CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD

DIGEST OF DECISIONS

1992 – 2007
6th Edition
[Updated February 12, 2007]

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CASE LISTS – SHORT CAPTIONS (PETITIONERS)

The full case caption indicates the Petitioner(s) and Respondent (*e.g.*, *Jody L. McVittie v. Snohomish County*). The cases are named after the Petitioner. The short name of the case appears in (parenthesis) and in ***bold italics*** after the full name of the case as it appears in the full case caption (***McVittie IV***). Consolidated cases contain two or more petitions for review (**PFRs**) and are typically named after the first Petitioner that files a PFR. A roman numeral in case name indicates that a Petitioner has been involved in multiple cases. The notation "pdr" following the case name and number indicates a Petition for Declaratory Rulings (**PDRs**).

The full case number (*e.g.* CPSGMHB Consolidated Case No. 00-3-0006c) indicates: the year the case was filed (first two digits – 20<u>00</u>); the Board where the case was filed (third digit – <u>3</u> = Central Puget Sound, 2 = Western, and 1 = Eastern); the PFR number filed that year (last four digits – the <u>6</u>th PFR filed); and whether the case was consolidated (<u>c</u> = consolidated). Usually the consolidated case number assigned corresponds to the number of the last PFR that was filed or consolidated. The short number of the case is depicted the same way as the short case name – parenthetically and in ***bold italics***. However, for the years 1992 through 2001, only four digits are used to depict the same information just described (*e.g.*, ***0306c***: year 200<u>0</u>, Board <u>3</u>, case <u>06c, c</u>onsolidated). [For example: For the case captioned *Jody L. McVittie v. Snohomish County* (***McVittie IV***), CPSGMHB Case No. 00-3-0006c (***0306c***), the short caption is noted as *McVittie IV, 0306c*.] For the years 2002 and beyond, **five digits** are used to depict the same information just described (*e.g.* ***02309c***: year 20<u>02</u>, Board <u>3</u>, case <u>09c c</u>onsolidated).

The full title of each matter that has come before the Central Puget Sound Growth Management Hearings Board between 1992 and 2007 is set forth a following section entitled "Synopsis of Decisions 1992 – 2007." The short caption reference is noted there for each case.

In this Sixth Edition of the Digest of Decisions, the Board has added references to Board decisions appealed to Superior Court, and their status. These notations are presented in [red type] and are based upon quarterly reports prepared for the Boards by the Attorney General's Office. When a case is remanded to the Board, the Board takes appropriate action; if the Board is affirmed, there is no further action of the Board required.

CASE LIST – BY YEAR (PETITIONERS)

1992 Cases[1] – 6
Tracy – 2301
Manke – 2302
Ruston – 2303
Snoqualmie – 2304c[2]
Gutschmidt – 2306
Poulsbo – 2309c

1993 Cases – 5
Twin Falls – 3303c
Edmonds – 3305c
Happy Valley – 3308c
Northgate – 3309
Rural Residents – 3310

1994 Cases – 19
Tacoma – 4301
Pilchuck I[3] – 4302
FOTL I – 4303
Black Diamond – 4304
KCRP – 4305
Kitsap – 4306
Brown – 4307
FOTL II – 4309
Aagaard – 4311c
In Re: Kitsap – 4312
Sumner – 4313
Kitsap/OFM – 4314
WSDF I – 4316
PNO – 4318
Robison – 4325c
KCRP III – 4327c
Slatten – 4328
Hensley I – 4329
Wright – 4330

1995 Cases – 28
Vashon-Maury – 5308c
Children's I – 5311
Gig Harbor – 5316c
Pierce Co. – 5320
Bremerton – 5339c
WSDF II – 5340
Alberg – 5341c
Valley Alliance – 5342
Hensley II -5343
CCSV – 5344
Pilchuck II – 5347c
Bigford – 5348
BNRR – 5350
Anderson Creek – 5353c
South Bellevue – 5355
AFT – 5356
Salisbury – 5358
PNA I – 5359
Sky Valley – 5368c
S. Lake Union – 5370
PNA II -5371
Benaroya I – 5372c
WSDF III – 5373
Hapsmith I – 5375c
Schulman – 5376
TAS – 5377
Keesling – 5378
Hayes – 5381

[1] A case may include more than one Petition for Review due to consolidation. Cases may also include more than one Order or Decision. Cases do not include remands from the Courts.
[2] "c" means consolidated case
[3] Roman numerals indicate that a Petitioner has been involved in multiple cases.

1996 Cases – 31
Overton – 6301pdr[4]
Sundquist – 6301
Litowitz – 6305
Baker – 6308
Cole – 6309c
HEAL – 6312
COPAC – 6313c
Hapsmith II – 6314
Harston – 6315
Banigan – 6316c
Rural Residents II- 6317
SCBB – 6318
Cosmos – 6319
Buckles – 6322c
Children's II – 6323
Arlington – 6324
Wallock I – 6325
PNA V – 6326
McGowan – 6327
Battrum – 6328
Tulalip – 6329
Tacoma Mall I – 6330
Hensley III – 6331
Des Moines – 6332
WSDF IV – 6333
Tacoma Mall II – 6334
FOTL V – 6335
Lake Forest Park – 6336
Wallock II – 6337
Torrance – 6338
PNA VI – 6339

1997 Cases – 17
Renton – 7301pdr
Johnson I – 7301
Johnson II – 7302
Gilpin – 7303
Fennel Creek – 7305
Frick – 7307
Tukwila – 7309
Benaroya II – 7310c
Kelly – 7312c
Auburn – 7313
Port of Seattle – 7314
Port Gamble[5] – 7324c
Renton – 7326
Keesling II – 7327
Morris – 7329c
Issaquah 69 – 7330
Lakehaven -7331

1998 Cases – 16
Alpine/Posten – 8301pdr
Port of Seattle II – 8301
Fircrest – 8302
Rabie – 8305c
Green Valley – 8308c
Style – 8309
Burien – 8310
Parsons – 8311
LMI/Chevron – 8312
Hanson – 8315c
RBI/Andrus – 8330c
Alpine – 8332c[6]
Lane – 8333
URBPA – 8334
WRECO – 8335
Carkeek – 8336

1999 Cases – 18
Montlake – 9302c
Sound Transit – 9303
AFT II – 9304
Screen I – 9306c
Pilchuck IV – 9307
Parsons III – 9308
Olympic – 9309
Housing Partners – 9310
Westcot – 9311
Screen II – 9312
Tulalip II – 9313
NW Golf – 9314
McVittie – 9316c
MacAngus – 9317
Burrow – 9318
Gain – 9319
Kenyon – 9320
Tacoma II – 9323c

[4] "pdr" means petition for declaratory ruling
[5] Coordinated with Bremerton, 5339c.
[6] Coordinated with Bremerton, 5339c.

2000 Cases – 18

Shoreline – 0301pdr
Bidwell – 0302pdr
Radabaugh – 0302
Grubb – 0304
Kimmett – 0305
McVittie IV – 0306c
DOC/DSHS – 0307
Harvey Airfield – 0308
Bidwell – 0309
Shoreline – 0310
Gawenka – 0311
WHIP – 0312
Petersville Road Residents – 0313
Homebuilders – 0314
Pierce County – 0315
McVittie V – 0316
LIHI I – 0317
Kitsap Citizens – 0319c

2001 Cases – 23

Kenyon II – 1301
McVittie VI – 1302
Hensley IV – 1304c
Mesher – 1307
Forster Woods – 1308c
Nelson – 1309
FOTL VI – 1310
Vine Street – 1311
Nardo – 1312
Shoreline II – 1313
SHAG – 1314
DOC II - 1315
MBA – 1316
McVittie VIII – 1317
Edgewood – 1318
HBA II – 1319
Lewis – 1320
Bennett – 1322
LIHI II – 1323
Lotto – 1324
McVittie IX – 1325
WHIP II – 1326
Crofut – 1327

2002 Cases – 17

Gagnier – 02302c
Miller – 02303
Hensley V – 02304
Clark – 02305
Everett Shorelines Coalition – 02309c
MBA/Brink – 02310
King County – 02311
Aagaard II– 02312
DSHS III – 02313
FACT – 02314
Kent CARES – 02315
Grieve – 02316
Harless – 02318c
Kent CARES – 02319
Robison II – 02320
Sakura – 02321
Salish Village – 02322

2003 Cases – 25

Salish Village – 03301pdr
Palmer – 03301
Tacoma III – 03302
Olsen – 03303
WHIP II/III/Moyer – 03306c
Windsong – 03307
Laurelhurst – 03308
Hensley VI – 03309c
Hensley VII – 03310
King County – 03311
Kent CARES III – 03312
Citizens – 03313
Harless II – 03314
Hensley VIII – 03315
Laurelhurst II – 03316
CTED – 03317
Tupper – 03318
1000 Friends – 03319
CTED II – 03320
Mueller – 03321
HIGA – 03322
Granite Falls – 03323
MBA/Lund – 03324
King County II – 03325
1000 Friends II – 03326

2004 Cases – 26

MBA/Larson – 04301
Bridgeport Way – 04303
Nicholson – 04304
FEARN – 04306c
Orton Farms – 04307c
Bremerton II – 04309c
Jensen – 04310
Shaffer – 04311
King County III – 04312
Samson – 04313
DSHS IV – 04314
1000 Friends III – 04315
Evergreen – 04316
Grieve II – 04317
1000 Friends IV – 04318
SOS – 04319
Sky Harbor – 04320
Fallgatter – 04321
1000 Friends V – 04322
Shaffer II - 04323
Keesling III – 04324
Duvall Quarry – 04326
Fuhriman/MBA – 04327
S/K Realtors – 04328
Soos Creek – 04329
1000 Friends/KCRP – 04331c

2005 Cases – 38

Keesling IV – 05301
Tahoma/Puget Sound – 05304c
1000 Friends VII – 05306
Kaleas – 05307c
Fallgatter III – 05310c
MBA/Bothell – 05311
Camwest – 05312
Futurewise – 05313
Bonney Lake – 05316c
Kitsap III – 05317c
LCC – 05318
Futurewise II – 05319
Futurewise III – 05320
Gateway – 05324
Fuhriman II – 05325c
Wellington – 05326
MBA/Camwest – 05327
Cossalman – 05328

2005 Cases (continued)

Pilchuck V -05329
MBA/Pacific Land – 05330
King County IV – 05331
Cossalman/Van Cleve – 05332
Futurewise IV – 05333
DOE/CTED – 05334
Fallgatter IV – 05335
DSHS V – 05336
DOC III – 05337
Safeway – 05338
KCRP V – 05339
Fuhriman III – 05340
Camwest III – 05341
Strahm – 05342
DOC IV – 05343
MBA/Bonney Lake – 05345
Cossalman/McTee – 05346c
Harvey Airfield II – 05347
Abbey Road – 05348
Covington Golf – 05349

2006 Cases – 32

Normandy Park – 06301pdr
CHB – 06301
Kap – 06302
Fallgatter V – 06303
DSHS VI – 06304
Sno-King – 06305
Suquamish Tribe – 06306
KCRP VI – 06307
Giba – 06308
Tacoma IV – 06311c
Hood Canal – 06312c
Pilchuck VI – 06315c
Pruitt – 06316
Fallgatter VI – 06317
Camwest IV – 06318
Orchard Beach – 06319
Giba – 06320
Garwood – 06321
Mildred/Boding – 06323
Seattle Audubon – 06324
Sno-King II – 06325
Kap II – 06326
McNaughton – 06327
Open Frame – 06328

2006 (continued)

Pirie – 06329
Brutsche – 06330
Campbell – 06331
Strahm III – 06333
Fallgatter VIII – 06334
Keesling V – 06335
Heydrick – 05337
WPAS – 06339c

2007 Cases – 10[7]

Muckelshoot – 07304c
Seattle I – 07305
Petso – 07306
Skills Inc – 07308c
CHECK – 07309
Cascade Bikers – 07310c
Petersen – 07312c
Burien II – 07313
Futurewise V – 07314
Smith – 07315

[7] Filed as of February 15, 2007.

ALPHABETICAL CASE LIST – (PETITIONERS)

Numerical:
1000 Friend/KCRP – 04331c
1000 Friends – 03319
1000 Friends II – 03326
1000 Friends III – 04315
1000 Friends IV – 04318
1000 Friends V - 04322
1000 Friends VII – 05306

A:
Aagaard – 4311c
Aagaard II – 02312
Abbey Road – 05348
AFT – 5356
AFT II– 9304
Alberg – 5341c
Alpine – 8332c
Alpine/Posten –8301pdr
Anderson Creek – 5353c
Andrus/RBI – 8330c
Arlington – 6324
Auburn – 7313

B:
Baker – 6308
Banigan – 6316c
Battrum – 6328
Benaroya I– 5372c
Benaroya II – 7310c
Bennett – 1322c
Bidwell – 0302pdr
Bidwell – 0309
Bigford – 5348
Black Diamond – 4304
BNRR – 5350
Bonney Lake – 05316c
Bremerton – 5339c
Bremerton II – 04309c
Bridgeport Way – 04303
Brown – 4307
Brutsche – 06330
Buckles – 6322c

B (continued):
Burien – 8310
Burien II – 07313
Burrow – 9318

C:
CCSV – 5344
CHB – 06301
Campbell – 06331
Camwest – 05312
Camwest III – 05341
Camwest IV – 06318
Carkeek – 8336
Cascade Bikers – 07310c
CHECK – 07309
Children's I – 5311
Children's II – 6323
Citizens – 03313
Clark – 02305
Cole – 6309c
COPAC – 6313c
Cosmos – 6319
Cossalman – 05328
Cossalman/VanCleve – 05332
Cossalman/McTee – 05346c
Covington Golf – 05349
Crofut – 1327
CTED – 03317
CTED II – 03320

D:
Des Moines – 6332
DOC/DSHS – 0307
DOC II – 1315
DOC III – 05337
DOC IV – 05343
DOE/CTED – 05334
DSHS III – 02313
DSHS IV – 04314
DSHS V – 05336
DSHS VI – 06304
Duvall Quarry – 04326

E:
Edmonds – 3305c
Edgewood – 1318
Everett Shorelines Coalition – 02309c
Evergreen – 04316

F:
FACT – 02314
Fallgatter – 04321
Fallgatter III – 05310c
Fallgatter IV – 05335
Fallgatter V – 06303
Fallgatter VI – 06317
Fallgatter VII – 06323
Fallgatter VIII – 06334
Fennel Creek – 7305
FEARN – 04306c
Fircrest – 8302
Forster Woods – 1308c
FOTL I – 4303
FOTL II – 4309
FOTL V – 6335
FOTL VI – 1310
Frick – 7307
Fuhriman/MBA – 04327
Fuhriman II – 05325c
Fuhriman III – 05340
Futurewise – 05313
Futurewise II – 05319
Futurewise III – 05320
Futurewise IV – 05333
Futurewise V – 07314

G:
Gagnier – 02302c
Gain – 9319
Garwood – 06321
Gateway – 05324
Gawenka – 0311
Giba – 06308
Giba II - 06320
Gig Harbor – 5316c

G (continued):
Gilpin – 7303
Granite Falls – 03323
Green Valley – 8308c
Grieve – 02316
Grieve II – 04317
Grubb – 0304
Gutschmidt – 2306c

H:
Hanson – 8315c
Happy Valley – 3308c
Hapsmith I – 5375c
Hapsmith II – 6314
Harless – 02318c
Harless II – 03314
Harston – 6315
Harvey Airfield – 0308
Harvey Airfield II – 05349
Hayes – 5381
HBA II – 1319
HEAL – 6312
Hensley I – 4329
Hensley II –5343
Hensley III –6331
Hensley IV – 1304c
Hensley V – 02304
Hensley VI - 03309c
Hensley VII – 03310
Hensley VIII – 03315
HIGA – 03322
Homebuilders – 0314
Hood Canal – 06312c
Housing Partners – 9310
Heydrick – 06337

I:
In Re: Kitsap – 4312
Issaquah 69 – 7330

J:
Jensen – 04310
Johnson I – 7301
Johnson II – 7302

K:
Kaleas – 05307c
Kap – 06302

K (continued):
Kap II – 06326
KCRP – 4305
KCRP III – 4327c
KCRP V – 05339
KCRP VI – 05339
KCRP VI – 06307
Keesling – 5378
Keesling II – 7327
Keesling III – 04324
Keesling IV – 05301
Keesling V – 06335
Kelly – 7312c
Kent CARES – 02315
Kent CARES – 02319
Kent CARES – 03312
Kenyon I – 9320
Kenyon II – 1301
Kimmett – 0305
King County – 02311
King County – 03311
King County II – 03325
King County III – 04312
King County IV - 05331
Kitsap – 4306
Kitsap III – 05317c
Kitsap Citizens – 0319c
Kitsap/OFM – 4314

L:
LCC – 05318
Lakehaven –7331
Lake Forest Park – 6336
Lane – 8333
Laurelhurst – 03308
Laurelhurst II – 03316
Lewis – 1320
LIHI I – 0317
LIHI II – 1323
Litowitz – 6305
LMI / Chevron – 8312
Lotto – 1324

M:
MacAngus – 9317
Manke – 2302
MBA – 1316
MBA/Bonney Lake – 05345

M (continued):
MBA/Bothell – 05311
MBA/Brink – 02310
MBA/Camwest – 05327
MBA/Lund – 03324
MBA/Larson – 04301
MBA/Pacific Land – 05330
McGowan – 6327
McNaughton – 06327
McVittie – 9316c
McVittie IV – 0306c
McVittie V – 0316
McVittie VI – 1302
McVittie VIII – 1317
McVittie IX – 1325
Mesher – 1307
Mildred/Bodine – 06322
Miller – 02303
Montlake – 9302c
Morris – 7329c
Moyer – 03306c
Muckelshoots – 07304c
Mueller - 03321

N:
Nardo – 1312
Nelson – 1309
Nicholson – 04304
Normandy Park – 06301pdr
Northgate – 3309
NW Golf – 9314

O:
Ocean Beach – 06319
Olsen – 03303
Olympic – 9309
Open Frame – 06328
Orton Farms – 04307c
Overton – 6301pdr

P:
Palmer – 03301
Parsons - 9308
Petersville Road Residents – 0313
Petso – 07306
Petersen – 07312c
Pierce Co. – 5320
Pierce II – 0315

P (continued):
Pilchuck I – 4302
Pilchuck II – 5347c
Pilchuck IV – 9307
Pilchuck V – 05329
Pilchuck VI – 06314c
Pirie – 06329
PNA I – 5359
PNA II –5371
PNA V – 6326
PNA VI – 6339
PNO – 4318
Port Gamble – 7324c
Port of Seattle – 7314
Port of Seattle II – 8301
Poulsbo – 2309c
Pruitt – 06316

R:
Rabie – 8305c
Radabaugh – 0302
RBI/Andrus – 8330c
Renton – 7301pdr
Renton – 7326
Robison – 4325c
Robison II – 02320
Rural Residents – 3310
Rural Residents II – 6317
Ruston – 2303

S :
Safeway – 05338
Sakura – 02321
Salish Village – 02322
Salish Village – 03301pdr
Samson – 04313
SCBB – 6318
Screen I – 9306c
Screen II – 9312
Seattle Audubon – 06324
Seattle I – 07305
Shaffer – 04311
Shaffer II – 04323
SHAG – 1314
Shoreline – 1313
Shoreline II – 0301pdr
Shoreline II – 0310
Shulman – 5376

S (continued):
S/K Realtors – 04328
Skills Inc – 07308c
Sky Harbor – 04320
Sky Valley – 5368c
Slatten – 4328
Smith – 07315
Sno-King – 06305
Sno-King II - 06325
Snoqualmie – 2304c
SOS – 04319
Soos Creek – 04329
Sound Transit – 9303
South Bellevue – 5355
South Lake Union – 5370
Strahm – 05342
Strahm III – 06333
Style – 8309
Sumner – 4313
Sundquist – 6301
Suquamish Tribe – 06306

T:
Tacoma – 4301
Tacoma II – 9323
Tacoma III – 03302
Tacoma IV – 06311c
Tacoma Mall – 6330
Tacoma Mall II – 6334
TAS – 5377
Tahoma/Puget Sound - 05304c
Torrance – 6338
Tracy – 2301
Tukwila – 7309
Tulalip – 6329
Tulalip II – 9313
Tupper – 03321
Twin Falls – 3303c

U:
URBPA – 8334

V:
Valley Alliance – 5342
Vashon-Maury – 5308c
Vine Street – 1311

W:
Wallock I – 6325
Wallock II – 6337
Wellington – 05326
Westcot – 9311
WHIP – 0312
WHIP II – 1326
WHIP III – 03306c
Windsong – 03307
WPAS – 06338c
WRECO – 8335
Wright – 4330
WSDF I – 4316
WSDF II – 5340
WSDF III – 5373
WSDF IV – 6333

SYNOPSIS OF CASES 1992 THROUGH 2007[8]

SYNOPSIS OF 1992 CASES[9]

CPSGMHB Decisions [With Key Words]

James Tracy v. City of Mercer Island (***Tracy***), CPSGPHB[10] Case No. 92-3-0001 (***2301***), Final Decision and Order, (Jan. 5, 1993). The challenged portions of Mercer Island's Interim Critical Areas Regulations were **upheld, except** for: certain lands and structures were not critical areas as defined in the GMA, and were **remanded**. [Interim – Critical Areas – SMJ – SEPA – Public Participation]

Tracy, 2301, Finding of Compliance, (May 24, 1993). Mercer Island **complied** with the January 5, 1993 FDO.

Manke Lumber Company Inc. v. Kitsap County [Peter Overton and Overton and Associates – Intervenors] (***Manke***), CPSGPHB Case No. 92-3-0002 (***2302***), Order Authorizing Withdrawal of Intervenor and Dismissing Matter with Prejudice, (Nov. 18, 1992). The challenge to Kitsap County's Interim Resource Land Designations and Regulations was **dismissed;** the petitioners withdrew their PFR.

Town of Ruston v. Pierce County (***Ruston***), CPSGPHB Case No. 92-3-0003 (***2303***), Order of Dismissal, (Oct. 13, 1992). Ruston's challenge to Pierce County's County-wide Planning Policies was **dismissed** since the Town failed to serve the County and did not participate in the prehearing conference. [Service – Default]

City of Snoqualmie and City of Issaquah v. King County (***Snoqualmie***), *CPSGPHB* Case No. 92-3-0004c[11] (***2304c***), Order Denying Motion for Continuance Beyond 180-Day Limit, (Nov. 4, 1992). Issaquah's and King County's motion for continuance or extension was **denied.** [180 Days – CPPs]

Snoqualmie, 2304c, Stipulation and Agreed Order of Dismissal without Prejudice, (Nov. 22, 1992). Issaquah's challenge to King County's CPPs was **dismissed; t**he City withdrew its PFR.

Snoqualmie, 2304c, Final Decision and Order, (Mar. 1, 1993). The challenged portions of King County's County-wide Planning Policies were **upheld, except** for: several

[8] This 6th Edition of the CPSGMHB Digest includes decisions issued on cases through February 1, 2007.
[9] Note that decisions were not necessarily issued in the year the case was filed.
[10] Originally, the Board was named the Central Puget Sound Growth *Planning* Hearings Board, or CPSGPHB. Therefore, citations in 1992 and 1993 use CPSGPHB.
[11] The suffix "c" means that the case is a consolidation of several petitions for review.

policies, which infringed on the land use powers of cities, which were **remanded.** [CPPs – General Discussion – Regional Planning – ILAs – Land Use Powers – SEPA] *Snoqualmie, 2304c*, Finding of Compliance, (Jun. 28, 1993). King County **complied** with the March 1, 1993 FDO.

James Gutschmidt v. City of Mercer Island [William Wright and Ralph Gutschmidt – Intervenors] (***Gutschmidt***), CPSGPHB Case No. 92-3-0006 (***2306***), Final Decision and Order, (Mar. 16, 1993). The challenged portions of Mercer Island's Interim Critical Areas regulations were **upheld, except** for: several definitions and non-legislative amendments, which were **remanded**. [SMJ – Goals – Interim – Critical Areas – Amendment – Definitions – SEPA]

Gutschmidt, 2306, Finding of Compliance, (Sep. 16, 1993). Mercer Island **complied** with the March 16, 1993 FDO.

[Appealed to Thurston County Superior Court – Consolidated Cause Nos. 93-2-01062-9 and 93-2-0169-6, **Dismissed**.]

City of Poulsbo, City of Port Orchard and City of Bremerton v. Kitsap County (***Poulsbo***), CPSGPHB Case No. 92-3-0009c (***2309c***) Final Decision and Order, (Apr. 6, 1993). The challenged portions of Kitsap County's County-wide Planning Policies were **upheld, except** for: policies that direct annexation methods or urban service provision, which were **remanded.** [CPPs - General Discussion – Annexation – Urban Growth – Transformation – ILAs]

Poulsbo, 2309c, Order Granting Kitsap County's Petition for Reconsideration and Modifying Final Decision and Order, (May 17, 1993). Reconsideration was **granted** and the Board clarified that urban governmental services were provided primarily by cities. [Reconsideration – Transformation of Governance – Annexation – PFR]

Poulsbo, 2309c, Finding of Compliance, (Oct. 10, 1993). Kitsap County **complied** with the May 17, 1993 FDO.

SYNOPSIS OF 1993 CASES[12]

CPSGMHB Decisions [With Key Words]

Twin Falls Inc., Weyerhaeuser Real Estate Co., Snohomish County Property Rights Alliance and Darrell R. Harting v. Snohomish County (***Twin Falls***), CPSGPHB[13] Case No. 93-3-0003c (***3303c***), Order on Dispositive Motions, (Jun. 11, 1993). Several issues were **dismissed** from the case for lack of subject matter jurisdiction. [Dismissal - SMJ - Minimum Guidelines - Forest Lands - 180 Days]

Twin Falls, 3303c, Final Decision and Order, (Sep. 7, 1993). The challenged portions of Snohomish County's Interim Forest Land designations and regulations were **upheld**. [Upheld - Abandoned Issues - Minimum Guidelines – Goals - Forest Lands - Existing Use – Property Rights – Interim – Boards – Standard of Review – Discretion – Quasi-Judicial – SEPA – Notice - Public Participation]

Twin Falls, 3303c, Order Granting WRECO's Petition for Reconsideration and Modifying Final Decision and Order; and Order Denying SNOCO PRA's Petition for Reconsideration, (Oct. 6, 1993). The Board **denied** reconsideration to one party but **granted** reconsideration to another and modified findings of fact and clarified a discussion.

[Appealed to Thurston County Superior Court – Cause No. 93-2-2442-5, Cause No. 93-2-02666-5 – Board **Affirmed**.]

City of Edmonds and City of Lynwood v. Snohomish County (***Edmonds***), CPSGPHB Case No. 93-3-0005c (***3305c***), Final Decision and Order, (Oct. 4, 1993). The challenged portions of Snohomish County's County-wide Planning Policies were **upheld, except** for: policies violating local land use powers, which were **remanded**. [General Discussion – CPPs – Land Use Powers – Allocation – UGAs –Hierarchy – Housing Element – CFE]

Edmonds, 3305c, Finding of Compliance, (Mar. 25, 1994). Snohomish County **complied** with the October 4, 1993 FDO.

[Appealed to Thurston County Superior Court – Consolidated Cause Nos. 93-2-02731-9, 93-2-02766-1 – Board **Affirmed**.]

Happy Valley Associates, City of Issaquah, Grand and Glacier Ridge Partnerships v. King County (***Happy Valley***), CPSGPHB Case No. 93-3-0008c (***3308c***), Order Granting Respondent King County's Motion to Dismiss and Denying Happy Valley's Motion to Amend Its Petition For Review, (Oct. 25, 1993). The challenge to King County's East Sammamish Community Plan was **dismissed** since it was a pre-existing, non-GMA plan

[12] Note that decisions were not necessarily issued in the year the case was filed.
[13] *See* footnote 2.

beyond the Board's subject matter jurisdiction. [Dismissal – PFR – Amendment – Pre-GMA – Subarea Plans – CPPs – UGAs]

Northgate Mall Partnership v. City of Seattle (***Northgate***), CPSGPHB Case No. 93-3-0009 (***3309***), Order Granting Seattle's Motion to Dismiss and Denying Northgate Mall's Cross Motion and Its Motion to Strike Statements, (Nov. 8, 1993). The challenge to Seattle's Northgate Plan was **dismissed** since it was a pre-existing, non-GMA plan beyond the Board's subject matter jurisdiction. [Dismissal – Rules of Evidence – SMJ – Pre-GMA]

[Appealed to Thurston County Superior Court –Cause No. 93-2-03026-3 – Board **Affirmed**.]

Association of Rural Residents v. Kitsap County (***Rural Residents***), CPSGPHB Case No. 93-3-0010 (***3310***), Order Granting Dispositive Motions, (Feb. 16, 1994). Certain SEPA issues were **dismissed** since Petitioners had failed to exhaust administrative remedies. [IUGAs - SEPA – Exhaustion – Quasi-judicial – Discretion]

*Rural Residents, 3310***,** Final Decision and Order, (Jun. 3, 1994). Kitsap County's adoption of Interim UGAs was **remanded** since it failed to use OFM projections and locate urban growth within an IUGA. [IUGAs – General Discussion – Hierarchy – Goals – UGAs - OFM Population - Open Space / Greenbelts]

Rural Residents, 3310, Order Denying Kitsap County's Motion for Reconsideration, (Jun. 24, 1994). Kitsap County's request for reconsideration regarding population and UGAs was **denied**.

Rural Residents, 3310, Finding of Noncompliance and Recommendation of Sanctions, (Nov. 18, 1994). Kitsap County **did not comply** with the June 3, 1993 FDO; **sanctions** were recommended to the Governor. [Noncompliance – Sanctions]

[Appealed to Thurston County Superior Court –Cause No. 94-2-02051-7 – Board **Affirmed**.]

SYNOPSIS OF 1994 CASES[14]

CPSGMHB Decisions [With Key Words]

City of Tacoma, City of Milton, City of Puyallup and City of Sumner v. Pierce County (***Tacoma***), CPSGMHB[15] Case No. 94-3-0001 (***4301***), Order on Dispositive Motions, (Mar. 4, 1994). Certain affirmative defenses based on common-law doctrines and equity were **denied** for lack of subject matter jurisdiction. [SMJ]

*Tacoma, 4301***,** Final Decision and Order, (Jul. 5, 1994). Pierce County's Interim Urban Growth Areas were **remanded** to: use OFM 2012 population, adjust urban densities, include open space and greenbelts, clearly define IUGAs, and show its work. The County was given the option of either amending its IUGAs or adopting Final Urban Growth Areas by the compliance date. (The County adopted its Plan, including FUGAs, within the compliance period). [Remand – UGAs - General Discussion – Recap - Transformation of Governance - Urban Growth – IUGAs - Development Regulations - OFM Population - Open Space / Greenbelts – Tiering – CPPs – Discretion]

Tacoma, 4301, Finding of Compliance, (Jan. 18, 1994). Pierce County **complied** with the FDO.

[Appealed to Pierce County Superior Court – Cause No. 96-2-02198-0 – Board **Affirmed**.]

Pilchuck Audubon Society and Snohomish Wetlands Alliance v. Snohomish County (***Pilchuck I***[16]), CPSGMHB Case No. 94-3-0002 (***4302***), Dispositive Order Granting Stipulated Motion, (May 10, 1994). Snohomish County stipulated that it had failed to adopt interim critical areas designations and regulations for protecting critical areas. The County was **directed to comply** by October 1, 1994. [Interim – Failure to Act – Critical Areas]

Pilchuck I, 4302, Finding of Noncompliance, (Oct. 28, 1994). Snohomish County did **not comply** with the Board's 5/10/94 Order; the imposition of **sanctions** was recommended. [Noncompliance – Sanctions – Critical Areas]

Friends of the Law and Bear Creek Citizens for Growth Management v. King County [Blakely Ridge Limited Partnership, City of Issaquah, Glacier Ridge Limited Partnership, Grand Ridge Limited Partnership, Sunrise Ridge Limited Partnership and Quadrant Corporation – Intervenors] (***FOTL I***), CPSGMHB Case No. 94-3-0003 (***4303***), Order on Dispositive Motions, (Apr. 22, 1994). King County **did not comply** with the GMA since it failed to adopt designations and protection for critical areas. The

[14] Note that decisions were not necessarily issued in the year the case was filed.
[15] *See* footnote 2.
[16] The Roman numeral indicates which case this is of several cases brought by the same petitioner.

County was **directed to comply**. [Timeliness – Standing – Failure to Act – Critical Areas – Interim]

FOTL I, 4303, Order Denying Reconsideration and FOTL's Motion to Amend Petition, (May 18, 1994). Petitioners' request for reconsideration was **denied**. [Board Rules – 180 days – Compliance – Standing – PFR]

FOTL I, 4303, Finding of Compliance, (Oct. 14, 1994). King County **complied** with the direction of the Board's 4/22/94 Order, by adopting the required designations of critical areas and regulations to protect them. [Compliance – Failure to Act – Critical Areas]

City of Black Diamond and Black Diamond Associates v. King County [Palmer Coking Coal Company – Intervenors] (***Black Diamond***), CPSGMHB Case No. 94-3-0004 (***4304***), Order on Dispositive Motion and Order Granting Amicus Status to City of Woodinville, (Jun. 9, 1994). King County stipulated that its IUGAs did **not comply** with the GMA. [IUGAs]

Black Diamond, 4304, Order Dismissing Legal Issues and Case and Directing Amendment to IUGA Map, (Jul. 18, 1994). The case was **dismissed** and the City directed to comply. [IUGA]

Black Diamond, 4304, Finding of Compliance, (Nov. 29, 1994). King County **complied** with the 6/9/94 Order.

Kitsap Citizens for Rural Preservation, Beth Wilson, Charlie Burrow, Tom Donnelly and Charlotte Garrido v. Kitsap County [Kitsap Audubon Society and Port Blakely Tree Farms – Intervenors] (***KCRP***), CPSGMHB Case No. 94-3-0005 (***4305***), Order on Kitsap County's Dispositive Motion, (Jul. 27, 1994). Kitsap County's motion was **granted,** in part, and **denied,** in part. Several legal issues were dismissed others were retained. [Development Regulations – SMJ – Exhaustion – SEPA - Failure to Act - Forest Lands - Sanctions]

KCRP, 4305, Final Decision and Order, (Oct. 25, 1994). Kitsap County's Conservation Easement Ordinance **did not comply** with the GMA since it permitted urban growth in the rural areas, and was **remanded**. [Development Regulations – Rural Element – Rural Densities – SEPA – Exhaustion]

KCRP, 4305, Finding of Compliance, (Jan. 25, 1995). Kitsap County **complied** with the GMA and October 25, 1994 FDO since it repealed its CEO ordinance.

Kitsap County v. City of Poulsbo (***Kitsap***), CPSGMHB Case No. 94-3-0006 (***4306***), Order of Dismissal, (Dec. 2, 1994). The challenge to Poulsbo's Comprehensive Plan was **dismissed** since neither County nor City briefed any issues. [Dismissal – Withdrawal – Abandoned Issues]

Brown v. City of Lake Stevens (***Brown***), CPSGMHB Case No. 94-3-0007 (***4307***), Stipulation and Order of Dismissal, (Nov. 30, 1994). Petitioner stipulated that Lake Stevens had complied with SEPA and the GMA; therefore, the case was **dismissed**.

Friends of the Law and Bear Creek Citizens for Growth Management v. King County [Port Blakely Tree Farms – Intervenor] (***FOTL II***), CPSGMHB Case No. 94-3-0009 (***4309***), Order Granting Dispositive Motions, (Nov. 8, 1994). King County's Comprehensive Plan did **not comply** with the GMA and was **remanded** since it did not include UGAs. [Comprehensive Plan – Failure to Act – UGAs]

FOTL II, 4309, Finding of Compliance, (Jan. 25, 1995). King County adopted its final UGAs; therefore it **complied** with the 11/8/94 Order.

Ann Aagaard, Sue Kienast, Tris Samberg, Cheri Miller, Michael Hablewitz, Craig Bernhart and Judy Fisher v. City of Bothell (***Aagaard***), CPSGMHB Case No. 94-3-0011c (***4311c***), Final Decision and Order, (Feb. 21, 1995). The challenged portions of Bothell's Comprehensive Plan were **upheld, except** for a high-density senior housing policy, which was inconsistent with the capital facilities element and transportation analysis and thus **remanded**. [Remand - Comprehensive Plan – Hierarchy - General Discussion – Framework – Goals - OFM Population – Consistency - Pre-GMA - Subarea Plans – UGAs – LUPP - Open Space / Greenbelts – CPPs - Housing Element – SEPA - Standing]

Aagaard, 4311c, Finding of Compliance, (Aug. 29, 1995). The City of Bothell **complied** with the FDO.

In Re: the Matter of Kitsap County's Twenty Year Growth Management Planning Population Projection (***In Re: Kitsap***), CPSGMHB Case No. 94-3-0012 (***4312***), Order of Dismissal Without Prejudice, (Sep. 29, 1994). Kitsap County withdrew its petition, but filed a new petition naming OFM as respondent (*See:* 94-3-0014). Therefore, the case was **dismissed**.

City of Sumner v. Pierce County Boundary Review Board and City of Pacific (***Sumner***), CPSGMHB Case No. 94-3-0013 (***4313***), Order Granting Respondent's Motion to Dismiss, (Dec. 14, 1994). The challenge to the BRB's approval of an annexation to the City of Pacific was **dismissed**, for lack of subject matter jurisdiction. [SMJ]

Kitsap County v. Office of Financial Management ***(Kitsap/OFM)***, CPSGMHB Case No. 94-3-0014 (***4314***), Final Decision and Order, (Mar. 27, 1995). OFM's 2012 population projection for Kitsap County was **upheld**. [OFM Population – General Discussion – Standard of Review]

West Seattle Defense Fund v. City of Seattle (***WSDF I***), CPSGMHB Case No. 94-3-0016 (***4316***), Order Granting Seattle's Motion to Dismiss SEPA Claim [Legal Issue No. 10], (Dec. 30, 1994). WSDF's SEPA challenge was **dismissed** for lack of standing and failure to exhaust administrative remedies. [Standing – Exhaustion - SEPA]

WSDF I, 4316, Final Decision and Order, (Apr. 4, 1995), {Tovar Dissenting}. The challenged portions of Seattle's Comprehensive Plan were **upheld, except** for treatment of Urban Villages and Centers in the CFE and transportation element, which were **remanded**. [Remand – Comprehensive Plan – Precedent – Mandatory Elements – Innovative Techniques - Goals - Subarea Plans - CFE - Localized Analysis – Abandoned Issues – CPPs - OFM Population - Transportation Element – Concurrency - Public Participation]

WSDF I, 4316, Finding of Compliance, (Nov. 2, 1995). Seattle **procedurally complied** with the GMA as set forth in the FDO; substantive compliance is to be resolved in ***WSDF III***. (*See: WSDF III,* CPSGMHB Case No. 95-3-0073 *and WSDF IV,* CPSGMHB Case No. 96-3-0033.) [Compliance – Pre-GMA]

Pilchuck-Newberg Organization, Andrea Moore, Isabel Loveluck, Steven Thomas and Barbara Miles v. Snohomish County [Weyerhaeuser Real Estate Company – Intervenors] (***PNO***), CPSGMHB Case No. 94-3-0018 (***4318***), Final Decision and Order, (Apr. 28, 1995). Certain Petitioners were **dismissed** for lack of standing; Snohomish County's interim forest land regulations **did not comply** with the GMA's definition of forest lands and were **remanded.** [Interim – Forest Lands – SEPA – Standard of Review – Standing]

PNO, 4318, Finding of Noncompliance, (Jul. 24, 1994). Snohomish County **did not comply** with the FDO; **no sanctions** were recommended. [Noncompliance – Sanctions]

Robison, et al., v. City of Bainbridge Island [SBCA and BISD – Intervenors] (***Robison***), CPSGMHB Case No. 94-3-0025c (***4325c***), Order Granting BISD's Dispositive Motion re: Jurisdiction, (Feb. 24, 1995). Petitioner's challenge relating to school impact fees was **dismissed;** the Board lacked subject matter jurisdiction. [SMJ – Impact Fees]

Robison, 4325c, Final Decision and Order, (May 3, 1995). The challenged portions of the City of Bainbridge Island's Comprehensive Plan were **upheld, except** for: incorporation of the County's population allocation, and localized capital facility analysis for the Winslow Urban Core, which were **remanded.** [Comprehensive Plan - Burden of Proof – Incorporation – UGAs – CFE - Localized Analysis – Water - Public Participation - Economic Development Element - Urban Growth – Infrastructure - Transportation Element – CPPs – TDRs – Allocation - Open Space - Rural Element - Rural Densities - Consistency]

Robison, 4325c, Finding of Compliance, (Dec. 11, 1995). Bainbridge Island **procedurally complied** with the FDO. (Note: No new PFRs were filed.)

Kitsap Citizens for Rural Preservation, Zane Thomas, Tom Donnelly and Beth Wilson v. Kitsap County (***KCRP III***), CPSGMHB Case No. 94-3-0027c (***4327c***), Order Granting Motion to Dismiss SEPA Issues, (Feb. 14, 1995). Petitioners' SEPA challenge to the County's CPPs was **dismissed;** Petitioners withdrew their appeal agreeing that the SEPA issues were not ripe. [SEPA – Ripeness]

KCRP III, 4327c, Order of Dismissal Without Prejudice, (Mar. 17, 1995). Petitioners' challenge to Kitsap County's CPPs was **dismissed** since Petitioners withdrew their petition for review.

Terry and Randi Slatten v. Town of Steilacoom (***Slatten***), CPSGMHB Case No. 94-3-0028 (***4328***), Order on Steilacoom's Dispositive Motion, (Feb. 21, 1995). Steilacoom's motion to dismiss several legal issues was **granted** for lack of subject matter jurisdiction and no duty to act. [UGAs – Goals – Impact Fees]

Slatten, 4328, Order Dismissing Legal Issue No. 10, (Feb. 24, 1995). Legal Issue No. 10, which dealt with impact fees, was **dismissed**. The Board had determined in *Robison, 4325*, that it did not have subject matter jurisdiction over challenges to impact fees established pursuant to Chapter 82.02 RCW. [Precedent – SMJ – Impact Fees]

Slatten, 4328, Order of Dismissal, (Mar. 9, 1995). The challenge to Steilacoom's Plan was **dismissed**, since Petitioners withdrew their petition for review.

Corinne Hensley v. Snohomish County, Cross Valley Water District and Alderwood Water District (***Hensley I***), CPSGMHB Case No. 94-3-0029 (***4329***), Order Granting Snohomish County's Dispositive Motion, (Feb. 24, 1995). Petitioner's challenge was **dismissed** for lack of subject matter jurisdiction. [SMJ - Sewer – Water – Consistency]

Wright v. City of Mercer Island (***Wright***), CPSGMHB Case No. 94-3-0030 (***4330***), Order of Dismissal With Prejudice, (Jan. 24, 1995). The parties stipulated to a dismissal of a challenge to OFM population projections and SEPA compliance; therefore, the case was **dismissed**.

SYNOPSIS OF 1995 CASES[17]

CPSGMHB Decisions [With Key Words]

Vashon-Maury, et al., v. King County (***Vashon-Maury***), CPSGMHB Case No. 95-3-0008c (***5308c***), Final Decision and Order, (Oct. 23, 1995), {Tovar Dissenting}. The challenged portions of King County's Comprehensive Plan were **upheld, except**: certain map amendments were **invalidated** and **remanded** due to lack of opportunity for public comment; the UGAs for certain rural cities were **remanded**; 5-acre lots in the rural area were **remanded**; and industrial areas in the rural area were **remanded**. [Comprehensive Plan – UGAs - OFM Population - Market Factor - Innovative Techniques – CFE – Water - Forest Lands – Amendments - Public Participation - Rural Element - Rural Densities - Critical Areas – SEPA – Standing – SMJ - Official Notice - Invalidity]

Vashon-Maury, 5308c, Order on Motions to Reconsider and Motion to Correct, (Dec. 1, 1995), {Towne and Tovar Dissenting}. The Board corrected several technical errors in its FDO and reconsidered and reversed its holding on the Bear Creek "Island" UGA. The Bear Creek "Island" UGA was **remanded** to be deleted or designated as a New Fully Contained Community. [UGAs – FCCs]

[Appealed to King County Superior Court – Cause Nos. 96-2-19142-6 SEA, 00-2-24543-2 SEA – **Dismissed**]

Vashon-Maury, 5308c, Finding of Compliance, May 24, 1996. The Board found **procedural compliance** with the Board's FDO and the Act. (*See: Buckles,* CPSGMHB Case No. 96-3-0022c.)

[Appealed to King County Superior Court – Cause Nos. 96-2-16705-3 SEA, Court of Appeals Division I and Supreme Court – **Remanded to Board** – See Appendix C – 1999 Decisions.]

King County v. CPSGMHB (***Bear Creek***), [Supreme Court Remand of a portion of *Vashon Maury v. King County*, CPSGMHB Case No. 95-3-0008c], (***5308c***), Second Precompliance Hearing Order, (Jan. 24,2000). The Board determined that for its deliberations on this case, remanded from the State Supreme Court, the Board's review would be based upon the "clearly erroneous standard." [Burden of Proof - Retroactive - Standard of Review]

Bear Creek, 5308c, Order on Quadrant's Motions to Dismiss and to Take Official Notice, (Apr. 4, 2000). The Board determined that the question of whether the Bear Creek area was justified as a UGA or FCC was properly before the Board and not moot. The Motion to Dismiss was **denied**. [FCC – UGA – Mootness – Official Notice]

[17] Note that decisions were not necessarily issued in the year the case was filed.

Bear Creek, 5308c, Order on Supreme Court Remand, (Jun. 15, 2000) {McGuire concurring, North concurring and Tovar dissenting}. Designation of the Bear Creek area as a UGA **did not comply** with the GMA's locational criteria for designating urban growth areas. However, the County's designation of the area as a fully contained community and any UGA designation flowing from approval of an FCC permit **comply** with the provisions of the GMA. The case was **remanded** with direction to the County to remove any UGA designations of the Bear Creek area based solely upon compliance with the locational criteria for UGA designation in the GMA. [UGAs – FCCs – CPPs – General Discussion – Definitions – CTED – OFM Population – Discretion – Deference – Zoning]

Bear Creek, 5308c, Order on FOTL's Motion for Reconsideration, (Aug. 22, 2000). The Board **denied** Petitioner's request to reconsider its determination that the Bear Creek area FCC was fully contained. [FCC – Reconsideration]

[Appealed to King County Superior Court – Cause Nos. 00-2-23110-5 SEA, 00-2-23249-7 SEA, 00-2-23543-2 SEA, 95-2-33178-5 SEA, 95-2-33614-1 SEA; Snohomish County Superior Court – Cause No. 96-2-00038-6 – convoluted history, ultimately resolved by the Supreme Court – Board **Affirmed** and **Reversed** – *See* Appendix C – 2003, 2005 Decisions.]

Bear Creek, 5308c, Order Finding Partial Noncompliance and Partial Invalidity, (Nov. 3, 2000). [On November 8, 2000, the Board issued a Scrivener's Error Correction to this Order.] The County's effort to comply with the GMA, by the adoption of an emergency interim ordinance, was found **not to comply** with the public participation requirements of the GMA; additionally, a noncompliant legend designation on the zoning map was determined to be **invalid**. . [Invalidity – Public Participation – Emergency – Amendment – Development Regulations – Interim – Plan – Land Use Powers – Zoning]

Bear Creek, 5308c, Order Rescinding Partial Invalidity and Finding Compliance, (Jan. 8, 2001). The County took the necessary actions to correct the map legend and held a public hearing on the remand items. The Board **rescinded invalidity** and entered a **Finding of Compliance**. [Compliance – Invalidity – Public Participation – Interim – Zoning]

Bear Creek, 5308c, Following the Washington Supreme Court's decision in *The Quadrant Corporation v. Growth Management Hearings Board*, 154 Wn 2d 224, 110 P. 3d 1132 (2005), which resolved the outstanding issues; the Board **terminated its review** of the matter and **closed** the case.

The Children's Alliance and Low Income Housing Institute v. City of Bellevue (***Children's I***), CPSGMHB Case No. 95-3-0011 (***5311***), Order Partially Granting Bellevue's Dispositive Motion, (May 17, 1995). Several of the challenges to Bellevue's development regulations pertaining to group homes were **dismissed**, since certain cited GMA requirements applied to plans, not development regulations. [Dismissal -

Development Regulation - Summary Judgment – Procedural – Criteria – CPPs - Consistency]

Children's I, 5311, Final Decision and Order, (Jul. 25, 1995). The City's development regulations pertaining to group homes were **remanded** for **non-compliance** with the nondiscriminatory and essential public facility provisions of the GMA. (*See: Children's II,* CPSGMHB Case No. 96-3-0023.) [Development Regulations – EPFs - Discrimination - Abandoned Issues – CTED - Housing Element]

Children's I, 5311, Finding of Noncompliance, (Feb. 2, 1996). Bellevue acknowledged that it was unable to repeal or amend its plan to comply with the Board's Order by the deadline in the FDO; therefore, the Board **recommended sanctions** be imposed to the extent necessary to bring about compliance. [Noncompliance – Sanctions – Invalidity]

[Appealed to Thurston County Superior Court –Cause No. 95-2-02601-7 – Board **Affirmed**.]

City of Gig Harbor, et al., v. Pierce County (***Gig Harbor***), CPSGMHB Case No. 95-3-0016c (***5316c***), Final Decision and Order, (Oct. 31, 1995). The challenged portions of Pierce County's Comprehensive Plan were **upheld, except** for: lack of an open space map; failure to incorporate its market factor; allowing urban uses in the rural area (Rural Activity Centers); and rural lot sizes, which were **remanded.** [Remand – Comprehensive Plan - Official Notice – CFE - Open Space - Critical Areas - Agricultural Lands – CPPs – UGAs - OFM Population - Allocation – Market Factor – Rural Densities]

Gig Harbor, 5316c, Finding of Compliance, (May 20, 1996). Pierce County **complied** with the FDO.

Pierce County v. City of Gig Harbor (***Pierce County***), CPSGMHB Case No. 95-3-0020 (***5320***), Stipulated Order of Dismissal, (Apr. 25, 1995). Pierce County's challenge to Gig Harbor's comprehensive plan was **dismissed**, since the County withdrew the petition. [Dismissal – Withdrawal]

Bremerton, et al., v. Kitsap County (***Bremerton***), CPSGMHB Case No. 95-3-0039c (***5339c***), Order on County's Dispositive Motions, (Jun. 5, 1995), {Philley dissenting}. Various SEPA challenges were **dismissed** for failure to exhaust administrative remedies and other parties' SEPA challenges were **dismissed** for lack of standing. [SMJ – Exhaustion – Standing – SEPA]

Bremerton, 5339c, Final Decision and Order, (Oct. 6, 1995). Kitsap County's entire Comprehensive Plan and all its implementing regulations were found **not in compliance** with the GMA and were **remanded** and **invalidated.** The Plan was incomplete, did not address certain GMA requirements and inadequately addressed others. [Comprehensive Plan - Development Regulations - General Discussion – UGAs - Market Factor - Rural Element - Rural Densities – Suburban - OFM Population – CFE – EPFs - Forest Lands - Invalidity]

[Appealed to Kitsap County Superior Court – Cause Nos. 95-2-03307-7, 95-2-03312-3, 95-2-03314-0, 97-2-02979-3, 97-2-02993-9, 99-2-00940-3, 99-2-00703-6, 99-2-00704-4, 99-2-00417-2, 99-2-0934-9 – Board **Affirmed**, See Appendix C 2000, 2002 Decisions.]

Bremerton, 5339c, Order on Poulsbo's Request for Clarification, (Nov. 6, 1995). Since the Board does not have subject matter jurisdiction over the annexation statutes, it **could not clarify** whether Poulsbo could annex territory since Kitsap County's Comprehensive Plan, including UGAs, had been invalidated. [UGAs – SMJ - Annexation]

Bremerton, 5339c, Finding of Noncompliance, (May 28, 1996). Kitsap County failed to adopt a comprehensive plan and implementing regulations by April 3, 1996 – within the 180-day deadline allowed by the GMA and the Board's FDO. Therefore, Kitsap County was found **not in compliance** with the GMA; the determination of **invalidity** on the plan and regulations was **not rescinded**, and gubernatorial **sanctions were recommended**. However, the Board requested that the Governor defer taking action on sanctions until after September 3, 1996. [Noncompliance – Sanctions – Invalidity]

Bremerton v. Kitsap County / Port Gamble v. Kitsap County (***Bremerton/Port Gamble)***, CPSGMHB Case No. 95-3-0039c Coordinated with Case No. 97-3-0024c ***(5339c/7324c)***, Order on Motions, (Apr. 22, 1997). Various parties were either **granted** or **denied** participation or standing based upon the facts of the petition or request for participation. [Public Participation – Standing]

Bremerton/Port Gamble, 5339c/7324c, Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble,* (Sep. 8, 1997). The Board **rescinded** an existing determination of **invalidity** on the entire Comprehensive Plan and **withdrew** a recommendation to the Governor to impose contingent **sanctions.** However, the amended Plan's Rural and Land Use Elements, including UGAs, were **invalidated**; other elements were found **not to comply** with the GMA; the entire plan was **remanded** for consistency review. The County was also directed to adopt permanent critical area and natural resource lands designations and implementing regulations at the time of Plan adoption. [Comprehensive Plan – Development Regulations – UGAs – Rural Element - Rural Densities - Land Use - Forest Lands - Critical Areas – SEPA – CFE - Transportation Element – CPPs - OFM Population - Public Participation - Invalidity]

Bremerton, 5339c, Order Denying County's Motion and Notice of Invalidity Hearing, (May 22, 1998). The County's motion for an expedited compliance hearing was **denied** as untimely. However, the Board separated the invalidity and compliance portions of the case and expedited the invalidity hearing. [Compliance – Timeliness – Invalidity]

Bremerton, 5339c, Order Consolidating Schedules for Invalidity and Compliance and Changing Case Schedule, (Jun. 15, 1998). The County's request to consolidate and delay the Invalidity and Compliance hearings was **granted**. [Compliance – Invalidity]

Bremerton, et al., v. Kitsap County / Alpine Evergreen, et al., v. Kitsap County (***Bremerton/Alpine***), CPSGMHB Case No. 95-3-0039c Coordinated with Case No. 98-3-

0032c (***5339c/8332c***), Order on Dispositive Motions, (Oct. 7, 1998). Kitsap County moved to dismiss two PFRs as untimely – one was **granted**, one was **denied**. The County also sought to dismiss parties for lack of SEPA standing – **granted**; and lack of (issue specific) participation standing – **denied**. [Dispositive Motion – Public Participation – PFR – Standing – Timeliness – SEPA]

Bremerton/Alpine, 5339c/8332c, Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine,* (Feb. 8, 1999). The Board's prior Determination of Invalidity in *Bremerton* was **rescinded** and the remanded issues were found to **comply** as to *Bremerton*. The challenged portions of Kitsap's 1998 Comprehensive Plan (*Alpine*) were **upheld, except** for the County's failure to address forest lands, restrictions on annexations within UGAs, designating Port Gamble as a UGA and use of an inappropriate timeframe for the six-year financing plan (CFE). *See Alpine, 8332c* for the remainder of the compliance proceedings. [Invalidity – Compliance - Comprehensive Plan - Development Regulations - Burden of Proof - Public Participation – Notice - Critical Areas – BAS - Forest Lands – UGAs - OFM Population – Allocation - Urban Densities – ADUs – Interjurisdictional – Annexation - Economic Development Element - Market Factor - Rural Element - Rural Densities - Rural Densities – Goals – CFE - Transportation Element - Urban Services - Drainage]

West Seattle Defense Fund, Neighborhood Rights Campaign and Charlie Chong v. City of Seattle (***WSDF II***), CPSGMHB Case No. 95-3-0040 (***5340***), Order Denying WSDF's Dispositive Motion, (Jun. 16, 1995). Since only portions of the Seattle's Comprehensive Plan were remanded, only portions of the City's development regulations may be subject to challenge, if they implement a remanded portion of the plan. Therefore, WSDF's motion to remand the development regulations was **denied**. [Development Regulations]

WSDF II, 5340, Final Decision and Order, (Sep. 11, 1995). The challenged portions of Seattle's Development Regulations and Map were **upheld, except** for the urban commercial village areas within urban villages, which were **remanded**. [Development B*remerton/Alpine* – Consistency – Interim – Goals – Concurrency]

WSDF II, 5340, Finding of Compliance, (Jan. 11, 1996). Seattle was found to have **procedurally complied** with the GMA and FDO.

Alberg, et al., v. King County (***Alberg***), CPSGMHB Case No. 95-3-0041c (***5341c***)**,** Final Decision and Order, (Sep. 13, 1995). The challenged portions of King County's Development Regulations were **upheld, except** for several provisions related to open space/agricultural land preservation, and uses on the land, which were **remanded**. [Remand – Development Regulations– Consistency – Mineral Lands – Agricultural Lands – Critical Areas – Indispensable Party – Recap – SMJ – Property Rights]

Alberg, 5341c, Finding of Compliance, (Jan. 30, 1996). King County **complied** with the GMA and FDO.

Snoqualmie River Valley Alliance v. City of Snoqualmie [Weyerhaeuser Real Estate Company – Intervenor] (***Valley Alliance***), CPSGMHB Case No. 95-3-0042 (***5342***), Order of Dismissal, (May 23, 1995). Petitioners withdrew their petition for review. The Board **dismissed** the case.

Hensley, et al., v. Snohomish County (***Hensley II***), CPSGMHB Case No. 95-3-0043 (***5343*****),** Order Granting Hensley's Dispositive Motion, (Jun. 9, 1995). Snohomish County was found **not in compliance** with the requirements of the GMA, since it failed to meet the statutory deadlines to adopt its comprehensive plan, UGAs and implementing regulations. The County was **directed to comply**. [Comprehensive Plan – Development Regulations – Failure to Act – Pre-GMA]

Hensley II, 5343, Finding of Noncompliance, (Nov. 3, 1995). Snohomish County failed to adopt implementing regulations (zoning) by September 6, 1995, as set forth in the Board's FDO. Therefore, Snohomish County was found **not in compliance** with the GMA, and gubernatorial **sanctions were recommended** [*See: Kelly,* CPSGMHB Case No. 97-3-0012c. [Noncompliance – Sanctions]

[Appealed to Snohomish County Superior Court – Cause No. 95-2-09141-3 – Board **Affirmed**.]

Concerned Citizens for Sky Valley v. City of Gold Bar (***CCSV***), CPSGMHB Case No 95-3-0044 (***5344*****),** Order Granting Dispositive Motion of Concerned Citizens for Sky Valley Regarding Legal Issues 1, 2, 3 and 4, (Jun. 14, 1995). Gold Bar was found **not in compliance** with the requirements of the GMA, since it failed to meet the statutory deadline in designating and protecting critical areas and resource lands, and adopting its comprehensive plan, UGAs and implementing regulations. The City was **directed to comply**. [Comprehensive Plan – Failure to Act – Pre-GMA]

CCSV, 5344, Finding of Compliance, (Jan. 9, 1996). Gold Bar **complied** with the adoption requirements of the GMA as directed in the Board's 6/14/95 Order.

Pilchuck Audubon Society v. Snohomish County (Master Builders Association and Snohomish County Realtors Association – Intervenors) (***Pilchuck II***), CPSGMHB Case No. 95-3-0047c (***5347c***), Order Granting Snohomish County's Dispositive Motion to Dismiss SEPA Claims, (Aug. 17, 1995). Several SEPA claims were **dismissed** for lack of standing. [PFR – Standing –SEPA]

Pilchuck II, 5347c, Final Decision and Order, (Dec. 6, 1995). The challenged portions of Snohomish County's critical areas ordinance were **upheld, except** for: its failure to designate and protect all critical areas; define fish and wildlife habitat areas, and its exemption process, which were **remanded**. [Goals – Critical Areas – Forest Lands – Abandoned Issues – Definitions – Minimum Guidelines – Interim – Public Participation – SEPA]

Pilchuck II, 5347c, Finding of Compliance, (Jul. 18, 1996), {Tovar dissenting}. (*See also*: Amended Finding of Compliance, (Aug. 14, 1996). Snohomish County **procedurally complied** with the requirements of the GMA as set forth in the Board's December 6, 1995 FDO. Substantive Compliance is addressed in *Tulalip Tribes of Washington v. Snohomish County,* CPSGMHB Case No. 96-3-0029**.** [Compliance – Savings Clause – BAS]

[Appealed to King County Superior Court – Cause No. 96-2-05662-6 SEA – Board **Affirmed**.]

Thomas Bigford v. City of Kent (***Bigford***), CPSGMHB Case No. 95-3-0048 (***5348***), Order of Dismissal, (Aug. 7, 1995). Petitioner's challenge to Kent's comprehensive plan was **dismissed**, since neither the petitioner nor his representative appeared at the prehearing conference. [Default]

Burlington Northern Railroad v. City of Auburn (***BNRR***), CPSGMHB Case No. 95-3-0050 (***5350***), Order of Dismissal, (Aug. 30, 1995). A challenge to Auburn's Comprehensive Plan was **dismissed**, since its adoption of the plan by resolution did not constitute adoption of a plan as required by the GMA. [Dismissal - Comprehensive Plan – Adoption - Failure to Act]

[Appealed to Thurston County Superior Court – Cause No. 95-2-03249-1 – Board **Affirmed**.]

Association to Protect Anderson Creek, et al., v. City of Bremerton [Sciepko and Lunde – Intervenors] (***Anderson Creek***), CPSGMHB Case No. 95-3-0053c (***5353c***)**,** Order on Bremerton's Dispositive Motions, (Oct. 18, 1995). Certain issues were **dismissed** from the appeal due to several procedural deficiencies, including standing and subject matter jurisdiction. [SEPA – Exhaustion – Standing – SMJ – Annexation - Impact Fees - Indispensable Party - Timeliness]

Anderson Creek, 5353c, Final Decision and Order, (Dec. 26, 1995). The challenged portions of Bremerton's Comprehensive Plan were **upheld, except** for: the need to adopt it by ordinance, internal inconsistency of the land use element, and factual errors, which were **remanded**. [Comprehensive Plan – Adoption – Public Participation – Open Space / Greenbelts – CFE – Critical Areas – CPPs – Consistency]

Anderson Creek, 5353c, Finding of Compliance, (Apr. 15, 1996). Bremerton **complied** with the requirements of the GMA as set forth in the FDO. Public participation was adequate, given the 62-day compliance period.

South Bellevue Partners Limited Partnership and South Bellevue Development, Inc. v. City of Bellevue and Issaquah School District No. 411 (***South Bellevue***), CPSGMHB Case No 95-3-0055 (***5355***), Order of Dismissal, (Nov. 30, 1995). A challenge to Bellevue's ordinance adopting school impact fees was **dismissed** for lack of subject matter jurisdiction. [SMJ – Impact Fees – Board Rules]

[Appealed to King County Superior Court – Cause No. 95-2-27252-5 SEA – Board **Affirmed**.]

Agriculture for Tomorrow v. City of Arlington (***AFT***), CPSGMHB Case No. 95-3-0056 (***5356***), Final Decision and Order, (Feb. 13, 1996). The challenged portions of Arlington's Comprehensive Plan and regulations were **upheld, except** for: failure to adopt critical area regulations by ordinance, identification of open space corridors, and review of flooding, drainage and stormwater runoff, which were **remanded**. [Development Regulations – UGAs - Critical Areas - Land Use - Open Space Interjurisdictional - Public Participation – Consistency – Goals - Drainage]

AFT, 5356, Finding of Compliance, (Jul. 23, 1996). Arlington **complied** with the requirements of the GMA as set forth in the FDO.

Jon T. Salisbury, Gerald C. Schmitz, and Connells Prairie Community Council v. City of Bonney Lake (***Salisbury***), CPSGMHB Case No. 95-3-0058 (***5358***), Order Granting Bonney Lake's Motion to Dismiss, (Oct. 27, 1995). The challenge to the capital facilities element of Bonney Lake's Plan was **dismissed** for improper and untimely service. [Service]

[Appealed to Pierce County Superior Court –Cause No. 95-2-13178-1 – Board **Affirmed**.]

Peninsula Neighborhood Association v. Pierce County (***PNA I***), CPSGMHB Case No. 95-3-0059 (***5359***)**,** Final Decision and Order, (Jan. 24, 1996). Petitioner's challenge to Pierce County's environmental review of its comprehensive plan was **dismissed** since the filing of the petition was untimely. [SEPA – Timeliness]

Sky Valley, et al., v. Snohomish County [Association of Rural Land Owners, Snohomish County Realtors, Gold Bar, Hensley and FPD #7 – Intervenors] (***Sky Valley***), CPSGMHB Case No. 95-3-0068c (***5368c***)**,** Order on Dispositive Motions, (Jan. 9, 1996). Certain issues and parties were **dismissed** from the proceeding for lack of standing, inadequate service and withdrawal. [Intervention – Service – Standing - PFR]

Sky Valley, 5368c, Final Decision and Order, (Mar. 12, 1996). The challenged portions of Snohomish County's Comprehensive Plan were **upheld, except** for: showing work for rural designations, 5-acre rural designations generally and adjacent to the UGA, clustered developments in rural area, Maltby UGA designation, EPF siting, designation of certain forest lands, and criteria for designating forest lands, which were **remanded.** [Comprehensive Plan - APA Rules – SMJ – Standing - Abandoned Issues - Public Participation – UGAs - Rural Element - Rural Densities - Land Use Pattern – Goals – Consistency - Pre-GMA - Subarea Plans - Agricultural Lands - Forest Lands – Dedesignation – CFE – LUPP - Minimum Guidelines – Implementation – Transportation Element – Concurrency - Open Space / Greenbelts]

Sky Valley, 5368c, Order on Motions to Reconsider and Correct, (Apr. 15, 1996). The FDO was amended to **remand** for identification of lands useful for public purposes and Utility Element provisions. [Reconsideration – LUPP - Utilities Element - Public Participation - Subarea Plans - Transportation Element]

Sky Valley, 5368c, Order Denying Reconsideration and Notice of Compliance Schedule and Briefing Schedule, (Sep. 19, 1996). Snohomish County's motion for extension of time beyond the 180-day statutory period was **denied**. [Reconsideration – 180 Days]

Sky Valley, 5368c, Finding of Noncompliance, Order on Motions, Notice of Second Compliance Hearing, and Briefing Schedule, (Nov. 5, 1996). Within the timeframe stated in the FDO, Snohomish County had **not complied** with any of the remand items identified in the March 12, 1996 FDO. Although requested, neither invalidity nor sanctions were imposed. [Noncompliance – Forest Lands – Invalidity]

Sky Valley, 5368c, Order on Compliance, (Oct. 2, 1997). Third Compliance Hearing {McGuire Dissenting}. The County's adoption of Comprehensive Plan amendments to address six remand issues, was **upheld, except** for one issue, relating to a rural designation in the Darrington area, which was **remanded**. [Comprehensive Plan - Show Your Work - Rural Element - Rural Densities – UGAs - Forest Lands -Utilities Element]

[Appealed to King County Superior Court –Cause No. 97-2-28156-3 SEA – Board **Affirmed;** Appealed to Snohomish County Superior Court – Cause No. 99-2-03528-1 – Board **Affirmed,** Court of Appeals *See* Appendix C, 2001 Decisions; Appealed to King and Snohomish County Superior Courts – Cause No. 96-2-03675-5 – Board **Affirmed**, in part, **Reversed** in part – **remanded** .]

Sky Valley, 5368c, Order on Compliance, (Apr. 23, 1999). Pursuant to a Superior Court Order and Remand from the Board, the County removed Smith and Spencer Islands and the Island Crossing area from the UGA and designated Smith and Spencer Islands and Area B of Island Crossing as Riverway Commercial Farmland, and Area A of Island Crossing as Rural Commercial. The Board concurred with the County's findings and conclusions and adopted and incorporated them as its own, thereby **affirming** the County's actions. [Adjacent - Agricultural Land – Consistency – Definitions - Land Use Element – NRLs - Rural Element – UGA - Location]

Sky Valley, 5368c, Finding of Compliance (Jun. 29, 1999), {McGuire concurring}. This portion of the *Sky Valley* case involved the Darrington remand. Pursuant to the Board's First and Second Orders on Compliance, the County amended the land use designations in the Darrington Valley so they would reflect appropriate rural densities. Snohomish County's action **complied** with the GMA and Board's prior Orders. [Compliance – Rural Density]

South Lake Union Defense Fund v. City of Seattle (***South Lake Union***), CPSGMHB Case No. 95-3-0070 (***5370***), Order of Dismissal, (Oct. 19, 1995). Petitioner's challenge to the

South Lake Union Plan for the proposed Seattle Commons was **dismissed**, since the City stipulated that the challenged plan was null and void.

Peninsula Neighborhood Association v. Pierce County (***PNA II***), CPSGMHB Case No. 95-3-0071 (***5371***), Order Denying Pierce County's Motion to Dismiss, (Jan. 9, 1996). The County's motion to dismiss was **denied**, since equitable doctrines are beyond the Board's jurisdiction. [SMJ – Mootness]

PNA II, 5371, Final Decision and Order, (Mar. 20, 1996). Pierce County's Development Regulations (zoning) implementing its Comprehensive Plan were found **not in compliance** with the GMA and were **remanded** to amend: shoreline densities, accessory dwelling units, 5-acre zoning and nonconforming use expansion. [Development Regulations - Rural Element - Rural Densities – Shorelines – ADUs - Nonconforming Uses]

[Appealed to Pierce County Superior Court – Cause No. 96-2-07592-8 – Board **Affirmed**.]

PNA II, 5371, Stipulated Order to Dismiss, (Sep. 3, 1996). Petitioners stipulated to compliance pending legislative review of certain amendments; petitioners also withdrew a court appeal. The Board **dismissed**.

Benaroya et al., v. City of Redmond [SKCAR and BIAW – Intervenors] (***Benaroya I***), CPSGMHB Case No. 95-3-0072c (***5372c***)**,** Order on Redmond's Dispositive Motions and Benaroya's Motion to Intervene as a Party, (Jan. 9, 1996). Petitioner's challenge to SEPA claims was **dismissed** for failure to exhaust administrative remedies. [Service – SEPA – Exhaustion – Standing – Intervention]

Benaroya I, 5372c, Final Decision and Order, (Mar. 25, 1996). The challenged portions of Redmond's Comprehensive Plan were **upheld, except** for: agricultural land designations, consistency of population projections, and urban densities, which were **remanded**. [Comprehensive Plan - Agricultural Lands – TDRs – Consistency – Discretion – Housing Element - OFM Population - Urban Growth – CPPs - Public Participation - Amendments - Average Net Density – CFE - Transportation Element]

Benaroya I, 5372c, Finding of Compliance, (Mar. 13, 1997). After two compliance hearings, the City of Redmond **complied** with the requirements of the GMA, as set forth in the Board's FDO and remand. [Compliance – Court – UGAs – Duties - Agricultural Lands – TDRs - Discretion]

[Appealed to King County Superior Court, Division I and the Supreme Court – Board **Affirmed** in part, **Reversed** in part – *See* Appendix C, 1998 Decisions]

Benaroya I, 5372c, Order on Remand from Washington Supreme Court, (Dec. 31, 1998). The Supreme Court **upheld** the Board's FDO relating to Redmond's noncompliance with the GMA for failing to establish a transfer of development rights program prior to

designating agricultural land within the City. The Court **reversed** the Board's FDO regarding its determination that the Benaroya and Cosmos properties could not be designated as agriculture since they were not primarily devoted to agricultural uses. The Board modified its Order accordingly. [Court - Agricultural Lands – TDRs – Definitions - Natural Resource Lands]

West Seattle Defense Fund, Neighborhood Rights Campaign, and Charles Chong v. City of Seattle (***WSDF III***), CPSGMHB Case No. 95-3-0073 (***5373*****),** Final Decision and Order, (Apr. 2, 1996). Seattle's Comprehensive Plan was **remanded** to the City with direction to comply with public participation provisions of the GMA and to modify a policy related to neighborhood or subarea plans. [All compliance issues from WSDF I were not addressed. *See: WSDF IV*, CPSGMHB Case No. 96-3-0033.] [Remand - Comprehensive Plan - Public Participation - Subarea Plans]

WSDF III, 5373, Order Partially Granting Petitions for Reconsideration, (May 14, 1996). The Board **modified** it FDO to make factual corrections. [Reconsideration – Invalidity]

Hapsmith, et al., v. City of Auburn (***Hapsmith I*****),** CPSGMHB Case No. 95-3-0075c (***5375c*****),** Final Decision and Order, (May 10, 1996). {*Philley dissenting*} Several Petitioners were **dismissed** for lack of standing, and certain SEPA issues were **dismissed**. The challenged portions of Auburn's Comprehensive Plan were **upheld, except** for: the transportation element's traffic forecast and assessment of impacts on adjacent jurisdictions, policies requiring certain industrial activities to occur inside structures, and lack of a process for siting essential public facilities, which were **remanded**. [Comprehensive Plan – SMJ – Standing – SEPA – Exhaustion – Consistency – Transportation Element – CPPs – EPFs – Goals - Property Rights - Innovative Techniques - Utilities Element]

Hapsmith I, 5375c, Finding of Noncompliance and Notice of Second Compliance Hearing, (Feb. 13, 1997). In the FDO, four items were remanded to the City of Auburn for revision. The City **complied** with three of the items in the FDO, but **did not comply** with one of the items. [Compliance – EPFs – CPPs]

Hapsmith I, 5375c, Finding of Compliance and Order Denying Motion Requesting Substantive Compliance Hearing, (Jul. 24, 1997). Auburn **complied** with the requirements of the GMA, as set forth in the Board's FDO and remand.

[Appealed to King County Superior Court – Cause No. 96-2-07781-4 KNT – Board **Affirmed;** Appealed to King County Superior Court – Cause No. 97-2-06689-1 KNT – Board **Affirmed**, but **remand** directing City to include Board's interpretation of Plan language.]

Hapsmith I, 5375c, Second Finding of Compliance Pursuant to Superior Court Judgment in Case No. 97-2-06689-KNT, (Apr. 24, 1998). Although the Board found Auburn in compliance with the Act, Burlington Northern Santa Fe Railroad appealed the action to Superior Court. The Court remanded the case for Auburn, through the Board, to

explicitly include the Board's interpretation of ambiguous language in its plan. Auburn **complied** with the Court's order. [Compliance – Court]

Shulman v. City of Bellevue **(*Shulman*)**, CPSGMHB Case No. 95-3-0076 (***5376*****),** Final Decision and Order, (May 13, 1996). The challenged portions of Bellevue's Comprehensive Plan amendments relating to urban densities were **upheld**. [Comprehensive Plan – Goals - Property Rights - Urban Densities]

Tahoma Audubon Society and Peninsula Neighborhood Association v. Pierce County (***TAS***), CPSGMHB Case No. 95-3-0077 (***5377***), Stipulation and Order of Dismissal, (Jan. 8, 1996). The case was **dismissed** since the Petitioners withdrew their petition for review.

Keesling v. King County (***Keesling***), CPSGMHB Case No. 95-3-0078 (***5378***), Order Granting Motion to Dismiss for Lack of Timely Service, (Mar. 18, 1996). Petitioner's challenge to a King County development regulation relating to drainage was **dismissed** for lack of timely service. [Service]

Martin P. Hayes v. Kitsap County (***Hayes***), CPSGMHB Case No. 95-3-0081c (***5381c***), Order Granting Motion to Dismiss, (Apr. 23, 1996). Petitioner's challenge to various emergency GMA enactments of the County were **dismissed** as moot, since interim ordinances were adopted by the County to replace them. [Mootness – SMJ – SEPA - Emergency]

SYNOPSIS OF 1996 CASES[18]

CPSGMHB Decisions [With Key Words]

Petition of Peter E. Overton for Declaratory Ruling (***Overton***), CPSGMHB Case No. PDR 96-3-0001 (***6301pdr***), Notice of Decision Not to Issue a Declaratory Ruling, (Feb. 26, 1996). Petitioner's request for a Declaratory Ruling to seek clarification of the Board's ruling in *Bremerton* was **denied,** since the deadline for compliance had not passed and the case had been appealed to Superior Court. [Declaratory Ruling]

Sundquist Homes v. Snohomish County (***Sundquist***), CPSGMHB Case No. 96-3-0001 (***6301***), Order Granting Snohomish County's Motion to Dismiss, (Feb. 21, 1996). Petitioner's challenge to Snohomish County's amendment of a CPP and its Comprehensive Plan was **dismissed** for lack of standing and untimeliness. [CPPs – Standing – Timeliness - OFM Population]

Aaron, Faith, David and Becky Litowitz; Bill, Eldrid, Tony and Patricia Segale; Rajinder and Kulwinder Johal v. City of Federal Way (***Litowitz***), CPSGMHB Case No. 96-3-0005 (***6305***), Final Decision and Order, (Jul. 22, 1996). The challenged portions of Federal Way's comprehensive plan amendments relating to urban densities in critical areas were **upheld**. [Comprehensive Plan – Discretion - Standard of Review - Public Participation – Amendments - General Discussion – UGAs – Duties – Goals - Show Your Work - Critical Areas - Urban Densities - Pre-GMA - Housing Element – CFE - Localized Analysis – Infrastructure – Precedent - Property Rights]

[Appealed to King County Superior Court – Cause No. 96-2-21975-4 – Board **Affirmed**; Court of Appeals Division I – Board **Affirmed** – *See* Appendix C, 1998 Decisions.]

Baker Commodities v. City of Tukwila (***Baker***), CPSGMHB Case No. 96-3-0008 (***6308***), Order Granting Stipulated Dismissal, (May 13, 1996). Petitioner's challenge was **dismissed**, at the request of the parties.

Alan and Karen Cole and Michael and Michele Millsap, Steve and Kim Burnside, Cathy Hyneman, Cynthia and Bryant Meyer, Peter Holt, Randy Mohoric, Julie Anne Cunningham and Laura Roberts, et al., v. Pierce County (***Cole***), CPSGMHB Case No. 96-3-0009c (***6309c***), Final Decision and Order, (Jul. 31, 1996). One Petitioner withdrew, and another Petitioner's challenge was **dismissed** for lack of subject matter jurisdiction; in the remaining challenge Pierce County's amendments to its comprehensive plan were **upheld,** since there was no duty to amend the plan as Petitioner proposed. [Comprehensive Plan – SMJ – Timeliness – Duties – Amendments - General Discussion – Goals - Burden of Proof - Abandoned Issues - Public Participation - Procedural Criteria]

[18] Note that decisions were not necessarily issued in the year the case was filed.

Honesty in Environmental Analysis and Legislation v. City of Seattle (***HEAL***), CPSGMHB Case No. 96-3-0012 (***6312***), Final Decision and Order, (Aug. 21, 1996). Several individual Petitioners were **dismissed** for lack of standing, and a challenge to a resolution amending city policies for critical area regulations was **dismissed** for lack of subject matter jurisdiction; in the remaining challenge Seattle's amendments to its critical areas ordinance were **upheld**. [Development Regulations – Exhibits – Official Notice – Standing – SMJ – Amendment – Critical Areas – BAS – Court]

[Appealed to King County Superior Court and Court of Appeals Division I – Board **Affirmed,** in part and **reversed,** in part **- remanded** – *See* Appendix C, 1999 Decisions.]

H.E.A.L., 6312, Order on Remand [Court of Appeals Division I, Remand of Case No. 40939-5-I and Mandate of Superior Court Case No. 9602-24695-6.SEA], (Oct. 4, 2001), {Tovar Concurring}. The Court of Appeals directed the Board to determine whether the City of Seattle's steep slope *policies* complied with the best available science requirements of RCW 36.70A.172(1). [Note: The Board had previously found that the City's critical areas (steep slope) regulations complied with .172(1).] The Board found that the steep slope policies **complied** with the GMA. [BAS – Standing – Critical Areas]

COPAC-Preston Mill Inc. v. King County (***COPAC***), CPSGMHB Case No. 96-3-0013c (***6313c***), Final Decision and Order, (Aug. 21, 1996). The challenged portions of King County's comprehensive plan amendments and forestry land map were **upheld, except** the County stipulated to a **remand** regarding one plan policy. [Comprehensive Plan - Official Notice - General Discussion – Record – CPPs - Forest Lands – Amendments – Duties - Discretion]

COPAC, 6313c, Finding of Compliance, (Nov. 27, 1997). The County **complied** with the requirements of the GMA, as set forth in the Board's FDO.

Hapsmith v. City of Auburn (***Hapsmith II***), CPSGMHB Case No. 96-3-0014 (***6314***), Order Granting City of Auburn's Motion to Dismiss, (Jun. 10, 1996). Petitioner's challenge to the Auburn's plan amendments was **dismissed** for lack of standing. [Comprehensive Plan – Standing – SEPA]

Harston v. East Bellevue Community Council and the City of Bellevue (***Harston***), CPSGMHB Case No. 96-3-0015 (***6315***), Order Granting Stipulated Dismissal, (Aug. 1, 1996). The challenge to the City's action was **dismissed**, since the Superior Court entered a Stipulated Partial Judgment, therefore making the petition moot. [Mootness]

Banigan, et al., v. Kitsap County (***Banigan***), CPSGMHB Case No. 96-3-0016c (***6316c***), Order Granting Dispositive Motions, (Jul. 29, 1996). The challenge to the termination of Kitsap County's renewal of adoption of Interim UGAs and Interim Zoning and Critical Areas ordinances, in light of the Board's invalidation of the County plan in a prior FDO, was **dismissed**. [Interim – Abandoned Issues – Standing – PFR]

Association of Rural Residents v. Kitsap County (***Rural Residents II***), CPSGMHB Case No. 96-3-0017 (***6317***), Order Granting Stipulated Dismissal, (May 13, 1996). Petitioner's challenge to the Kitsap County's approval of a planned unit development for Apple Tree Point, as a violation of the GMA, was **dismissed**; the parties stipulated and the Board agreed, that it did not have subject matter jurisdiction.

Send the Commons Back to Boston v. City of Seattle (***SCBB***), CPSGMHB Case No. 96-3-0018 (***6318***), Order of Dismissal, (Jul. 2, 1996). SCBB's challenge to the Seattle's plan was **dismissed;** the petitioner withdrew its PFR.

Cosmos Development and Administration Corp., and Universal Holdings Ltd. Partnership v. City of Redmond (***Cosmos***), CPSGMHB Case No. 96-3-0019 (***6319***), Order on Dispositive Motions, (Jun. 17, 1996). Petitioners' challenge to Redmond's adoption of a transferable development rights (TDR) program was **dismissed.** The City amended the challenged ordinance to cure alleged defects. [Development Regulations – TDRs – Burden of Proof – Record – Agricultural Lands]

Cosmos, 6319, Order of Dismissal, (Jul. 12, 1996). Petitioner's challenge to the City's action was **dismissed**; petitioners withdrew their PFR.

Buckles, et al., v. King County (***Buckles***), CPSGMHB Case No. 95-3-0022c (***6322c***), Final Decision and Order, (Nov. 12, 1996), {Tovar dissenting}. The challenged portions of King County's comprehensive plan amendments (made in response to the Board's FDO and remand in *Vashon-Maury, 5308*) were **upheld**. [Comprehensive Plan - Property Rights – Consistency – Notice – Goals - Housing Element - Public Participation – Standing – SEPA – SMJ - Quasi-Judicial - Abandoned Issues – UGAs - FCCs]

Buckles, 6322c, Order Denying Reconsideration, (Dec. 18, 1996). Petitioner's request for reconsideration was **denied**.

[Appealed to King County Superior Court – Cause Nos. 95-2-27012-3 SEA, 96-2-31900-7 KNT, 96-2-22333-6 SEA – Board **Affirmed**; Court of Appeals Division 1 – **Remand** – *See* Appendix C 1999 Decisions.]

Buckles, 6322c, Superior Court Remand of Case No. 96-2-31900-7.KNT CPSGMHB Case No 96-3-0022c *Buckles v. King County [Duwamish Portion]*, Order Finding Noncompliance and Notice of Compliance Hearing, (Apr. 19, 2001). The Court of Appeals – Division I upheld the Board's FDO in the *Buckles* case, but remanded the Duwamish Valley portion of the case because the Board denied Duwamish's request to supplement the record with rebuttal evidence at the hearing on the merits. On remand, the Board admitted the rebuttal evidence and concluded that the County had failed to provide effective notice. The case was **remanded** to the County for **failing to comply** with the notice and public participation requirements of the Act. [Notice – Public Participation]

Buckles, 6322c, Superior Court Remand of Case No. 96-2-31900-7.KNT CPSGMHB Case No. 96-3-0022c [Duwamish Portion], Order Finding Compliance, (Jul. 31, 2001). [Note: The Board's decision in this matter was pursuant to a remand from the Court of Appeals Division I in Duwamish Valley Neighborhood Preservation Coalition v. CPSGMHB, No. 41523-9-I.] On remand, the County provided adequate notice and the opportunity for public comment on the proposed amendments; therefore, the Board entered a **Finding of Compliance**.

The Children's Alliance and Low Income Housing Institute v. City of Bellevue (***Children's II***), CPSGMHB Case No. 96-3-0023 (***6323***), Final Decision and Order, (Nov. 13, 1996). The challenged portions of Bellevue's amendments to its plan and development regulations, adopted pursuant to the Board's FDO and remand in *Children's I*, were **upheld**. Once Bellevue responded to the remand by adopting amendments, the Board withdrew its recommendation for **sanctions**. [Comprehensive Plan - Development Regulations – EPFs - Group Homes – Goals - Housing Element – Consistency – CPPs – CTED - Notice]

[Appealed to Thurston County Superior Court –Cause No. 96-2-04516-8 – Board **Affirmed**.]

City of Arlington v. City of Marysville (***Arlington***), CPSGMHB Case No. 96-3-0024 (***6324***), Order Granting Stipulated Dismissal, (Oct. 15, 1996). Petitioner's challenge to the City's plan was **dismissed**. Petitioner withdrew the PFR.

John Wallock v. City of Everett (***Wallock I***), CPSGMHB Case No. 96-3-0025 (***6325***), Final Decision and Order, (Dec. 3, 1996). Petitioner's challenge to Everett's adoption of emergency interim adult entertainment regulations and plan amendments was **dismissed** and the regulations **upheld**. [Comprehensive Plan – Development Regulations – Interim – Emergency – Public Participation]

[Appealed to Thurston County Superior Court –Cause No. 96-2-04516-8 – Board **Affirmed.**]

Peninsula Neighborhood Association v. Pierce County (***PNA V***), CPSGMHB Case No. 96-3-0026 (***6326***), Stipulated Order of Dismissal, (Aug. 27, 1996). Petitioner's challenge to Pierce County's plan was **dismissed**. Petitioner withdrew the PFR.

McGowan, et al., v. Pierce County (***McGowan***), CPSGMHB Case No. 96-3-0027 (***6327***), Order on Motions, (Sep. 5, 1996). Petitioner's challenge to Pierce County's development regulations was **dismissed** for lack of standing. [Notice – Standing – Amendments Comprehensive Plan]

McGowan, 6327, Order Denying Reconsideration, (Oct. 9, 1996). Petitioner's motion for reconsideration was **denied**.

[Appealed to Pierce County Superior Court –Cause No. 96-2-01754-5 – Board **Affirmed**.]

Dr. Herbert Battrum v. City of Redmond (***Battrum***), CPSGMHB Case No. 96-3-0028 (***6328***), Order Dismissing Dr. Herbert Battrum's Petition for Review, (Oct. 18, 1996). Petitioner's challenge to Redmond's development regulations was **dismissed.** Petitioner withdrew the PFR.

Tulalip Tribes of Washington v. Snohomish County (***Tulalip***), CPSGMHB Case No. 96-3-0029 (***6329***), Final Decision and Order, (Jan. 8, 1997). The challenged portions of Snohomish County's amendments to its critical areas regulations were **upheld.** [Development Regulations – Critical Areas – Abandoned Issues – BAS – Incentives]

Tulalip, 6329, Order Denying Petition for Reconsideration, (Feb. 19, 1997). Petitioner's request for reconsideration was **denied**.

Tacoma Mall Partnership v. City of Tacoma (***Tacoma Mall I***), CPSGMHB Case No. 96-3-0030 (***6330***), Order Granting Stipulated Dismissal, (Nov. 1, 1996). Petitioner's challenge to Tacoma's development regulations regarding movie theaters was **dismissed**. Petitioner withdrew the PFR.

Corrine R. Hensley v. City of Woodinville (***Hensley III***), CPSGMHB Case No. 96-3-0031 (***6331***), Final Decision and Order, (Feb. 25, 1997). The challenged portions of Woodinville's comprehensive plan were **upheld, except** for two areas: review of drainage, flooding and stormwater; and urban densities that were **remanded.** [Comprehensive Plan - Official Notice - Abandoned Issues – UGAs – Consistency – CFE - Urban Services Housing Element - ILAs]

Hensley III, 6331, Finding of Compliance, (Oct. 10, 1997). Woodinville **complied** with the requirements of the GMA, as set forth in the Board's FDO.

City of Des Moines et al., v. The Puget Sound Regional Council and the Port of Seattle (***Des Moines***), CPSGMHB Case No. 96-3-0032 (***6332***), Stipulation and Order of Dismissal, (Oct. 10, 1996). Petitioner's challenge to the Port of Seattle's proposed third runway at SeaTac and the PSRC's approval of the project was **dismissed.** Petitioners withdrew their PFR.

West Seattle Defense Fund and Neighborhood Rights Campaign v. City of Seattle (***WSDF IV***), CPSGMHB Case No. 96-3-0033 (***6333***), Final Decision and Order, (Mar. 24, 1997). The challenged portions of Seattle's plan amendments, adopted pursuant to the Board's FDO and remand in *WSDF I and WSDF III*, were **upheld, except** for lack of citation or reference to the location of the needs analysis in the City's capital facilities and utilities elements, which were **remanded**. (*See: WSDF I,* CPSGMHB Case No. 94-3-0016, and *WSDF III*, CPSGMHB Case No. 95-3-0073) [Comprehensive Plan - General Discussion - Subarea Plans – CFE - Transportation Element - Localized Analysis - OFM Population - Procedural Criteria - Consistency]

WSDF IV, 6333, Finding of Compliance, (Nov. 13, 1997). Seattle **complied** with the requirements of the GMA, as set forth in the Board's FDO and remand. (*See: WSDF I,* CPSGMHB Case No. 94-3-0016, and *WSDF III,* CPSGMHB Case No. 95-3-0073).

Tacoma Mall Partnership v. City of Tacoma (***Tacoma Mall II***), CPSGMHB Case No. 96-3-0034 (***6334***), Order Granting Stipulated Dismissal, (Mar. 21, 1997). Petitioner's challenge to Tacoma's amendment to its development regulations for movie theaters was **dismissed**. Petitioner withdrew the PFR.

Friends of the Law and the Coalition for Public Trust v. King County (***FOTL V***), CPSGMHB Case No. 96-3-0035 (***6335***), Final Decision and Order, (May 12, 1997). Petitioner's allegation that King County failed to act consistently with the King County CPPs was **dismissed** as untimely. [Failure to Act – UGAs – SMJ – Timeliness]

City of Lake Forest Park v. City of Shoreline (***Lake Forest Park***), CPSGMHB Case No. 96-3-0036 (***6336***), Order Granting Dispositive Motions, (Feb. 14, 1997). Petitioner's challenge to Shoreline's adoption of a Resolution regarding future annexations was **dismissed** as not ripe. [SMJ – Annexation – Interim]

John Wallock and DEJA Vu of Everett v. City of Everett (***Wallock II***), CPSGMHB Case No. 96-3-0037 (***6337***), Order Granting Motion to Dismiss, (Feb. 20, 1997). Petitioners' challenge to Everett's amendments to its plan and adult entertainment regulations was **dismissed** for improper service. [Development Regulations - Service]

Wallock II, 6337, Order Denying Petition for Reconsideration, (Mar. 21, 1997). Petitioner's petition for reconsideration was **denied.**

John R. Torrance and William Torrance v. King County (***Torrance***), CPSGMHB Case No. 96-3-0038 (***6338***), Order Granting Dispositive Motion, (Mar. 31, 1997). Petitioners' challenge to King County's plan was **dismissed,** since the County had not failed to act when it did not amend its plan as Petitioner had requested. [Comprehensive Plan – Failure to Act – Amendment]

Peninsula Neighborhood Association v. Pierce County (***PNA IV***), CPSGMHB Case No. 96-3-0039 (***6339***), Order Granting Stipulated Dismissal, (May 2, 1997). Petitioner's challenge to the County's development regulations pertaining to administrative and conditional use permits was **dismissed**. Petitioner withdrew the PFR.

SYNOPSIS OF 1997 CASES[19]

CPSGMHB Decisions [With Key Words]

City of Renton v. City of Newcastle (***Renton***), CPSGMHB Case No. 97-3-0001 PDR (***7301pdr***)**,** Notice of Decision Not to Issue Declaratory Ruling, (Sep. 11, 1997). Renton's Petition for Declaratory Ruling (**PDR**) was **denied** since the City's PFR *(Renton, 7326)* incorporated the issues raised in the PDR. [Declaratory Ruling]

Doreen Johnson, Christy Ellingson, Daniel Palmer, Gil and Marlene Bortelson, Dan and Diane Peterson, James Morrissey Jr., Forrest Wright and Soos Creek Area Response v. City of Black Diamond [Plum Creek Timber Company, L.P. and Palmer Coking Coal Company – Intervenors] (***Johnson I***), CPSGMHB Case No. 97-3-0001 (***7301***), Order Granting Dispositive Motions, (Apr. 4, 1997). Petitioners' challenge to a Resolution approving and authorizing the execution of an interlocal agreement regarding potential future amendments to Black Diamond's plan and regulations was **dismissed**, since the Board lacked subject matter jurisdiction. [SMJ – ILAs]

Doreen Johnson, Christy Ellingson, Daniel Palmer, Gil and Marlene Bortelson and Friends of the Green v. King County [Plum Creek Timber Company, L.P. and Palmer Coking Coal Company – Intervenors] (***Johnson II***), CPSGMHB Case No, 97-3-0002 (***7302***), Final Decision and Order, (Jul. 23, 1997). The County's designation of an Urban Growth Area for the City of Black Diamond, pursuant to an Interlocal Agreement, was **upheld**, **except** for one geographic location – Lake 12, which was **remanded**. [Comprehensive Plan – UGAs - Show Your Work - Innovative Techniques – CFE - ILAs]

Johnson II, 7302, Finding of Compliance, (Mar. 23, 1998). The County **complied** with the requirements of the GMA, as set forth in the Board's FDO.

Sharon Gilpin v. Washington State Department of Ecology and City of Bainbridge Island (***Gilpin***), CPSGMHB Case No. 97-3-0003 (***7303***), Final Decision and Order, (Jun. 30, 1997). A challenge to the Department of Ecology's approval of Bainbridge Island's amendment to its Shoreline Master Program was **dismissed**, since consistency with the SMA was not alleged. [SMA - General Discussion - Standard of Review]

[Appealed to Thurston County Superior Court – Cause No. 97-2-01754-5 – Board **Affirmed**.]

Friends of Fennel Creek v. Pierce County [City of Bonney Lake – Intervenor] (***Fennel Creek***), CPSGMHB Case No. 97-3-0005 (***7305***), Order on Motions, (Apr. 22, 1997). A challenge to Pierce County's designation of a UGA for the City of Bonney Lake was

[19] Note that decisions were not necessarily issued in the year the case was filed.

dismissed, since the Petitioners lacked standing to challenge the designation. [Comprehensive Plan – Standing – PFR – UGAs]

David Frick and Park Ryker v. City of Milton [Fife School District – Intervenor] (***Frick***), CPSGMHB Case No. 97-3-0007 (***7307***), Order Granting Dispositive Motion, (Apr. 17, 1997). A challenge to Milton's adoption of school impact fees was **dismissed,** since the Board lacked subject matter jurisdiction. [SMJ – Impact Fees]

City of Tukwila v. City of Seattle (***Tukwila***), CPSGMHB Case No. 97-3-0009 (***7309***), Order Granting Stipulated Dismissal, (Jul. 2, 1997). Tukwila's challenge to Seattle's Plan amendment regarding annexation policies and overlapping Potential Annexation Areas was **dismissed**, at the parties' request.

Benaroya Shareholders Trust, Larry R Benaroya- Trustee and Cosmos Development and Adminsitration Corp. and Universal Holdings LTD. Partnership II v. City of Redmond (***Benaroya II***), CPSGMHB Case No. 97-3-0010c (***7310c***), Order Dismissing Consolidated Case, (Mar. 17, 1997). A challenge to Redmond's adoption of a Plan amendment pursuant to an FDO and remand was **dismissed,** since, at the Compliance Hearing, the Board had determined that the Plan amendment complied with the GMA and FDO. *See: Benaroya,* CPSGMHB Case No. 95-3-0072c. [Dismissal –Comprehensive Plan – Withdrawal]

Kristin Kelly, Carol McDonald, City of Woodinville, 1000 Friends of Snohomish County and Corinne Hensley and Concerned Citizens for Clearview Growth and Land Use v. Snohomish County [Cavalero Hill LLC and Snohomish-Camano Association of Realtors – Intervenors] (***Kelly***), CPSGMHB Case No. 97-3-0012c (***7312c***), Order on Dispositive Motions and Motions to Supplement the Record, (May 8, 1997). A Petitioner was **dismissed** from the *Kelly* case for lack of standing. [Standing]

Kelly, 7312c, Final Decision and Order, (Jul. 30, 1997). The challenged portions of Snohomish County's amendments to its Plan and Development Regulations, pursuant (partially) to an FDO and remand, were **upheld, except** one Plan amendment failed to comply with public participation requirements, and was **remanded** and **invalidated**. [Comprehensive Plan - Development Regulations - Public Participation – UGAs – Annexation - Abandoned Issues – Notice – ILAs - Urban Services - Invalidity]

Kelly, 7312c, Order Finding Noncompliance, (Mar. 31, 1999). Snohomish County chose to address the Plan amendment, invalidated by the Board in the FDO, as part of a subarea plan for the Lake Stevens UGA. After 19 months, the County had not acted to comply or remove invalidity. The Board again **remanded** the Ordinance with direction to **repeal** the invalid amendment. [Public Participation – Invalidity – Notice - Subarea Plans - Land Use Element – UGA-Generally - Compliance]

Kelly, 7312c, Order Rescinding Invalidity and Finding of Compliance (Jun. 28, 1999). Snohomish County's adoption of an ordinance repealing the noncompliant amendments, and a commitment to reconsider its designation in the context of the Lake Stevens

Subarea Plan, removed the substantial interference with Goal 11. The Board's determination if invalidity was **rescinded** and a **Finding of Compliance** entered. [Compliance – Invalidity – Goals - Public Participation - Notice]

City of Auburn v. Pierce County and City of Bonney Lake (***Auburn***), CPSGMHB Case No. 97-3-0013 (***7313***), Order Granting Dispositive Motion, (May 1, 1997). A challenge to the Pierce County's adoption of a Coordinated Water System Plan was **dismissed** for lack of subject matter jurisdiction. [SMJ]

Port of Seattle v. City of Des Moines (***Port of Seattle***), CPSGMHB Case No. 97-3-0014 (***7314***), Final Decision and Order, (Aug. 13, 1997), {Tovar concurring}. Des Moines' Plan, which included policies opposing construction of the third runway at Sea-Tac International Airport, was **remanded** and **invalidated** for precluding the siting of an essential public facility. [Comprehensive Plan – EPFs – Duties – Amendments - Invalidity]

Port of Seattle, 7314, Order Finding Noncompliance and Invalidity, and Recommending Contingent Sanctions, (May 26, 1998). Six policies in the City's plan were **invalidated**, including two prior invalidated policies, one newly amended policy, and four unamended polices. The Plan's continued preclusive treatment of EPFs justified **continuing noncompliance** and a **contingent recommendation of sanctions.** [EPFs – Duties – Sanctions - Amendments – Standard of Review]

[Appealed to King County Superior Court, Court of Appeals Division I and the Supreme Court – Board **Affirmed** – *See* Appendix C, 1999 Decisions.]

Port of Seattle, 7314, Recission of Invalidity and Finding of Compliance, (Jan. 5, 1999). Des Moines **complied** with the requirements of the GMA, as set forth in the Board's 5/26/98 Order. The Board **rescinded** its determination of invalidity regarding Plan Policies that precluded the third runway at Seattle Tacoma International Airport. [Invalidity – Compliance – EPFs]

Port Gamble v. Kitsap County (***Port Gamble***), CPSGMHB Case No. 97-3-0024c (***7324c***). *Port Gamble* was coordinated with the compliance hearing for *Bremerton. Port Gamble* was **dismissed** in the coordinated decision. *See: Bremerton/Port Gamble,* 5339c/7324c, *supra.*

City of Renton v. City of Newcastle (***Renton***), CPSGMHB Case No. 97-3-0026 (***7326***), Final Decision and Order, (Feb. 12, 1998). Renton challenged the newly incorporated City of Newcastle's comprehensive plan, specifically its provisions for affordable housing and Potential Annexation Areas. The challenged portions of the plan were **upheld, except** for Newcastle's designation of an overlapping PAA, which was **remanded**. [CPPs – Housing Element – Consistency – Annexation – Overlap - UGAs]

Renton, 7326, Finding of Compliance, (Oct. 6, 1998). Newcastle amended its Plan to eliminate the overlapping Potential Annexation Area, thereby **complying** with the

requirements of the Act as set forth in the Board's FDO. [Comprehensive Plan – Annexation – Compliance – Overlap]

Maxine Keesling v. King County (***Keesling***), CPSGMHB Case No. 97-3-0027 (***7327***), Final Decision and Order, (Mar. 23, 1998). Petitioner challenged King County's amendment to its development regulations that eliminated P-suffix conditions and replaced them with Special District Overlays (SDOs). The challenged portions of the County's action were **upheld** since they **complied** with the requirements of the GMA. However, King County admitted to including too great an area in application of its "Tree Removal SDO." The Board encouraged the County to correct its error, even though the ordinance applying the SDO was not before the Board. [Comprehensive Plan - Development Regulations – Amendment - Rural Element - Rural Densities - Agricultural Lands – Notice - Public Participation]

Marcia Morris, Susan Fodor, Margaret Anderson, v. City of Lake Forest Park (***Morris***), CPSGMHB Case No. 97-3-0029c (***7329c***), Order Denying Dispositive Motion re: Standing to Raise Legal Issue No. 5, (Jan. 9, 1998). Lake Forest Park's motion to dismiss for lack of SEPA standing was **denied**. [SEPA –Standing – Failure to Act]

Morris, 7329c, Order of Dismissal, (Feb. 26, 1998). Following several settlement extensions, Lake Forest Park repealed the challenged ordinance thereby rendered the appeal moot. The case was **dismissed**. [Development Regulations – Mootness]

Issaquah 69 Association v. City of Issaquah (***Issaquah 69***), CPSGMHB Case No. 97-3-0030 (***7330***)**,** Order Granting Stipulated Dismissal, (Dec. 16, 1997). Petitioner's challenge was **dismissed**, at the request of the parties. [Comprehensive Plan]

Lakehaven Utility District, Beverly Tweddle and Richard Mayer v. City of Federal Way (***Lakehaven***), CPSGMHB Case No. 97-3-0031 (***7331***)**,** Order on Dispositive Motions, (Mar. 6, 1998). Petitioner's challenge was **dismissed**, since the challenged ordinance did not amend Federal Way's plan and petitioners lacked standing. [SMJ – Standing]

SYNOPSIS OF 1998 CASES[20]

CPSGMHB Decisions [With Key Words]

Warren Posten v Kitsap County (***Posten***), CPSGMHB Case No. 98-3-0001 PDR (***8301pdr***), Notice of Decision Not to Issue Declaratory Ruling, (Oct. 7, 1998). Mr. Posten's Petition for Declaratory Ruling (**PDR**) was **denied**. [Declaratory Ruling]

Port of Seattle v. City of Burien (***Port II***), CPSGMHB Case No. 98-3-0001 (***8301***), Order of Dismissal of Case, (Apr. 28, 1998). Burien amended its Plan to address the issues raised by the Port in its challenge, thereby making the case moot. The case was **dismissed**. [Mootness]

City of Fircrest v. Pierce County (***Fircrest***), CPSGMHB Case No. 98-3-0002 (***8302***). Order on Dispositive Motion, (Mar. 27, 1998). Fircrest's challenge of Pierce County's failure to amend its Plan to designate an overlap Urban Service Area for Fircrest was **dismissed**. There was no GMA duty for the County to amend its Plan. [Amendment – CPPs – UGAs]

Lee Rabie, Keith Inness and Randal Parsons v. City of Burien [Robert Ramboll – Intervenor] (***Rabie***), CPSGMHB Case No. 98-3-0005c (***8305c***), Order on Dispositive Motions, (Apr. 3, 1998). Burien's motion to dismiss for improper service was **denied**, and a Petitioner's motion to direct Burien to suspend efforts to amend its plan was **denied**. [PFR – Service – SMJ]

Rabie, 8305c, Order Granting 90 Day Settlement Extension and Amending Prehearing Order – Final Schedule, (Apr. 17, 1998). The request of all parties for a ninety-day settlement extension for the purpose of negotiating a settlement was **granted**.

Rabie, et. al, and Randall L. Parsons v. City of Burien (***Parsons***), CPSGMHB Case No. 98-3-0011 (***8311***), Order on Motions, Second Order of Consolidation, and Order Amending Prehearing Order, (Apr. 24, 1998). Petitioner's challenge to an ordinance implementing Burien's comprehensive plan was **consolidated** with *Rabie, 8305c,* and its schedule was extended. [180 days – PFR – Consolidation]

Rabie, 8305c, Order Dismissing Petitions, Deferring Consideration of Motions and Announcing Location and Schedule for Hearing, (Sep. 10, 1998). Two Petitioners failed to file prehearing briefs; therefore, their petitions were **dismissed.** [Intervention – Abandoned Issues – Board Rules]

Rabie, 8305c, Final Decision and Order, (Oct. 19, 1998). Petitioners challenged whether Burien's Plan complied with many of the GMA goals. The challenged provisions of the City's Plan were **upheld**. The Plan **complied** with the requirements of the GMA.

[20] Note that decisions were not necessarily issued in the year the case was filed.

[Comprehensive Plan – Goals - Abandoned Issues - Property Rights - Critical Areas - Public Participation - Development Regulations]

Upper Green Valley Preservation Society v. King County [Novelty Hill Neighbors, Northshore Youth Soccer Association, City of Woodinville, Pro Parks and Woodinville Fire & Life Safety District – Intervenors] (***Green Valley***), CPSGMHB Case No. 98-3-0008c (***8308c***), Order on Alberg's Motion on Legal Issue No. 3 and Novelty Neighbors' Cross-Motion on Legal Issues 1, 2 and 3, (Apr. 17, 1998). Petitioner's assertion that King County improperly used the legislative process to adjudicate allowed uses on his property was **dismissed**. [Property Rights - Nonconforming Use - Existing Use - Quasi-Judicial]

Green Valley, 8308c, Final Decision and Order, (Jul. 29, 1998), {McGuire dissenting}. King County's Plan and zoning code amendments, allowing active recreation on designated agricultural lands, were **invalidated** and **remanded**. [Agricultural Lands – Duties – Goals – Interim – Invalidity - Mineral Lands -Public Participation]

[Appealed to King County Superior Court and Supreme Court – Board **Affirmed** – *See* Appendix C, 2000 Decisions.]

Green Valley, 8308c, Order Finding Compliance and Rescinding Invalidity Pursuant to Supreme Court Remand in *Upper Green Valley Preservation Society, et al., v. King County,* Cause No. 68284-4 and Superior Court Remand in *King County v. Central Puget Sound Growth Management Hearings Board, et al.,* Case No. 98-2-20858-9SEA, (Nov. 21, 2001). The Board's FDO was upheld by the Supreme Court. King County amended its Plan and regulations to comply. The Board entered a **Finding of Compliance**. [Agriculture – Goals]

Robert L. Style v. King County (***Style***), CPSGMHB Case No. 98-3-0009 (***7309***), Order of Dismissal, (Feb. 13, 1998). Petitioner's challenge to the levy vote, by the citizens of King County, for Medic One Emergency Medical Services was **dismissed** *sua sponte* for lack of subject matter jurisdiction. [SMJ]

City of Burien, City of Des Moines, City of Normandy Park and City of Tukwila v. City of Sea-Tac (***Burien***), CPSGMHB Case No. 98-3-0010 (***8310***), Order of Dismissal – Portion of Issue 7 Pertaining to RCW 47.80.023, (Apr. 23, 1998). The parties stipulated, and the Board concurred, that the Board did not have subject matter jurisdiction over Chapter 47.80 RCW; the relevant portion of the legal issue was **dismissed**. [SMJ]

Burien, 8310, Final Decision and Order, (Aug. 10, 1998). The challenged portions of SeaTac's Plan were **upheld** and found to **comply** with the requirements of the GMA. The Airport Coalition Cities challenged SeaTac's Plan amendments which accommodated the third runway at the Seattle Tacoma International Airport. [Comprehensive Plan - Abandoned Issues – EPFs - Public Participation – CPPs – MPPs – Consistency – SEPA - Goals]

[Appealed to Thurston County Superior Court, and Court of Appeals Division II – Board **Affirmed** - See Appendix C, 2002 Decisions.]

Randall L. Parsons v. City of Burien (***Parsons***), CPSGMHB Case No. 98-3-0011 (***8311***), Order on Motions, Second Order of Consolidation, and Order Amending Prehearing Order, (Apr. 24, 1998). Petitioner's challenge to an ordinance implementing Burien's comprehensive plan was **consolidated** with the *Rabie, 8305c,* and its **extended** schedule. (*See: Rabie, 8305c*) [180 days – PFR – Consolidation]

Lawrence Michael Investments, Chevron U.S.A. and Chevron Land and Development Company v. Town of Woodway (***LMI/Chevron***), CPSGMHB Case No. 98-3-0012 (***8312***), Order on Dispositive Motion, (Sep. 2, 1998). Woodway's motion to dismiss was **denied.** The question of whether RCW 36.70A.020(7), .130 and .470 create a duty to consider amendments at least within one year was postponed until the hearing on the merits. [Amendment]

LMI/Chevron, 8312, Final Decision and Order, (Jan. 8, 1999). The challenged amendments to Woodway's Plan, which limited development to a portion of the City's Subarea Plans area, were found **not in compliance** with the requirements of the GMA and were **remanded**. [Comprehensive Plan - Development Regulations – Amendments – Discrimination - Quasi-Judicial - Abandoned Issues – Consistency - Critical Areas – BAS – Discretion - Minimum Guidelines – Deference - General Discussion – UGAs - Urban Densities - Urban Growth - Land Use Element - Land Use Pattern – Duties – Goals - Subarea Plans - Standard of Review - Housing Element - Property Rights - Transportation Element – CPPs – MPPs - Mandatory Elements - Open Space / Greenbelts]

LMI/Chevron, 8312, Order Finding Noncompliance and Notice of Second Compliance Hearing, (Oct. 7, 1999). Woodway amended its plan to allow urban densities in its Urban Reserve District. However, Woodway's Plan amendment effort was insufficient to achieve full compliance with the GMA. The Board entered a **Finding of Noncompliance** and forwarded it to the Governor – sanctions were not recommended. A second compliance hearing was scheduled. [Noncompliance]

LMI/Chevron, 8312, Finding of Compliance, (Dec. 20, 1999). In its effort to comply with the GMA, Woodway maintained appropriate urban densities in its Plan, amended its future land use map, and repealed portions of prior ordinances to remove provisions that created internal inconsistencies within the Plan. The Board entered a **Finding of Compliance** and notified the Governor that Woodway had achieved compliance. [Compliance]

[Appealed to Thurston County Superior Court – Cause No. 99-2-00081-9 – **Dismissed**.]

Philip Hanson, Anne Herfindahl, Anne Woodward, Jake Jacobovitch and Vashoh-Maury Community Council v. King County [Sprint PCS – Intervenor] (***Hanson***), CPSGMHB Case No. 98-4-0015c (***8315c***), Order Granting Dispositive Motion, (Sep. 28, 1998).

Petitioners' challenge to King County's issuance of three conditional use permits for wireless communication towers was **dismissed**. [SMJ – Definitions - Dispositive Motion - Development Regulation]

Hanson, 8315c, Order Denying Reconsideration and Motion to Compel, (Oct. 15, 1998). The Board **denied** the request to reconsider its disposition of a motion regarding Board jurisdiction over project permits. [Reconsideration – Dispositive Motion – Board Rules]

Hanson, 8315c, Final Decision and Order, (Dec. 16, 1998). Petitioners' challenge to an amendment to King County's development regulations, asserting the regulation amendments did not comply with GMA plan requirements, was **dismissed** and the regulations **upheld**. [Development Regulation – Plan - Mandatory Elements - Utilities Element - Rural Element - Rural Densities – Definitions – Consistency - Abandoned Issues]

Rural Bainbridge Island and A. Andrus v. City of Bainbridge Island (***RBI***), CPSGMHB Case No. 98-3-0030c (***8330c***), Order on Dispositive Motions, (Oct. 16, 1998). Various Petitioners were **dismissed** for lack of standing. [Dispositive Motion – Standing - SEPA]

RBI, 8330c, Order Dismissing Appeal of Rural Bainbridge Island, (Dec. 28, 1998). Petitioners withdrew their appeal; therefore, the RBI PFR was **dismissed** from the consolidated case. CPSGMHB Case No. 98-3-0030c was recaptioned *Andrus v. City of Bainbridge Island* (***Andrus***) Case No. 98-3-0030 (***8330c***).

Andrus v. City of Bainbridge Island (***Andrus***), CPSGMHB Case No. 98-3-0030c (***8330c***), Final Decision and Order, (Mar. 31, 1999). Bainbridge Island's notice and public participation process for amendments to the Winslow Master Plan, pertaining to the ferry terminal area, did not provide a reasonable opportunity for public review and comment prior to adoption of the subarea plan. The Plan was **remanded**. [Public Participation -- Notice -- Subarea plan --Amendment]

Andrus, 8330c, Finding of Compliance, (Feb. 10, 2000). The Board entered a **Finding of Compliance** for the City regarding the notice and public participation issues surrounding the Winslow Master Plan. [Compliance – Public Participation – Notice]

Alpine Evergreen, et al., v. Kitsap County (***Alpine***), *CPSGMHB Case No. 98-3-0032c* (***8332c***). *Alpine* was coordinated with the compliance hearing for *Bremerton.* While the *Bremerton* portion of the case **complied** with the GMA, the *Alpine* Iportion of the case did **not comply,** and was **remanded** regarding forest lands, annexation restrictions, Port Gamble UGA, and its CFE. *See: Bremerton/Alpine, 5339c/8332c supra.*

Alpine, 8332c, Order Denying Petitions for Reconsideration, (Mar. 5, 1999). Petitioners' request for reconsideration was **denied**.

Alpine, 8332c, Order Denying Posten's Petition for Stay of Effectiveness, (Mar.ch 24, 1999). The Board **denied** the petition for a stay of the *Alpine* FDO, pursuant to RCW 34.05.467. [Board Rules - Presumption of Validity]

Alpine, 8332c, Notice of Hearing, Order of Consolidation of Portion of *Screen I* with *Screen II* and Coordination with Portion of *Alpine* (Jul. 22, 1999).

Alpine, 8332c, Order on Compliance Re: Forestry Issues in *Alpine* and Final Decision and Order in *Screen (**Screen I**)* (Oct. 11, 1999). Kitsap County's designation of forest lands complied with the GMA and one of the Board's remand items (3b) in the February 8, 1999 FDO. The **Finding of Compliance** is included in the FDO in *Screen, et al., v. Kitsap County. [McCormick Land Company – Intervenor]. See: Screen I, 9306c*.

Alpine, 8332c, Order on Compliance with Remand Paragraph 3e in *Alpine* and Final Decision and Order in *Screen* (***Screen II***), (Nov. 22, 1999). Kitsap County addressed one of eight remand items from the Board's FDO. The County removed an inconsistency between the Plan text and Plan map by amending the Plan text. The **Finding of Compliance** is included in the FDO in *Screen II. 9312.* [Compliance – Forestry]

Alpine, 8332c, Order on Compliance with Remand Paragraphs 3a, 3b, 3c, 3g and 3h in *Alpine* (Nov. 22, 1999). The County addressed five of eight remand items from the Board's FDO. The Board entered a **Finding of Compliance** for these five items. [Compliance – Public Participation – Annexation – Transportation – Economic Development Element – Forestry -- Mootness]

Alpine, 8332c. The remaining portion of the compliance case was coordinated with the Board's decision in *Burrow v. Kitsap County*, CPSGMHB Case No. 99-3-0018, Order on Compliance in a Portion of Alpine and Final Decision and Order, (Mar. 29, 2000). The Board entered a **Finding of Compliance** for the County on the capital facilities and Port Gamble UGA compliance issues. [Compliance – CFE – UGA]

Dwayne Lane and Sky Valley v. Snohomish County (***Lane***), CPSGMHB Case No. 98-3-0033c (***8333c***), Order Granting Motion to Dismiss, (Jan. 20, 1999). Petitioner's appeal challenging Snohomish County's designation of agricultural land, pursuant to a Court remand and Board Order, was **dismissed** for failure to serve the PFR on the County Auditor. [Dispositive Motion – Service – Boards Rules – Court]

[Appealed to Snohomish County Superior Court – Cause No. 99-2-01236-3 – Board **Affirmed**.]

Union River Basin Protection Association, et al., v. Kitsap County (***URBPA***), CPSGMHB Case No. 98-3-0034 (***8334***), Order Granting Settlement Extension and Continuing Prehearing Conference, (Nov. 25, 1998). The parties agreed to, and the Board **granted,** a 90-day extension pending the Board's decision in *Bremerton/Alpine*, 5339c/8332c. [Extension]

URBPA, 8334, Order Dismissing Petition, (Feb. 26, 1999). Following the Board's FDO in *Alpine*, Petitioners withdrew their PFR. Petitioners' claims were **dismissed**.

Weyerhaeuser Real Estate Company, Land Management Division v. City of Dupont (***WRECO***), CPSGMHB Case No. 98-3-0035 (***8335***), Final Decision and Order, (May 19, 1999). DuPont's notice and public participation process for Plan amendments was limited to adjacent property owners which was determined to be too narrow and limiting to comply with the Act's requirement for broad based public participation. The Ordinance establishing the Plan amendment procedure was **remanded** to revise the notice provisions. [Notice - Public Participation – Record - Dispositive Motions – Standing – PFR – Amendment – Timeliness - Procedural Criteria]

WRECO, 8335, Finding of Compliance (Oct. 14, 1999). DuPont adopted new notice procedures designed to encourage broad public participation and provide effective notice procedures. The Board entered a **Finding of Compliance**. [Compliance – Notice – Public Participation]

Paul P. Carkeek v. King County (***Carkeek***), CPSGMHB Case No. 98-3-0036 (***8336***), Order Granting Stipulated Dismissal, (Oct. 9, 2000). After seven settlement extensions and twenty-two months, the parties reached agreement and the case was **dismissed**. [Settlement Extension – Dismissal]

[21]

SYNOPSIS OF 1999 CASES

CPSGMHB Decisions [With Key Words]

Montlake Community Club, et al. v. City of Seattle (***Montlake***), CPSGMHB Case No. 99-3-0002c (***9302c***), Order on Dispositive Motions, (Apr. 23, 1999). The Board **dismissed** the petition for review filed by Friends of Brooklyn since the organization lacked GMA [participation] standing. SEPA issues were also **dismissed** since the remaining petitioner withdrew the issue. [Amendments - Board Rules – PFR - Public Participation – Publication – SEPA – SMJ – Standing - Timeliness]

Montlake, 9302c, Final Decision and Order (Jul. 30, 1999). The City's adoption of 'portions' of the University Community Urban Center Plan developed by the neighborhood, as the City's Community Plan for the neighborhood, was **upheld**. [Subarea Plans – Adoption – General Discussion – Discretion – Public Participation – Timeliness -- Abandoned Issues – LOS – Concurrency – SEPA]

[Appealed to King County Superior Court – Cause No. 99-2-20106-0 SEA, and Court of Appeals – Board **Affirmed**, See Appendix C 2002 Decisions.]

*Brian Ramey v. City of Seattle (**Ramey Remand**)*, [The Board consolidated the Ramey PFR with the Montlake Community Club case. [Superior Court Remand of CPSGMHB Case No. 99-3-0002 – *Ramey* portion] This case is discussed under 2000 decisions.

Sound Transit v. City of Tukwila (***Sound Transit***), CPSGMHB Case No. 99-3-0003 (***9303***), Order on Dispositive Motion (Jun. 18, 1999). The City's motion to dismiss the PFR, alleging that the Director of Sound Transit lacked authority to initiate the challenge was **denied**. [SMJ – Dispositive Motion]

Sound Transit, 9303, Final Decision and Order (Sep. 15, 1999). The City of Tukwila's efforts to influence the location of Sound Transit's preferred, but not selected, light-rail route through use of its plan policies and development regulations **complied** with the GMA. [Plan – Discretion – EPF – Land Use Powers – Regional Planning – Duties - Goals]

Agriculture for Tomorrow (***AFT II***) *v. Snohomish County,* CPSGMHB Case No. 99-3-0004 (***9304***), Order on Dispositive Motion (Jun. 18, 1999). Petitioner's challenge was **dismissed** as untimely. [Amendment – Duty – SMJ – Timeliness]

Screen, et al. v. Kitsap County (***Screen I***), CPSGMHB Case No. 99-3-0006c (***9306c***), Notice of Hearing, Order of Consolidation of Portion of *Screen I* with *Screen II* and Coordination with Portion of *Alpine* (Jul. 22, 1999).

[21] Note that decisions were not necessarily issued in the year the case was filed.

Screen I, 9306c, Order on Compliance Re: Forestry Issues in *Alpine* and Final Decision and Order in *Screen (Screen I)* (Oct. 11, 1999). The County's designation of forest lands complied with the GMA and one of the Board's remand items (3b) in the FDO. The **Finding of Compliance** is included in the FDO in *Screen I, 9306c*. [Compliance – Forest Land]

Pilchuck Audubon Society v. Snohomish County (***Pilchuck IV***), CPSGMHB Case No. 99-3-0007 (***9307***), Order of Dismissal (May 28, 1999). Both parties stipulated to the dismissal of this case, consequently, it was **dismissed**.

Randall L. Parsons v. City of Burien (***Parsons III***), CPSGMHB Case No. 99-3-0008 (***9308***), Order on Dispositive Motion (Aug. 30, 1999). The City amended the Plan Policies that Petitioner sought to have implemented; therefore the challenge became moot, and was **dismissed**. [Mootness]

*Olympic Pipe Line Company v. City of North Bend (**Olympic**)*, CPSGMHB Case No. 99-3-0009 (***9309***), Order of Dismissal (Jul. 15, 1999). Olympic Pipe Line withdrew its petition for review. Therefore, the case was **dismissed**.

Housing Partners, L.L.C.; W. Noel Higa; and The Class of Affordable Housing Advocates v. Snohomish County (***Housing Partners***), CPSGMHB Case No. 99-3-0010 (***9310***), Order of Dismissal, (May 5, 2001). After almost two years, and ten settlement extensions, the parties agreed to a voluntary dismissal of Housing Partner's challenge to the County's adoption of an emergency ordinance modifying its development regulations. The Board **dismissed** the petition for review. [Emergency – Dismissal]

The Westcot Company and Environmental Transport v. City of Des Moines (***Westcot***), CPSGMHB Case No. 99-3-0011 (***9311***), Order of Dismissal, (Jan. 26, 2000). Following three settlement extensions, the parties agreed to a stipulated dismissal; the challenge was **dismissed**.

*Robert and Janet Screen v. Kitsap County (**Screen II**)*, CPSGMHB Case No. 99-3-0012 (***9312***), Notice of Hearing, Order of Consolidation of Portion of *Screen I* with *Screen II* and Coordination with Portion of *Alpine*, (Jul. 22, 1999).

Screen II, 9312, Order on Compliance with Remand Paragraph 3e in *Alpine* and Final Decision and Order in *Screen* (*Screen II*) (Nov. 22, 1999). The County removed an inconsistency between the Plan text and Plan map by amending the Plan text. The County's action complied with the goals and requirements of the Act. The FDO includes the **Finding of Compliance** for a portion of the *Alpine* case. *See Alpine, et al., v. Kitsap County*, CPSGMHB Case No. 98-3-0032c. [Compliance – Forest Land]

The Tulalip Tribes of Washington v. City of Monroe (***Tulalip II***), CPSGMHB Case No. 99-3-0013 (***9313***), Final Decision and Order, (Jan. 28, 2000). The Tulalip Tribe failed to carry its burden of proof in its challenge to the City of Monroe's adoption of the North Area Community Plan. The Plan was **upheld**. [Abandoned Issues – CA – Fish and

Wildlife Habitat Conservation Areas – Development Regulations – Plan – Exhaustion – SEPA – BAS – Innovative Techniques – Duty – Subarea Plans – Mandatory Elements – Open Space/Greenbelts – Consistency]

[Appealed to Snohomish County Superior Court –Cause No. 00-2-01687-3 – **Dismissed**.]

Robert Ross, d/b/a Northwest Golf, Inc. v. Kitsap County (***NW Golf***), CPSGMHB Case No. 99-3-0014 (***9314***), Order on Dispositive Motions (Sep.29, 1999). Kitsap County's motion to dismiss several issues for lack of standing was granted. Several issues were **dismissed** for lack of participation standing. [SMJ -- Standing]

*NW Golf, 9314,*Order Granting Stipulated Dismissal (Oct. 21, 1999). The parties filed a stipulation requesting the case be dismissed. The Board case was **dismissed with prejudice.**

Jody McVittie, et al., v. Snohomish County [Snohomish County-Camano Association of Realtors – Intervenor] (***McVittie I***), CPSGMHB Case No. 99-3-0016c (***9316c***), Order on Dispositive Motions (Oct. 26, 1999). Motions by the County and Intervenor to dismiss various issues were **denied**. [Dispositive Motion]

McVittie I, 9316c, Final Decision and Order, (Feb. 9, 2000). All issues raised in this case were ultimately **dismissed** as untimely, moot, abandoned or because petitioner failure to meet the burden of proof. However, the Board was asked to interpret and provide guidance on the scope of Goal 12 [Timeliness – Mootness – Abandoned Issues – Burden of Proof – Housing Element – Goals – Transportation Element – LOS – CFE – Consistency]

McVittie, 9316c, Order on Motion to Reconsider, (Mar. 16, 2000). Petitioner's motion to reconsider was **granted in part and denied in part**. The Board clarified one portion of its discussion. [LOS]

*MacAngus Ranches Inc., Michael Leung and Dennis Daley v. Snohomish County, (**MacAngus**),* CPSGMHB Case No. 99-3-0017 (***9317***), Final Decision and Order, (Mar. 23, 2000) {North concurring}. The challenge to the County's Plan and zoning code amendments were **upheld**, the case was **dismissed**. [Standing – Timeliness – Agricultural Lands – Development Regulations – Zoning – Consistency – Show Your Work – Public Participation – Amendment – Land Use Element – Subarea Plans – Mandatory Elements – Reaffirm - .120]

[Appealed to Kitsap County Superior Court – Cause No. 00-2-10800-1 SEA – **Dismissed**.]

Charlie Burrow, Linda Cazin and KCRP v. Kitsap County, (***Burrows***), CPSGMHB Case No. 99-3-0018 (***9318***), Order on Compliance in a Portion of *Alpine* and Final Decision and Order in *Burrow*, (Mar. 29, 2000). Kitsap County was found to **comply** with the GMA regarding the *Alpine* case, which was finally closed. The County's designation of

Port Gamble as a limited area of more intensive rural development was found to **comply** with the GMA in the *Burrow* case. [Abandoned Issues – Amendment – Average Net Density – CFE – Deference – General Discussion – Goals – LAMIRD – Land Use Element – Public Participation – Rural Element – Rural Densities – Standard of Review – Urban Growth]

Kenneth and Sharon Gain v. Pierce County (***Gain***), CPSGMHB Case No. 99-3-0019 (***9319***), Order on Dispositive Motions, (Jan. 28, 2000). Thirty-three of Petitioner's thirty-five issues were **dismissed** as untimely or for lack of subject matter jurisdiction. [Abandoned Issues – Board – Failure to Act – FCC – Forest lands – MPRs – OFM Population – SMJ – Timeliness – UGAs]

Gain, 9319, Order on Petitioner's Motion for Reconsideration of Dispositive Order, (Feb. 15, 2000). The Board **denied** the request for reconsideration.

Gain, 9319, Final Decision and Order, (Apr. 18, 2000). On the two remaining issues in this matter, the County's action was found to **comply** with the Act. [Amendment – CPP – Forest lands – UGA – LAMIRD – Sewer – MPRs – Rural Element – Urban Growth]

*David and Meredith Kenyon v. Pierce County (**Kenyon I**),* CPSGMHB Case No. 99-3-0020 (***9320***), Order Granting Stipulated Dismissal, (Dec. 14, 2000). After granting four settlement extensions, the parties stipulated to **dismissal** of the case.

City of Tacoma, et al., v. Pierce County (***Tacoma II***), CPSGMHB Case No. 99-3-23c (***9323c***), Order on Dispositive Motions, (Mar. 10, 2000). The Board **dismissed** two PFRs alleging the County failed to adopt amendments proposed by Petitioners. [Amendment – Duty – Failure to Act – Timeliness]

Tacoma II, 9323c, Order on Motion for Reconsideration, (Mar. 27, 2000). The Board reconsidered its 3/10/00 Order, considered Petitioners' response briefs and **dismissed** the two PFRs alleging the County failed to adopt amendments proposed by Petitioners.

[Appealed to Pierce County Superior Court – Cause No. 00-2-07309-2 – **Dismissed**.]

Tacoma II, 9323c, Final Decision and Order, (Jun. 26, 2000). The County's designation of a RAID (LAMIRD) did not comply with the GMA's rural element requirements; it was **remanded**. [Abandoned Issues – CPP – Infrastructure – LAMIRD – Land Use Element – Sewer – Rural Element – UGA]

Tacoma II, 9323c, Finding of Compliance, (Sep. 11, 2000). The County repealed the challenged RAID; the Board entered a **Finding of Compliance**.

[22]

SYNOPSIS OF 2000 CASES

CPSGMHB Decisions [With Key Words]

City of Shoreline v. Snohomish County, (***Shoreline pdr***), CPSGMHB Case No. 00-3-0001pdr (***0301pdr***), Order Declining to Issue Declaratory Ruling, (Feb. 6, 2000), {Dissenting opinion by North, Concurring opinion by Tovar}. The Board **declined** to issue a declaratory ruling stating that Shoreline's Plan was valid and binding on Snohomish County and the cities of Snohomish County. [Abandoned Issues – Declaratory Ruling – PFR – SMJ]

In the Matter of the Petition of Geoffrey J. Bidwell for a Declaratory Ruling, (***Bidwell pdr***), CPSGMHB Case No. 00-3-0002 PDR (***0302pdr***), Notice of Decision not to issue a declaratory ruling, (Dec. 6, 2000), {Concurring opinion by North}. The Board **declined** to issue a declaratory ruling regarding the City of Bellevue's compliance with the GMA. [Declaratory Ruling]

Brian Ramey v. City of Seattle (***Ramey Remand***), [Superior Court Remand of CPSGMHB Case No. 99-3-0002] (***9302***), Order on Motions [To supplement the record and dispositive], (Nov. 11, 2000). The Board **declined to rule** on the City's dispositive motion until the hearing on the merits. [Dispositive Motion – Exhibits – Record – Standing]

[Appealed to King County Superior Court – Cause No. 99-2-12488-0 SEA – Board **Reversed** and **Remanded.**]

Ramey Remand, 9302, Order on Motion to Reconsider, (Dec. 15, 2000). The Board reconsidered its Order on Motions and **dismissed** four of five legal issues from the remand case. [Reconsideration – Standing – CFE – EPFs – Open Space/Greenbelts – Historic Preservation]

Ramey Remand, 9302, Order Granting Continuance Pending Outcome of Court of Appeals Decision in *Montlake Community Club v. City of Seattle*, (***MCC***) Cause No. l 46708-5-I, (Jan. 8, 2000). The parties requested, and the Board **granted a continuance** pending the outcome of the MCC case. The parties will report quarterly on the status of the MCC case.

Ramey Remand, 9302, Order of Dismissal, (Oct. 17, 2002). This remand matter was stayed pending the outcome of the *Montlake Community Club v. City of Seattle* in the Court of Appeals. In April 2002, the Court of Appeals upheld the Board in the *Montlake Community Club* case. Petitioner failed to prosecute his case and comply with Board Orders, thus the matter was **dismissed**. [Dismissal]

[22] Note that decisions were not necessarily issued in the year the case was filed.

David Radabaugh v. City of Seattle (***Radabaugh***), CPSGMHB Case No. 00-3-0002 (***0302***), Final Decision and Order, (Jul. 7, 2000). Policies in the City's Greenwood/Phinney Ridge Neighborhood Plan and the City's Comprehensive Plan were inconsistent and **did not comply** with the requirements of the GMA. The matter was **remanded**. [Amendment – Concurrency – Consistency – CFE – Discretion – Duties – LOS - Subarea Plans]

Radabaugh, 0302, Order on Compliance, (Dec. 20, 2000). Seattle removed the Plan inconsistencies and the Board entered a **Finding of Compliance**.

Richard L. Grubb v. City of Redmond, (***Grubb***), CPSGMHB Case No. 00-3-0004 (***0304***), Final Decision and Order, (Aug. 10, 2000). Redmond's re-designation of several parcels of land, that were previously designated as agriculture, to urban recreation **did not comply** with the Act. A **determination of invalidity** was entered pertaining to these parcels. [Agricultural lands – CTED – Definitions – Duties – General Discussion – Goals Open Regional Planning – Space/Greenbelts]

Grubb, 0304, Order Finding Continued Noncompliance and Invalidity, Denying Motion to Extend and Providing Notice of Second Compliance Hearing, (Feb. 16, 2001). Redmond challenged the Board's FDO in Superior Court, but took no legislative action to comply with the Act or remove invalidity. The Board entered a **continuing finding of noncompliance, a continued determination of invalidity** and scheduled a second compliance hearing. The Board's Order was transmitted to the Governor, but the Board **did not to recommend sanctions at this time**. [Noncompliance – Invalidity – Sanctions]

Grubb, 0304, Order Finding Compliance, (Jun. 15, 2001). Redmond re-designated the noncompliant properties as Agriculture and made the necessary text amendments to its Plan and regulations. The Board entered a **Finding of Compliance**.

[Appealed to King County Superior Court – Cause No. 00-2-23502-2 SEA; Court of Appeals Division One – Board **Reversed** – See Appendix C 2003 Decisions.]

Grubb, 0304, Order on Remand [In Redmond vs. CPSGMHB, Court of Appeals Division I], (Dec. 4, 2003). The Court of Appeals determined that [the Benaroya and Muller properties, originally found noncompliant and invalid in *Grubb* are] validly designated as urban recreational and the Board erred by concluding otherwise. Based upon the Court of Appeals ruling, the Board entered a **Finding of Compliance** for the Urban Recreational designations. [Agricultural Lands]

Larry Kimmett v. Kitsap County, (***Kimmett***), CPSGMHB Case No. 003-0005, (***0305***), Order of Dismissal, (Apr. 27, 2000). Petitioner withdrew his challenge to Kitsap County; the matter was **dismissed**.

Jody L. McVittie v. Snohomish County [Snohomish County-Camano Island Realtors – Intervenor, 1000 Friends of Washington – Amicus] (***McVittie IV***), CPSGMHB Case No.

00-3-0006c, (***0306c***), Order on Dispositive Motion, (Apr. 25, 2000), The County and Intervenor's motions to dismiss for lack of subject matter jurisdiction were **denied**. [Publication – Timeliness – Mootness]

McVittie IV, 0306c, Final Decision and Order, (Sep. 9, 2000). The challenge to Snohomish County's Transportation and Capital Facilities Elements was **dismissed**; the County's action was **upheld**. [Abandoned Issues – CFE – Consistency – Goals – Implementation – LOS - Public Participation - Transportation Element]

McVittie IV, 0306c, Order on Motion to Reconsider, (Oct. 9, 2000). The Board **denied** the motion to reconsider.

State of Washington Department of Corrections and Department of Social and Health Services v. City of Tacoma, (***DOC/DSHS***), CPSGMHB Case No. 00-3-0007, (***0307***), Final Decision and Order, (Nov. 20, 2000). The City stipulated to **noncompliance** pertaining to DSHS's challenge to the City's restrictions on juvenile community facilities. The Board found that the City's restrictions on work release facilities **did not comply** with the requirements of the Act. The challenged ordinance was **remanded** to the City with direction to comply with the terms of the stipulated agreement and the requirements of the GMA. Two separate compliance schedules, one for DSHS and one for DOC, were included in the Board's Order. [Settlement – EPFs – Definitions – CPPs – Notice – Public Participation – CTED – Goals]

DOC/DSHS, 0307, Finding of Partial Compliance [Re: DSHS portion of case – juvenile correction facilities], (Feb. 5, 2001). The City adopted a new ordinance governing juvenile correction facilities that implemented the settlement agreement and complied with the Act. The Board entered a **Finding of Partial Compliance**. [Compliance – EPFs]

DOC/DSHS, 0307, Finding of Compliance [Re: DOC portion of case – work release facilities], (May 30, 2001). The City of Tacoma amended its zoning code so as not to preclude the siting of work release facilities and the Board entered a **Finding of Compliance**. [EPFs]

[Appealed to King County Superior Court –Cause No. 01-2-26743-4 – **Dismissed**; Appealed to Thurston County Superior Court – Cause No. 02-2-001135-6 - **Dismissed**.]

Harvey Airfield v. Snohomish County (***Harvey Airfield***), CPSGMHB Case No. 00-3-0008 (***0308***), Order on Dispositive Motion, (Jul. 13, 2000) {North dissenting}. Petitioner's challenge to the County's failure to adopt Petitioner's proposed amendments was **dismissed**. [Airports – Amendment – Duties – EPFs – Re-evaluate – Regional Planning]

Geoffrey J. Bidwell v. City of Bellevue, (***Bidwell***), CPSGMHB Case No. 00-3-0009 (***0309***), Order on Dispositive Motion, (Jul. 14, 2000). Petitioner's challenge to the City's failure to adopt Petitioner's proposed amendments was **dismissed**. [Amendment – Duties]

Bidwell, 0309, Order Denying Motion for Reconsideration on Board's Order on Dispositive Motion, (Aug. 3, 2000). The Board **denied** the motion to reconsider.

City of Shoreline v. Snohomish County, (***Shoreline***), CPSGMHB Case No. 003-0010 (***0310***), Order on County's Motion to Dismiss, Order on Supplemental Evidence and Notice of Hearing, (Sep. 5, 2000). The Board **dismissed** Shoreline's challenge for lack of jurisdiction. [Annexation – Overlap – SMJ – UGAs]

Michael Gawenka, Helen Miller, Paul Scheyer and Joanne and David Forbes v. City of Bremerton, (***Gawenka***), CPSGMHB Case No. 00-3-0011 (***0311***), Order on Dispositive Motion, (Oct. 10, 2000). The City repealed the challenged ordinance. Consequently the case was **dismissed**. [Definitions – Dismissal – Mootness]

Wildlife Habitat Injustice Prevention, Bruce Diehl, Ed Nicholas, Pamela Yeager, Joel and Gina Guddat, B.W. Abbott, Terri R. Sapp, Jon Owens, Patti Melton, Mark Lanza and Susan Fenderson v. City of Covington [Lee J. Moyer, Jack D. Clark and Alayar Deabestani – Intervenors], (***WHIP***), CPSGMHB Case No. 00-3-0012 (***0312***), Order on Motions, (Nov. 6, 2000). The City contended it was not subject to the Board's jurisdiction or the requirements of the GMA, thus it did not have to comply with the Act's public participation requirements. The Board has jurisdiction; it found the City's action in adopting 10 Ordinances **did not comply** with the GMA and entered a **determination of invalidity** for each of the ordinances. [Adoption – Incorporation – SMJ – Plan – Pre-GMA – Public Participation – Invalidity]

WHIP, 0312, Order on Motions for Reconsideration, (Dec. 4, 2000). The Board **denied** the request for reconsideration.

WHIP, 0312, Order Rescinding Invalidity and Entering a Finding of Compliance, (Mar. 5, 2001). The City enacted a public participation ordinance, several interim control ordinances and repealed prior challenged ordinances. The Board **rescinded** the Determination of Invalidity and entered a **Finding of Compliance**. [Compliance – Invalidity - Public Participation – Reconsideration - SMJ]

Petersville Road Area Residents, Eugene G. Ollenbuger, Dave Mitchell and Earl Gallagher v. Kitsap County, (***Petersville Road Residents***), CPSGMHB Case No. 00-3-0013 (***0313***), Order on Motions, (Oct. 23, 2000). Petitioners' challenge was **dismissed** for lack of subject matter jurisdiction. [SMJ – EPFs – Group Homes]

Homebuilders Association of Kitsap County v. City of Bainbridge Island, (***Homebuilders***), CPSGMHB Case No. 00-3-0014 (***0314***), Final Decision and Order, (Feb. 26, 2001) {McGuire concurring}. The City's notice and public participation process for adoption of the challenged ordinance did **not comply** with the Act and was **remanded**. The Board entered a **Determination of Invalidity**. [Notice – Public Participation – Goals – CTED – Consistency – Invalidity]

Homebuilders, 0314, Rescission of Invalidity and Finding of Compliance, (Aug. 20, 2001). The City provided effective notice in amending its critical areas ordinance. The Board **rescinded invalidity** and entered a **Finding of Compliance**.

Pierce County v. City of Lakewood (***Pierce II***), CPSGMHB Case No. 00-3-0015 (***0315***), Order of Dismissal, (Apr. 16, 2001). Neither party filed prehearing briefs by the deadlines established in the prehearing order. Pursuant to WAC 242-02-570(1), the Board **dismissed** the petition for review. [Board Rules]

Jody L. McVittie v. Snohomish County, (***McVittie V***), CPSGMHB Case No. 00-3-0016 (***0316***), Order Denying Dispositive Motions Re: Participation Standing, (Nov. 6, 2000). The Board **denied** the County's motion to dismiss for lack of participation standing. [Standing (Participation and Governor Certified)]

McVittie V, 0316, Order on Motion to Reconsider, (Dec. 4, 2000) {North dissenting}. The Board **granted** the County's motion to reconsider its 11/6/00 Order. Further consideration of participation standing was postponed until the Final Decision and Order.

McVittie V, 0316, Order on Request for Expedited Review and Clarification, (Jan. 4, 2001). A request for expedited review was **denied**. [Board Rules]

McVittie V, 0316, Order on Dispositive Motions, (Jan. 22, 2001). Various motions to dismiss or address different Legal Issues, in a dispositive manner, were **denied** and **granted**. [Dispositive Motion – Emergency – SMJ]

McVittie V, 0316, Final Decision and Order, (Apr. 12, 2001), {Tovar concurring}. The County's adoption of emergency ordinances expanding its UGA, designating and rezoning the area for urban uses without any notice or opportunity for public participation **did not comply** with the GMA. The Board issued a **Determination of Invalidity** along with the **remand** order. The Board also found that notwithstanding the lack of opportunity for public participation, Petitioner had standing to pursue the appeal. [Mootness – Standing – Notice – Public Participation - Emergency]

McVittie V, 0316, Order on Motion to Reconsider FDO, (May 4, 2001). The County contended it had no jurisdiction to take legislative action to remove a noncompliant, invalidated UGA designation since the area had been subsequently annexed and to change the designation would be a meaningless act. The Board **denied** the County's motion. [Reconsideration – Compliance]

McVittie V, 0316, Order Finding Validity of the Prior Plan and Regulations During the Remand Period, Rescinding Invalidity and Finding Compliance, (Aug. 16, 2001). The County took corrective action to achieve compliance with the GMA, therefore the Board **rescinded invalidity**, found **compliance** and determined the prior plan and regulations were compliant during the remand period.

Low Income Housing Institute, Fair Housing Center of South Puget Sound, V.L. Kershaw, Starlit Rothe and Beverly Edwards v. City of Lakewood (***LIHI I***), CPSGMHB Case No. 00-3-0017 (***0317***), Order on Motions, (Nov. 22, 2000). The Board **granted** a request to change the location of the hearing on the merits. [Board Rules]

LIHI I, 0317, Final Decision and Order, Mar. 9, 2001. The Board found the challenged provisions of the City's housing element **complied** with the requirement of the Act, but entered a **Finding of Noncompliance** because the City had not adopted development regulations to implement its plan. The City was directed to adopt the GMA required implementing regulations. [Housing Element – Development Regulations – Failure to Act – Affordable Housing]

LIHI I, 0317, Order Finding Compliance, (Oct. 11, 2001). The City of Lakewood adopted its Land Use and Development Code to implement its Plan. The Board found that adoption of these development regulations corrected the City's admitted failure to act and **complied** with the requirements of the GMA. The Board entered a **Finding of Compliance**.

[Appealed to Thurston County Superior Court, Cause No. 02-2-00464-1 – Board **remanded** for additional findings.]

LIHI I, 0317, Order on Superior Court Remand [No. 01-2-000608-5] in *LIHI I*, CPSGMHB Case No. 00-3-0017, (Feb. 21, 2002). Thurston County Superior Court remanded two issues from the Board's FDO because the Board had failed to adequately articulate the basis for its decision on those issues. On remand, the Board further **explained** its rationale and **affirmed** the decision on the two remanded issues.

[Appealed to Thurston County Superior Court – Cause No. 01-2-00608-5 – Board **remanded** for additional findings.]

LIHI I, 0317, Order of Dismissal [Division II Remand of LIHI I, CPSGMHB Case No. 00-3-0017]. (Feb. 14, 2005). The Court of Appeals **remanded** two issues for resolution by the Board. After the Court decision, the Parties sought, and received, four settlement extensions to resolve the remaining remand issue. The parties reached agreement, withdrew their challenge and stipulated to compliance. The Board found **compliance**. [Affordable Housing]

Kitsap Citizens for Rural Preservation and Suquamish Tribe v. Kitsap County [Port Blakely Tree Farms L.P.- Intervenor] (***Kitsap Citizens***), CPSGMHB Case No. 00-3-0018 (***0319c***), Order on Dispositive Motions and Motions to Supplement the Record, (Feb. 16, 2001). The Board **denied** the County's motion to dismiss. [Mootness – UGA - Annexation]

Kitsap Citizens, 0319c, Final Decision and Order, (May 29, 2001), {Tovar concurring}. The County's adoption of the Port Blakely Subarea Plan and UGA expansion was **upheld**. Petitioners' challenge was **dismissed**. [Subarea Plan – Annexation – UGA]

SYNOPSIS OF 2001 CASES

CPSGMHB Decisions [With Key Words]

David and Meredith Kenyon and Gold Hill Community Club v. Pierce County [Crystal Conservation Coalition and Dana Meeks & Associates – Intervenors] (***Kenyon II***), CPSGMHB Case No. 01-3-0001 (***1301***), Final Decision and Order, (Aug. 27, 2002). Following five settlement extensions, settlement discussions failed. Petitioners, owners of two tracts of land (Gold Hill and Eagles Lair) that are located within, or adjacent to, the boundaries of Crystal Mountain Resort, challenged the County's designation of the Crystal Mountain Ski Resort, as a Master Planned Resort. The Board concluded the County had not addressed the statutory criteria for including an existing master planned resort in it designation of a master planned resort. The MPR designation did **not comply** with the Act and it was **remanded** to the County to take action to comply with the Act. [Master Planned Resort]

Kenyon II, 1301, Order Finding Compliance, (Mar. 10, 2003). On remand, the County repealed its designation of the Crystal Mountain Resort, and associated properties, as a Master Planned Resort, previous designations were reinstated. The Board entered a **Finding of Compliance**. [MPR]

Jody L. McVittie v. Snohomish County (***McVittie VI***), CPSGMHB Case No. 01-3-0002 (***1302***) , Final Decision and Order, (Jul. 25, 2001). The Board **upheld** the challenged portions of Snohomish County's capital facilities element **except** the Board **remanded** for the Ordinances for **failure to comply** with the Act's notice and public participation requirements. [Notice – Public Participation - CFE]

McVittie VI, 1302, Notice of Partial Reconsideration and Notice of Schedule for Board to Rule on Remaining Issues, (Aug.24, 2001). The Board **adjusted** the compliance schedule to allow the County to consider the remand amendments as part of consideration of its 2001 CFE amendments. The Board also indicated a time it would rule on the outstanding motions.

McVittie VI, 1302, Order on Motions, (Oct. 11, 2001). Both Petitioner and Respondent moved the Board to reconsider its FDO. Petitioner's motion was **denied**, Respondent's motion was **granted** to allow adjustments to the compliance schedule.

McVittie VI, 1302, Order Finding Compliance, (Feb. 7, 2001). The County's notice and public participation process on remand cured the noncompliance found in the Board's FDO. The Board entered a **Finding of Compliance**.

Corinne R. Hensley and Jody L. McVittie v. Snohomish County (***Hensley IV***), CPSGMHB Case No. 01-3-0004c (***1304c***), Order on Dispositive Motion [Motion to

[23] Note that decisions were not necessarily issued in the year the case was filed.

Invalidate], (Apr. 30, 2001). The County's Ordinance Plan amended various sections of its GMA Plan. In its notice, the County failed to indicate that it was amending the Plan's Transportation Element. The County agreed that due to a clerical error, the newspaper notice omitted reference to the Transportation Element amendments, and stipulated to non-compliance and remand. The Board found **non-compliance** with the public participation requirements of the Act and **remanded** the matter for corrective action. The Board declined to issue a Determination of Invalidity. [Notice – Transportation Element]

Hensley IV, 1304c [McVittie Portion – Transportation Element], Finding of Partial Compliance, (Aug. 16, 2001). Per a stipulation of the parties, the Board's April 30, 2001 Order found noncompliance with the GMA and remanded the Ordinance amending the County's Transportation Element back to the County so that notice could be provided. The County published notice prior to the reenactment of the Transportation Element amendments thereby **complying** with the notice requirements of the GMA. [Notice]

Hensley IV, 1304c, Final Decision and Order, (Aug. 15, 2001), {Tovar concurring}. Petitioners challenged the County's designation of a Limited Area of More Intensive Rural Development [Clearview] and the County's expansion of its UGA [Maltby]. The Board found that both actions did **not comply** with the requirements of the GMA, **remanded** the challenged Ordinances for compliance and entered a **Determination of Invalidity** on the UGA expansion. [LAMIRD – UGA – Goals]

Hensley IV, 1304c, Order on Reconsideration [Clearview], (Sep. 7, 2001). On reconsideration the Board **granted** the County's request to adjust the compliance schedule from 90 to 180 days for the Clearview portion of the case. The compliance schedule for the Maltby portion of the case remained the same as stated in the FDO.

Hensley IV, 1304c, compliance pending for Clearview (*See Hensley V, 02304c*), action on Maltby was **stayed**.

Corinne Hensley and Jody McVittie v. Snohomish County (***Hensley IV and V***), Consolidated CPSGMHB Case No. 01-3-0004c coordinated with CPSGMHB Case No. 02-3-0004 (***1304c/02304***), Order Finding Compliance in *Hensley IV* and Final Decision and Order in *Hensley V* [Clearview], (Jun. 17, 2002), {North Dissenting and Tovar Concurring}. Petitioners challenged a package of three ordinances adopted by the County: the first was a Plan amendment that modified the Clearview limited area of more intensive rural development (LAMIRD); the second and third ordinance amended the zoning map and text to implement the Plan amendment, respectively. The Board found that the new Clearview LAMIRD Plan designation and zoning map amendment **complied** with the Act and entered a **Finding of Compliance** (*Hensley IV*), but found the zoning regulations did **not comply** with Goal 1 of the GMA and **remanded** the ordinance so the extensive urban uses permitted in the rural zone could be corrected (*Hensley V*). [*See also Hensley V, 02304, infra*.]

[Appealed to Snohomish County Superior Court – Cause No. 01-2-07907-5 – Board **remanded** to allow Maltby Christian Assembly to participate as Intevenor.]

Hensley IV, 1304c, (***Maltby UGA Remand***), Order on Remand and Reconsideration (Maltby UGA Remand) [Snohomish County Superior Court Remand of *Maltby Christian Assembly v. CPSGMHB, Corrine Hensley and Snohomish County*, NO. 1-2-07907-5 and CPSGMHB Case No. 01-3-0004c, *Hensley v. Snohomish County* (*Hensley IV*)], (Dec. 19, 2002). The Board reconsidered its FDO, allowing Maltby Christian Assembly as Intervenor. The Board found Petitioner had standing and **affirmed** its prior ruling in the FDO. [Standing – ILAs – UGAs Generally]

Hensley IV, 1304c, (***Maltby UGA Remand***),Order Denying Certificate of Appealability Re: Order on Remand and Reconsideration (Maltby UGA Remand), (Mar. 20, 2003). The Board **declined** to certify the case for direct review to the Court of Appeals.

Hensley IV, 1304c, (***Maltby UGA Remand***), Order Rescinding Invalidity and Finding Compliance, (Jul. 24, 2003). The County created a public/institutional use land use designation and revised its zoning regulations to correspond to the new land use designation. Churches were included in the new designations. The Board entered a **Finding of Compliance** and **rescinded** the determination of invalidity. [Land Use Element – UGAs]

Hensley IV (***Maltby UGA Remand***), *1304*c, Order on Reconsideration, (Aug. 12, 2003). Petitioners motion to reconsider was **denied**. [Reconsideration]

Shirley Mesher and Citizens for Land Use and Public Accountability v. City of Seattle (***Mesher***), CPSGMHB Case No. 01-3-0007 (***1307***), Order on Motions, (Aug. 2, 2001). Petitioners' petition for review was **dismissed** for failing to establish participation standing. [Dispositive Motion - Standing - Board Rules]

Mesher, 1307, Order Denying Motion for Reconsideration, (Aug. 20, 2001). The Board found no basis for reconsideration and **denied** the motion.

Forster Woods Homeowners' Association and Friends and Neighbors of Forster Woods, Washington State Department of Natural Resources, City of North Bend et al., v. King County [Robert Yerkes and Richard and Rosanne Zemp – Intervenors] (***Forster Woods***), CPSGMHB Case No. 01-3-0008c (***1308c***), Final Decision and Order, (Nov. 6, 2001). The Board granted motions to **dismiss** several issues and amend the issue statements in the prehearing order. A de-designation of forest lands was **upheld**, several zoning changes and designations were found **not to comply** and the Board entered a **determination of invalidity** pertaining to one action. [Public Participation – Forest lands – Goals – Consistency – CPPs – Zoning – Urban Density]

Forster Woods, 1308c, Order Rescinding Invalidity and Entering Finding of Compliance [Maple Valley Portion], (Mar. 13, 2002). The County changed the zoning designation for the noncompliant area to a designation allowing 4 dwelling units per acre. The Board entered a **Finding of Compliance** and **Rescinded the Determination of Invalidity**. [Urban Densities – Invalidity – Zoning]

[Appealed to King County Superior Court and to the Court of Appeals Division I – Board **remanded** – *See* Appendix C 2004 Decisions.]

Forster Woods, 1308c, Order of Dismissal [Division I Remand of CPSGMHB Case No. 01-3-0008c: Yerkes portion of Forster Woods], (Dec. 7, 2004). After the Board found for Petitioner Yerkes in the FDO; King County appealed. Division I of the Court of Appeals found the Board **erred** and remanded the matter for further proceedings. Following a hearing, where Petitioners did not appear, the Board found that Petitioners had not carried their burden of proof and **dismissed** the Yerkes portion of the case. [Rural]

John Nelson, Fredrick Nelson and Nancy Bauer v. King County (***Nelson***), CPSGMHB Case No. 01-3-0009 (***1309***), Order of Dismissal, (Dec. 12, 2002). After eighteen months and five settlement extensions, the parties settled their dispute and submitted a stipulated motion to dismiss. The Board **dismissed** the matter. [Settlement Extensions]

Friends of the Law v. King County [Quadrant Corporation – Intervenor] (***FOTL VI***), CPSGMHB Case No. 01-3-0010 (***1310***), Final Decision and Order, (Oct. 29, 2001). After having achieved compliance with the GMA regarding the Bear Creek area, the County again designated a portion of the Bear Creek area as a UGA. The Board determined that the designation of the area in question as a UGA did **not comply** with the goals and requirements of the Act and **invalidated** the County's action. The matter was **remanded**. [UGA – FCC – Transportation Element - Definitions]

[Appealed – Consolidated with *Quadrant* – Cause No. 01-2-32984-7 SEA; Consolidated with Cause Nos. 01-2-32985-5 SEA and 00-2-24543-2 SEA. *See* Appendix C 2005 Decisions.]

FOTL VI, 1310, Order Acknowledging Stay – Canceling Compliance Proceedings, (Jan. 15, 2001). Pursuant to an "Order Staying Board's Decision Pending Review," issued by King County Superior Court, the Board **cancelled** the compliance proceedings.

FOTL VI, 1310, Final Order Terminating Review, (Oct. 14, 2005). Following the Washington Supreme Court's decision in *The Quadrant Corporation v. Growth Management Hearings Board*, 154 Wn 2d 224, 110 P. 3d 1132 (2005), which resolved the outstanding issues; the Board **terminated its review** of the matter and **closed** the case.

Vine Street Investors LLC. v. City of Stanwood (***Vine Street***), CPSGMHB Case No. 01-3-0011 (***1311***), Order of Dismissal, (Jul. 12, 2001). Petitioner concurred in the City's motion to dismiss for lack of subject matter jurisdiction and withdrew its appeal. The Board **dismissed** the petition for review.

James and Carmen Nardo v. City of Poulsbo (***Nardo***), CPSGMHB Case No. 01-3-0012 (***1312***), Order of Dismissal, (Jun. 29, 2001). Pursuant to a stipulation of the parties, the Board **dismissed** Petitioner's petition for review.

City of Shoreline v. Town of Woodway [Snohomish County - Intervenors] (***Shoreline II***), CPSGMHB Case No. 01-3-0013 (***1313***), Order on Motions to Dismiss, (August 9, 2001). Woodway and the County moved to dismiss several (eight) of the issues stated in the petition for review and prehearing order. The Board granted the motions and **dismissed** the eight challenged issues.

Shoreline II, 0313, [Chevron USA – additional Intervenor], Order on Motions to Reconsider and to Amend and Order Modifying Prehearing Order, (Sep. 10, 2001), {McGuire Concurring and Dissenting}. The Board **denied** the motion to reconsider and **denied** the motion to amend its petition for review on six issues, but **granted** the motion to amend by combining two issues and restating them as one.

Shoreline II, 1313, Final Decision and Order, (Nov. 28, 2001), {McGuire Dissenting}. The City of Shoreline persuaded the Board that Woodway's Plan policy statements regarding potential annexation of the Point Wells area did **not comply** with the interjurisdictional coordination requirements of RCW 36.70A.100. The Plan amendment was **remanded** with direction to repeal or revise the noncompliant Plan policy. [Annexation - Consistency – Interjurisdictional - Overlap]

Shoreline II, 1313, Order Denying Motions for Reconsideration of Final Decision and Order, (Dec. 28, 2001), {McGuire concurring and dissenting}. The Board **denied** the motions for reconsideration of Chevron, Woodway and Snohomish County.

[Appealed to King County and Snohomish County Superior Courts, Court of Appeals Division I and Supreme Court – Board **reversed** and **remanded** – *See* Appendix C 2004 and 2006 Decisions.]

Shoreline II, 1313, Order on Remand – Finding Compliance, (Nov. 16, 2006). Following a remand from Division I of the Court of Appeals, and after Supreme Court review, the Board found that the Town of Woodway's adoption of 2001 Plan amendment Land Use Policy 19 regarding the Point Wells area, was not clearly erroneous. The Board entered a **Finding of Compliance**. [Overlap]

Senior Housing Assistance Group; Lynwood RM Investors, LLC; Alderwood Court Associates Limited Partnership; Alderwood Condominiums LLC, Sunquist Homes Inc; and Carlyle Condominiums LLC. v. City of Lynnwood (***SHAG***), CPSGMHB Case No. 01-3-0014 (***1314***), Order on Motions, (Aug. 3, 2001). Petitioners' challenge to the City's procedures in adopting an Ordinance imposing a moratorium was **dismissed**. [Emergency - Interim]

[Appealed to Snohomish County Superior Court – Cause No. 01-2-06017-0 – Board **Affirmed**.]

State of Washington Department of Corrections and Department of Social and Health Services v. Pierce County (***DOC II***), CPSGMHB Case No. 01-3-0015 (***1315***), Order of Dismissal, (Jul. 1, 2002). The State challenged Pierce County's adoption of a

moratorium for new construction of facilities to house high-risk sex offenders on McNeil Island. The moratorium allowed the County time to develop comprehensive plan amendments and zoning code provisions for McNeil Island; the moratorium was extended one time. Four settlement extensions were granted. During this time, the Legislature enacted legislation preempting and superceding local plans, development regulations related to the operation of a secure community transition facility on McNeil Island. Subsequently, the County adopted two ordinances amending its Plan and development regulations for McNeil Island. The State did not appeal the adoption of these ordinances. The County moved to dismiss the challenge to the moratorium. The Board determined the challenged to the moratorium was moot and **dismissed** the matter. [Mootness]

Master Builders Association, et al., v. Snohomish County [Jody L. McVittie – Intervenor] (***Master Builders Association***), CPSGMHB Case No. 01-3-0016 (***1316***), Final Decision and Order, (Dec. 13, 2001). The County's amendments to its planned residential development regulations were **upheld** by the Board and found to **comply** with the implementation requirements of the GMA. [Implementation regulations – UGA – Urban Density]

Jody L. McVittie v. Snohomish County (***McVittie VIII***), CPSGMHB Case No. 01-3-0017 (***1317***), Final Decision and Order, (Jan. 8, 2002), {Tovar concurring}. The County's Transportation Element amendments were found to **comply** with the requirements of the GMA. [Public Participation – Transportation Element - LOS]

City of Edgewood, W. Dale and Joanne R Overfield, Carl R. and Betty Hogan, Donald R and Camille Vandevante, Larry G. and Louetta Oney, Mel and Jean Korum and Anne C. Pyfer v. City of Sumner (***Edgewood***), CPSGMHB Case No. 01-3-0018 (***1318***), Final Decision and Order, (Jan. 18, 2002). The City of Sumner's Plan and development code amendment were found to **comply** with the requirements of the GMA. [Interjurisdictional – Consistency – Implementing regulations]

Homebuilders Association of Kitsap County v. City of Bainbridge Island (***HBA II***), CPSGMHB Case No. 01-3-0019 (***1319***), Order on Motion, (Oct. 18, 2001). Petitioners posed a constitutional protection of private property issue in its petition for review. The City moved to dismiss the issue. The Board granted the motion and **dismissed** the issue for lack of subject matter jurisdiction. [SMJ]

HBA II, 1319, Order of Dismissal, (Dec. 3, 2001). Petitioners withdrew their petition for review. The Board **dismissed** the PFR.

Elaine Lewis v. City of Edgewood (***Lewis***), CPSGMHB Case No. 01-3-0020 (***1320***), Order on Motions, (Oct. 29, 2001). Pursuant to a motion by the City the Board **dismissed** one of the issues in the case.

Lewis, 1320, Order Denying Motion for Reconsideration, (Nov. 9, 2001). The Board determined that motions to supplement the record are not subject to motions for reconsideration. The motion was **denied**. [Reconsideration]

Lewis, 1320, Final Decision and Order, (Feb. 7, 2001). The Plan for Edgewood, a newly incorporated city, was challenged. The Board determined that the notice and public participation process for last minute amendments and its policies for frequently flooded areas did **not comply** with the requirements of the Act and **remanded** the Plan. [Notice – Public Participation – BAS – Transportation Element]

Lewis, 1320, Order Entering Finding of Compliance, (Jul. 22, 2002). The City of Edgewood provided notice and a reasonable opportunity for the public to review and comment on its reconsideration of six amendments to its Plan; the City also included reference to best available science in delineating its floodways. The Board entered a **Finding of Compliance**.

Renay Bennett, Jan Benson and East Bellevue Community Council v. City of Bellevue (***Bennett***), CPSGMHB Case No. 01-3-0022c (***1322c***), Order on City's Dispositive Motion, (Jan. 7, 2002). The Board **denied** the City's motion to dismiss the East Bellevue Community Council from the case for lack of standing. [Standing]

Bennett, 1322c, Final Decision and Order, (Apr. 8, 2002). Petitioners challenged the City's Ordinance exempting redevelopment of neighborhood shopping centers from the traffic concurrency requirements of the Act. The Board found that the City's exemption from concurrency did **not comply** with the GMA, **remanded** the Ordinance and entered **Determination of Invalidity**. [Concurrency – Exhaustion - LOS – Procedural Criteria – SEPA - Transportation Element]

Bennett, 1322c, Order Finding Continuing Noncompliance and Invalidity and Scheduling Second Compliance Hearing, (Jul. 31, 2002). During the remand period, the City of Bellevue did not take any legislative action to comply with the GMA, but instead filed an appeal of the Board's decision in Superior Court. The Board found **continuing noncompliance** and **invalidity** and scheduled a second compliance hearing. The Superior Court subsequently stayed further Board proceedings. [Invalidity]

[Appealed to King County Superior Court and Court of Appeals Division I – Board **Affirmed** – See Appendix C 2003 Decisions.]

Bennett, 1322c, Order Finding Compliance and Rescinding Invalidity, (Feb. 3, 2005). Division I of the Court of Appeals **upheld** the Board's FDO in this matter. The City of Bellevue adopted an ordinance revising its concurrency regulations to eliminate exceptions for certain uses. The Board found the City's action consistent with the FDO and Court decision. The Board found **compliance**. [Concurrency]

Low Income Housing Institute Fair Housing Center of South Puget Sound, V.L. Kershaw, Starlit Rothe and Beverly Edwards v. City of Lakewood (***LIHI II***), CPSGMHB Case No.

01-3-0023 (***1323***), Final Decision and Order, (Apr. 15, 2002). Petitioners challenged the City of Lakewood's Housing Incentive Program. The Board found that the HIP program intended for low-income persons, was ambiguous and did **not comply** with Goal 4 and the Plan implementation requirements of the Act. The matter was **remanded**. [Affordable Housing – Development Regulations – Goals – Housing Element – Implementation Actions]

LIHI II, 1323, Finding of Compliance, (Oct. 24, 2002). The City of Lakewood amended its Housing Incentive Program to comply with the GMA. The Board issued a **Finding of Compliance**. [Housing Element]

Michael S. Lotto and Ann M. Lotto and Angelo Toppano and June Toppano v. City of Kent (***Lotto***), CPSGMHB Case No. 01-3-0024 (***1324***), Order of Dismissal, (Dec. 13, 2001). The parties filed a stipulated dismissal with the Board. The Board **dismissed** the petition for review.

Jody L. McVittie v. Snohomish County (***McVittie IX***), CPSGMHB Case No. 01-3-0025 (***1325***), Order of Dismissal, (Jan. 29, 2002). Petitioner withdrew the petition for review. The Board **dismissed** the PFR.

Wildlife Habitat Injustice Prevention, Bruce Diehl, Ed Nichols, Bud Sizemore, Joel and Gina Guddat, Deborah Jacobsen, Jon Jones and Patti Melton v. City of Covington (***WHIP II***), CPSGMHB Case No. 01-3-0026 (***1326***). This case was coordinated with the consolidated case of *WHIP III/ Moyer, 03306c, See* 2003 cases. After four settlement extensions, agreement could not be reached and WHIP filed an additional PFR which was consolidated with the Moyer PFR. WHIP abandoned its challenge in the 2001 proceeding and challenged the more recent enactment in the *WHIP/Moyer* matter. *WHIP II* was **dismissed**. [Dismissal]

Sheila Crofut and Friends of the Ravine and The Save Ericksen Committee v. City of Bainbridge Island (***Crofut***), CPSGMHB Case No. 01-3-0027 (***1327***), Order of Dismissal, (May 21, 2002). After a settlement extension the Board received a request for a stipulated dismissal; the matter was **dismissed with prejudice**.

[24]

SYNOPSIS OF 2002 CASES

CPSGMHB Decisions [With Key Words]

Beverly Gagnier and Betsey Swenson v. City of Bellevue (***Gagnier***), CPSGMHB Consolidated Case No. 02-3-0002c (***02302c***), Order of Dismissal, (Feb. 14, 2002). Pursuant to a stipulated agreement, the parties withdrew the PFR, and the case was **dismissed**. [Dismissal]

Michael Gawenka, Helen Miller, Joanne and David Forbes, John and Jennifer Didio v. City of Bremerton (***Miller***), CPSGMHB Case No. 02-3-0003 (***02303***), Order on Dispositive Motion, (Apr. 30, 2002). Petitioners challenged the City's adoption of three Plan amendments that occurred at two separate times during the calendar year. The Board **dismissed** the substantive challenge to the first amendment since the PFR was filed beyond the sixty-day filing period; the appeal was untimely regarding the one Plan amendment. [Amendment – Timeliness]

Miller, 02303, Final Decision and Order, (Jul. 29, 2002). Among other things, Petitioners challenged Bremerton's adoption of Plan amendments at two separate times during 2001. The City did not dispute that it adopted amendments in August and November of 2001. The Board found the dual amendments did **not comply** with the amendment process of the GMA and **remanded** the Ordinances to be considered concurrently and cumulatively. [Amendment – Housing Element – Land Use Element – Notice – Public Participation - SEPA]

Miller, 02303, Order on Reconsideration, (Aug. 26, 2002), {Tovar Concurring}. The City requested reconsideration and proposed a course of action to comply. Bremerton sought guidance from the Board on the "best method for achieving compliance." The Board **denied** the motion but noted that often the "best methods" for achieving compliance evolve during the public hearing and participation process. [Reconsideration]

Miller, 02303, Finding of Compliance, (Nov. 25, 2002). The City of Bremerton reconsidered its adoption of the three challenged ordinances concurrently, choosing to repeal one and readopt the other two. The Board entered a **Finding of Compliance**. [Amendment]

Corinne Hensley and Jody McVittie v. Snohomish County (***Hensley IV and V***), Consolidated CPSGMHB Case No. 01-3-0004c coordinated with CPSGMHB Case No. 02-3-0004 (***1304c/02304***), Order Finding Compliance in *Hensley IV* and Final Decision and Order in *Hensley V* [Clearview], (Jun. 17, 2002), {North Dissenting and Tovar Concurring}. Petitioners challenged a package of three ordinances adopted by the

[24] Note that decisions were not necessarily issued in the year the case was filed.

County: the first was a Plan amendment that modified the Clearview limited area of more intensive rural development (LAMIRD); the second and third ordinance amended the zoning map and text to implement the Plan amendment, respectively. The Board found that the new Clearview LAMIRD Plan designation and zoning map amendment **complied** with the Act and entered a **Finding of Compliance** (*Hensley IV*), but found the zoning regulations did **not comply** with Goal 1 of the GMA and **remanded** the ordinance so the extensive urban uses permitted in the rural zone could be corrected (*Hensley V*).

Hensley V, 2304c, Order on Reconsideration [Clearview], (Aug. 12, 2002). Snohomish County requested reconsideration on that portion of the Board's 6/17/02 Order relating to the Clearview implementing regulations. The Board held a reconsideration hearing and subsequently issued an Order **affirming** its analysis and conclusions and supplementing and clarifying a portion of its 6/17/02 Order. [Goals – LAMIRD – Public Participation – Reconsideration – Rural Element]

Hensley V, 2304c, Order Finding Noncompliance [Clearview], (Mar. 28, 2003) {McGuire Dissent}. On remand, the County corrected several deficiencies in its development regulations for the Clearview LAMIRD, but the Board found that the uses permitted in the implementing zone did not comply with the GMA. The Board issued a **Finding of Noncompliance**. [Development Regulations – LAMIRD – Notice – Public Participation – SEPA]

[Appealed to Snohomish County Superior Court – Board **affirmed**, in part, **reversed** in part 8/12/02 and 3/28/03 – Cause Nos. 03-2-07429-1 and 02-2-09336-0.]

Hensley V, 02304c, Order on Remand – Finding of Compliance in CPSGMHB Case No. 02-3-0004 *Hensley V v. Snohomish County*, (Jan. 29, 2007). Snohomish County Superior Court reversed the majority of the Board and remanded involving permitted uses in an implementing zone for a LAMIRD. The Board concurred in the Court's decision and entered a **Finding of Compliance**.

Jack and Pamela Clark v. City of Covington (***Clark***), CPSGMHB Case No. 02-3-0005 (***02305***), Final Decision and Order, (Sep. 27, 2002). Petitioners challenged Covington's adoption of an "interim future land use map" in its Plan to replace a previously adopted map. The interim period affecting the map was extended once. The Board **upheld** the City's action. [Emergency – Interim – Mootness – Notice – Public Participation – Subject Matter Jurisdiction]

Everett Shorelines Coalition, Washington Environmental Council, Tulalip Tribe of Washington and Jeff M. Hall v. City of Everett and Washington State Department of Ecology [Port of Everett – Intervenor; Association of Washington Cities, Washington Public Port Association, 1000 Friends of Washington, Washington State Office of Community Development - Amicus] (***Everett Shorelines Coalition***), CPSGMHB consolidated Case No. 02-3-0009c (***02309c***), Final Prehearing Order, First Order on Motions to Intervene and Order on City's Motion to Dismiss Petitioner Hall, (Sep. 19,

2002). The City of Everett moved to dismiss Petitioner Hall for improper service. The Board **denied** the City's motion to dismiss. [Service]

Everett Shorelines Coalition, 02309c, Order on Motions for Amicus and Intervention, Order on Dispositive Motions and Order Amending Final Schedule, (Oct. 1, 2002). This Order **granted** *Amicus Curiae* status to four entities and adjusted the briefing schedule accordingly. The Board **denied** the City of Everett's motion to dismiss all GMA issues from the Board's review of its shoreline master program, but the Board **granted** the City's motion to **dismiss** SEPA issues for lack of standing. [Amicus Curiae – SEPA – Shoreline Management Act – Standing – Subject Matter Jurisdiction]

Everett Shorelines Coalition, 02309c, Final Decision and Order, (Jan. 9, 2002). Petitioners challenged the City's adoption of an update to its shoreline master program (**SMP**). This was the Board's first review of a shoreline master program since the SMA and GMA were integrated in 1995. Everett's adoption of the SMP, and the Board's review occurred during a period when the Department of Ecology had no valid shoreline guidelines to guide shoreline planning. The Board interpreted the total statutory scheme (SMA/GMA integration) then applied it to Everett's SMP as approved by Ecology. The Board found that the identified and designated shorelines of statewide significance in Everett were also critical areas as defined in the GMA. Therefore, the critical area provisions of the GMA, including protection based upon best available science, applied. The Board found that one of the scientific studies used to make the SMP designations was the best available science for designating uses. The Board **upheld** three of the five SMP use designations challenged by Petitioner, but found that two did **not comply** with RCW 90.58.020. The Board also found that the implementing regulations (including the City's critical areas regulations) for the SMP did **not comply** with the requirements of RCW 36.70A.060 and .172. Being a complex and unique matter, the SMP was **remanded** with the request that the City submit a timeframe for a compliance schedule, including further review and approval by Ecology. [BAS – Critical Areas – Development Regulations – Fish and Wildlife Habitat Conservation Areas – Goals – Shorelines – Shoreline Master Programs – SMA – Standard of Review]

Everett Shorelines Coalition, 02309c, Order Granting Tribes' Motion to Reconsider and Clarify, Order Denying Ecology's Motion to Reconsider and Notice of Scrivener's Errors in Final Decision and Order, (Feb. 10, 2003). The Board **denied** Ecology's request to reconsider the conclusion that one of the challenged areas was beyond 200' of the ordinary high water mark and therefore not within the SMA jurisdiction. The Board **granted** the Tribes request to clarify, rejecting specific language proposed by the Tribe, but nonetheless clarifying several portions of the FDO. [Critical Areas – Development Regulations – SMA]

Everett Shorelines Coalition, 02309c, Order Granting Certificate of Appealability, (Apr. 10, 2003). The Board **granted** and certified the City of Everett's request to go directly to the Court of Appeals for review of the Board's FDO.

Everett Shorelines Coalition, 02309c, Second Order Granting Certificate of Appealability, (Apr. 21, 2003). The Board **granted** and certified the Department of Ecology's request to go directly to the Court of Appeals for review of the Board's FDO.

[Appealed to Snohomish County Superior Court, certified for Court of Appeals Division One review – Stipulated **dismissal** with FDO **vacated**.]

Everett Shorelines Coalition, 02309c, Order Closing CPSGMHB Case No. 02-3-0009c Pursuant to Order of the Court of Appeals – Division One, (Jan. 26, 2006). The parties settled their dispute pursuant to a settlement agreement. The Court of Appeals vacated the Board's FDO and dismissed the appeal. The Board **closed** the matter.

Master Builders Association of Pierce County, Terry L. Brink, Edward Zenker, Associated General Contractors and Tacoma Pierce County Chamber of Commerce – South County Division v. Pierce County (***MBA/Brink***), CPSGMHB Case No. 02-3-0010 (***02310***), Order on Motions to Dismiss SEPA Claims, (Oct. 21, 2002). Pierce County moved to dismiss Petitioner's SEPA claims for failure to exhaust administrative remedies and lack of standing. The Board **dismissed** certain parties for failure to exhaust. Nonetheless, those that had exhausted failed to establish SEPA standing and the Board **granted** the County's motion, the SEPA claim was **dismissed**. However the Board noted situations where the SEPA standing test could be met for non-project legislative actions. [Exhaustion – SEPA – Standing]

MBA/Brink, 02310, Final Decision and Order, (Feb. 4, 2003). Petitioners challenged numerous provisions of the County's adoption of the Parkland Spanaway Midland Community Plan and implementing regulations. The primary focus of the challenge was on Plan provisions and zoning designations that allowed for residential densities of 1-3 dwelling units per acre and 2-4 dwelling units per acre within this UGA. Petitioners also objected to the introduction and adoption of a new zoning designation at the final hearing. The Board found that the last minute zoning amendment did **not comply** with the notice and public participation requirements of the Act. Additionally, the Board found the 2-4 dwelling unit designations did **not comply** with the GMA. Regarding the 1-3 dwelling unit designations, the Board concluded that five of the eight areas designated as 1-3 dwelling units per acre were not justified on environmental grounds since existing critical areas regulations provide adequate protection. The designation for these five areas did **not comply** with the goals and requirements of the Act. The Board determined that the non-complying provisions were **invalid**. The remaining three designations were **upheld** on environmental grounds. The matter was **remanded** for compliance. [Affordable Housing – Amendment – Consistency – CPPs – Critical Areas – Economic Development Element – Goals – Invalidity – Mandatory Elements – Notice – Open Space – Property Rights – Public Participation – Record – Transportation Element – Urban Densities – UGAs – Zoning]

MBA/Brink, 02310, Order Finding Partial Noncompliance and Continuing Invalidity, (Sep. 4, 2003). On three, and most of the fourth, remanded items, the Board found compliance. However, the Board found **continuing noncompliance** and **continuing**

invalidity in one area where the County retained the 1-3 acre zoning designations. [Critical Areas – Public Participation – Zoning]

MBA/Brink, 02310, Second Compliance Order – Finding Compliance and Rescinding Invalidity, (Jan. 21, 2004). A participant joined the compliance proceeding; nonetheless, the Board entered a **Finding of Compliance** and **rescinded** invalidity. [Compliance]

King County v. City of Edmonds [*Unocal – Intervenor*] (***King Co.***), CPSGMHB Case No. 02-3-0011 (***02311***), Order of Dismissal, (Sep. 12, 2002). This case involved the *potential* siting of a new regional wastewater system. Pursuant to a stipulation of the parties, preserving the appeal rights of the parties for when a final siting decision is made, the petition for review was **dismissed**. [Essential Public Facilities – Timeliness]

Ann Aagaard, Andrea Perry and Jose Blakely v. City of Bothell (***Aagaard III***), CPSGMHB Case No. 02-3-0012 (***02312***), Order of Dismissal, (Dec. 18, 2003). Following four settlement extensions, Petitioners failed to file their prehearing brief as established in the amended schedule and the Board **dismissed** the matter. [PFR]

State of Washington, by Dennis Braddock, Secretary of the Department of Social and Health Services v. City of Tacoma (***DSHS III***), CPSGMHB Case No. 02-3-0013 (***02313***), Order of Dismissal, (May 14, 2003). Following two settlement extensions, the parties filed a stipulated dismissal. The Board **dismissed**. [Settlement Extension]

Beverly Gagnier, Betsy Swensen and Factoria Area Coalition for Tomorrow v. City of Bellevue (***FACT***), CPSGMHB Case No. 02-3-0014 (*02314*), Final Decision and Order, (Mar. 17, 2003). The City's amendments to a zoning designation and development regulation were **upheld**. [Presumption of Validity – SEPA]

Kent C.A.R.E.S., Northwest Alliance, Inc., and Don Shaffer v. City of Kent (***Kent CARES***), CPSGMHB Case No. 02-3-0015 (***02315***), Order on Motions, (Nov. 27, 2002). Petitioner challenged the City of Kent's adoption of a planned action ordinance for the Kent Street Station [Sound Transit]. The petition was **dismissed** for lack of subject matter jurisdiction. [SEPA – Subarea Plan – SMJ]

Gene J. Grieve v. Snohomish County (***Grieve***), CPSGMHB Case No. 02-3-0016 (***02316***), Order of Dismissal, (Dec. 2, 2002). Petitioner challenged a non-legislative project action of the County. The Board **dismissed** the matter for lack of subject matter jurisdiction. [SMJ]

Jerry Harless and the Suquamish Indian Tribe v. Kitsap County [McCormick Land Company – Intervenor] (***Harless***), CPSGMHB Consolidated Case No. 02-3-0018c (***02318c***), Order on Motions, (Jan. 23, 2003). Petitioners challenged Kitsap County's adoption of a Memorandum of Agreement and ULID directing changes to the County's UGA and Comprehensive Plan. Since neither the County's Plan nor development regulations were amended, the Board **dismissed** the matter for lack of subject matter jurisdiction. [ILAs – SMJ – UGAs]

Kent CARES, Northwest Alliance Inc. and Don B. Shaffer v. City of Kent (***Kent CARES II***), CPSGMHB Case No. 02-3-0019 (***02319***), Order on Motions, (Mar. 14, 2003). Petitioner challenged a City Ordinance vacating a road. The petition for review was **dismissed** for lack of standing and Board jurisdiction. [Definitions – Mootness – Standing – SMJ]

Merrill Robison v. City of Bainbridge Island (***Robison II***), CPSGMHB Case No. 02-3-0020 (***02320***), Order on Motions, (Mar. 6, 2003). A resolution, repealing another resolution, that dealt with a street plan, which was not part of the City's GMA Plan or development regulations is not within the Board's jurisdiction. The petition for review was **dismissed** for lack of subject matter jurisdiction. [Service – SMJ]

Corinne R. Hensley, Mark Sakura, Patricia Eston, Linda Gray, Aaron Noble, and Sno-King Environmental Alliance v. Snohomish County (***Sakura***), CPSGMHB Case No. 02-3-0021 (***02321***), Order on Dispositive Motion, (Feb. 12, 2003). Petitioners challenged Snohomish County, alleging it had failed to protect aquifer recharge areas under its critical areas regulations since they were not mapped. The Board concluded the County had adopted the required critical areas regulations and that the County's approach complied with the requirements of the Act. The Board **dismissed** the matter. [Aquifer Recharge Area – Critical Areas]

Sakura, 02321, Order Denying Motion for Reconsideration, (Mar. 13, 2003). The Board **denied** Petitioners' request for reconsideration. [Dispositive Motion – Reconsideration]

Salish Village Homeowners Association v. City of Kirkland (***Salish Village***), CPSGMHB Case No. 02-3-0022 (***02322***), Order Granting Dispositive Motions, (Mar. 19, 2003). Petitioner originally filed an action in superior court challenging the City's "site specific rezone." The superior court determined that the City's action was legislative and LUPA [land use petition act] did not apply, and the appeal should be brought to the Growth Board. The City moved to dismiss numerous issues for lack of jurisdiction, the Board agreed and **dismissed** several issues. [SMJ]

Salish Village, 02322, Order of Dismissal, (Apr. 10, 2003). Petitioner sought voluntary dismissal of the appeal. The Board **dismissed**. [Dismissal]

[25]

SYNOPSIS OF 2003 CASES

CPSGMHB Decisions [With Key Words]

Salish Village Homeowners Association v. City of Kirkland (***Salish Village***), CPSGMHB Case No. 03-3-0001pdr (***03301pdr***) coordinated with 02-3-0022, Order Declining to Issue Declaratory Ruling, (Feb. 4, 2003). Petitioner asked the Board to determine whether it had jurisdiction over the challenged action. The Board **declined** to answer in a declaratory ruling, but urged Petitioner to bring a dispositive motion in the pending petition for review. [Declaratory Ruling]

Marvin Palmer D/B/A Kingsbury West Mobile Home Park v. City of Lynnwood (***Palmer***), CPSGMHB Case No. 03-3-0001 (***03301***), Order on Motions, (Mar. 20, 2003). Petitioner's challenge was filed beyond the sixty-day filing period established in statute. The Board **dismissed**. [Timeliness]

[Appealed to Snohomish County Superior Court, Cause No. 03-2-07159-3 – **Dismissed**.]

City of Tacoma v. Pierce County (***Tacoma III***), CPSGMHB Case No. 03-3-0002 (***03302***), Finding Noncompliance and Order of Remand, (Jul. 23, 2003). This action involved a city airport within the recently adopted Gig Harbor Community Plan area. Following two settlement extensions, the parties filed a stipulation indicating noncompliance by the County and requesting a remand. The Board obliged the parties, finding **noncompliance**, and **remanded** the Ordinance to pursue compliance. [Compliance – Extensions – Stipulation]

Tacoma III, 03302, Order Finding Continuing Noncompliance, (Apr. 27, 2004). Due to the unusual scope and complexity of the remand, the Board established a 270-day compliance period. Nonetheless, prior to the compliance hearing, the County stipulated to **Continuing Noncompliance**. A new compliance schedule was established. [Noncompliance]

Tacoma III, 03302, Order Finding Compliance, (Dec. 16, 2004). In response to the Board's remand in the FDO, the County established a Tacoma Narrows Airport Advisory Committee, conducted a public process and developed a plan for the Tacoma Narrows Airport and environs – consultation and collaboration occurred. The City and County stipulated to compliance. The Board entered a **Finding of Compliance** order. [Subarea Plans]

Dan Olsen, Bonnie Olsen, Allan McFadden and Karen McFadden v. City of Kenmore (***Olsen***), CPSGMHB Case No. 03-3-0003 (***03303***), Order on Motions, (Apr. 7, 2003). The Board **denied** the City's motion to dismiss finding the challenged development regulation amendment subject to Board review. [Development Regulations – SMJ]

[25] Note that decisions were not necessarily issued in the year the case was filed.

Olsen, 03303, Final Decision and Order, (Jun. 30, 2003). Petitioners challenged a City amendment to its development regulations allowing timeline extensions for commercial site development permits. The Board **dismissed** the appeal. [Discretion – GMA Planning – Goals - Permit Process]

*Wildlife Habitat Injustice Prevention, Bruce Diehl, Ed Nichols, Bud Sizemore, Joel and Gina Guddat, Deborah Jacobsen, Jon Jones and Patti Melton v. City of Covington [Lee J Moyer – Intervenor] (**WHIP II, 1326**);* coordinated with *WHIP et al., v. Covington (**WHIP III**), 03-3-0004;* consolidated with *Lee J. Moyer v. City of Covington (**WHIP/Moyer**),* Consolidated CPSGMHB Case No. 03-3-0006c (***03306c***), Order Denying Request to Amend Prehearing Order, (Apr. 25, 2003). The Board **denied** an untimely request to amend the prehearing order. [PHO]

WHIP/Moyer, *03306c*, Final Decision and Order in the Coordinated WHIP II and Consolidated *WHIP III* and *Moyer* Proceeding, (Jul. 31, 2003). After four settlement extensions, agreement could not be reached and WHIP filed an additional PFR which was consolidated with the Moyer PFR. WHIP abandoned its challenge in the 2001 proceeding and challenged the more recent enactment in the *WHIP/Moyer* matter. *WHIP II* was **dismissed**. The City's map designations, in one area, were inconsistent between the FLUM, Downtown Element and zoning map. The maps were **remanded**. Additionally, the City failed to provide notice and the opportunity for public participation pertaining to last minute amendments. The public process did **not comply** with the Act and the changes were determined to be **invalid.** The matter was **remanded**. [CTED – Deference – Dismissal – Notice – Public Participation – Sprawl – Subarea Plan -]

WHIP/Moyer, *03306c*, Order Finding Compliance and Rescinding Invalidity in the Consolidated *WHIP III* and *Moyer* Proceeding, (Feb. 17, 2004). The City amended its FLUM and zoning maps to remove inconsistency and provided notice and the opportunity for public participation during the remand period. The Board entered a **Finding of Compliance** and **Rescinded Invalidity**. [Maps – Public Participation]

Windsong Neighborhood Association v. Snohomish County (***Windsong***), CPSGMHB Case No.03-3-0007 (***03307***), Final Decision and Order, (Feb. 5, 2004). Petitioners alleged that Snohomish County is required to conduct subarea planning for all unincorporated areas of its UGA according to its Comprehensive Plan. The County redesignated two of six acres from low density residential land to commercial; Petitioners appealed since a subarea plan had not been done for the area. The Board **upheld** the County's redesignation. [CFE – Public Participation – Subarea Plans]

Windsong, 03307, Order Denying Reconsideration, (Mar. 1, 2004). Petitioners request for reconsideration was **denied.** [Reconsideration]

Laurelhurst Community Club, Friends of Brooklyn, University District Community Council, Northeast District Council and University Park Community Club v. City of Seattle [University of Washington – Intervenor] (***Laurelhurst***), CPSGMHB Case No. 03-

3-0008 (***03308***), Order on Motions, (Jun. 18, 2003). Petitioners challenged the City of Seattle's adoption of the University of Washington Campus Master Plan. The City and University jointly moved for dismissal arguing that the Campus Master Plan was not a subarea Plan as Petitioners alleged, but rather a site plan approval that was not subject to Board review. The Board agreed with the City and University, the challenge was **dismissed** for lack of subject matter jurisdiction. [GMA Planning – Hierarchy – Subarea Plans – SMJ]

Laurelhurst, 03308, Order Denying Certificate of Appealability, (Sep. 9, 2003). The Board **denied** Petitioners' request to certify the Board's Order on Motions for review by the Court of Appeals.

[Appealed to King County Superior Court – Cause 03-2-31087-5 – Board **Affirmed**.]

Corinne R. Hensley, Windsong Neighborhood Association and 1000 Friends of Washington v. Snohomish County [Mark Verbarenendse, Yarmuth-Davis Partnership, MBA-SCCAR, Mac Angus Ranches, Sultan School District No. 11 and Marysville School District No. 25 – Intervenors] (***Hensley VI***), CPSGMHB Consolidated Case No. 03-3-0009c (***03309c***), Order on Motions, (May 19, 2003). The County and an Intervenor challenged whether any of the Petitioners had SEPA standing and challenged Hensley's GMA participation standing. The Board **dismissed** Petitioners SEPA issues for lack of standing, but found Hensley had GMA participation standing. [SEPA – Standing]

Hensley VI, 03309c, Final Decision and Order, (Sep. 22, 2003). Petitioners challenged numerous Plan amendments arising out of the County's annual review cycle. The Board **upheld** a Plan Policy allowing the expansion of a UGA to include schools and churches, and a rezone to allow a school in the rural area. However, the Board found that a UGA expansion, a de-designation of designated agricultural lands and the creation of a Type 3 LAMIRD, did **not comply** with the Act. The de-designation of agricultural land and LAMIRD were **invalidated**. These items were **remanded** to the County for compliance. [Agricultural Lands – Buildable Lands – Burden of Proof – Consistency – Definitions – Institutional Uses – Land Capacity Analysis – LAMIRDs – Natural Resource Lands – Re-affirm or Re-evaluate – Reasonable Measures – Rural Element – Show Your Work – UGA Generally – UGA Sizing]

Hensley VI, 03309c, Order Finding Validity of the Prior Plan and Regualtions During the Remand Period and Rescinding Invalidity, (Oct. 13, 2003). The Board's FDO invalidated two provisions of the County's action in *Hensley VI*. The County moved to remove invalidity since it had a savings clause in the Ordinances that caused the designations to revert to prior designations if any portion of the Ordinance was found invalid. The County confirmed that the two invalid designations reverted to those in place prior to its action. The Board **rescinded** invalidity. [Savings Clause – Invalidity]

Hensley VI, 03309c, Order on Reconsideration, (Oct. 21, 2003). The Board **granted** reconsideration of its Order and clarified and corrected references within it, by amending the FDO. [Reconsideration]

Hensley VI, 03309c, Order Finding Compliance, (Apr. 1, 2004). The County **complied** with the FDO and the Act.

[Appealed to Snohomish County Superior Court, Cause Nos. 03-2-12932-0, 03-2-12966-4, 03-2-12871-4 – Board **Reversed**. Portion still pending.]

Hensley VI, 03309c, Order on Remand – Finding Compliance for CPSGMHB Consolidated Case No. 03-3-0009c *Hensley VI v. Snohomish County [Verbarendse and Davis portion]*, (Jan. 29, 2007). Snohomish County Superior Court reversed and remanded two issues to the Board – one involved a LAMIRD expansion, the other a UGA expansion. The Board concurred in the Court's decision and entered a **Finding of Compliance**.

Corinne Hensley v. Snohomish County (***Hensley VII***), CPSGMHB Case No. 03-3-0010 (***03310***), Order on Motions, (Aug. 11, 2003), {McGuire Concurring}. [This PFR was filed in response to a compliance action.] In *Hensley IV*, the Board determined that the County's Plan, relating to the Clearview LAMIRD, complied with the Act. In *Hensley V*, the Board determined that the County's implementing development regulations, relating to the Clearview LAMIRD, did not comply with the Act. In this case, Petitioner challenged whether the Clearview LAMIRD regulations implemented the Plan's provisions for the Clearview LAMIRD. The Board concluded the implementing regulations did not implement the Plan, and therefore **did not comply** with the Act. The Board indicated any compliance proceedings would be consolidated with *Hensley V*. [Compliance – Development Regulations – Dispositive Motion – Implementing Actions – LAMIRDs – PFR – SMJ]

Hensley VII, 03310, Order Finding Compliance, (Jan. 30, 2007). This was a companion case to the *Hensley V* matter regarding development regulations governing uses in a LAMIRD. Having found compliance in the *Hensley V* matter after a Court remand in that case, the Board likewise entered a **Finding of Compliance** in *Hensley VII* and **dismissed** the PFR. [Development Regulations – LAMIRDs]

King County v. Snohomish County [Cities of Renton and Edmonds – Intervenors; Puget Sound Water Quality Defense Fund - Amicus] (***King County***), CPSGMHB Case No. 03-3-0011 (***03311***), Order on Motions, (Jul. 15, 2003). King County challenged Snohomish County's adoption of an Ordinance governing the siting and regulation of essential public facilities as being preclusionary. Pursuant to a motion from Snohomish County, the Board **dismissed** two issues from the case. One was withdrawn by King County, the other challenged compliance with Chapter 36.70B RCW. [Essential Public Facilities – Subject Matter Jurisdiction]

King County, 03311, Final Decision and Order, (Oct. 13, 2003). Petitioner challenged Snohomish County's essential public facility ordinance. The Board concluded the Ordinance precluded the siting of EPFs and did **not comply** with the Act. The Ordinance process was also determined to be **not in compliance** with Goal 7's requirement that

permits be processed in a timely, fair and predictable manner. The Ordinance was **invalidated**, and **remanded** to the County for compliance. [EPFs – Permit Process]

King County, 03311, Order on Reconsideration and Clarification, (Dec. 15, 2003). The Board **denied** Snohomish County's motion requesting more time, and to reject King County's objection to a moratorium the County adopted in response to the Board's FDO. [Compliance – CTED – Moratorium]

King County I, 03311, Order Finding Continuing Noncompliance and Continuing Invalidity and Notice of Second Compliance Hearing, (May 26, 2004) {McGuire concurring}. The County's effort, on remand, to define and distinguish regional essential public facilities, based upon its involvement through an interlocal agreement, and the use of a conditional use permit process and criteria for such EPFs, did not comply with the Act. Findings of **Continuing Noncompliance** and **Invalidity** were entered. [EPFs – ILAs – Permit Process]

King County I, 03311, Order Denying Reconsideration, (Jul. 1, 2004). WAC 242-02-832(3) provides that an order for reconsideration that the Board does not respond to within 20-days of filing is deemed denied. The Board did not respond to a motion for reconsideration within the 20-day timeframe. This Order affirmed that the motion for reconsideration was **denied**. [Reconsideration]

[Appealed to Thurston County Superior Court, Cause No. ____ - Board **Affirmed** and **Remanded**.]

King County I, 03311, Order on Court Remand of CPSGMHB Case No. 03-3-0011 [Re: Legal Issue 3], (Jul. 29, 2005). Thurston County Superior Court **upheld** the Board but remanded for one issue. The Board addressed an issue it had not previously answered in the FDO. The Board found the County's conditional use permit process would not cause unpredictable delay on EPF applications. The issue was **dismissed**; however, the remainder of the Board's remand in the FDO is still pending. [EPFs]

King County I, 03311, Order Finding Compliance, (Mar. 27, 2006). The County repealed its code provisions related to EPFs, including the noncompliant definition of "regional authority." The Board entered a **Finding of Compliance**. [EPF]

Kent CARES, Northwest Alliance Inc., and Don Shaffer v. City of Kent (***Kent CARES III***), CPSGMHB Case No. 03-3-0012 (***03312***), Order on Motions, (Jul. 31, 2003). The City's motion to dismiss for lack of proper service was denied, but the Board **dismissed** one Petitioner for lack of standing and several legal issues for lack of subject matter jurisdiction. [Service – Standing – SMJ]

Kent CARES III, 03312, Final Decision and Order, (Dec. 1, 2003). Petitioner challenged the City's modification to its administrative modifications of planned unit development and planned action projects. While the Board agreed that Cities may delegate authority to an administrator, this ordinance was not sufficiently clear in establishing the process

and criteria to be used by the administrator. The Board found it did **not comply** with the Act and **remanded** it to the City for compliance. [Burden of Proof – Discretion – Goals – Public Participation – Permit Process – Settlement Extensions]

Kent CARES III, 03312, Order Finding Compliance, (May 6, 2004). The City amended its code to include criteria to guide determinations regarding major or minor amendments to approved planned actions. The Board entered a **Finding of Compliance**. [Compliance]

Citizens for Responsible Growth of Greater Lake Stevens, Ruth Brandal and Jody McVittie v. Snohomish County [Crescent Capital X and Master Builders Association of King and Snohomish County-Camano Association of Realtors – Intervenors] (***Citizens***), CPSGMHB Case No. 03-3-0013 (***03313***), Order on Motions, (Aug. 15, 2003). The Board **dismissed** Petitioners' SEPA claims for lack of standing; **dismissed** one Petitioner's challenge to one ordinance for lack of participation standing; and rejected Intervenor's argument that because Petitioner had previously challenged compliance with certain goals of the Act on other ordinances, Petitioner should be precluded from challenging the present ordinance's compliance with the same goals. Intervenor's motion to dismiss was **denied**. [Service – SMJ – Standing]

Citizens, 03313, Final Decision and Order, (Dec. 8, 2003). Within the Lake Stevens UGA Plan area, the County enacted a development phasing overlay (DPO) and regulations to defer development until the financing of needed facilities was assured. The County amended it's criteria and process for removal of the DPO in its development phasing regulations and the Petitioners appealed. Several of the amendments **did not comply** with the Act and were **remanded**. One provision was determined to be **invalid**. [Amendment – Consistency – CFE – CTED – Discretion – Infrastructure – Invalidity – PFR – Plan – Sequencing – Tiering – Transportation Element – Urban Growth – UGA Generally – UGA Size –]

Citizens, 03313, Order Denying Reconsideration, (Jan. 8, 2004). The Board **denied** the motions for reconsideration filed by both parties. [Reconsideration]

Citizens, 03313, Order Rescinding Invalidity and Finding Compliance, (Jun. 24, 2004). The County amended the development phasing provisions of its Lake Stevens UGA Plan and implementing regulations to comply with the GMA. The Board entered a **Finding of Compliance** and **Rescinded Invalidity**. [Capital Facilities Element – Sequencing – Tiering]

Jerry Harless v. Kitsap County (***Harless II***), CPSGMHB Case No. 03-3-0014 (***03314***), Order of Dismissal, (Sep. 16, 2003). The County repealed the challenged Ordinance and Petitioner withdrew the appeal. The matter was **dismissed**.

Corinne R. Hensley v. Snohomish County (***Hensley VIII***), CPSGMHB Case No. 03-3-0015 (***03315***), Order on Motions, (Oct. 8, 2003). Petitioner challenged the same ordinances that were the subject of a compliance hearing and order finding compliance in

Hensley IV. Issues raised in the new PFR were either abandoned in the prior proceeding, addressed in the prior proceeding or without merit. The case was **dismissed with prejudice**. [LUPP – CTED – SEPA]

Laurelhurst Community Club, Friends of Brooklyn, Ravenna-Bryant Community Association, University District Community Council, University Park Community Club, Seattle Displacement Coalition, Hawthorne Hills Community Council and Northeast District Council v. City of Seattle and University of Washington (***Laurelhurst II***), CPSGMHB Case No. 03-3-0016 (***03316***), Order on Motions, (Dec. 5, 2003). The Board **declined** to address a dispositive motion to dismiss since the matter involved mixed issues of law and facts, and there was fundamental disagreement about the factual issues, including the appropriate scope, relevance and weight of facts the Board should consider. The Board entered no ruling on the issues but indicated they would be addressed in the FDO. [Dispositive Motions]

Laurelhurst II, 03316, Order on Reconsideration/Modification and Order Establishing Location for HOM, (Dec. 16, 2003). The Board **denied** Petitioners request to reconsider the order on supplemental exhibits and allowing rebuttal evidence. [Reconsideration]

Laurelhurst II, 03316, Final Decision and Order, (Mar. 3, 2004). Petitioners challenged an Ordinance amending a 1998 Agreement between the City and the University of Washington. The amendment removed a "lease lid" provision that limited the amount of land the University could acquire or lease in the area around the UW. The Board rejected the City's and University's argument that the 1998 City-University Agreement, which is codified into the Seattle Municipal Code, including its lease-lid provisions, is not a development regulation subject to the goals and requirements of the GMA. The Board concluded that the challenged Ordinance did **not comply** with the GMA's public notice and public participation requirements. The Board **remanded** the Ordinance. [Discretion – Development Regulations – GMA Planning – ILA – Public Participation – SMJ]

Laurelhurst II, 03316, Order Denying Motion to Modify Compliance Schedule, (Aug. 3, 2004). The Board **denied** the request to extend the compliance schedule since the full statutory 180-remand period had been authorized in the FDO. [Compliance]

Laurelhurst II, 03316, Order Finding Continuing Noncompliance and Establishing a Second Compliance Schedule, (Sep. 2, 2004). The City stipulated that it was not able to adhere to the statutory timeframe set forth in the compliance schedule in the FDO. The Board entered a **Finding of Continuing Noncompliance and Invalidity**. A new compliance schedule was established. [Compliance]

Laurelhurst II, 03316, Order Finding Compliance, (Jan. 24, 2005). After the Board found continuing noncompliance, the City provided notice and carried out a public participation process pertaining to a "lease lid" in the University of Washington Campus area that complied with the GMA's requirements. The Board found **compliance**. [Notice – Public Participation]

Director of the State Department of Community, Trade and Economic Development v. Snohomish County [Snohomish County-Camano Association of Realtors, Master Builders Association of King and Snohomish Counties, Sultan School District No. 311, Snohomish County School District No. 201 – Intervenors; Washington Association of Counties – Amicus] (***CTED I***), CPSGMHB Case No. 03-3-0017 (***03317***), Final Decision and Order, (Mar. 8, 2004). The State challenged the County's adoption and amendment of two County-wide Planning Policies, one of the CPPs had four sub-parts that were individually challenged. The Board determined that one CPP did **not comply** with the Act and that two of the sub-parts of the other CPP did **not comply**. The noncompliant CPPs were **remanded**. [Affordable Housing – Agricultural Lands – Amicus – Buildable Lands – Burden of Proof – CPPs – Goals – Housing Element – Land Capacity Analysis – Presumption of Validity – Standing – SMJ – Timeliness – UGAs]

CTED I, 03317, Order Denying Motion for Extensions to Compliance Schedule, (Aug. 16, 2004). The Board **denied** the request to extend the compliance schedule since essentially the full statutory period had been authorized in the FDO (179-days). [Compliance]

CTED I, 03317, Order Finding Continuing Noncompliance, (Sep. 13, 2004). The County stipulated that it remained noncompliant with the Board's FDO and the GMA. The Board entered a **Finding of Continuing Noncompliance and Invalidity**. A new compliance schedule was established. [Compliance]

[Appealed to Thurston County Superior Court, Cause Nos. 04-2-00659-4, 04-2-00655-1 – Board **Reversed** Stipulated **Dismissal**.]

CTED I, 03317, Order of Dismissal, (Nov. 29, 2004). Thurston County Superior Court **reversed** the Board's finding in the FDO that certain CPPs adopted by Snohomish County were not guided by the goals of the Act. CTED did not pursue an appeal and stipulated to dismissal. The Board **dismissed** the CTED matter. [CPPs – Goals]

Finis Gerald Tupper v. City of Edmonds (***Tupper***), CPSGMHB Case No. 03-3-0018 (***03318***), Order on Motions, (Dec. 3, 2003). Respondent's motion to dismiss based on jurisdictional and timeliness issues was **denied**. [Adoption – Timeliness]

Tupper, 03318, Final Decision and Order, (Mar. 19, 2004). Petitioner's challenge to the City of Edmonds amendment to its Planned Residential Development Ordinance was **dismissed with prejudice**. [Accessory Dwelling Units – Development Regulations]

1000 Friends of Washington, Stillaguamish Flood Control District, Agriculture for Tomorrow, Pilchuck Audubon Society and the Director of the State Department of Community, Trade and Economic Development v. Snohomish County [Dwayne Lane – Intervenor] (***1000 Friends I - Island Crossing***), CPSGMHB Case No. 03-3-0019c (***03319c***), Final Decision and Order, (Mar. 22, 2004). Petitioners challenged Snohomish County's redesignation of designated agricultural lands at Island Crossing to urban commercial plan designations and the expansion of the Arlington UGA. The Board

concluded that the redesignation from agricultural to urban commercial and the UGA expansion did **not comply** with the goals and requirements of the Act. The Board entered a **Determination of Invalidity** on these provisions and **remanded** the matter. [Agricultural Lands – Critical Areas – Evidence – UGA Location – UGA Sizing]

1000 Friends I – Island Crossing, 03319c, Order Rescinding Findings of Noncompliance and Invalidity, (Apr. 9, 2004). A savings clause revived prior designations. The Board therefore **rescinded** noncompliance and invalidity. [Savings Clause]

1000 Friends I – Island Crossing, 03319c, Order Rescinding the April 9, 2004 Order Rescinding Noncompliance and Invalidity, (Jun. 1, 2004). The Board rescinded its prior Order in this matter, thereby **reinstating noncompliance and invalidity**. [Savings Clause]

1000 Friends I – Island Crossing, 03319c, Order Finding Continuing Noncompliance and Continuing Invalidity and Recommending Gubernatorial Sanctions, (Jun. 24, 2004) {McGuire concurring}. The County's remand effort, which de-designated the same land from agricultural resource land to commercial and included it in the Arlington UGA, continued to be noncompliant and invalid. In addition to finding **continuing noncompliance** and **invalidity**, the Board recommended that the Governor impose financial **sanctions**. [On December 28, 2004 **the Governor imposed sanctions** upon Snohomish County.] [Agricultural Lands – Critical Areas – Evidence – Sanctions – SMJ – UGAs]

1000 Friends I – Island Crossing, 03319c, Order Granting Reconsideration [Revising Finding of Fact 17] and Denying Motion to Enter a Determination of Validity Pursuant to RCW 36.70A.302(4), (Jul. 22, 2004). The Board **granted** reconsideration and **corrected** a factual finding but **declined** to enter a determination of validity pursuant to a savings clause. [Savings Clause]

1000 Friends I – Island Crossing, 03319c, Order Withdrawing the Recommendation of Gubernatorial Sanctions, Rescinding Invalidity and Finding Compliance, (Jan. 6, 2005). Pursuant to a Board recommendation, the Governor imposed fiscal sanctions on the County for the agricultural resource lands being re-designated as commercial and within an expanded UGA. In response, the County passed a resolution clarifying and affirming the area was no longer within the UGA or designated commercial, but remained designated as agriculture. The Board **withdrew its recommendation of sanctions, rescinded invalidity and found compliance**. **The Governor rescinded the sanctions order**. [Sanctions]

1000 Friends I – Island Crossing, 03319c, Order Denying Reconsideration, (Jan. 27, 2005). The Board **denied** Petitioners motion to reconsider its January 6, 2005 Order Withdrawing Sanctions, Rescinding Invalidity and Finding Compliance. [Reconsideration]

[Appealed to Snohomsih County Superior Court, Cause Nos. 04-2-09180-1, 04-2-09225-4, 04-2-05634-7, 04-2-11409-6 – Board **Affirmed**.]

Department of Community, Trade and Economic Development v. Snohomish County [Snohomish County School District No. 201 – Intervenor] (***CTED II***), CPSGMHB Case No. 03-3-0020 (***03320***), Final Decision and Order, (May 5, 2004) {Tovar Concurring}. The County amended its Plan and regulations to allow the extension of sewer service into the rural area to serve schools and churches. Applying the Supreme Court's decision in *Thurston County v. WWGMHB*, 148 Wn. 2d 1 (2002) [*Cooper Point*], the Board determined the amendments were **noncompliant**, **remanded** the action and entered a determination of **invalidity**. [Institutional Uses – Rural Element – Sewers – UGAs]

CTED II, 03320, Finding of Compliance, (Sep. 30, 2004.) The County took legislative action to reinstate compliant prior Plan policies that prohibited the extension of urban services into the rural area. The Board entered a **Finding of Compliance** and **rescinded invalidity**. [Compliance]

*Andy Mueller, Mueller Construction Company, Land Use Professionals Forum v. City of Bainbridge Island (**Mueller***), CPSGMHB Case No. 03-3-0021 (***03321***), Order of Dismissal, (Aug. 16, 2004). The parties stipulated that the matter be dismissed and Petitioner withdrew the PFR. The matter was **dismissed with prejudice**.

HIGA Birkholder Associates LLC; and Tom Ehrlichman v. City of Arlington (***HIGA***), CPSGMHB Case No. 03-3-0022 (***03322***), Order of Dismissal, (Oct. 14, 2004). Following four settlement extensions, Petitioners withdrew their PFR. The matter was **dismissed with prejudice**.

City of Granite Falls v. Snohomish County [Charles and Judy Essex – Intervenors] (**Granite Falls**), CPSGMHB Case No. 03-3-0023 (***03323***), Order of Dismissal, (Jun. 7, 2004). After Petitioner filed the Petition for Review, the County adopted Ordinances repealing and revising the challenged provisions to its Plan and development regulations. Petitioner did not object to the County's dismissal motion. The matter was **dismissed**. [Mootness]

Master Builders Association of King and Snohomish Counties and Ivan Lund v. City of Stanwood (***MBA/Lund***), CPSGMHB Case No. 03-3-0024 (***03324***), Order of Dismissal. (Feb. 12, 2004). After filing a PFR, Petitioners voluntarily withdrew their appeal. The case was **dismissed with prejudice**.

King County and City of Renton v. Snohomish County (***King County II***), CPSGMHB Case No. 03-3-0025 (***03325***), Order of Dismissal, (May 26, 2004). [*See King County I, 03311*, 5/26/04 Order]. The County adopted a moratorium on issuing permits for and EPF which was subsequently repealed. The PFR was **dismissed** as moot. [Mootness]

[Appealed to Skagit County Superior Court, Cause No. 04-2-01049-0 – Board **Remanded** to delete language.]

King County II, 03325, Order Revising Order of Dismissal, (Feb. 1, 2005). Pursuant to an Order of the Skagit County Superior Court, the Board deleted two paragraphs in its **dismissal** order since the Board's dismissal was based upon mootness and the discussion was unnecessary. [Burden of Proof – Mootness]

1000 Friends of Washington v. Snohomish County [Mohammed Youssefi – Intervenor] (***1000 Friends II***), CPSGMHB Case No. 03-3-0026 (***03326***), Final Decision and Order, (Jun 21, 2004). The found the County's expansion of an existing type 1 LAMIRD to be **noncompliant** with the GMA and **invalid**. The action was remanded. [Definitions – LAMIRDs – Rural Element – Zoning]

[Appealed to Snohomish County Superior Court, Cause Nos. 04-2-11408-8, 04-2-11429-1 – pending.]

1000 Friends II, 03326, compliance pending [**stayed**].

[26]

SYNOPSIS OF 2004 CASES

CPSGMHB Decisions [With Key Words]

Master Builders Association of King and Snohomish Counties; Oscar Lund and Barbara Larson and Michael Davis v. City of Arlington (***MBA/Larson***), CPSGMHB Case No. 04-3-0001 (***04301***), Order on Dispositive Motion, (Apr. 2, 2004). The Board **denied** the City's motion to dismiss for lack of subject matter jurisdiction, but **dismissed** two petitioners for lack of APA standing. [SMJ – Standing]

MBA/Larson, 04301, Final Decision and Order, (Jul. 14, 2004). The Board found that requiring annexation to a city as a condition of the city providing sewer service within the UGA was a valid option under the GMA. The City's amendment was **upheld** and Petitioners' PFR was **dismissed**. [Annexation – Development Regulations – General Discussion – Minimum Guidelines – UGAs]

MBA/Larson, 04301, Order Denying Certificate of Appealability, (Sep. 7, 2004). The Board **denied** the request for a certificate of appealability.

[Appealed to Snohomish County Superior Court, Cause No. 04-2-11946-2 – **Dismissed**.]

Bridgeport Way Community Association, Robert A. Warfield, Thomas V. Galdabini, Matt Guss, Cheryl Hart-Guss and Nancy H. Pearson v. City of Lakewood [Wal-Mart – Intervenor] (***BridgeportWay***), CPSGMHB Case No. 04-3-0003 (***04303***), Final Decision and Order, (Jul. 14, 2004). The Board found that the City had **failed to comply** with the public participation requirements of the GMA and the City's local procedures, but concluded the amendments were not internally inconsistent. The matter was **remanded**. [Consistency – Deference – Discretion – Notice – Public Participation – Quasi-judicial – SMJ – Urban Growth]

Bridgeport Way, 04303, Order Acknowledging Stay and Rescinding Compliance Schedule, (Nov. 2, 2004).

[Appealed to Thurston County Superior Court, Cause Nos. 04-2-01521-6, 04-2-01636-1, Board **Reversed**.]

Bridgeport Way, 04303, Order on Superior Court Remand [Thurston County Cause Nos. 04-2-01521-6 and 04-2-01636-1], (Jun. 7, 2005). In its prior decision, the Board found that the City's commercial designation of an area complied with the GMA, but that the public participation process used by the City was contrary to its own code. The Superior Court found no local code provision requiring a hearing, and therefore disagreed with the Board and **remanded** the matter. Absent explicit direction from the City's own code, the

[26] Note that decisions were not necessarily issued in the year the case was filed.

Board found the City's public participation process in **compliance** with the Act. [Public Participation]

Brad Nicholson v. City of Renton [The Boeing Company – Intervenor] (***Nicholson***), CPSGMHB Case No. 04-3-0004 (***04304***), Order of Dismissal, (Apr. 19, 2004). The PFR was **dismissed**. The Board could not discern from the PFR, the restated Legal Issues or the briefing on motions the Issues to be resolved by the Board. [Definitions – PFR]

FEARN, MTB Associates, Master Builders Association of King and Snohomish Counties and Bothell Owners for Responsible Growth v. City of Bothell (***FEARN***), CPSGMHB Case No. 04-3-0006c (***04304***), Order on Motions, (May 20, 2004). Petitioners' failure to act challenge was **dismissed** with prejudice, as untimely. [Buildable Lands –Failure to Act – Implementing Actions – Reasonable Measures – Timeliness – Update]

FEARN, 04306c, Order Denying Reconsideration, (Jun. 7, 2004). Petitioners request for reconsideration was **denied**. [Reconsideration]

Orton Farms LLC, Riverside Estates Joint Venture, Knutson Farms, Inc., and 1000 Friends of Washington and Friends of Pierce County v. Pierce County [Department of Community, Trade and Economic Development, 1000 Friends of Washington, City of Bonney Lake, Sumner School District No. 320 and The Buttes LLC – Intervenors] (***Orton Farms***), CPSGMHB Case No. 04-3-0007c (***04307c***), Final Decision and Order, (Aug. 2, 2004). The Board found that the County's notice and public participation process failed to indicate that the County was changing the criteria by which it designated agricultural lands of long-term commercial significance and that significant acreages would now meet the new criteria for designation. Additionally, the County's designation criteria relied primarily upon soil characteristics and did not consider proximity to population areas and the possibility of more intensive use – components of determining long-term commercial significance. Further, the County's de-designation of several agricultural resource lands was based upon land-owner intent. The provisions of the Ordinance pertaining to agricultural land designation and de-designation were determined to be **noncompliant** and **remanded**. The designations and de-designations of agricultural land were also **invalidated**. [Agricultural Lands – Duty – General Discussion – Notice – Public Participation – Record - Timeliness]

Orton Farms, 04307c, Order on Reconsideration [Rescinding Invalidity on Amendments T-8 and M-12], (Aug. 12, 2004). Since the County had not adopted development regulations to implement the new, but noncompliant and invalid, agricultural land designation, the Board **rescinded** invalidity. [Invalidity]

[Appealed to Pierce County Superior Court, Cause No. 04-2-11621-5 – **Dismissed**.]

Orton Farms, 04307c, Order Finding Partial Compliance and Rescinding Invalidity [Regarding Amendment M-10], (Mar. 1, 2005). The County took action to repeal and amend map and text designations to comply with all but one of the remand issues in the Board's FDO. The County continued to work on the remanded Agricultural Resource

Lands designations. The Board found **partial compliance** and **rescinded invalidity**. [Agriculture]

Orton Farms, 04307, Order Finding Compliance (coordinated proceeding) CPSGMHB Consolidated Case No. 04-3-0007c] and Final Decision and Order [CPSGMHB Consolidated Case No. 05-3-0016c], (Aug. 4, 2005). In *Bonney Lake, 05416c*, Petitioners challenged Pierce County's Plan Update, including compliance action in *Orton Farms*. In this coordinated proceeding, the Board found that the County's designation of Agricultural Resource Lands, following a remand in *Orton Farms, 04307c*, **complied** with the GMA. [The Board also *upheld* other challenged revisions in the Plan Update, but found that the County's designations for shoreline densities (exceptions) **did not comply** with the rural lands requirements of the GMA. The Board **remanded**. *See Bonney Lake, 05316c*.] [Agricultural Lands – Rural Density – Shorelines – Transportation Element - UGAs]

City of Bremerton, et al., v. Kitsap County [Manke Lumber Company, Overton Family, McCormick Land Company, Olympic Property Group and Port of Bremerton – Intervenors; 1000 Friends of Washington - Amicus Curiae] (***Bremerton II***), CPSGMHB Case No. 04-3-0009c (***04309c***), Order on Motions, (Apr. 22, 2004). Petitioners' SEPA claims were **dismissed** for failure to exhaust administrative remedies, failure to allege standing in the PFR, and lack of SEPA standing. [Exhaustion – PFR – SEPA – Standing]

Bremerton II, 04309c, Final Decision and Order, (Aug. 9, 2004), {McGuire concurring}. The Board found that density incentive policies for rural wooded lands within the rural area did **not comply** with the requirements of the Act, but the Board **upheld** UGA expansions in three areas that were the subject of subarea plans. The measure was **remanded** to the County. [Buildable Lands – Clustering – Critical Areas – CPPs – Development Regulations – Forest Lands – Goals – Land Capacity Analysis – OFM Population – Rural Densities – Rural Element – UGAs]

Bremerton II, 04309c, Order on Reconsideration, (Sep. 16, 2004). The Board **granted** reconsideration to **correct** a factual error and **clarified** the Order, but **denied** the remainder of the motion. [Land Capacity Analysis]

[Appealed to Thurston County Superior Court, Cause No. 04-2-02138-1 – pending; Kitsap County Superior Court – Cause No. 04-2-02544-5 – pending.]

Bremerton II, 04309c, Order Denying Certificate of Appealabity, (Nov. 24, 2005). The Board determined that the issues on appeal in the *Bremerton II* matter were unique to Kitsap County and not of state-wide significance, nor of precedential value. The Board **denied** direct review by the Court of Appeals.

Bremerton II, 04309c, Order Finding Continuing Noncompliance and Invalidity, (Oct. 14, 2005). Although the Board gave the County one-year to achieve compliance, the County failed to take any action to adopt implementing regulations and bring its rural wooded lands Plan policies into compliance with the Act. The Board found **continuing**

noncompliance, **invalidated** specific policies and established a new compliance schedule.

Bremerton II, 04309c, Order Finding Compliance and Rescinding Invalidity – RWL Policies, (Feb. 27, 2006). The County repealed noncompliant policies related to rural wooded lands and reinstated prior directive policies. The Board entered a **Finding of Compliance**. [NRL]

Dan and Randy Jensen v. City of Bonney Lake (***Jensen***), CPSGMHB Case No. 04-3-0010 (***04310***), Final Decision and Order, (Sep. 20, 2004), {Pageler concurring}. This was a Plan Update case. The Board found that the City had discretion to lower densities within the City so long as the resulting densities remained urban. The Board also found that the City was not achieving urban densities in a large portion of the City and the Plan Update did not provide for appropriate urban densities. The Board entered a finding of **noncompliance**, a determination of **invalidity** and **remanded** the Plan. [Affordable Housing – Compliance – Consistency – Development Regulations – Standing – Urban Densities – Update]

Jensen, 04310, Order Finding Partial Compliance, (Nov. 19, 2004). The City removed UGA areas from its FLUM since the areas had not been designated as UGAs by the County; but continued to work on other remand issues. The Board found **partial compliance**. [UGAs]

Jensen, 04310, Order Rescinding Invalidity and Finding Compliance [Re: Ordinance Nos. 1110 and 1099], (Apr. 26, 2005). In advance of the scheduled compliance hearing the City revised its Plan and zoning designations to eliminate its "Very Low Density Residential" [up to 2du/acres] and "Low Density Residential" [up to 4du/acre] and replaced it with one "Single Family Residential" [4-5du/acre] designation. With the consent of the parties, the Board rescheduled a compliance hearing and found **compliance** and **rescinded invalidity**. [Urban Density]

Kent CARES, Northwest Alliance, Inc., and Don B. Shaffer v. Puget Sound Regional Council (***Shaffer***), CPSGMHB Case No. 04-3-0011 (***04311***), Order of Dismissal, (Apr. 19, 2004). The Board lacked subject matter jurisdiction; the PFR was **dismissed** as frivolous. [PFR – SMJ]

King County v. Snohomish County (***King County III***), CPSGMHB Case No. 04-3-0012 (***04312***), Order of Dismissal, (May 26, 2004). [*See King County I, 03311*, 5/26/04 Order]. Petitioners' PFR was **dismissed**, since it raised the same issues as those disposed of in the compliance proceeding in *King County I, 03311*. [Mootness]

Kelly and Sally Samson and Robert and JoAnne Hacker and Bainbridge Citizens United v. City of Bainbridge Island and Department of Ecology (***Samson***), CPSGMHB Case No. 04-3-0013 (***04313***), Order on Motions, (Jul. 6, 2004). The Board **dismissed** certain Legal Issues and clarified others in the context of recent amendments to RCW 36.70A.480. This section of the Act limits the Board's GMA compliance review to internal

consistency between shoreline master programs. The SMA provides the basis for further Board review of shoreline master programs. [PFRs – Public Participation – SMA]

Samson, 04313, Final Decision and Order, (Jan. 19, 2005). The Board found that the City of Bainbridge Island's amendment to its Shoreline Master Program related to the prohibition of new single-use private docks in Blakely Harbor **complied** with the Shoreline Management Act requirements and was consistent with the City's GMA Plan and **complied** with the Act. [SMA]

[Appealed to Thurston County Superior Court, Cause No. 05-2-00331-3 – Board **Affirmed**.]

State of Washington Department of Social and Health Services v. Snohomish County (***DSHS IV***), CPSGMHB Case No. 04-3-0014 (***04314***), Order of Dismissal, (Jul. 26, 2005). After five settlement extensions, the parties settled their dispute and stipulated to dismissal. The Board **dismissed**.

1000 Friends of Washington and Friends of Pierce County v. Pierce County [Department of Community, Trade and Economic Development, City of Bonney Lake, Sumner School District No. 320 and The Buttes LLC – Intervenors] (***1000 Friends III***), CPSGMHB Case No. 04-3-0015 (***04315***), Order of Dismissal, (Jul. 7, 2004). The County repealed the Bonney Lake UGA expansions challenged by Petitioners in their petition for review. The matter was **dismissed**. [UGAs]

Evergreen Sun Enterprises Inc. v. City of Kirkland (***Evergreen***), CPSGMHB Case No. 04-3-0016 (***04316***), Order of Dismissal, (Jan. 19, 2005). Following three settlement extensions, the parties resolved their dispute and the Board **dismissed** the matter.

Gene J Grieve v. Snohomish County (***Grieve II***), CPSGMHB Case No. 04-3-0017 (***04317***), Order of Dismissal, (Jun. 29, 2004). Petitioner withdrew the Petition for Review. The Board **dismissed** the matter.

1000 Friends of Washington v. Snohomish County (***1000 Friends IV***), CPSGMHB Case No. 04-3-0018 (***04318***), Order on Motions, (Aug. 6, 2004). The Board **suspended** the motions schedule, but allowed the single issue to be re-briefed and considered at the hearing on the merits. [Dispositive Motion]

1000 Friends IV, 04318, Final Decision and Order, (Dec. 13, 2004). The Board found **noncompliance** and **remanded** a Snohomish County Ordinance permitting redefining accessory dwelling units and allowing free-standing manufactured/mobile homes on lots of smaller than 10 acres in rural areas. [ADU]

[Appealed to Snohomish County Superior Court, Cause No. 05-2-05727-9 – **Dismissed**.]

1000 Friends IV, 04318, Order Finding Compliance [Re: Ordinance No. 06-138 – ADUs in the Rural Area], (Jan. 30, 2007). The County adopted an ordinance restricting the use

of mobile homes as detached accessory apartments to rural lots ten acres or larger. The parties stipulated to compliance. The Board issued a **Finding of Compliance**. [ADU]

Save Our Separators, Thomas and Mary Williams, Patricia Horn, Bruce Burns and Ron Novak v. City of Kent [Kent 160 LLC – Intervenor] (***SOS***), CPSGMHB Case No. 04-3-0019 (***04319***), Order on Motions, (Sep. 16, 2004). The Board **dismissed** numerous Legal Issues as untimely, beyond the Board's jurisdiction or duplicative. [Timeliness – SEPA – SMJ]

SOS, 04319, Final Decision and Order, (Dec. 16, 2004) {Pageler Dissenting}. Petitioners challenged the City of Kent's rezoning of an "island" portion of the City previously protected as a watershed. The Board dismissed alleged SEPA issues for lack of SEPA standing and concluded that Petitioners did not meet their burden of proof in demonstrating noncompliance with the challenged provisions of the Act. The challenge was **dismissed**. [Annexation – Notice – Property Rights – Public Participation – SEPA – Standing]

1320 Sky Harbor, LLC; Master Builders Association of King and Snohomish Counties v. City of Sultan (***Sky Harbor***), CPSGMHB Case No. 04-3-0020 (***04320***), Order on Motion for Voluntary Dismissal, (Oct. 11, 2004). Following a settlement extension, Petitioners withdrew their PFR. The matter was **dismissed** with prejudice.

Jocelynne Fallgatter and Jeff Kirkman v. City of Sultan (***Fallgatter***), CPSGMHB Case No. 04-3-0021 (***04321***), Final Decision and Order, (Jun. 13, 2005). Petitioners challenged the City of Sultan's failure to update its Plan and a development regulation allowing in lieu contributions instead of adhering to explicit regulatory requirements for open space. During the pendency of this matter, the City adopted its Plan Update, but the in lieu provisions were litigated. The Board determined that the development regulations were inconsistent with the Plan Update, internally inconsistent and found **noncompliance** and entered a **determination of invalidity**. [Development Regulations – Open Space]

Fallagatter, 04321, Order Amending Compliance Schedule, (Oct. 21, 2005). The City acted to repeal the noncompliant and invalid ordinance and requested that the compliance hearing be moved forward. The Board **granted** the request and advanced the compliance hearing.

Fallgatter, 04321, Order Rescinding Invalidity and Finding Compliance [Re: Ordinance Nos. 853-04 and 854-04], (Nov. 14, 2005). The City repealed the noncompliant ordinances. The Board entered an order **Rescinding Invalidity** and a **Finding of Compliance.**

1000 Friends of Washington v. City of Kent (***1000 Friends V***), CPSGMHB Case No. 04-3-0022 (***04322***), Order Denying Motion to Reconsider, (Apr. 25, 2005). Six months after settlement discussions were initiated; the Board received, and **granted**, a motion to intervene by RRR Enterprises and Gene J. Rosso. In granting intervention, the Board limited Intervener's participation to the issues presented in the prehearing order and

limited Intervener's role in settlement discussions. On reconsideration Intervener requested status as full participant in the settlement discussions, related to Intervener's property. The Board **denied** the request, to avoid bootstrapping an untimely petition. [Intervention – Timeliness]

1000 Friends V, 04322, Order of Dismissal, (Dec. 22, 2005). After four settlement extensions and a grant of intervention, a challenge to the City's Plan update regarding urban densities was withdrawn by a stipulation of Petitioner and Respondent. The Board **dismissed** the matter.

Kent CARES, Northwest Alliance and Don Shaffer v. City of Kent (***Shaffer II***), CPSGMHB Case No.04-3-0023 (***04323***), Order on Motions, (Dec. 9, 2004). The Board **dismissed** Northwest Alliance as a party to the proceeding for lack of GMA standing, and **dismissed** 19 of the 20 Legal Issues from the case for not being reasonably related to the issues presented to the City by Petitioner Shaffer. [Standing, SMJ]

Shaffer II, 04323, Final Decision and Order, (Mar. 3, 2005). The Board **upheld** the City's deletion of one alternative railroad grade separation from its Transportation Improvement Plan in favor of another alternative as not being inconsistent with Plan provisions that called for a railroad grade separation. The Board found **compliance**. [Public Participation – Transportation]

Maxine Keesling v. King County (***Keesling III***), CPSGMHB Case No. 04-3-0024 (***04324***), Final Decision and Order, (May 31, 2005). Petitioner challenged King County's Plan Update. The Board concluded that a dual designation in one of the County's Agricultural Production Districts was inconsistent and **did not comply** with the Act. [Consistency]

Keesling III, 04324, Order Finding Compliance, (Jan. 3, 2006). The County amended its noncompliant Plan and zoning designations to eliminate a dual designation for certain properties in an agricultural area. The Board entered a **Finding of Compliance**. [NRL]

Keesling III, 04324, Order Denying Reconsideration, (Jan. 26.2006). Petitioner disagreed with the Board's FDO and Order Finding Compliance and therefore moved for reconsideration. The Board **denied** the motion. [NRL]

Duvall Quarry v. King County (**Duvall Quarry**), CPSGMHB Case No. 04-3-0026 (***04326***), Order of Dismissal, (Jan. 5, 2006). After four settlement extensions, a challenge to the County's Plan update regarding the designation of mineral resource lands was withdrawn by a stipulation of the parties. The Board **dismissed** the matter. [NRL]

Richard Apollo Fuhriman v. City of Bothell (***Fuhriman I***), CPSGMHB Case No. 04-3-0027 (***04327***), Order Finding Noncompliance – Failure to Act [failure to update implementing development regulations], (Jan. 12, 2005). At the prehearing conference, the City conceded that it was late in updating its Plan, but had since completed its Plan Update, but did not update its implementing development regulations. The Board found

noncompliance and **remanded** and set a compliance schedule for action on updating the City's development regulations. (A new petition for review was filed challenging the Plan Update's compliance with provisions of the Act. *See Fuhriman II, 05325c*.) [Failure to Act]

Fuhriman I, 04327, Order Finding Compliance [Re: Adopting Implementing Development Regulations], (Jul. 25, 2005). The Board found that the City of Bothell had acted to update its implementing development regulations and found **compliance**. The substance of the City's update action was not before the Board in this proceeding. A challenge to the substance would have to be brought in a new PFR. (A new PFR was filed, *see Fuhriman III, 05340*.) [Failure to Act – PFR]

Seattle-King County Association of Realtors v. King County (***S/K Realtors***), CPSGMHB Case No. 04-3-0028 (***04328***), Final Decision and Order, (May 31, 2005). Realtors challenged King County's Plan Update. The focus of the challenge was the adequacy of the County's 2002 Buildable Lands Report. The Board determined that the adequacy challenge to the BLR was timely since the County had not published notification of the BLR's completion. The BLR was found to **comply** with the review and evaluation requirements of the Act and the Board concluded that the Realtors had failed to demonstrate that the County's Plan Update did not comply with the goals and requirements of the Act. [BLR – Public Participation – Timeliness – UGA]

Soos Creek Plateau Rural Neighbors Association, Sasha Rebkin, Shevanthi Daniel, Nyla Rosen Lai-Lani Ovalles, Roy Wilson, Karen Bohlke, Barbara Holt, Feelon Hunter and Greg Wingard v. King County (***Soos Creek***), CPSGMHB Case No. 04-3-0029 (***04329***), Order of Dismissal, (Dec. 7, 2006). Following seven settlement extensions, the parties resolved their dispute and Petitioners withdrew their petition for review. The matter was **dismissed**. [Withdrawal]

1000 Friends of Washington, Kitsap Citizens for Responsible Planning and Jerry Harless v. Kitsap County [Overton & Associates, Alpine Evergreen Company, Inc and Olympic Property Group – Amicus Curiae] (***1000 Friends/KCRP***), CPSGMHB Case No. 04-3-0031c (***04331c***), Order on Motions, Dismissing Harless Petition, Ruling on Supplementation and Granting Amicus, (Mar. 15, 2005). The Board granted Kitsap County's motion to **dismiss** Petitioner Harless and all issues posed in the petition for review. [Timeliness]

1000 Friends/KCRP, 04331c, Order on Reconsideration, Rescinding Dismissal of Harless and Amending Briefing Schedule, (Mar. 31, 2005). On reconsideration, the Board concluded that one of the issues in the Harless petition alleged a failure to act, which the Board had jurisdiction to consider. Harless was **reinstated** as a Petitioner on the failure to act issue, the motion to reconsider was partially **granted**. [Failure to Act]

1000 Friends/KCRP, 04331c, Final Decision and Order, (Jun. 28, 2005). Petitioners challenged the County's designation of a LAMIRD, an addendum to its BLR adding reasonable measures and the County's failure to update its urban growth areas as part of

the required Plan Update. The County disputed the deadline for a UGA review. The Board dismissed the challenges to the LAMIRD and the BLR addendum. However, after reviewing the GMA's legislative history and timelines for the UGA updates, the Board concluded that Kitsap County had failed to act in reviewing its UGAs in the Plan Update – compliance review. The Board found **noncompliance**, and concluded the County had **failed to act** in reviewing its UGAs during the Plan Update process. The Board directed the County to act, and established a compliance schedule. [BLR – Failure to Act – LAMIRDs – Reasonable Measures – UGAs]

1000 Friends/KCRP, 04331c, Order Denying Reconsideration, (Jul. 25, 2005). The Board **denied** reconsideration.

[Appealed to Kitsap County Superior Court and Thurston County Superior Courts – Board Affirmed in part and Reversed in part – pending.]

1000 Friends/KCRP, 04331c, Order Finding of Compliance [Re: Failure to Act on Kitsap County 10-year Comprehensive Plan Update], (Feb. 2, 2007). The County adopted its ten-year Plan update. Having acted, the Board entered a **Finding of Compliance.** [Failure to Act]

1000 Friends/KCRP, 04331c, other aspects of this case are still pending before the courts.

[27]

SYNOPSIS OF 2005 CASES

CPSGMHB Decisions [With Key Words]

Maxine Keesling v. King County (***Keesling CAO***), CPSGMHB Case No. 05-3-0001 (***05301***), Final Decision and Order, (Jul. 5, 2005). Petitioner challenged numerous provisions of King County's Critical Areas ordinances update as interfering with agricultural and rural practices allowed in the Plan. The Board concluded that challenged provisions of the CAO update were consistent with the Plan and GMA and that Petitioner had failed to demonstrate noncompliance. The Board **dismissed** the petition for review. [Agricultural Lands – Critical Areas]

Tahoma Audubon Society, People for Puget Sound and Citizens for a Healthy Bay v. Pierce County [Park Junction Partners – Intervenor, Snohomish County – Amicus Curiae] (***Tahoma/Puget Sound***), CPSGMHB Consolidated Case No. 05-3-0004c (***05304c***), Final Decision and Order, (Jul. 12, 2005). Petitioners challenged two separate aspects of the County's update to its critical areas regulations. The Board found that the County had used best available science in mapping and designating a lahar inundation zone and that the risk-safety assessment to allow a convention center in the area was within the County's discretion. However, the Board concluded that the County had not used the best available science to designate and protect fish and wildlife habitat conservation areas and critical salmon habitat along its marine shorelines. The Board found **noncompliance** and **remanded** to the County. [BAS – Critical Areas – FWHCA – Geological Hazardous Areas]

[Appealed to Pierce County Superior Court, Cause No. 05-2-10543-2 – pending.]

Tahoma/Puget Sound, 05304c, Order Finding Compliance [Re: Ordinance No. 2005-80s – Marine Shoreline Critical Salmon Habitat Provisions], (Jan. 12, 2006). The County amended its critical area regulations by designating and mapping approximately 20 lineal miles of marine shorelines as "Marine Shoreline Critical Salmon Habitat" and requiring vegetative buffers in high value shorelines. The Board entered a **Finding of Compliance**. [BAS – CAs – Fish and Wildlife Habitat Conservation Areas – Shorelines]

1000 Friends of Washington v. City of Issaquah (***1000 Friends VII***), CPSGMHB Case No. 05-3-0006 (***05306***), Final Decision and Order, (Jul. 20, 2005). Petitioners challenged Issaquah's Plan Update asserting that 6% of the land area did not allow appropriate urban densities. The Board found all designations compliant except for one small area where **noncompliance** was found. The Board **remanded**, but did not invalidate the noncompliant designation. [Critical Areas – Goal – OFM Population – Sprawl – Urban Density – Urban Growth]

[27] Note that decisions were not necessarily issued in the year the case was filed.

1000 Friends VII, 05306, Order Finding Compliance, (Mar. 1, 2006). The City adopted a Plan policy calling for review of urban density designations upon availability of sewer service within the limited affected area. The Board entered a **Finding of Compliance**. [Sewer]

John R. Kaleas, Bruce W. Horst and Futurewise v. City of Normandy Park (***Kaleas***), CPSGMHB Consolidated Case No. 05-3-0007c (***05307c***), Final Decision and Order, (Jul. 19, 2005). {Pageler concurring} Petitioners challenged Normandy Park's Plan Update asserting that 74% of the land area did not allow appropriate urban densities. The Board agreed and set forth the factors involved in determining whether urban residential designations are appropriate urban densities. The Board found **noncompliance** and **invalidated** portions of the Plan designations (related to vacant and undeveloped parcels) and **remanded** to the City. [Critical Areas – General Discussion – Goals – OFM Population – Sprawl – Urban Density – Urban Growth]

Kaleas, 05307c, Order Denying Certificate of Appealability, (Sep. 26, 2005). The Board **denied** the request to certify review of its FDO to the Court of Appeals.

[Appealed to King County Superior Court, Cause No. 05-2-27090-0 KNT – Board **Reversed** and **Remanded**.]

Kaleas, 05307c, Order on Remand – King County Superior Court Final Order and Judgment – No. 05-2-27090-0 KNT (Kaleas Remand: CPSGMHB Case No. 05-3-0007c), (Jul. 31, 2006). {McGuire Dissenting}. The Superior Court reversed the Board based upon the *Viking Properties* case holding that the Board had no authority to impose a bright line rule of a minimum four dwelling units per acre as an appropriate urban density. The Court also indicated that the Board must defer to the City of Normandy Park's choice of urban densities. The majority of the Board entered a **Finding of Compliance**. [Discretion – Urban Densities]

Jocelynn Fallgatter and Jeff Kirkman v. City of Sultan (***Fallgatter II***), CPSGMHB Case No. 05-3-0010c (***05308c***), Order of Dismissal, (Mar. 8, 2005). Following discussion at the prehearing conference, the Board **dismissed** the petition for review, *sua sponte*, as not being timely filed. [Timeliness]

Jocelynne Fallgatter and Jeff Kirkman v. City of Sultan (***Fallgatter III***), CPSGMHB Consolidated Case No. 05-3-0010c (***05310c***), Order of Dismissal, (Jun. 21, 2005). The Board consolidated two separate challenges to the City's Plan Update filed by Petitioners; then pursuant to a settlement agreement, the parties stipulated to dismissal. The Board **dismissed**.

Master Builders of King and Snohomish Counties v. City of Bothell (***MBA-Bothell***), CPSGMHB Case No. 05-3-0011 (***05311***), Order of Dismissal and Joining MBA to the *Fuhriman I* Compliance Proceeding, (Feb. 1, 2005). MBA challenged the City of Bothell for failing to act in updating its implementing development regulations by the statutory deadline of December 1, 2005. Since the Board had already entered an Order Finding

Noncompliance – Failure to Act in the *Fuhriman I, 04327* matter, the Board **dismissed** the MBA petition for review, but **joined** MBA as a party to the compliance proceedings. [Failure to Act]

Camwest Development Inc., Conner Homes Company, John F. Buchan Construction, Inc., Loier at Gamercy Park LLC, Pacific Land Investment Inc., William Buchan Homes Inc., Windward Real Estate Services Inc., Master Builders of King and Snohomish Counties, Samuel and Joan Bell, Jane Catterson, Theodor and Phyllis McIntire, James and Jeanine Pruitt, Jack and Pamela Skeen, Yadong Wang and Robert and Linda Welsh v. City of Sammamish (***Camwest***), CPSGMHB Case No. 05-3-0012 (***05312***), Order Finding Noncompliance – Failure to Act [failure to update implementing development regulations, including critical areas regulations], (Apr. 1, 2005). Pursuant to an agreement by the parties, the City of Sammamish conceded that it had not completed action on updating its development regulations, including critical areas regulations, and stipulated to noncompliance. The Board found **noncompliance** and established a compliance schedule. [Failure to Act]

Camwest, 05312, Order Finding Continuing Noncompliance and Establishing a Second Compliance Schedule, (Oct. 20, 2005). The City was unable to comply within the compliance period, but documented that it is making substantial progress toward compliance. The Board found **continuing noncompliance** and established a second compliance schedule.

Camwest, 05312, Order Finding Compliance [Re: Adoption of Development Regulations], (Jan. 26, 2006). The City took legislative action to revise and update its development regulations, including critical areas regulations. The Board entered a **Finding of Compliance**. [Failure to Act]

Futurewise v. City of Bellevue (***Futurewise – Bellevue***), CPSGMHB Case No. 05-3-0013 (***05313***), Order of Dismissal, (May 7, 2005). Petitioners challenged several of the City of Bellevue's urban density designations as not being appropriate urban densities. The parties informed the Board that they had resolved their dispute and the petition for review was withdrawn. The Board **dismissed** the matter. [Urban Density]

City of Bonney Lake, Jerome Taylor, The Buttes LLC and Futurewise v. Pierce County [Cities of Roy and Orting and Summit Waller Community Association – Intervenors] (***Bonney Lake***), CPSGMHB Consolidated Case No. 05-3-0016c (***05316c***), Order Finding Compliance [CPSGMHB Consolidated Case No. 04-3-0007c] and Final Decision and Order [CPSGMHB Consolidated Case No. 05-3-0016c], (Aug. 4, 2005). Petitioners challenged Pierce County's Plan Update. In this coordinated proceeding, the Board found that the County's designation of Agricultural Resource Lands, following a remand in *Orton Farms, 04307c*, **complied** with the GMA. The Board also upheld other challenged revisions in the Plan Update, but found that the County's designations for shoreline densities (exceptions) **did not comply** with the rural lands requirements of the GMA. The Board **remanded**. [Agricultural Lands – Rural Density – Shorelines – Transportation Element - UGAs]

Bonney Lake, 05316c, Order Denying Reconsideration, (Aug. 31, 2005). The Board **denied** Futurewise's motion for reconsideration.

[Appealed to Thurston County Superior Court, Cause No. 05-2-01959-7 – pending.]

Bonney Lake, 05316c, Order Finding Compliance and Rescinding Invalidity, (Feb. 23, 2006). The County repealed the "shoreline density exception provisions" in its Plan and development regulations for rural areas. The Board entered a **Finding of Compliance**. [CAs – Shorelines]

Kitsap County, Overton & Associates, Coulter Creek LP, North Bay Properties, North Mason LP and South West Kitsap LP v. City of Bremerton [Alpine Evergreen Company Inc. – Intervenor] (***Kitsap County III***), CPSGMHB Consolidated Case No. 05-3-0017c (***05317c***), Order of Dismissal, (Jun. 1, 2005). Petitioners challenged the City of Bremerton's Plan Update. Following a settlement extension, the parties stipulated to dismissal of the matter. The Board **dismissed**.

Livable Communities Coalition v. City of Eatonville (***LCC***), CPSGMHB Case No. 05-3-0018 (***05318***), Order of Dismissal, (Mar. 14, 2005). In its notice of hearing, the Board indicated that the timeliness of the petition for review would be discussed at the prehearing conference. Petitioners subsequently withdrew their petition. The Board **dismissed** the matter. [Timeliness]

Futurewise v. City of Auburn (***Futurewise II***), CPSGMHB Case No. 05-3-0019 (***05319***), Order of Dismissal, (Nov. 29, 2005). After two settlement extensions, a challenge to the City's Plan update regarding urban densities was withdrawn by a stipulation of the parties. The Board **dismissed** the matter.

Futurewise v. Snohomish County (***Futurewise III***), CPSGMHB Case No. 05-3-0020 (***05320***), Order on Motion to Dismiss, (May 23, 2005). Snohomish County adopted an Ordinance pursuant to the GMA's update requirements. Petitioner filed a challenge alleging that the County failed to act, because some provisions did not comply with the Act. The County moved to dismiss as untimely and asserted that it had acted. The Board **dismissed** the petition for review as untimely and noted the challenge was not a valid failure to act claim. [Failure to Act – Timeliness]

Gateway Office LLC v. City of Bothell, (***Gateway***), CPSGMHB Case No. 05-3-0024 (***05324***), [originally consolidated into *Fuhriman II, 04325c*, then segregated for settlement extension], Order of Dismissal, (Nov. 3, 2005). After three settlement extensions, Petitioners failed to file a prehearing brief. The Board **dismissed** the matter for lack of prosecution by Petitioner. [Abandoned Issues – Board Rules]

Richard Apollo Fuhriman, Master Builders Association of King and Snohomish Counties, North Creek Village LLC, James and Sharlyn Phillips, Tom and Susan Berry and Camwest Development Inc. v. City of Bothell [Friends of North Creek and Its Neighbors

and Norway Hill Residents – Intervenors] (***Fuhriman II***), CPSGMHB Consolidated Case No. 05-3-0025c (***05325c***), Final Decision and Order, (Aug. 29, 2005). Petitioners challenged the City of Bothell's Plan Update. Specifically, Petitioners challenged the City's calculation of "net buildable area" and whether certain designations were appropriate urban densities. The Board found the City's designations to be appropriate urban densities and the basis for calculating net buildable area to be within the City's discretion. The Board found **compliance**. [Abandoned Issues – Critical Areas – Definitions – Discretion – Goals – Public Participation – Urban Density]

Wellington Park Pointe, LLC. v. City of Issaquah (***Wellington***), CPSGMHB Case No. 05-3-0026 (***05326***), Order of Dismissal, (Sep. 15, 2005). Following a settlement extension, Petitioner withdrew the PFR. The Board **dismissed** the matter.

Camwest Development Inc., Conner Homes Company, John F. Buchan Construction Inc., Lozier at Gamercy Park LLC, Pacific Land Investment Inc. William Buchan Homes Inc. Windward Real Estate Services, Inc. v. City of Sammamish (***MBA/Camwest***), CPSGMHB Case No. 05-3-0027 (***05327***), Order Segregating Case No. 05-3-0027 from the Consolidated Case [05-3-0030] and Final Decision and Order in Case No. 05-3-0027, (Aug. 4, 2005). This matter, involving a challenge to the City of Sammamish's ongoing development moratorium, was segregated from another matter involving the same parties, but a different ordinance. The Board found that the City's 12th extension of a six-month moratorium on development was not an interim control, but a permanent development regulation and that these development regulations did not implement the City's Plan. The Board found **noncompliance**, **remanded** and entered a **determination of invalidity**. [Interim – Development Regulations – Moratorium]

MBA/Camwest, 05327, Order Clarifying Effective Date of Invalidity, (Aug. 9, 2005). The Board's FDO invalidated the City of Sammamish's ongoing moratorium, the City contended invalidity did not attach until it had acted to respond to the Board's Order. The Board **clarified** that, pursuant to the GMA, invalidity attaches upon the date the jurisdiction receives the Board's Order. [Invalidity]

[Appealed to King County Superior Court, Cause No. 05-2-29747-6 SEA – **Dismissed**.]

MBA/Camwest, 05327, Order Denying Reconsideration and Stay, (Sep. 1, 2005). The Board **denied** the City's motion for reconsideration and stay.

MBA/Camwest, 05327, Order Rescinding Invalidity and Finding Compliance [Re: Ordinance No. 02005-169]. The City's six-year moratorium was allowed to lapse without renewal. The Board found **compliance** and **rescinded invalidity**.

Stephen W. Cossalman, Charles K. McTee, Arlen Paranto and Steven Van Cleve v. Town of Eatonville (***Cossalman***), CPSGMHB Case No. 05-3-0028 (***05328***), Order Finding Noncompliance – Failure to Act [failure to update comprehensive plan and development regulations], (May 13, 2005). At the prehearing conference Eatonville conceded that it

had not taken action to update its Plan or implementing development regulations. The Board found **noncompliance** and established a compliance schedule. [Failure to Act]

Cossalman, 05328, Order Finding Partial Compliance [Re: Plan] and Order Finding Continuing Noncompliance [Re: Development Regulations], (Nov. 29, 2005). The Town took legislative action to update and revise its Plan, but had not yet reviewed and updated its development regulations. The Board found **partial compliance** and continuing **noncompliance** and established a compliance schedule. [Failure to Act]

Cossalman, 05328, Order Finding Compliance, (Mar. 13, 2006). The Town took legislative action to update and revise its development regulations. The Board issued a **Finding of Compliance**. [Failure to Act]

Pilchuck Audubon Society v. Town of Mukilteo (***Pilchuck V***), CPSGMHB Case No. 05-3-0029 (***05329***), Final Decision and Order, (Oct. 10, 2005). The Board found that a last minute amendment to the City's wetland buffer requirements was added without notice, the opportunity for public comment and beyond the parameters of the best available science used by the City. The Board found **noncompliance** and **remanded** the matter. [BAS – Notice – Public Participation]

Pilchuck V, 05329, Order Finding Compliance, (Feb. 14, 2006). The City conducted additional public hearing following proper notice and revised its wetland buffer requirements consistent with the best available science in the record. The Board entered a **Finding of Compliance**. [BAS – CAs – Wetlands]

Camwest Development Inc., Conner Homes Company, John F. Buchan Construction Inc., Lozier at Gamercy Park LLC, Pacific Land Investment Inc. William Buchan Homes Inc. Windward Real Estate Services, Inc. v. City of Sammamish (***MBA/Pacific Land***), CPSGMHB Case No. 05-3-0030 (***05330***), Final Decision and Order, (Sep. 22, 2005). [This matter and *MBA/Camwest, 05327* were originally consolidated; however, Case No. *05327* was segregated and addressed in a separate FDO.] Petitioners challenged the City's basis for determining net density in its development regulations. The Board concluded that the definition was not clearly erroneous since it yielded appropriate urban densities and fell within the discretion of the City. The Board found **compliance**, but noted varying definitions of this term by different jurisdictions undermines coordinated planning, the intent of the GMA. [Urban Density]

King County v. Snohomish County [City of Renton and Sno-King Environmental Alliance – Intervenors] (***King County IV***), CPSGMHB Case No. 05-3-0031 (***05331***), Prehearing Order and Order on Prehearing Motions), (Jun. 20, 2005). In another chapter of this protracted dispute, Petitioner challenged Snohomish County's adoption of an Odor Ordinance and a Seismic Ordinance as precluding the siting of essential public facilities. Both parties filed motions prior to the prehearing conference which were resolved by the Board in this Prehearing Order. The Board **dismissed** the motion for an immediate compliance hearing, request for declaratory ruling and imposition of sanctions, the PHO

set forth the schedule and Legal Issues for the proceedings. [Prehearing Order – Declaratory Ruling]

King County IV, 05331, Order on Motions, (Aug. 8, 2005). This Order found the City of Renton did not have standing, but granted intervention status to the City. Several Legal Issues were **dismissed**. [CPPs – Development Regulations – Standing – SMJ]

King County IV, 05331, Order of Dismissal, (Jan. 23, 2006). After two settlement extensions, initially requested at the statutory settlement extension deadline, the parties resolved their dispute and filed a stipulation requesting dismissal. The Board **dismissed** the matter. [EPFs]

Stephen W. Cossalman, Charles K. McTee, Arlen Paranto and Steve Van Cleve v. Town of Eatonville (***Cossalman/Van Cleve***), CPSGMHB Case No. 05-3-0032 (***05332***), Order on Motions, (Jun. 20, 2005). Petitioners challenged the Town of Eatonville's adoption of a resolution declaring certain lands surplus and authorizing their sale. The Board concluded it did not have subject matter jurisdiction to review the matter and **dismissed** the petition for review. [SMJ]

Futurewise v. City of Bothell (***Futurewise IV***), CPSGMHB Case No. 05-3-0033 (***05333***), Order of Dismissal, (Jan. 29, 2007). Following six settlement extensions the parties resolved their dispute regarding the City of Bothell's Plan Update Housing Element. Pursuant to a stipulation, the Board **dismissed** the matter. [Housing Element]

Washington State Department of Ecology and Washington State Department of Community, Trade and Economic Development v. City of Kent (***DOE/CTED***), CPSGMHB Case No. 05-3-0034 (***05334***), Final Decision and Order, (April 19, 2006). Petitioners challenged the City of Kent's revised wetland regulations, specifically its wetlands exemption, its wetlands ranking system and its wetland buffer requirements. The Board found **noncompliance** with the GMA on all three issues and **remanded**. [BAS – Burden of Proof – CAs – Definitions – General Discussion – Goals – Wetlands]

[Appealed to King County Superior Court, Cause Nos. 06-2-16675-2 KNT, 06-2-16933-6 – pending.]

DOE/CTED, 05334, Certificate of Appealability, (Jul. 11, 2006). The Board **granted** a request for a Certificate of Appealability for review of its FDO.

DOE/CTED, 05334, Order Finding Compliance, (Dec. 13, 2006). The City of Kent amended its wetlands regulations regarding wetlands ranking and buffer widths to comply with the GMA and the Board's FDO. The Board entered a **Finding of Compliance**. [CAs – Wetlands]

Jocelynne Fallgatter and Jeff Kirkman v. City of Sultan (***Fallgatter IV***), CPSGMHB Case No. 05-3-0035 (***05335***), Order Denying Dispositive Motions, (Sep. 14, 2005). The City of Sultan sought to dismiss Petitioner's challenge as untimely; or in the alternative,

asserting that the sewer and water allocation and priority procedure adopted by the City was not a development regulation subject to Board review. The Board found the PFR to be timely, and that the challenged enactment was a development regulation subject to Board review. The motion to dismiss was **denied**. [Development Regulation – Timeliness]

Fallgatter IV, 05335, Order of Dismissal, (Oct. 27, 2005). The City repealed the challenged action and moved for dismissal of further proceedings. The Board **dismissed** the matter as moot. [Mootness]

State of Washington Department of Social and Health Services v. City of Lakewood (***DSHS V***), CPSGMHB Case No. 05-3-0036 (***05336***), Order of Dismissal, (Oct. 5, 2005). Pursuant to a settlement extension, the parties reached agreement. The Board **dismissed** the case.

State of Washington Department of Corrections v. City of Lakewood (***DOC III***), CPSGMHB Case No. 05-3-0037 (***05337***), Order on Motions, (Sep. 21, 2005). The City's motion to dismiss the matter as untimely was **denied**. This matter was consolidated with 05343c. [EPF – Moratorium]

[Appealed to Pierce County Superior Court, Cause No. 05-2-13075-5 – pending.]

Safeway v. City of Seattle (***Safeway***), CPSGMHB Case No. 05-3-0038 (***05338***), Order Granting Motion to Dismiss, (Oct. 20, 2005). The City adopted an emergency interim ordinance and work plan; Petitioner challenged the City's action. The Board declined to review whether the emergency was justified, but found the City's action adhered to the procedures for adoption of interim regulations pursuant to RCW 36.70A.390. The Board also determined that a challenge to the consistency of the interim regulation with the City's Plan was premature since the challenged action was not a permanent regulation. The matter was **dismissed**. [Emergency – Interim]

[Appealed to King County Superior Court, Cause No. 05-2-37716-0 SEA – **Dismissed**.]

Kitsap Citizens for Rural Preservation v. Kitsap County (***KCRP V***), CPSGMHB Case No. 05-3-0039 (***05339***), Order on Motions, (Oct. 20, 2005). The Board found that Petitioner's appeal was timely filed. The Board deferred ruling on a SEPA challenge until the FDO, since the County had not indicated whether it had conducted any SEPA analysis on the challenged amendment. The motion to dismiss was **denied**. [Timeliness – SEPA]

KCRP, 05339, Order of Dismissal, (Dec. 7, 2005). A challenge to a County Plan amendment allowing a NASCAR track was withdrawn by a stipulation of the parties. The Board **dismissed** the matter.

Richard Apollo Fuhriman v. City of Bothell (***Fuhriman III***), CPSGMHB Case No. 05-3-0040 (***05340***), Order of Dismissal, (Jan. 9, 2006). On the day of the Board's hearing on the merits Petitioner withdrew the challenge and PFR. The Board **dismissed** the matter.

Master Builders Association of King and Snohomish Counties, Camwest Development Inc, Conner Homes Company, John F. Buchan Construction Inc., Lozier at Gramercy Park LLC. Pacific Land Investment Inc. William Buchan Homes Inc. and Windward Real Estate Services Inc. v. City of Sammamish (***Camwest III***), CPSGMHB Case No. 05-3-0041 (***05341***), Final Decision and Order, (Feb. 21, 2006){Pageler Concurring}. Following a six-year moratorium on residential development, Sammamish adopted a "growth phasing lottery" ordinance which allowed applications for 420 units per year for a two-year period, selected by lottery. Petitioners challenged the growth phasing lottery. The Board concluded that the growth phasing lottery failed to comply with the phasing or sequencing provisions of the GMA – RCW 36.70A.110 – and several goals of the Act. The Board found **noncompliance** and **remanded** the phasing ordinance. [Goals – Moratorium – OFM Population – Sequencing – Standing – Tiering – Urban Growth]

Camwest III, 05341, Order Finding Compliance, (Jun. 22, 2006). The City of Sammamish repealed its Growth Phasing Lottery, and the Board entered a **Finding of Compliance**. [Sequencing – Tiering]

F. Robert Strahm v. City of Everett (***Strahm***), CPSGMHB Case No. 05-3-0042 (***05342***), Final Decision and Order, (Sep. 15, 2006). Petitioner challenged the City's Plan Update alleging that the population and employment targets adopted by the City were in excess of its land capacity, and that the City had effectively decreased density in the downtown core by reducing height limits and floor area ratios. The Board found that the City's land capacity analysis indicated a discrepancy between land capacity and population to be accommodated. However, the discrepancy appeared to occur in the unincorporated UGA, not the City Limits, but the City's LCA did not clearly distinguish its City Limits and the unincorporated UGA. The Board supported the City's redevelopment efforts, but nonetheless, found **noncompliance** with the accommodating growth provisions of the GMA and **remanded**. [BLR – Consistency – CPPs – LCA – OFM Population – Show Your Work – UGAs]

Strahm, 05342, compliance pending.

State of Washington Department of Corrections v. City of Lakewood (***DOC III/IV***), CPSGMHB Consolidated Case No. 05-3-0043 (***05343c***), consolidated with *DOC III, 05337*, Final Decision and Order, (Jan. 31, 2006). DOC challenged the City of Lakewood's adoption of a moratorium prohibiting the filing of applications for correctional facilities in the Public Institutional zone, which included the Western State Hospital (**WSH**) campus. DOC sought to relocate a work release facility from Tacoma to an existing structure on the WSH campus that formerly housed a work release program. The Board concluded that the moratorium precluded the siting of an essential public facility and did not comply with RCW 36.70A.200. The Board **remanded**, found **noncompliance** and entered a **determination of invalidity**. [EPF – Moratorium – SMJ]

[Appealed to Pierce County Superior Court, Cause Nos. 05-2-13075-5, 06-2-05538-7 – pending.]

DOC III/IV, 05343c, compliance pending - *stayed*.

Master Builders Association of Pierce County v. City of Bonney Lake (***MBA – Bonney Lake***), CPSGMHB Case No. 05-3-0045 (***05345***), Order on Dispositive Motion, (Jan. 12, 2006). Petitioners challenged an ordinance increasing the City's park impact fees [adopted pursuant to Ch. 82.02 RCW]. The Board **dismissed** for lack of subject matter jurisdiction. [Impact Fees – SMJ]

Charles McTee, Steven W. Cossalman, Arlen Parento and G. Steven Van Cleve v. Town of Eatonville (***Cossalman/McTee***), CPSGMHB Case No. 05-3-0046c (***05346c***), Final Decision and Order, (May 1, 2006). {McGuire Concurring} Petitioners challenged the Town of Eatonville's notice and public participation procedures pertaining to the deletion of Van Eaton Park from the Town's Plan. The Board found that the Town had **complied** with the challenged GMA provisions. [CTED – Notice – Public Participation – SEPA]

Harvey Airfield, Inc. V. Snohomish County (***Harvey Airfield II***), CPSGMHB Case No. 05-3-0047 (***05347***), Order of Dismissal, (Dec. 9, 2005). Petitioner withdrew the PFR. The Board **dismissed** the matter.

Abbey Road Group LLC, Virginia J. Leslie Trust, Karl J. and Virginia S. Thun, Thomas Pavolka and Reich Land Inc. v. City of Bonney Lake (***Abbey Road***), CPSGMHB Case No. 05-3-0048 (***05348***), Final Decision and Order, (May 15, 2006). Bonney Lake rezoned several hundred acres of land on steep slopes that descended into the Puyallup River Valley from commercial and higher density residential to low-density residential designations. Petitioners challenged alleging the rezone did not comply with the urban densities required by the GMA. The Board found the rezone **compliant** with the GMA since the area contained geologically hazardous areas and the designation was consistent with the City's Comprehensive Plan. [BAS – CAs – Notice – Public Participation – Standing – SMJ – Urban Densities]

Covington Golf Course Inc. d/b/a Elk Run Golf Course v. City of Maple Valley (***Covington Golf***), CPSGMHB Case No. 05-3-0049 (***05349***) – settlement extension – pending.

[28]

SYNOPSIS OF 2006 CASES

CPSGMHB Decisions [With Key Words]

*In the matter of the Petition of City of Normandy Park for a Declaratory Ruling (**Normandy Park**)*, CPSGMHB Case No. 06-3-0001pdr (***06301pdr***)), Notice of Decision Not to Issue a Declaratory Ruling, (Oct. 20, 2006). The City asked the Board whether it should process an application [apparently to settle a portion of a pending case] immediately or as part of its annual review process. The Board **declined** to offer advice or issue a declaratory ruling.

Tahoma Audubon Society, Citizens for a Healthy Bay, People for Puget Sound and Futurewise v. City of Tacoma (***CHB***), CPSGMHB Case No. 06-3-0001 (***06301***) – settlement extension – pending.

Jason Kap, Eric Mederios and Friends of 172nd v. City of Redmond (***Kap***), CPSGMHB Case No. 06-3-0002 (***06302***), Order of Dismissal, (Apr. 12, 2006). Petitioners challenged the City's adoption of a Transportation Master Plan – characterized by the City as a functional plan and non-GMA document. The Board found the TMP to be a Plan amendment, **dismissed** the case, but directed the City to adopt the TMP by ordinance with GMA notice and publication.

Jocelynne Fallgatter and Jeff Kirkman v. City of Sultan (***Fallgatter V***), CPSGMHB Case No. 06-3-0003 (***06303***), Order on Motions, (Apr. 24, 2006). The Board **denied** a motion to dismiss challenges to the City of Sultan's water and sewer plans since they were incorporated by reference into the Capital Facility Element of the City's Plan. [CFE – Capital Facilities and Services – SMJ]

Fallgatter V, 06303, Order Regarding Disqualification of Board, (Jun. 5, 2006). The City of Sultan moved to disqualify all CPS Board members from the pending matter due to the Petitioner's participation on a *Pro Se* panel at the Semi-annual Joint Board meeting, alleging that appearing on the panel before the Boards amounted to an *ex-parte* communication. The Board determined that the communications at the meeting was limited to settlement and mediation procedures and none of the legal issues presented in the pending matter involved such procedures. The Board **declined** to recuse itself and dismiss the PFR. However, the Board granted a motion to strike references to a settlement agreement from Petitioner's prehearing brief.

Fallgatter V, 06303, Final Decision and Order, (Jun. 29, 2006). The City relied upon information contained in its Water System and Sewer System Plan as part of its Capital Facilities Element. The population projections for each were different and inconsistent with the population allocated by the County. The City also used different time horizons and different UGA configurations than that adopted by the County. The TIP was

[28] Note that decisions were not necessarily issued in the year the case was filed.

likewise inconsistent with the Transportation Element. The Board found **noncompliance** and **remanded**. [CFE – Reconsideration – SMJ – Transportation Element]

Fallgatter V, 06303, Order Denying Reconsideration, (Jul. 24, 2006). Petitioner's motion for reconsideration was **denied**. [Reconsideration]

Fallgatter V, 06303, compliance pending.

State Department of Social and Health Services v. City of Monroe (***DSHS VI***), CPSGMHB Case No. 06-3-0004 (***06404***) – settlement extension – pending.

Sno-King Environmental Alliance, Emma Dixon and Gerald Farris v. Snohomish County [King County – Intervenor] (***Sno-King***), CPSGMHB Case No. 06-3-0005 (***06305***), Order on Motions, (May 25, 2006). Petitioners challenged several enactments of the County related to the siting and development of a wastewater treatment plant – an essential public facility. The County moved to dismiss challenges to certain ordinances for lack of subject matter jurisdiction, several Petitioners for lack of GMA participation standing and the challenge to the County's notice. The Board **dismissed** one ordinance from the matter, **denied** the County's motion regarding standing and **dismissed** the notice challenge. [Notice – Standing – SMJ]

Sno-King, 06305, Final Decision and Order, (Jul. 24, 2006). Petitioners challenged the County's adoption of Ordinances regulating odor, seismic hazards and procedures for siting essential public facilities. The Board found the County's EPF regulations **compiled** with the GMA. [CAs – Emergency – EPFs – Geologically Hazardous Areas – Notice – Public Participation – Standing]

Sno-King, 06305, Order on Snohomish County's Motion for Reconsideration, (Apr. 8, 2006). The Board **granted** the County's motion for reconsideration to correct several incorrect citations and references. The substance of the FDO remained unchanged. [Reconsideration]

Suquamish Tribe v. City of Bainbridge Island (***Suquamish Tribe***), CPSGMHB Case No. 06-3-0006 (***06306***) – pending.

Kitsap Citizens for Responsible Planning and Jerry Harless v. Kitsap County [Home Builders of Kitsap County and Kitsap County Association of Realtors – Amicus] (***KCRP VI***), CPSGMHB Case No. 06-3-0007 (***06307***), Final Decision and Order, (Jul. 26, 2006). The Board found that adoption of the Kingston Subarea Plan expanding an individual UGA prior to the ten-year review to the County's UGAs, county-wide analysis and collective consideration to accommodate the full 2025 population target did not comply with the GMA. Additionally, the County's expansion of the UGA in advance of adopting reasonable measures also failed to comply with the GMA. The Board found **noncompliance** and **remanded** the matter. [Reasonable Measures – UGA]

KCRP VI, 06307, compliance pending.

Liz Giba, Don Bennett, Eric Dickman, Heidi R. Johnson, Martha Koestner, Maggie Larrick, Cherisse Lux and Savun Neang v. City of Burien (***Giba***), CPSGMHB Case No. 06-3-0008 (***06308***), Order of Dismissal, (Apr. 17, 2006). The City of Burien repealed the section of Ordinance that was challenged. The Board **dismissed** the matter as moot. [Mootness - PFR]

City of Tacoma and Waller Enterprises LLC v. Pierce County (***Tacoma IV***) CPSGMHB Consolidated Case No. 06-3-0011c (***06311c***), Order on Motion to Dismiss and Order on Intervention, (May 1, 2006). The City's motion to **dismiss** one Petitioner's PFR for improper service was granted. However, the same party was **granted** status as an Intervenor. [Service – Intervention]

City of Tacoma v. Pierce County [Waller Enterprises LLC and Summit Waller Community Association – Intervenors] (***Tacoma IV***), CPSGMHB Case No. 06-3-0011c (***06311c***), Final Decision and Order, (Nov. 27, 2006). The City challenged the County's a four acre expansion of an existing LAMIRD close to the city limits. Partially because of the well documented local circumstances applying to the property, the Board found that the LAMIRD expansion **complied** with the Act. [Definitions – LAMIRD]

Hood Canal Environmental Council, People for Puget Sound, West Sound Conservation Council, Kitsap Citizens for Responsible Planning, Futurewise, Judith and Irwin Krigsman, Jim Trainer and Kitsap Alliance of Property Owners, William Palmer and Ron Ross v. Kitsap County (***Hood Canal***), CPSGMHB Consolidated Case No. 06-3-0012c (***06312c***), Order on Motions, (May 8, 2006). The County moved to dismiss Petitioner's SEPA issues for lack of standing. The Board **granted** the County's motion and **dismissed** the SEPA issues. [SEPA – Standing]

Hood Canal, 06312c, Order Denying Reconsideration, (Jun. 19, 2006). Petitioner reiterated argument and moved to reconsider the Board's dismissal of SEPA claims. The Board **declined** to reconsider its prior Order. [Reconsideration]

Hood Canal, 06312c, Order Granting Amicus and Granting Motion to Strike, (Jun. 20, 2006). The Board **granted** *amicus curiae* status to the Pacific Legal Foundation and Kitsap County Association of Realtors, but **granted** Kitsap County's motion to **strike** portions of the *Amicus* brief that did not address Legal Issues posed in the pending case. [Amicus]

Hood Canal, 06312c, Final Decision and Order, (Aug. 28, 2006). Kitsap County updated its critical area regulations as required by the GMA; Petitioners challenged them as being both to lax and too stringent and not based upon BAS. The Board concluded that the County's designation of marine shorelines as critical areas **complied** with the GMA but that the County's exemption of certain wetlands and its marine shoreline buffers **did not comply** with the GMA and the Board **remanded**. [Abandoned Issues – BAS – CAs – Definitions – Fish and Wildlife Habitat Conservation Areas – Property Rights – Public Participation – Shorelines – SMA – Wetlands]

[Appealed to Kitsap County Superior Court, Cause No. 06-2-02271-0 – pending.]

Hood Canal, 06312c, compliance pending.

Pilchuck Audubon Society, Futurewise, Jody McVittie, Cindy Howard, Darlene & Ken Salo, Shelly & Tim Thomas, Barbara Bailey, Lisa Stettler and F. Robert Strahm v. Snohomish County [Cities of Arlington, Marysville and Lake Stevens, Lake Stevens Sewer District, Kandace Harvey and Harvey Airfield, Master Builders Association of King and Snohomish Counties and Snohomish County Camano Association of Realtors – Intervenors] (***Pilchuck VI***), CPSGMHB Consolidated Case No. 06-3-0015c (***06315c***), Order on Motions, (May 4, 2006). The Board **granted** the County's motion to dismiss certain issues as untimely and that Petitioners lacked standing to pursue them. Additionally, certain Petitioners were **dismissed** for lack of standing. [BLR – Official Notice – Standing – Timeliness]

Pilchuck VI, 06315c, Final Decision and Order, (Sep. 15, 2006). The County adopted over 20 Ordinances to accomplish its Plan Update. Numerous Petitioners challenged 15 of the Plan Update Ordinances, raising numerous and various issues. The Board found **noncompliance** on two issues: the de-designation of agricultural land and it inclusion in the Arlington UGA; and a policy to enable the extension of sewers into the rural area. The latter issue was also **invalidated**. The Board remanded to the County. [Abandoned Issues – Agricultural Lands – Airports – BLR – CFE – Frequently Flooded Areas – Infrastructure – Land Capacity Analysis – OFM Population – Sewer – Transportation Element – UGAs]

[Appealed to Skagit County Superior Court, Cause No. 06-2-01816-1 – pending.]

Pilchuck VI, 06315c, Order Finding Compliance [Legal Issues 2 and 6] and Rescinding Invalidity [Legal Issue 2], (Feb. 2, 2007). The County reinstated its prior policies prohibiting the extension of sewer into the rural area and created a record and entered findings supporting the de-designation of 6 acres of agricultural land an inclusion of it in the City of Arlington UGA. The Board entered a **Finding of Compliance**. [Agricultural Lands – Sewer – UGAs]

Stephen Pruitt and Steven Van Cleve v. Town of Eatonville (***Pruitt***), CPSGMHB Case No. 06-3-0016 (***06316***), Final Decision and Order, (Dec. 18, 2006). Petitioners challenged the Town's adoption of regulations creating an Aerospace District permitting various uses and regulating height adjacent to Swanson Field – a general aviation airport. The Board found the airport regulations in conflict with the Town's Plan and the advice of the Aviation Division of DOT and the FAA and entered a finding of **noncompliance** and **remanded**. [Abandoned Issues – Airports]

Pruitt, 06316, compliance pending.

Jocelynne Fallgatter and Jeff Kirkman v. City of Sultan (***Fallgatter VI***), CPSGMHB Case No. 06-3-0017 (***06317***), Order on Motions and Order Amending Schedule, (Jun. 29,

2006). The City's motion to **dismiss** a several issues for lack of subject matter jurisdiction was granted in part, and denied in part. [Discretion – SMJ]

Fallgatter VI, 06317, FDO pending.

Camwest Development Inc. v. Snohomish County (***Camwest IV***), CPSGMHB Case No. 06-3-0018 (***06318***), Order of Dismissal, (Jul. 25, 2006). This matter was segregated from a consolidated case [*Pilchuck VI, 06315c*] in order to allow settlement discussion to occur. The parties resolved their dispute, and stipulated to dismissal of the PFR. The Board **dismissed** the matter. [Settlement Extension]

Orchard Reach Partnership, Fircrest Reach Partnership and Roland Jankelson v. City of Fircrest (***Orchard Beach***), CPSGMHB Case No. 06-3-0019 (***06319***), Order of Dismissal, (Jul. 6, 2006). Petitioners challenged the City's rejection of a proposed Plan amendment and previously adopted Plan provisions. The Board found no duty to amend and that the challenge to prior provisions was untimely. The Board **dismissed** the matter. [Amendment – Duties – Timeliness]

Liz Giba, Don Bennett, Eric Dickman, Heidi R. Johnson, Martha Koester, Maggie Larrick, Cherisse Luxa, Savun Neang, Russ Kay and Barbara Peters [Steven Lamhear – Intervenor] v. City of Burien (***Giba II***), CPSGMHB Case No. 06-3-0020 (***06320***), Order of Dismissal, (Jul. 3, 2006). The Board dismissed a challenge to an Ordinance repealing a prior action of the City. The matter was **dismissed** for lack of subject matter jurisdiction. [SMJ]

Robert D. Garwood v. City of Shoreline (***Garwood***), CPSGMHB Case No. 06-3-0021 (***06321***), Order of Dismissal, (Jun. 5, 2006). At the prehearing conference the parties presented a stipulated Order of Dismissal. The Board obliged and the matter was **dismissed**.

2101 Mildred LLC and Bruce & Debbie Bodine v. City of University Place (***Mildred/Bodine***), CPSGMHB Case No. 06-3-0022 (***06322***), Order of Dismissal, (Aug. 27, 2006). A challenge to an amendment to a planned action ordinance was filed by Petitioners. The Board granted the City's motion to dismiss for lack of subject matter jurisdiction and lack of SEPA standing. The matter was **dismissed**. [SEPA – Standing – SMJ]

Jocelynne Fallgatter v. City of Sultan (***Fallgatter VII***), CPSGMHB Case No. 06-3-0023 (***06323***), Order of Dismissal, (Jun. 29, 2006). Petitioner challenged an Ordinance providing for the annexation of some land to the City. The Board granted the City's motion to dismiss for lack of jurisdiction. The matter was **dismissed**. [Annexation – SMJ]

Seattle Audubon Society, Yes for Seattle, Heron Habitat Helpers and Eugene D. Hoglund v. City of Seattle (***Seattle Audubon***), CPSGMHB Case No. 06-3-0024 (***06324***), Final Decision and Order, (Dec. 11, 2006). Seattle's critical areas regulations designated as

geologically hazardous areas only landslide-prone areas, steep slopes and liquefaction zones despite the fact that the record included BAS on other seismic hazards. Petitioners challenged this defect, among others, in the City's critical areas update. The Board agreed with Petitioner, finding the City **noncompliant** with the GMA and **remanded**. [BAS – CAs – Fish and Wildlife Habitat Conservation Areas – Geologically Hazardous Areas – Wetlands]

Seattle Audubon, 06324, compliance pending.

Sno-King Environmental Alliance and Corinne R. Hensley v. Snohomish County [King County – Intervenor] (***Sno-King II***), CPSGMHB Case No. 06-3-0025 (***06325***), Order of Dismissal, (Aug. 28, 2006). Petitioners withdrew their petition for review. The matter was **dismissed**. [Withdawal]

The McNaughton Group LLC v. Snohomish County [Camwest Development Inc. – Intervenor] (***McNaughton***), CPSGMHB Case No. 06-3-0027 (***06327***), Order on Motions, (Oct. 30, 2006). The County and Intervenor attempted to have all or portions of the PFR dismissed for various reasons, including among others, standing, subject matter jurisdiction. The several **Legal Issues were dismissed**, but the bulk of them were maintained until the hearing on the merits. [SEPA – SMJ – Standing – Zoning]

McNaughton, 06327, Final Decision and Order, (Jan. 29, 2007). The County adopted its Plan Update, and numerous petitions were filed. One Petitioner was able to resolve their dispute with the County and their petition was dismissed. Petitioner here challenged the adoption of the Plan and regulation amendments precipitated by the prior settlement. Petitioner challenged the County's action asserting that the Plan amendment must be accomplished in the annual review cycle – the docketing process – one of the processes used by the County for Plan amendments. The Board upheld the County on the primary issues in the case, but found **noncompliance** since the County failed to submit the proposed Ordinances to CTED for review, prior to their adoption. [Amendments – CPPs – CTED – Plan Update]

McNaughton, 06327, compliance pending.

Open Frame LLC v. City of Tukwila (***Open Frame***), CPSGMHB Case No. 06-3-0028 (***06328***), Order of Dismissal, (Nov. 17, 2006). Petitioner's challenged the City's adoption of its Transportation Improvement Program, asserting that the TIP located and sited a Transit Center in the City's Urban Center. The Board concluded the TIP did not establish a location, site the transit center, or otherwise amend the City's Plan or development regulations. The matter was **dismissed** for lack of subject matter jurisdiction. [Consistency – Public Participation – SMJ – Transportation Element]

[Appealed to King County Superior Court, Cause No. 06-2-39331-7 KNT – pending.]

Pirie Second Family Partnership LP v. City of Lynnwood (***Pirie***), CPSGMHB Case No. 06-3-0029 (***06329***), Order on Dispositive Motion, (Dec. 22, 2006). Petitioner challenged

six ordinances and two resolutions adopted by the City of Lynnwood, alleging these actions were development regulations implementing the City's City Center Subarea Plan. The City moved to dismiss several of the actions. The Board **dismissed** two ordinances and the two resolutions from the proceeding finding that they were not development regulations subject to the Board's jurisdiction. [Development Regulations – SMJ – Subarea Plan]

Pirie, 06329, FDO pending.

Leo C. Brutsche and Washington Cedar & Supply Co. v. City of Auburn (Brutsche), CPSGMHB Case No. 06-3-0030, second settlement extension – pending.

*Elizabeth A. Campbell v. City of Everett (**Campbell**)*, CPSGMHB Case No. 06-3-0031 (***06331***), Order of Dismissal, (Nov. 9, 2006). The Board **dismissed** a challenge to an interlocal agreement between the City of Everett and the Tulalip Tribe regarding the provision of water services to tribal trust lands. The Board found that it lacked subject matter jurisdiction and the matter was **dismissed**. [ILA – Standing – SMJ]

F. Robert Strahm v. City of Everett (***Strahm III***), CPSGMHB Case No. 06-3-0033 (***06333***), Order Granting Dispositive Motion, (Dec. 14, 2006). Petitioner challenged the City of Everett's adoption of its Downtown Subarea Plan, alleging a land capacity analysis had not been done and the Downtown area could not accommodate the allocated population. The City moved for dismissal asserting that the GMA's requirements for land capacity analysis were required at the jurisdictional level, not the subarea level. The Board agreed and **dismissed** the relevant legal issues. [Land Capacity Analysis – Subarea Plan]

Strahm III, 06333, FDO pending

Jocelynne Fallgatter v. City of Sultan (***Fallgatter VIII***), CPSGMHB Case No. 06-3-0034 (***06334***), pending.

Maxine Keesling v. King County (***Keesling V***), CPSGMHB Case No. 06-3-0035 (***06335***), pending.

Judy and Stan Heydrick and Kerry Ourada v. City of Sultan (***Heydrick***), CPSGMHB Case No. 06-3-00037 (***06337***), pending.

Washington Protection and Advocacy System, et al., v. City of Tacoma (***WPAS***), CPSGMHB Consolidated Case No. 06-3-0039c (***06339c***), pending.

[29]

SYNOPSIS OF 2007 CASES

CPSGMHB Decisions [With Key Words]

Muckleshoot Indian Tribe, et al., v. Pierce County (***Muckleshoot***), CPSGMHB Consolidated Case No. 07-3-0004c (***07304c***), pending.

City of Seattle v. City of Burien (***Seattle I***), CPSGMHB Case No. 07-3-0005 (***07305***), pending.

Lora Petso v. Snohomish County (***Petso***), CPSGMHB Case No. 07-3-006 (***07306***), pending.

Skills Inc. et al., v. City of Auburn (***Skills Inc***), CPSGMHB Consolidated Case No. 07-3-0008c (***07308c***), pending.

Coalition for Healthy Economic Choices in Kitsap County, Kitsap Citizens for Rural Preservation v. Kitsap County (***CHECK***), CPSGMHB Case No. 07-3-0009 (***07309***), pending.

Cascade Bicycle Club, et al., v. City of Lake Forest Park (***Cascade Bikers***), CPSGMHB Consolidated Case No. 07-3-0010c (***07310c***), pending.

Inez Sommerville Petersen, et al., v. City of Renton (Petersen), CPSGMHB Consolidated Case No. 07-3-0012c (***07312c***), pending.

City of Burien v. City of Seattle (***Burien II***), CPSGMHB Case No. 07-3-0013 (***07313***), pending.

Futurewise v. City of Bothell (***Futurewise V***), CPSGMHB Case No. 07-3-0014 (***07314***), pending.

Daniel Smith v. City of Bainbridge Island (***Smith***), CPSGMHB Case No. 07-3-0015 (***07315***), pending

SR9/US2 LLC. v. City of Lake Stevens (***SR9/US2***), CPSGMHB Case No. 07-3-0016 (***07316***), pending.

[29] Note that decisions were not necessarily issued in the year the case was filed.

SYNOPSIS OF 2008 CASES[30]

CPSGMHB Decisions [With Key Words]

[30] Note that decisions were not necessarily issued in the year the case was filed.

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• 180 Days

- Nothing in the GMA suggests that a growth planning hearings board has the authority to waive the 180-day limit to issue its final order as specified in RCW 36.70A.300. [*Snoqualmie, 2304c,* 11/4/92 Order, at 3.]
- The Board did not determine that this matter was of unusual scope or complexity in its FDO and gave the City the full statutory limit (180-days) to take action to comply with the requirements of the Act. The Board has no latitude to extend the present matter beyond the statutory deadline. [The Board noted that the City could stipulate to continuing noncompliance, which would allow the Board to establish a new compliance schedule.] [*Laurelhurst II, 03316*, 8/3/04 Order, at 2.]
- The Board did not determine that this matter was of unusual scope or complexity in its FDO and gave the County essentially the full statutory limit (179-days) to take action to comply with the requirements of the Act. The Board has no latitude to extend the present matter beyond the statutory deadline. [The Board noted that the County could stipulate to continuing noncompliance, which would allow the Board to establish a new compliance schedule.] [*CTED I, 03317*, 8/16/04 Order, at 2.]

• Abandoned Issues

- As a general rule, the Board will treat an unbriefed legal issue as abandoned; it will not be considered, and will be dismissed with prejudice. [*Twin Falls, 3303c,* FDO, at 18.]
- In the absence of a brief on any of the issues set forth in the prehearing order, by the deadline, all issues have been abandoned – per WAC 242-02-570(1). [*Kitsap, 4306,* 12/2/94 Order, at 1.]
- Inadequately briefed issues must be considered similar to unbriefed issues, i.e., abandoned. [*Sky Valley, 5368c,* FDO, at 24.]
- In order for an issue to be considered by the Board, it must be briefed. Failure to brief an issue shall constitute abandonment of the issue. [*Sky Valley, 5368c,* 4/15/96 Order, at 3.]
- Inadequately briefed issues would be considered in a manner similar to consideration of unbriefed issues and, therefore, should be deemed to be abandoned. [*Sky Valley, 5368c,* 4/15/96 Order, at 3.]
- If petitioner fails to brief an issue in its required prehearing brief, the issue will be deemed abandoned; it is not sufficient for a petitioner to brief an issue for the first time in a reply brief. [*Tulalip, 6329,* FDO, at 7.]
- If a party is unable to muster sufficient legal or factual argument to meet the standards required by the Act, or has not been able to assemble all the components necessary to meet the burden of proof, the Board cannot decide in its favor. Therefore, inadequately briefed issues must be considered similar to unbriefed issues. [*Sky Valley, 5368c,* FDO, at 24.]

- An issue is 'briefed' when legal argument is provided; it is not sufficient for a petitioner to make conclusory statements, without explaining how, as the law applies to the facts before the Board, a local government has failed to comply with the Act. [*Tulalip I, 6329*, FDO, fn. 1, at 7.]
- [The Board declined to dismiss the PFRs because each issue was not set forth in the prehearing briefs. The reply briefs gave page numbers relating to where each issue was argued.] At the HOM the Board stated again the importance of identifying *in a petitioner's opening brief* each legal issue being addressed. While legal issues may be regrouped or re-ordered by a petitioner for purposes of argument, failure to indicate the issue being addressed creates an undue burden on the respondent, in setting forth its response, as well as for the Board, in entering its decision. [*Tahoma/Puget Sound, 05304c*, FDO, at 5.]
- [Petitioner's prehearing brief consisted of a cover sheet and an attached brief from a prior case challenging a different enactment and without reference to the Legal Issues stated in the PFR.] The briefing filed was unresponsive to the Legal Issues posed by [Petitioner]. These Legal Issues will not be addressed in this FDO and are dismissed. [*Fuhriman II, 05325c*, FDO, at 9.]
- [Petitioner's prehearing brief was due October 24, 2005, as of November 3, 2005, the Board had not received the brief.] Nor has the Board received a timely request for an additional settlement extension. Consequently, the Board will dismiss this matter for lack of prosecution – all issues have been abandoned. Dismissal is required since [Petitioner] has failed to pursue its case and failed to comply with the Board's 3rd Extension Order. [*Gateway, 05324*, 11/3/05 Order, at 2.]

- **Accessory Dwelling Units - ADUs**

- The only record evidence indicates that the effect of ADUs on housing capacity is *de minimis*. (Municipal Research & Service Center of Washington: "communities with favorable zoning can expect to get approximately one ADU per 1,000 single family homes per year.) [*Bremerton/Alpine, 5339c/8332c*, FDO, at 40.]
- It is crucial to remember that these are "accessory" dwellings – not the primary dwelling. Furthermore, they are limited in size and design to fit in with the primary dwelling. The Board also notes that RCW 36.70A.400 requires local governments to comply with RCW 43.63A.215, which in turn mandates that local governments include ADU provisions within their development regulations. That mandate must be reconciled with RCW 36.70A.020(2) and .110(1). Except for areas outside UGAs, the County has appropriately balanced these two requirements by placing clear restrictions on ADUs. [*PNA II, 5371*, FDO, at 21-22.]
- Construction of a detached new ADU on a parcel smaller than 10 acres is generally prohibited because it would effectively allow two freestanding dwelling units. The effect would necessarily be one freestanding dwelling on a lot smaller than 5 acres, which the Board has previously held to constitute urban growth. Regardless of the size of the rural lot, ADUs attached to the main residence or a conversion of a detached existing structure (*e.g.* garage) in close association with the primary residence would not constitute urban growth. [*PNA II, 5371*, FDO, at 22.]

- Manufactured-home ADUs as freestanding new structures on lots of less than 10 acres create a density of more than one unit in five acres. The Board finds nothing in the subordination requirement or conditional use process to persuade it to abandon its established precedents. As the Board stated in *PNA II*, "Regardless of the size of the rural lot, ADUs attached to the main residence or a conversion of a detached existing structure (*e.g.* garage) in close association with the primary residence would not constitute urban growth." *Id.* at 22. However, by adding manufactured homes on lots of less than 10 acres, the County permits a growth level in rural areas that the Growth Management Hearings Boards have consistently found to constitute sprawl. [*1000 Friends IV, 04312*, FDO, at 13.]

- **Adjacent**

- City comprehensive plans must contain an assessment of its impact on adjacent jurisdictions. . . . At the very least, a plan must indicate which jurisdictions are adjacent to the city, what the present traffic volumes and system capacities of major arterials in those jurisdiction connected to the city's are, and an analysis of what impact, if any, the city's transportation plan will have on those neighboring jurisdictions. [*WSDF I, 4316*, FDO, at 68.]
- General discussion of transportation coordination with adjacent jurisdictions. [*Hapsmith I, 5375c*, FDO, at 32-34.]
- For purposes of evaluating a jurisdiction's compliance with RCW 36.70A.070(6)(d), adjacent jurisdictions are those, which are connected to the jurisdiction by a major arterial. [*WSDF IV, 6333*, FDO, at 35.]
- The principal legal theory underlying the issues raised in this case is that the GMA establishes a duty upon the City of SeaTac to provide for mitigation of the impacts of STIA activities, in its Plan or development regulations, for its neighboring jurisdictions. Petitioners attempt to construct a duty to mitigate from the provisions of RCW 36.70A.100 and .210. The attempt to create a GMA duty on jurisdictions to provide for mitigation of impacts on surrounding communities, in their plans and development regulations, fails. [*Burien, 8310*, FDO, at 5-6.]
- In evaluating plans of adjacent jurisdictions for consistency, the Board will examine the challenged amendments to determine if, on their face, the amendments are inconsistent with [thwart] the adjacent jurisdictions' provisions identified. If the challenged amendments are consistent with the identified policies, the challenge fails. If the challenged amendments are facially inconsistent, the Board will examine the challenged amendments in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the identified adjacent jurisdiction policies. [*LMI/Chevron, 8312*, FDO, at 48.]
- The Board rejects [the] unsupported assertion that Island Crossing is "clearly" an entryway to Arlington. Area A of the Island Crossing area is an isolated, small-scale freeway service node, and all of the Island Crossing area is on the flat bottom land of a river valley. In addition to being a mile away, Arlington is neither physically nor visually connected to Island Crossing and is situated above the valley floor. [*Sky Valley*, 5368c, 4/22/99 Order, at 10.]

- RCW 36.70A.100 and .210 refer to consistency of Plans with adjacent jurisdictions; they do not relate to the application of a Plan within a jurisdiction. [*Sky Valley*, 5368c, 4/22/99 Order, at 12.]
- The City's notice provisions [mailed to adjacent property owners] fall woefully short of the required "broad dissemination" and "notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses and organizations [of RCW 36.70A.140 and .035(1)]." [*WRECO, 8335*, FDO, at 13.]
- The County's argument about the propriety of its RAID designation evidence several fundamental misapprehensions. What the Act contemplates is flexibility for counties, in certain circumstances and subject to careful restrictions, to "round off" with logical outer boundaries "limited areas of more intensive rural development" [LAMIRDs]. However, simply because an unincorporated parcel was urbanized as of July 1, 1990, does not mean that it is appropriate to designated it as a LAMIRD. The County's spacing criteria for rural activity centers (RACs) and rural neighborhood centers (RNCs) indicates that it grasps the concept of a "central place," the idea that a commercial center serves a surrounding hinterland. The placement of its RAID less than 400 feet from the UGA flies in the face of this "central place" theory. The location of the [property] immediately adjacent to the UGA makes it a candidate not for LAMIRD designation, but potentially for UGA expansion. [*Tacoma II, 9323c*, FDO, at 7.]
- It is an axiom of land use planning that urban uses at urban densities and intensities inhibit adjacent farm operations. This axiom is reflected in the statutory language of the Act that seeks to protect agricultural uses from more intensive adjacent activities (citing RCW 36.70A.060(1)). [*1000 Friends I, 03319c*, 6/24/04 Order, at 19.]

- **Adoption**

- The legislative body has authority to create whatever advisory apparatus it deems appropriate – however, the authority to adopt cannot be delegated to such advisory groups. [*Twin Falls, 3303*, FDO, at 79.]
- A development regulation, whether interim or implementing, must be a binding legislative enactment. The Board is not ruling that a resolution or motion can never be used to comply with GMA critical areas and natural resource lands requirements. The test is whether the public has advance notice providing the opportunity to comment before the matter is adopted; whether a public hearing is held; whether the legislative action has the force and effect of law; and whether notice of adoption is published – regardless whether the enactment took place by way of ordinance, motion or resolution. [*FOTL I, 4303*, 4/22/94 Order, at. 20-21.]
- Upon initial adoption of a comprehensive plan, jurisdictions planning under the Act must have fully completed all the mandatory requirements of RCW 36.70A.070. [*WSDF I, 4316*, FDO, at 12.]
- Optional features of a comprehensive plan do not have to be complete at the time of plan adoption, provided that the adopted portions otherwise comply with the Act's requirements. [*WSDF I, 4316*, FDO, at 14.]

- All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning. [*Bremerton, 5339c,* FDO, at 77.]
- Because comprehensive plans are controlling documents under the GMA, rather than discretionary advice, or "a basic source of reference," they now have the force of law, unlike the comprehensive plans adopted pursuant to Chapters 36.70 RCW and 35A.63 RCW. It is both appropriate and necessary that such binding laws be codified, as ordinances are and resolutions are not. [*BNRR, 5350,* 8/30/95 Order, at 3.]
- The Central Puget Sound Board respectfully disagrees with the Western Board's conclusion that "ordinance" is a generic term. The Board holds that a GMA comprehensive plan can only be adopted by ordinance. [*BNRR, 5350,* 8/30/95 Order, at 3.]
- RCW 36.70A.290(1) requires that cities adopt their comprehensive plans by ordinance. [*Anderson Creek, 5353c,* FDO, at 10.]
- Cities must adopt comprehensive plans and development regulations adopted pursuant to the requirements of the GMA by ordinance, and they must publish notice of adoption promptly thereafter. [*South Bellevue, 5355,* 11/30/95 Order, at 14.]
- Development regulations adopted pursuant to RCW 36.70A.060 must be adopted by ordinance, not by resolution. [*AFT, 5356,* FDO, at 13.]
- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317,* FDO, at 7-8.]
- The adoption of [a subarea plan] is a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to [an unchanged plan designation.] [A jurisdiction's decision to maintain an existing designation does not reopen the appeal period of that unchanged designation.] [*MacAngus, 9317,* FDO, at 8.]
- In adopting the Tulalip Subarea Plan, the County did not change, re-adopt, or re-affirm the [agricultural] designation; it merely maintained the existing designation. Additionally, the County's action was not taken in response to a statutory requirement, such as RCW 36.70A.215, which may require the County to change, re-adopt, or re-affirm its comprehensive plan or development regulations. [*MacAngus, 9317,* FDO, at 8-9.]
- Pursuant to RCW 36.70A.290(2)(a), the [City's Transportation Master Plan] supplementing and amending the City's GMA Plan Transportation Element, shall be adopted by ordinance. [*Kap, 06302, 4/12/06 Order,* at 5.]

- **Affordable Housing**

- The Act requires cities and counties to preserve existing housing while promoting affordable housing and a variety of residential densities and housing types. No jurisdiction is required to reconcile these seemingly inconsistent requirements by totally focusing on one requirement, for instance preserving existing housing, to the exclusion of other requirements, such as encouraging more affordable housing. Instead, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them. [*WSDF I, 4316*, FDO, at 30.]
- The Board rejects the argument that because RCW 36.70A.070(2)(c) requires jurisdictions to identify "sufficient land for housing" in their comprehensive plans, that their development regulations must also do so. The sufficiency of land supply required by RCW 36.70A.070(2)(c) is a mandate that the city, as a matter of policy, identify sufficient land for this purpose. Development regulations are to then impose controls to assure that the land identified in the plan for housing is available for that purpose. Because development regulations must be consistent with the comprehensive plan, they cannot decrease the land supply available for housing. RCW 36.70A.040(3). [*Children's I, 5311,* 5/17/95 Order, at 6.]
- RCW 36.70A.020(4) does not prohibit the demolition of existing housing structures. Instead, cities and counties must balance the Act's requirements to "encourage preservation of existing housing stock" with the demand to "encourage the availability of affordable housing" and the promotion of a "variety of residential densities and housing types." . . . It does not mandate that single-family residences be preserved at the expense of every other housing type. [*WSDF II, 5340,* FDO, at 25.]
- The requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas – while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." [*Benaroya I, 5372c,* FDO, at 21.]
- Nothing in the GMA or the CPPs requires a jurisdiction to show a detailed plan as to how affordable housing policies will be achieved. There is nothing in the Plan or in the record that suggests the housing affordability policies are not capable of being carried out. [*Benaroya, 5372c,* FDO, at 26.]
- As important as the affordable housing policy is, CPPs can only be as directive as they are clear. [*Renton, 7326,* FDO, at 7.]
- [RCW 36.70A.020(4) does not require that each and every land use designation of a jurisdiction provide for affordable housing. [*LMI/Chevron, 8312,* FDO, at 29.]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, at 30.]
- The GMA's provisions for "ensuring" the "vitality" and "character" of established residential neighborhoods applies to all neighborhoods, including those that house predominantly low income people. In many ways the GMA represents a break from the land use decision-making that preceded it, learning from and attempting not to

repeat the mistakes of the past. Among the most sobering of those failures nationally has been the needless wholesale destruction of entire neighborhoods in the name of "urban renewal." With this history clearly in mind, the Board looked closely at the GMA's provisions and the City's actions. [*LIHI I*, *0317*, FDO, at 4.]

- The conversion of up to one third [of the land area in two neighborhoods] to industrial uses is strong, albeit necessary, medicine. Had it been in a larger dosage, the Board would have seriously questioned whether these areas could remain viable as residential neighborhoods. [LIHI's concern was focused on the City's willingness to follow through on the commitments made in the Plan, the subject of a subsequent proceeding.] [*LIHI I*, *0317*, FDO, at 4.]
- [It is undisputed that the City must ensure the vitality and character of the two existing neighborhoods in question.] The question is whether the content of the City's Plan, including not just the industrial designation for portions of these two neighborhoods, but also other goals, policies and strategies set forth in the Plan, meet the duty of ensuring neighborhood vitality and character. [The Board found that they did.] [*LIHI I*, *0317*, FDO, at 6.]
- The City proposes to promote the *vitality* of these two entire residential neighborhoods, and perhaps others by making non-residential land use designations for a portion of them. These non-residential designations may reasonably be expected to lead to the elimination of some amount of sub-standard residential housing and its replacement with industrial uses that will have several benefits for the vitality of the area. [*e.g.* Investment in sewers to eliminate a public health problem and employment opportunities.] The City has made a credible argument that such policies are an appropriate strategy to encourage long-term investment in these neighborhoods. [*LIHI I*, *0317*, FDO, at 12.]
- Ensuring the neighborhood's *character* is not simply a matter of maintaining homogeneity of land use – but rather, as the Board noted in Benaroya, a question of accommodating growth and change in such a way as to respect, maintain or even improve residential character. This would be true even with regard to non-residential uses, whether they are industrial, as here, or neighborhood commercial, or institutional. The Plan lays some policy groundwork for the integration of industrial uses into what will remain a predominantly residential area, however the details of many project design considerations (e.g. building bulk, signage, grading, landscaping, noise, traffic and access) are largely the focus of development regulations. [The Board notes that many Plan policies provide for the housing needs of existing neighborhood residents, including those that may be displaced. Implementing these Plan provisions will not be limited to development regulations but other City actions.] [*LIHI I*, *0317*, FDO, at 12-13.]
- By allowing the conversion of up to one-third [of the existing residential neighborhoods to industrial uses] the City will ensure the vitality of these established residential neighborhoods by providing job opportunities, sewering the area and improving public services, including public health and safety. [*LIHI I*, *0317*, FDO, at 13.]
- The "character" of these neighborhoods will inevitably change over time, and the City's policy of having new industrial uses as a part (not the whole) of that character is not inconsistent with preserving a residential character for the remaining two-thirds

of the area. Because "character" is largely a matter of the scale and design of specific projects, the GMA policy objective of ensuring that future growth that is "in character" with an existing residential neighborhood must be the focus for the specific development regulations that the City has yet to adopt. [*LIHI I, 0317*, FDO, at 13.]

- [The MBA exhibit] illustrates the benefits of housing affordability that accrue from use of the PRD approach compared to not having the benefits of the PRD regulations (or average lot sizing). However, MBA's concern about the impact on affordable housing is one of degree. While the housing affordability statistics are likely to be different under the new PRD regulations than they were under the prior PRD regulations, those statistics will still be better under the new PRD regulations than under a development scheme with no PRD option. This difference in degree of benefit is not sufficient to find the County's action was in error. [*Master Builders Association, 1316*, FDO, at 22-23.]
- The Housing Goal contains three separate, but equal subparts: 1) encouraging the availability of affordable housing to all segments of the population of this state, 2) promoting a variety of residential densities and housing types, and 3) encouraging the preservation of existing neighborhoods. [*LIHI II, 1223*, FDO, at 8.]
- The Housing Incentive Program (HIP) defines low-income as 80% or less of the average median income (AMI). [Petitioner] is correct, the HIP does not distinguish those at or below 50% AMI (very low-income) or those at or below 30% AMI (extremely low-income) persons. As [Petitioner] demonstrates, over three-quarters of the poor people who need affordable housing in Lakewood earn less than 50% of median income. American Lake Gardens, Springbrook and Tillicum contain some of the highest concentrations of poverty in the City. While those with the greatest need fall within the City's low-income definition, the bar is high enough to dilute the potential impact of the HIP program in providing affordable housing to the poorest of Lakewood's poor that are concentrated in its poorest neighborhoods. [*LIHI II, 1223*, FDO, at 10-11.]
- Further, the Board agrees with [Petitioner] that the HIP is ambiguous and unclear as to whether seniors or disabled persons must also be low-income to benefit from the program and whether or not low-income units can qualify for the density bonuses. . . . [The language contained in the HIP] seems to suggest that housing units to serve non low-income seniors or non low-income disabled persons are eligible for the density bonuses of the HIP. If this is the case, it further dilutes the potential effectiveness of the HIP in providing affordable housing to low-income persons. It is also not clear whether the fee reductions are only available to low-income tenants. Base upon these ambiguities of the HIP, the Board concludes that the HIP does not encourage the provision of affordable housing to all economic segments of Lakewood's population. [*LIHI II, 1223*, FDO, at 10-11.]
- Developing programs that will provide affordable housing opportunities and special needs housing opportunities for the low-income, very low-income, extremely low-income, and disabled and senior citizens of Lakewood is, as the City acknowledges, its responsibility. The HIP program, though well intentioned, with its ambiguities and omissions, does not carry out this responsibility. [*LIHI II, 1223*, FDO, at 14.]
- The GMA clearly encourages the preservation of existing housing stock (*See* RCW 36.70A.020(4)) and provides for ensuring the vitality and character of established

residential neighborhoods (*See* RCW 36.70A.070(4)). However, as the Board stated, *supra*, "any opportunity to perpetuate an "historic low-density residential" development pattern, [in the subarea], ended in 1994 when the County included the area within the UGA." It is clear that existing housing stock and neighborhoods may be maintained and preserved, however existing low-density patterns of development cannot be perpetuated. [*MBA/Brink, 02310*, FDO, at 14-15.]

- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land for an affordable housing crisis did not comply with the Act – RCW 36.70A.215. (Note: A CPP, allowing an individual UGA to be potentially expanded for additional residential land is permissible if a need for additional residential land is demonstrated in a land capacity and reasonable measures have been taken. The challenged CPP bypassed .215's reasonable measures requirement.) The Board also commented that a land capacity analysis for residential *land* is off point in relation to a potential expansion of a UGA pursuant to an "affordable housing crisis," which is the basis for this potential UGA expansion.] Whether the existing and projected housing stock is affordable falls within the parameters of RCW 36.70A.070(2) – the Housing Element. A GMA Plan's Housing Element is required to *identify sufficient land for housing, including government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities*. RCW 36.70A.070(2)(c). Also the Housing Element requires jurisdictions have adequate provision for existing and projected housing needs for *all economic segments of the community*. RCW 36.70A.070(2)(d). Therefore, reliance upon just a land capacity analysis without supporting documentation in the County's Housing Element would be inadequate to implement [a UGA expansion pursuant to this CPP. The Board found this CPP noncompliant.] [*CTED, 03317*, FDO, at 35-36.]
- The City focuses its approach on meeting affordable housing needs through: multi family housing, manufactured or mobile homes,* duplexes,* small lot developments* and accessory dwelling units* [* in some zoning designations]. Other than small lot developments, the City has not indicated its strategy for encouraging affordable single-family housing units in the Very Low Density Residential [up to 2 du/ac] or Low Density Residential [up to 4du/ac] areas. Likewise, with over half the City designated for low density residential uses, the Plan falls short of providing for a variety of residential densities. [The Plan Update is not guided by goal 4.] [*Jensen, 04310*, FDO, at 18.]
- Affordable housing, while a significant issue in the state and the CPS region, is not an issue the BLR was designed to address. Neither the BLR statute nor the County's methodology requires the collection of data regarding income, land costs, housing prices or occupants of various housing types. This type of data is critical in evaluating affordable housing, but it is not information required to be collected in the context of a BLR. [*S/K Realtors, 04328*, FDO, at 19.]
- The Board observes that the affordable housing percentages for income levels are targets to be adjusted and/or met over the 20-year life of the Plan. One should not expect them to be achieved half-way into the Plan's time horizons. Peaks and valleys in progress will obviously occur over time depending upon numerous factors. But monitoring progress toward the targets is essential – which the County clearly does as

reflected in the Housing Appendix and Benchmarks Reports. [*S/K Realtors, 04328*, FDO, at 36.]

- The Board has previously determined that Goals 3 and 4 do not require that every residential land use designation employed by a jurisdiction support transit or provide for affordable housing. (Citations omitted.) A Plan providing a variety and mix of housing densities and types is guided by these GMA goals. Without more evidence, a challenge to residential map designations must fail. [*Fuhriman II, 05325c*, FDO, at 49.]

• Agricultural Lands

- *See also:* **Natural Resource Lands**
- The Board declines the invitation to establish a minimum lot size for agricultural parcel sizes. [*Gig Harbor, 5316c*, FDO, at 31.]
- The County's intention to conserve agricultural lands does not prohibit the County from establishing policies for the conversion of some agricultural lands to other uses, when the CPPs mandate such conversion policies. [*Gig Harbor, 5316c*, FDO, at 33.]
- RCW 36.70A.170(1)(a) requires counties and cities to designate all lands that meet the definition of agricultural lands, unless the lands fall within a UGA lacking a program for purchase or transfer of development rights, and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all designated agricultural lands. [*Sky Valley, 5368c*, FDO, at 113.]
- Lands not receiving interim designation as agricultural lands may receive such a designation during the review required by RCW 36.70A.060(3). However, such a designation is predicated on the parcels in question meeting the definition of "agricultural lands." [*Sky Valley, 5368c*, FDO, at 114.]
- A county or city does not *per se* violate the Act simply because its final agricultural land designations approved at the time of comprehensive plan adoption include lesser acreage than the preliminary, interim agricultural land designations. [*Sky Valley, 5368c*, FDO, at 114.]
- A city is without authority to make any agricultural designations within a UGA prior to the enactment of a program authorizing a transfer or purchase of development rights pursuant to RCW 36.70A.060(4). Unless and until it adopts such a program, it is obliged to designate such properties for non-agricultural urban uses. [*Benaroya I, 5372c*, FDO, at. 11-12.]
- Open space is an inevitable byproduct of land being put to an agricultural use. However, this fact alone is insufficient grounds for a claim that agricultural designation by a local government requires development rights acquisition pursuant to RCW 36.70A.160. Only if a government restricts the use of designated agricultural lands solely to maintain or enhance the value of such lands as open space, must the City or County acquire a sufficient interest in the property. [*Benaroya I, 5372c*, FDO, at 13.]
- The Board reaffirmed its holding in the FDO that the City could not designate lands agriculture unless and until it adopted a program authorizing the transfer of development rights. [*Benaroya I, 5372c*, 12/31/98 Order, Court Remand, at 3.]

- The Board reversed its holding in the FDO to the extent that it was based upon the determination that the Benaroya and Cosmos properties were not agricultural land within the meaning of that term in RCW 36.70A.030(2). [*Benaroya I, 5372c,* 12/31/98 Order, Court Remand, at 4.]
- The remainder of the Board's FDO and the Board's Finding of Compliance remain unaffected by the Washington Supreme Court Opinion. [*Benaroya I, 5372c,* 12/31/98 Order, Court Remand, at 4.]
- RCW 36.70A.020(8), .060, and .170, when read together, create an agricultural conservation imperative that imposes an affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry. [*Green Valley, 8308c,* FDO, at 16.]
- The location-specific and directive duty of RCW 36.70A.020(8), .060 and .170 to designate and conserve agricultural lands clearly trumps the non-directive, non-site specific guidance and inventory requirements for open space and recreation of .020(9), .150 and .160. [*Green Valley, 8308c,* FDO, at 17.]
- General discussion and interpretation of RCW 36.70A.177 by majority and dissent. [*Green Valley, 8308c,* FDO, at 17-18 and 24-25.]
- RCW 36.70A.177 does create an opportunity for land use and development techniques that are new and innovative, [but] the Board cannot read these provisions to be interpreted to allow the effective evisceration of agricultural lands conservation on a piecemeal basis. [*Green Valley, 8308c,* FDO, at 18.]
- Both experience and common sense indicate that conversion of agricultural resource lands to nonagricultural uses is a one-way ratchet. To suggest that designated agricultural resource lands, once given over to intensive uses demanded by an ever-increasing urban population, could ever be "retrieved" is simply not credible. [*Green Valley, 8308c,* FDO, at 18.]
- [RCW 36.70A.177] allows flexibility on a site or parcel basis to enable a portion of a parcel not suitable for agricultural purposes to have a non-agricultural use; however, the County's amendments allow entire parcels to be given over to nonfarm and nonagricultural uses [thereby violating .177]. [*Green Valley, 8308c,* FDO, pp. 18-19]
- The Act requires conservation not just of the soil attributes that make agricultural lands productive and potentially subject to designation, but also of the agricultural use of that land, to the end that the resource-based industry is maintained and enhanced. [*Green Valley, 8308c,* FDO, at 19.]
- Land use plans and development regulations which allow parcels designated agricultural resource lands to be used for active recreation uses and supporting facilities does not assure the conservation of those lands for the maintenance and enhancement of the agricultural industry. [*Green Valley, 8308c,* FDO, at 19.]
- The Washington Supreme Court has determined that land is devoted to agricultural use under the GMA "if it is an area where the land is actually used or capable of being used for agricultural production. *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.* 136 Wn.2d 38, 56 (1998). It is irrelevant that a parcel has not been farmed for 25 years. The question is whether the land is actually used or capable of being used for agriculture. [*Sky Valley,* 5368c, 4/22/99 Order, at 8-9.]

- It is absurd to argue that the presence of roads, even an interstate highway, automatically prohibits designation of land as agriculture. [*Sky Valley*, 5368c, 4/22/99 Order, at 11.]
- It is hard to imagine a situation where agricultural use of land near an urban area is the most economically valuable use of that land. [Relying on such facts alone cannot dictate the designation of land.] [*Sky Valley*, 5368c, 4/22/99 Order, at 11.]
- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317*, FDO, at 7-8.]
- [This case] is the first GMA challenge arising form the action of a local government to remove the agricultural resource land designation that it had previously adopted. The permanence of agricultural resource lands designations have been discussed only peripherally in prior Board decisions, and never settled as a matter of law. [The threshold question in this case is] can lands that have been designated [agricultural lands] pursuant to RCW 36.70A.170(1)(a) and regulated pursuant to RCW 36.70Al060(1) be "de-designated" and, and if so, under what conditions? [*Grubb, 0304*, FDO, at 8.]
- General discussion of agricultural lands designation and the agricultural conservation imperative. [*Grubb, 0304*, FDO, at 8-12.]
- The GMA's provisions for the conservation of natural resource lands, including agricultural lands, constitutes on of the Act's most important and directive mandates. [*Grubb, 0304*, FDO, at 8.]
- [In *Green Valley, 8308c*] the Board examined and rejected the argument that the discretion that the GMA affords to local governments to "balance the goals of the Act" somehow elevates recreational uses to an equal with agricultural uses. [*Grubb, 0304*, FDO, at 9.]
- The Board has interpreted the Act to acknowledge the paramount importance of the designation, conservation and protection of agricultural lands. It is a duty local government should not take lightly. [*Grubb, 0304*, FDO, at 9.]
- Although both RCW 36.70A.130 and .215 require counties and cities to systematically review their comprehensive plans, and to take action to amend them when appropriate, neither provision requires that amendment actually occur. Significantly, neither .130 nor .215 make explicit mention of reviewing or amending agricultural resource lands designations. More significantly, neither .170 nor .060 describe a process or criteria to amend or "de-designate" agricultural lands. Does the lack of an explicit GMA mention, much less mandate, to review and amend prior agricultural lands designations mean that ag lands may never be "de-designated"? [The Board answers this question in the negative.] [*Grubb, 0304*, FDO, at 10-11.]
- Once lands are designated as agricultural lands they are not necessarily destined to be agricultural lands forever. This is not license for local governments to "de-designated" agricultural lands where it may simply be locally popular or politically

convenient. "De-designation" of agricultural lands is a serious matter with potentially very long-term consequences. Such de-designation may only occur if the record shows demonstrable and conclusive evidence that the Act's definitions and criteria for designation are no longer met. The documentation of changed conditions that prohibit the continued designation, conservation and protection of agricultural lands would need to be specific and rigorous. If such de-designation action were challenged, it would be subject to heightened scrutiny by the Board. [*Grubb, 0304,* FDO, at 11.]

- There are two criteria for local governments to [use when designating] agricultural resource lands. The first is the requirement that the land be "devoted to" agricultural usage. The second is that the land must have "long-term commercial significance" for agriculture. [*Grubb, 0304,* FDO, at 11.]
- [The Washington Supreme Court has held that] land is "devoted to" agricultural use under RCW 36.70A.030 if it is in an area where the land is actually used or capable of being used for agricultural production. (Citation omitted). [*Grubb, 0304,* FDO, at 11.]
- [There are two components to "lands of long-term commercial significance."] The first addresses the viability of the lands as a function of intrinsic attributes, i.e., "growing capacity" and "productivity" which in turn are largely a function of the suitability of the soils for growing agricultural products. The second involves consideration of the off-site factors and some degree of judgment about how those factors affect the long-term viability of agriculture. [*Grubb, 0304,* FDO, at 9.]
- When both the statutory definition [RCW 36.70A.030(10)] and the factors set forth in the Department's regulations [the Department of Community, Trade and Economic Developments – WAC 365-190-050(1)] are considered, it is apparent that [generally,] the Northern Sammamish Valley no longer has long-term commercial significance for agricultural production. [*Grubb, 0304,* FDO, at 7.]
- [Judged against these criteria and factors, the record shows that] Redmond's conclusion that [most of the] properties [in the Northern Sammamish Valley] no longer have long-term commercial significance is reasonable and supportable. Even if lands have prime soils, and have been historically farmed, it does not follow that they must remain designated as agricultural resource lands if a significant physical change has occurred to destroy the long-term viability of *those parcels* as agricultural land. Likewise, the fact that [certain parcels] are surrounded by incompatible residential uses and [are] severed from connection with a larger pattern of agricultural land makes them also untenable long-term as commercial agriculture. [These parcels no longer meet the definition of "long-term commercial significance."] [*Grubb, 0304,* FDO, at 13.]
- The properties in the "Northern Sammamish Valley" are, in fact, the *southerly portion* of the much larger lands of the Sammamish River Valley. Thus, when Redmond argues that 80% of the "Northern Sammamish Valley" [within the city-limits] is irrevocably committed to non-agricultural uses, it is actually talking only about the relatively small piece of a much bigger picture – a picture that is overwhelmingly agricultural. [*Grubb, 0304,* FDO, at 13.]
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- The term "lands" in the definition of "long-term commercial significance," means more than an individual parcel – it means the patterns of contiguous parcels, regardless of jurisdictional boundaries, that are "devoted to" agriculture. [Several parcels that are immediately adjacent to King County's agricultural production districts are visually, functionally and effectively a part of these lands with long-term commercial significance. [*Grubb, 0304,* FDO, at 13.]
- It is undisputed that the County complied with the Board's FDO as to the APD [agricultural production district] development <u>regulations</u>. Plainly, the County has deleted the language [in the King County Code] that permitted active recreation on designated resource lands. The remaining dispute between the parties is whether the County's action resurrecting the Plan's prior policy statements does not comply with the GMA as construed by the Supreme Court in the *King County* decision, and by the Board in the *Green Valley* FDO. [*Green Valley, 8308c*, 11/21/01 Order, at 9.]
- [The County's Plan language says active recreation *should not* be located within APDs. Petitioners contend this language carries an unspoken but implied modifier - "unless" and ask the Board to direct the County to change it to *shall not* for fear that the County may revisit the notion of placing active recreation on agricultural lands. The Board declined.] The Board reads the Supreme Court's decision as clear an unequivocal – the County's development regulations [which regulate the use of land] shall not permit active recreation on designated resource lands with prime soils for agriculture. Attempts to carve out loopholes, under the aegis of RCW 36.70A.177, are flatly prohibited by the Supreme Court's decision, notwithstanding any reading that the County chooses to give to [the Plan policy]. [*Green Valley, 8308c*, 11/21/01 Order, at 10.]
- The term "de-designated," rather than simply "re-designated" was first used by the Board in *Grubb* [0314, FDO]. Under the GMA all lands are either: (1) *urban* lands (i.e. within urban growth areas); (2) *rural* lands; or *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as either urban or rural. In contrast, a "**de**-designation" of lands from resource land to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction. [*Forster Woods, 1308c*, FDO, at 14, footnote 4.]
- General discussion of the Grubb and Green Valley cases as they relate to resource lands. [*Forster Woods, 1308c*, FDO, at 16-18.]
- There are two requirements in the designation, or de-designation, of agricultural lands. As the Board noted in *Grubb*, at 11, "The first is the requirement that the land be "devoted to" agricultural usage. The second is that the land must have "long-term commercial significance" for agriculture.". . .Here, Petitioner . . . has made a *prima facia* case supporting the assertion that there have been no changes to the soil

condition, nor any changed circumstances that could support the County's revision of the 216 acres from agricultural lands to allow other non-agricultural related uses. [*Hensley VI*, *03309c*, FDO, at 36.]

- [T]he County did not alter its criteria for designating agricultural land to include *only those soils*, according to SCS soils capability criteria, *without constraints*, such as drainage limitations. Had the County done so, the necessity to "de-designate existing agricultural lands," which no longer met its designation criteria, would have likely affected far more designated agricultural land than the single 216-acre area affected by the amendment. Instead, without amending its own agricultural land soils designation criteria, the County apparently decided that a new soil constraint criterion, (Footnote omitted) regarding drainage, should be applied only to this area. [*Hensley VI*, *03309c*, FDO, at 37.]
- [B]ased upon the. . . history of the property and its soil characteristics (as defined by the USDA, SCS and the County), whether drained or not, the soils found upon the property are prime agricultural soils that are "capable of being used for agricultural production." The County does not dispute that the property is currently used for agriculture. (Citation omitted.) In short, and in light of the Supreme Court's holding in *Redmond*, nothing has changed regarding the soil composition that persuades the Board that the property is not, or could not be, devoted to agriculture. However, even lands that are "devoted to agriculture" may not have long-term commercial significance and thereby not be appropriate for designation under the GMA. [*Hensley VI*, *03309c*, FDO, at 37.]
- The County's decision, as reflected in its Finding F, seems to be based upon development occurring to the south, but not adjacent to the property; present tax status; and speculation on the area being acquired by the Tulalip Tribe. The discrepancies between the evidence in the record regarding mandatory designation criteria and the decision of the County to de-designate this area, as contained in Finding F, is plainly more than a disagreement over policy choices. Were that the case, the Board would defer to the sound discretion of the County. However, the County's Ordinance Finding draws scant, if any, support from the record. In contrast, the arguments advanced by 1000 Friends, are supported by evidence in the record. The record suggests that the land continues to meet *all* criteria for the designation of agricultural land. This is true regarding the question of prime farmland soil characteristics and whether the 216-acres are of long-term commercial significance. Contrary to the County's Ordinance Finding, the record weighs heavily toward the denial of the de-designation. The Board's review of the record and arguments presented, leads to the conclusion that this area that is devoted to agriculture and continues to be of long-term commercial significance and should not have been de-designated from the Upland Commercial Farmland designation and A-10 zoning. [*Hensley VI*, *03309c*, FDO, at 41.]
- [The last challenged County CPP] is premised on the notion that some type of designated resource land (agricultural, forest or mineral lands) no longer meets the criteria for designation as that resource land, and may be redesignated to a rural or urban designation. As the parties are well aware, any such reclassification of resource lands to either a rural or urban designation is an event that is appealable to the Board. Depending on the facts and circumstances surrounding the specific

revised designation of natural resource lands, the Board may, or may not, find that the change complies with the goals and requirements of the Act. This CPP merely acknowledges the possibility of redesignation from resource land to a designation that would allow different economic development uses. Therefore, the Board need not consider this aspect of [the challenge.] [*CTED, 03317*, FDO, at 39.]

- [The County's CPP, allowing an individual UGA to be potentially expanded for economic development purposes to adjacent land that had previously been designated as resource lands, is permissible if a need for additional commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken.] [*CTED, 03317*, FDO, at 39.]
- A plain reading of the Supreme Court's holdings suggests that if land has ever been *used for agriculture or is capable of being used for agriculture*, it meets the "devoted to" prong of the test [for designation or redesignation of agricultural lands.] [*1000 Friends, 03319c*, FDO, at 26.]
- Petitioners have made a *prima facia* case supporting the assertion that there have been no changes to the soil condition, nor any changed circumstances that could support the County's revision of [the] agricultural resource lands to non-agricultural resource lands commercial uses. [*1000 Friends, 03319c*, FDO, at 27.]
- [Regarding whether the land had long term commercial significance, the Board reviewed the County's findings and evidence in the record. Basing a finding upon] Anecdotal testimony, particularly from an individual whose direct experience with the area is decades removed from the present and whose declared expertise was in dairy rather than crop farming, does not constitute credible evidence on which to support the County's action. [Other anecdotal evidence also contradicted this testimony.] Further damaging to the credibility of the County's reasoning is that nowhere do Respondent or Intervenor cite to credible, objective evidence to refute or reconcile the substantial record evidence (*i.e.* the PDS report, the DSEIS, USDA soils survey) to the contrary. [*1000 Friends, 03319c*, FDO, at 28.]
- The Board construes any declarations or conclusions entered from [consultant reports prepared on behalf of the proponent of the action] to be reflections, if not direct expressions, of "landowner intent" and assigns them the appropriate weight (*i.e.* expressions of landowner intent, alone, are not determinative). [*1000 Friends, 03319c*, FDO, at 29.]
- It is an axiom of land use planning that urban uses at urban densities and intensities inhibit adjacent farm operations, and the County points to no evidence here to expect a different result in the immediate vicinity. [*1000 Friends, 03319c*, FDO, at 29.]
- The County's Ordinance draws scant credible evidence and objective support from the record. In contrast, the arguments advanced by Petitioners, are supported by credible and objective evidence in the record. The record suggests that the land continues to meet the criteria for the designation of agricultural land. [*1000 Friends, 03319c*, FDO, at 29-30.]
- The Board notes that RCW 36.70A.060 does not prohibit agricultural resource lands from being included within a UGA. However, RCW 36.70A.060(4) requires a program authorizing the transfer or purchase of development rights as a condition precedent to such inclusion in the UGA. In this case, none of the parties argued or

offered any evidence pertaining to whether such a program exists to allow agricultural land within the UGA. [*1000 Friends, 03319c*, FDO, at 36, footnote 11.]

- [T]he land use plan and zoning designations wrought by [the ordinance adopted on remand] are identical to those created by [the prior] noncompliant and invalid [ordinance]. The only remedial action taken by the County on remand from the Board was to place more testimony in its record, both pro and con, regarding the historical or speculative future ability of specific individuals to profitably farm specific parcels within the Island Crossing triangle. The County insists that, notwithstanding soil characteristics, the Council may divine the long-term commercial significance of agricultural lands by weighing the credibility of opposing opinions. [None of the testimony relied upon addressed the criteria listed at WAC 365-190-050, or testimony reflected land-owner intent.] . . . In the final analysis, however, the relative weight or credibility that the County assigned to the opinions expressed by individuals during the [public] hearing sheds little light on the question of whether agricultural lands at Island Crossing have long-term commercial significance. While the Board would agree that soils information alone is not determinative, neither is reliance on anecdotal, parcel-focused expression of opinion nor is landowner intent. Instead, to cull from the universe of lands that are "devoted to" agriculture the subset that also has "long-term commercial significance" demands an objective, area-wide inquiry that examines locational factors (footnote omitted) as well as the adequacy of infrastructure to support the agricultural industry. [*1000 Friends I, 03319c*, 6/24/04 Order, at 16-17.]
- The County's reliance on anecdotal, parcel-focused witness testimony as the primary determining factor of LTCS has too narrow a focus – it misses the broad sweep of the Act's natural resource goal, which is to maintain and enhance the agricultural resource *industry*, not simply agricultural operations on individual parcels of land. (Citations omitted.) This breadth of vision informs a proper reading of the Act's requirements for resource lands designation under .10 and conservation under .060. Reading these provisions as a whole, it is apparent that agricultural lands with "long-term commercial significance" are *area-wide patterns of land use*, not localized parcel specific ownerships. Historical or speculative statements by individuals regarding their personal inability to profitably farm certain parcels does not inform a GMA-required inquiry into the *long-term commercial significance* of *area-wide patterns of land use* that are to *assure the maintenance and enhancement of the agricultural land resource base to support the agricultural industry*. [*1000 Friends I, 03319c*, 6/24/04 Order, at 18.]
- It is an axiom of land use planning that urban uses at urban densities and intensities inhibit adjacent farm operations. This axiom is reflected in the statutory language of the Act that seeks to protect agricultural uses from more intensive adjacent activities (citing RCW 36.70A.060(1)). [*1000 Friends I, 03319c*, 6/24/04 Order, at 19.]
- [A new analysis regarding large lots cured an inconsistency with one of the County's CPPs regarding UGA expansion.] However, achieving consistency between [the new ordinance designation and the CPP], does not cure the County's noncompliance with RCW 36.70A.110 because it does not address the "UGA location" deficiencies identified in the FDO. . . .No new facts or reasoning are presented to disturb the Board's conclusions that Island Crossing continues to have agricultural lands of long-

term commercial significance, that the presence of a sewer line is irrelevant, particularly given its limitations, that the freeway service uses do not rise to the status of "urban growth," and that Island Crossing is not "adjacent" to the Arlington UGA or a residential "population" of any sort. In fact, the private lands within this proposed UGA expansion would be connected to the Arlington UGA only by means of a 700 foot long "cherry stem" consisting of nothing but public right-of-way. While such dramatically irregular boundaries were common in the pre-GMA era, the meaning of "adjacency" under the GMA precludes such behavior. [*1000 Friends I, 03319c*, 6/24/04 Order, at 22-23.]

- [Adoption of the challenged ordinance] represents Snohomish County's **third** attempt under the GMA (and second attempt within the past nine months) to convert Island Crossing from a part of the designated agricultural resource lands of the Stillaquamish River Valley into Arlington's UGA. It has done so notwithstanding consistent contrary readings of the Growth Management Act by the Snohomish County SEPA Responsible Official, Snohomish County Executive, the Growth Management Hearings Board, Snohomish County Superior Court, the First Division of the Washington State Court of Appeals and the Governor of the State of Washington. [The Board recommended the imposition of financial sanctions as authorized by RCW 36.70A.340.] [*1000 Friends I, 03319c*, 6/24/04 Order, at 24.]
- It is undisputed that the GMA imposes a **duty** upon [cities and counties] to identify, designate and protect agricultural resource lands of long-term commercial significance. *See* RCW 36.70A.170, .050, .060, .020(8) and .030(2) and (10). The GMA defines terms, and mandates criteria and factors that must be considered in discharging this duty. WAC 365-190-050(1) also provides direction for meeting this duty. To fulfill this obligation, the [jurisdiction] must solicit public participation and develop a record that demonstrates that the [jurisdiction] has conducted the required analysis (*i.e.*, application of the statutory criteria) in reaching its decision. [*Orton Farms, 04307c*, FDO, at 24.]
- [General Discussion of procedures and criteria for designating agricultural lands of long-term commercial significance. Court decisions and the Board's two-prong test.] [*Orton Farms, 04307c*, FDO, at 24-25.]
- The Board agrees that soils weigh heavily in the designation of agricultural resource lands. USDA, SCS and NRCS soils information establishes and defines the "potential universe" of lands that could be designated as agricultural resource lands. However, the Act's definition of [long-term commercial significance] requires two other factors be considered: 1) the land's proximity to population areas; and 2) the possibility of more intense use of the land. These two factors are principally locational factors requiring that the intrinsic attributes of the land [*i.e.*, growing capacity, productivity and soil composition] be evaluated in the context of the land's location and surroundings. Application of these two factors will likely cull the size of the potential agricultural resource land universe derived solely from soils information, and yield fewer acres as appropriate for designation as agricultural resource lands of long-term commercial significance. It is these latter factors for determining [long-term commercial significance] that provide the basis for the present dispute. Note that these are not optional factors to consider, by definition they are required

components of determining [long-term commercial significance]; they must be evaluated and considered. [*Orton Farms, 04307c*, FDO, at 25-26.]

- [The Board and the Courts have acknowledged and recognized that CTED's minimum guidelines [*i.e.*, WAC 365-190-050(a thorough j)] are valid and valuable indicators of long-term commercial significance.] [*Orton Farms, 04307c*, FDO, at 26.]
- [In addition to the indicators of long-term commercial significance articulated at WAC 365-190-050(a through j), land-owner intent, current use, and "commercial viability" may be considered, but none of these individual factors can be conclusive in determining long-term commercial significance. Likewise, the presence or absence of critical areas may affect decisions regarding long-term commercial significance.] [*Orton Farms, 04307c*, FDO, at 26-28.]
- The Board continues to believe that de-designation of previously designated resource lands is possible under the Act. Given the importance of soils data and mapping, and the large scale of such maps, it seems reasonable that as Plans are reviewed and evaluated in terms of more current and refined information, a jurisdiction may realize that mistakes have been made or circumstances have changed that warrant revision to prior resource land designations. However, since agricultural lands were identified and designated pursuant to the GMA's criteria and requirements it follows that the de-designation of such lands demands additional evaluation and analysis to ascertain whether the GMA criteria and requirements are, or are not, still applicable to the lands being considered for change. A rationale process evaluating objective criteria is essential for designating or de-designating agricultural resource lands. . . . It logically follows that if [a jurisdiction] is required to conduct an analysis based upon GMA mandated criteria to designate agricultural lands of long-term commercial significance; it cannot simply adopt an ordinance that undoes, undermines or contradicts analysis performed to support the original designation decisions. [*Orton Farms, 04307c*, FDO, at 37.]
- [Regarding de-designation of agricultural resource lands] the Board notes that both Petitioner and Intervenor applied the CTED indicators for long-term commercial significance [WAC 365-290-050(a through j)] in testimony to the County, and in briefing, and drew different conclusions as to whether the property was of long-term commercial significance. Again, this stresses the importance of the County's conducting its own analysis and drawing its own conclusions, be they different or the same as those presented. [*Orton Farms, 04307c*, FDO, at 39-40.]
- [An area designated as an Agricultural Production District on the County's Agriculture and Forest Lands Map that is also designated as Rural Residential on the County's FLUM is internally inconsistent. Dual designations do not comply with the GMA provisions that rural areas not include agricultural resource lands of long term commercial significance.] [*Keesling III, 04324*, FDO, at 35-36.]
- The GMA "requires all local governments to designate all lands within their jurisdictions which meet the definition of critical areas." (Citation omitted.) Agricultural lands cannot be excluded. [The County's designation of critical areas within an agricultural production district] recognizes the dual obligation under GMA to protect agricultural resource lands and to protect long-term water quality for people

and for fish and wildlife. The Board will defer to King County in the balance it has struck. [*Keesing CAO, 05301*, FDO, at 11-12.]

- [The criteria used by the County to designate agricultural resource lands (**ARLs**) are based upon the GMA definitions and CTED's minimum guidelines – WAC 365-190-050.] Reserve-5 areas are to accommodate the future urban growth of an adjacent city or town; it is not clearly erroneous for the County to exclude such designated lands from its consideration in the ARLs designation process. The County must balance the preservation of agricultural lands with the GMA mandate that present, and future, forecasts of urban growth be accommodated. [*Bonney Lake, 05316c*, FDO, at 18.]
- Establishing a criterion based upon the grass/legume yield of 3.5 tons per acre limitation is within the County's discretion. [There was substantial evidence in the record to support the County's choice.] Likewise, the County's use of a minimum parcel size of five acres is within its discretion, neither the Act nor CTED criteria require or prohibit minimum parcel sizes [as a factor in designation]. [*Bonney Lake, 05316c*, FDO, at 19.]
- [Petitioner's] concern with the delegation of ARLs designation or de-designation to a community planning group is unfounded. As explained by the County, any subarea plans must be consistent with the County-wide Plan and any recommendations of a land use advisory committee for a subarea plan are advisory only. The ultimate decisions are made by the County Council, representing the views of the entire County. [*Bonney Lake, 05316c*, FDO, at 19.]
- The Board finds the 50% development [with one acre lots] adjacent to the perimeter criterion to be a reasonable method of protecting ARLs and agricultural enterprises from incompatible encroachment. It is also a reasonable means of measuring the intensity of nearby uses and proximity to population. Such a criterion helps identify and minimize uses that are potentially incompatible with agricultural activities. [*Bonney Lake, 05316c*, FDO, at 20.]
- Just as the Board rejected the argument that "commercial viability" is a controlling factor in determining long-term commercial significance in the *Orton Farms* FDO, the Board likewise rejects [Petitioner's] contention that "economic viability" is a controlling factor in determining long-term commercial significance. [The County includes 'economic viability' as a component of the 'pressure to urbanize' criterion in the ARLs designation process. Additionally, the County's ongoing commitment to understand and address economic viability is impressive as evidenced by <u>The Suitability, Viability, Needs and Economic Future of Pierce County Agriculture – Phase I Report</u>, prepared by the American Farmland Trust.] [*Bonney Lake, 05316c*, FDO, at 20.]
- The County has specifically included ARLs de-designation procedures to correct ARLs designation mistakes. [The policy] clearly provides a process for the de-designation of ARLs that is not simply based upon a landowner's intent to quit farming, as was the case in *Orton Farms*. [*Bonney Lake, 05316c*, FDO, at 20.]
- [T]he County's duty to maintain, enhance, and conserve agricultural land [Footnote omitted], starting with its designation which keys on the three-part test recently articulated by the Supreme Court: *(1)* whether the land is already *characterized by urban growth, (2)* whether that land is *primarily devoted* to the commercial

agricultural product, and *(3)* whether the land has *long-term commercial significance for agricultural production*. RCW 36.70A.030(2); *Lewis County*, 139 P.3d at 1101-1102. [*Pilchuck VI, 06315c*, FDO, at 41.]

- [RCW 36.70A.030(10)] has two components – the intrinsic attributes of the land component (growing capacity, productivity, and soil composition) and a locational component (proximity to population and possibility of more intense uses). Based on these components, a County must do more than simply catalogue lands that are physically suited to farming, it must consider and weigh the locational factors in determining if agricultural land has the enduring commercial quality needed to fit the agricultural land definition. *Lewis County*, 139 P.2d at 1102. A county must consider the guidelines developed by CTED and contained in WAC 365-190-050; but, according to the *Lewis County* Court, it may also weigh other factors not specifically enumerated in the GMA or the WAC in evaluating whether agricultural land has long-term commercial significance. WAC 365-190-050(1)(e) specifically states that "predominant parcel size" is a factor that may be considered and weighed in designating agricultural resource lands. . . .Nowhere in the record, nor in the Petitioner's PHB or Reply does the Board find that the County has excluded any land from the designation solely due to parcel sizes without consideration of the other criteria contained in WAC 365-195-050 and Policy 7.A.3. [*Pilchuck VI, 06315c*, FDO, at 42-43.]
- This Board has previously addressed what is required to remove an agricultural designation from land which has been previously designated as such. *See Grubb v. City of Redmond*, CPSGMHB Case No. 00-3-0004, Final Decision and Order, (Aug. 11, 2000) (Overruled in *Redmond v. CPSGMHB*, 116 Wn. App 48, Div. I, (2003)*;* and *Forster Woods Homeowners Association, et. al. v. King County*, CPSGMHB Case No. 01-3-0008c, Final Decision and Order (Nov. 6, 1001). In analyzing the GMA's provisions for amending policies and designations, the Board in the *Grubb* case found that the de-designation of resource lands may occur if the GMA's definitions and criteria for designation are no longer met. [*Pilchuck VI, 06315c*, FDO, at 43.]
- Although some factors may support de-designation, the City provides brief and primarily unsupported assertions as to why the property no longer is suitable for agricultural production. The City's assertion that the property is no longer devoted to agriculture because it contains structures, including a barn and outbuilding formerly utilized by the dairy operation, raises the question that if a barn cannot be seen as agriculture then what structure is? In addition, the Petitioner's assertion in regard to urban growth is confirmed by documentation submitted by the City of Arlington with their Response Brief – an aerial photo/map overlay entitled "Figure 6: Foster Request to be in the UGA." This map clearly demonstrates that urban growth, although in the area, is not immediately adjacent to Foster property. *The Board sees these 6 acres as the "farm center" or, essentially, the operational headquarters for the farm. The purpose of the farm center is to ensure the long-term survival of the agricultural land it serves by allowing farmers to support the main agricultural operation (*i.e.* crop production or livestock rearing) and, at times, to allow small commercial and/or retail activities that provide secondary income to the farm based on its agricultural output. The farm center is not only compatible with a GMA

agricultural resource land designation, but necessary to *maintain the agricultural industry*. The Record indicates that the challenged 6 acres has and continues to serve as the operational center of the farm, providing both living quarters and a retail 'farm stand' from which the farmer sells agricultural products grown on the adjacent acreage in addition to recent "entrepreneurial activities." Although these 6 acres are providing "entrepreneurial" secondary income to the farm, the primary, as well as this secondary income, all arise from the agricultural activities on the adjacent land. *This is in accord with the Supreme Court's ruling in *Lewis County* in regard to "farm centers." In *Lewis County*, the Court upheld the Western Board's invalidation of County regulations which excluded farm homes and "farm centers" – up to five acres per farm -from designation as agricultural land, regardless of whether or not it was viable for agricultural production. *Lewis County*, 139 P.3d at 1104. *The City appears to argue that somehow Mr. Foster's participation in the County's TDR program supports the de-designation, apparently because the intent behind the TDR program is to preserve agricultural land by providing financial incentives to property owners. Arlington Response at 4. Although this may be true, the Board fails to see how eliminating the operational heart of the farm would result in the preservation of the remaining land. Removal of this land would effectively strip the farm of its ability to operate. The Board cannot conclude that the farm stand, barn and other structures located on the land amount to urban growth warranting the de-designation of the land as agricultural. This conclusion is supported by the Record, and the property owner's and City's own analysis, which describes the property as agricultural in nature. The farm land below, the land on the bench, and the structures upon it are an important component of the agricultural industry which should not be allowed to disappear, especially in the urbanized Puget Sound region. [*Pilchuck VI, 06315c*, FDO, at 44-45.]

- **Airports**

- There are two duties imposed by RCW 36.70A.200: a duty to adopt, in the plan, a process for siting essential public facilities (EPFs); and a duty not to preclude the siting of EPFs in a plan or implementing development regulations. [*Port of Seattle, 7314*, FDO, at 7.]
- The GMA duty for cities and counties not to preclude the siting of essential public facilities encompasses: new EPFs; existing EPFs; the expansion of existing EPFs; and necessary support activities for expansion of an EPF. [*Port of Seattle, 7314*, FDO, at 7.]
- A local government plan, through policies or strategy directives, cannot effectively make the siting or expansion of an EPF, or its support activities, incapable of being accomplished by means available to the EPF proponent. [*Port of Seattle, 7314*, FDO, at 8.]
- RCW 36.70A.200 imposes a duty on cities and counties not to preclude EPFs, even when the decision regarding the EPF was made subsequent to the initial adoption of the jurisdiction's plan. In other words, if a decision regarding an EPF follows the adoption of the plan, and if the plan violates the .200 duty 'not to preclude', the jurisdiction has a duty to amend its plan. [*Port of Seattle, 7314*, FDO, at 8.]

- [T]he regional decision regarding STIA [an EPF] triggered Des Moines' duty to review its Plan for preclusive policies and amend its Plan to eliminate the preclusive effect of any of its policies. [*Port of Seattle, 7314*, 5/26/98 Order, at 1.]
- If certain conditions are not met, the "mitigation" language obligates the City to oppose airport-related projects and to deny certain permits. The inescapable conclusion is that opposition . . . and denial of certain permits can result in preclusion of STIA expansion or some other EPF. There is no Plan provision excluding EPFs from these preclusive requirements. [*Port of Seattle, 7314*, 5/26/98 Order, at 3]
- Because the City is under a continuing duty, imposed by RCW 36.70A.200, not to preclude EPFs, any and all Plan policies that direct the City to use them to preclude EPFs, such as the expansion of STIA, even if not specifically identified above, are not in compliance with the GMA and the City must amend them. [*Port of Seattle, 7314*, 5/26/98 Order, at 6.]
- [Petitioner tried to distinguish this case from *AFT, 9304*, and *Cole, 6309c*, arguing that it is more like *Port of Seattle II, 7314*. In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Poet wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]
- Whether FEMA changes its density fringe designation along the Snohomish River floodway, or whether the FAA approves expansion of Harvey Airfield are interesting wrinkles that the County will have to iron out when those federal decisions are ultimately made. However, the issue before the Board is whether the County's retention of some 50 acres within the City of Snohomish's UGA is clearly erroneous. The Board concludes that it is not. The focus of Petitioners' argument is that the area within the UGA is a critical area and its inclusion in the UGA indicates it is not, will not, or cannot be protected. Pilchuck has not made its case on this point, nor could it in the context of the present ordinance. Further, the Board finds that Petitioners' theory is unsupported by the GMA. The GMA acknowledges that critical areas occur throughout the landscape, within urban, rural and resource land designations. The GMA does not discriminate; it simply requires that their functions and values be protected *wherever they are found*. [*Pilchuck VI, 06315c*, FDO, at 68.]
- [T]he provisions of RCW 36.70A.510 and RCW 36.70.547 provide explicit statutory direction for local governments to give substantial weight to WSDOT Aviation Division's comments and concerns related to matters affecting safety at general aviation airports. Eatonville "*shall* . . . discourage the siting of incompatible uses adjacent to [Swanson Field]." RCW 36.70.547. Likewise, the FAA's expertise and decades of experience, as reflected in FAR Part 77, cannot be summarily ignored. Both these agencies have statutory authority to inject their substantial experience and

expertise into local governmental matters involving airport safety. [*Pruitt, 06316*, FDO, at 10.]

- These agencies, with expertise in aviation safety and defining airspace, had the opportunity to review the Town's proposed development regulations. They provided specific comments noting flaws, which related to height limitations and incompatible uses and offered recommendations to correct the noted deficiencies. The agencies' comment letters detailed serious conflicts that, if uncorrected, would endanger those using Swanson Field and the general public. These comment letters were available to the Town Council prior to their taking action on the development regulations; yet no changes were made to address the serious safety concerns raised by the state and federal agencies charged with aviation safety. Nor did the Town pay any heed to its own Plan Policies. Without any technical aviation safety support in its record, the Town simply adopted the proposed regulations without further revision or amendment. *See* HOM Transcript, at 60-61. It appears to the Board that the Town completely ignored the concerns of the FAA and WSDOT Aviation Division, the very federal and state agencies charged with aviation safety at general aviation airports. [*Pruitt, 06316*, FDO, at 16.]
- It is clear that the Town's height restrictions are contrary to, and conflict with, FAR Part 77 height provisions. Nor are the Town's regulations consistent with, nor do they implement, the Town's Comprehensive Plan Policies – LU-1 Policies 7, 9 and 10; and LU-5 Policies 2, 3, 4, 6 and 7. Allowing structures to penetrate the height limits established by the imaginary surfaces creates a potential obstruction hindering airport operations. Therefore, the Town has not complied with the provisions of RCW 36.70A.130(1), RCW 36.70A.510 and RCW 36.70.547. *Likewise, the limited definition of incompatible uses in the Town's regulations is contrary to the Town's own Plan Policies and contrary to WSDOT Aviation Division and FAA comments on incompatible uses. Allowing extensive incompatible uses to continue developing adjacent to Swanson Field is also contrary to the Town's own Plan Policies and the provisions of RCW 36.70.547. The Town acknowledges that it authorized the continuation of incompatible uses in its Ordinance. [*Pruitt, 06316*, FDO, at 16-17.]

- **Allocation of Population**

- The County may allocate population and employment to cities. [*Edmonds, 3305c*, FDO, at 27.]
- Allocating growth (and its constituent parts, population and employment) is a regional policy exercise rather than a local regulatory exercise. [*Edmonds, 3305c*, FDO, at 31.]
- Counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act. [*Tacoma, 4301*, FDO, at 10.]
- Unless a specific policy in the CPPs prohibits a city from planning for a greater population capacity than the allocation granted it by the county, the city may plan for more than the allocation. [*WSDF I, 4316*, FDO, at 55.]

- Determining how to distribute projected population growth among existing cities falls within the ultimate discretion of counties, subject to the requirements of RCW 36.70A.110(2) to attempt to reach agreement with cities. The Act does not require proportionate distributions. [*Vashon-Maury, 5308c,* FDO, at 34.]
- Allocating a portion of its projected population to the rural area, even though the rural area had capacity, during the planning period, for more than that allocated, does not violate the Act. [*Gig Harbor, 5316c,* FDO, at 44.]
- In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development, the duty to accommodate the population and employment that is allocated to them by a county, the duty to accommodate a county allocation and reflect it in both a city's comprehensive plan land use designations and capital facility plans, the Act imposes a duty on cities to encourage urban growth within UGAs. [*Benaroya I, 5372c,* 3/13/97 Order, at 8.]
- A petition alleging that the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted can be filed at any time. WAC 242-02-220(3). This provision addresses challenges to OFM's adoption of population projections; it does not address a county's allocation of its OFM population within the county. [*Gain, 9319,* 1/28/00 Order, at 9.]
- [A]ccommodating the growth allocated to meet a one-time projected 20-year target does not extinguish a city's GMA obligations [per .110]. [*Camwest II, 05341,* FDO, at14.]

- **Amendment**

- No provision of the GMA prohibits or restricts amendment of the county-wide planning policies (unlike comprehensive plans that can be amended no more frequently than once every year). [*Snoqualmie, 2304c,* 11/4/92 Order, at 5.]
- When a change [amendment] is substantially different from the prior designation, the public needs a reasonable opportunity to comment. [*Vashon-Maury, 5308c,* FDO, at 58.]
- Formal actions taken by the legislative bodies of cities and counties to amend their comprehensive plans and/or development regulations in response to a Board remand order are entitled to the presumption of validity contained in RCW 36.70A.320(1). [*Vashon-Maury, 5308c,* 5/24/96 Order, at 8.]
- Planning jurisdictions may adopt contingent implementing development regulations that do not take effect until some future amendment to a comprehensive plan has been formally adopted. [*WSDF II, 5340,* FDO, at 17.]
- If the amendments to a draft that were included in the final Plan were within the range of options discussed in the EIS, considered by the Planning Commission, and/or raised at the Council's public hearings, and were presented with sufficient detail and analysis at an adequately publicized hearing, then the public has had an opportunity to review and comment. [*Sky Valley, 5368c,* FDO, at 31.]

- RCW 36.70A.130 authorizes a local government to amend comprehensive plans annually; it does not require amendments. Moreover, it does not dictate that a specific proposed amendment be adopted. [*Cole, 6309c*, FDO, at 10.]
- The GMA's planning goals guide the development and adoption of comprehensive plans, and guide the adoption of amendments to comprehensive plans. [*Cole, 6309c*, FDO, at 15.]
- The Board is authorized to review a jurisdiction's legislative action that is alleged not to comply with the Act. The Board will not review quasi-judicial actions of local jurisdictions. Simply because a person has requested that a designation be changed does not mean that the resulting action taken by the legislative body was quasi-judicial. [*Buckles, 6322c*, FDO, at 24.]
- The legislative action of the Council was a vote on two ordinances that amended the county-wide comprehensive plan and amended the county-wide development regulations. Adoption of these ordinances affected property owners throughout the County. Quasi-judicial actions do not include the legislative actions of adopting, amending or revising comprehensive plans. [*Buckles, 6322c*, FDO, at 25.]
- Before the GMA was enacted, a jurisdiction considering [numerous] changes to its comprehensive plan or zoning code might take separate and discrete actions. Because of the narrow focus of such separate and discrete actions, characterization of the jurisdiction's action as quasi-judicial or legislative may have been difficult. However, it is an easier task to characterize a jurisdiction's action under the GMA. The Act generally limits a jurisdiction's ability to amend its comprehensive plan to no more than once a year. In these annual amendment cycles, a jurisdiction must consider all proposals concurrently so that the cumulative effect of the various proposals can be ascertained. Consequently, the proposals that, prior to GMA, may have been considered on a case-by-case basis, through separate actions by the jurisdiction, must now be considered as a single bundle of proposals. Such consideration precludes a jurisdiction from functioning in a quasi-judicial manner; it amounts to broad policy-making action by the jurisdiction. The pros and cons of individual proposals are weighed and considered in light of the cumulative effects of all proposals, and action on all proposals is combined into one vote. [*Buckles, 6322c*, FDO, at 25-26.]
- RCW 36.70A.130(2) requires local governments to establish a public participation process and procedure for plan amendments. The Board's jurisdiction extends only to determining compliance with that requirement, not to reviewing the circumstances, situations or events that may precipitate a proposed amendment. [*Wallock I, 6325*, FDO, at 10.]
- Petitioners cannot now challenge the original designation of their property (untimely); neither can they challenge the County's decision not to adopt the proposed amendments. [*Torrance, 6338*, 3/31/97 Order, at. 5-6.]
- When a plan or development regulation amendment involves the pending, or future, redesignation of specific geographic locations, the legal notice explaining the general purpose of the hearing must identify the location and proposed or future reclassification. [*Kelly, 7312c*, FDO, at 9.]
- RCW 36.70A.200 imposes a duty on cities and counties not to preclude EPFs, even when the decision regarding the EPF was made subsequent to the initial adoption of

the jurisdiction's plan. In other words, if a decision regarding an EPF follows the adoption of the plan, and if the plan violates the .200 duty 'not to preclude', the jurisdiction has a duty to amend its plan. [*Port of Seattle, 7314,* FDO, at 8.]

- [T]he regional decision regarding STIA [an EPF] triggered Des Moines' duty to review its Plan for preclusive policies and amend its Plan to eliminate the preclusive effect of any of its policies. [*Port of Seattle, 7314,* 5/26/98 Order, at 1.]
- Because the City is under a continuing duty, imposed by RCW 36.70A.200, not to preclude EPFs, any and all Plan policies that direct the City to use them to preclude EPFs, such as the expansion of STIA, even if not specifically identified above, are not in compliance with the GMA and the City must amend them. [*Port of Seattle, 7314,* 5/26/98 Order, at 6.]
- The requirement of RCW 36.70A.130 that provides for comprehensive plan amendments no more frequently than once every year, does not apply to development regulations. [*Keesling, 7327,* FDO, at 5.]
- Based upon the Board's prior decisions and the assertions of the parties in this case, it is undisputed that the County was not required to adopt the City's proposed amendment to the County Plan; and the County's rejection of the City's proposal did not violate any GMA duty to amend its comprehensive plan. [*Fircrest, 8302,* 3/27/98 Order, at 4.]
- The County must adhere to the plan amendment process set forth in its CPPs. If the CPPs are not clear, the Board will defer to the County's reasonable interpretation of its CPPs. Citing *King County v.Central Puget Sound Growth Management Hearings Board,* 91 Wash. App. I (1998). [*Fircrest, 8302,* 3/27/98 Order, at 4.]
- Although the purchase of [certain parcels or property] was linked to subsequent Plan and development regulation amendments, the purchase itself is not a GMA action and thus not subject to RCW 36.70A.140. (*See also* Footnote 4, [T]he Board recognizes that local government must undertake many steps, internal communications and activities prior to the development of a proposed amendment to a GMA plan or regulation, at least some of which actions are not GMA actions. The Board has not previously articulated, and does not here articulate, a standard for when such local government steps, communications and activities arise to the status of a "proposed GMA amendment" that would be subject to the requirements of RCW 36.70A.140 or other provisions of the Act. [*Green Valley, 8308c,* FDO, at 10.]
- The Act requires early and continuous public participation on proposed amendments of GMA plans and development regulations; the Act does not require public participation prior to the development and consideration of a proposal to amend the plan or development regulations. [*Green Valley, 8308c,* FDO, at 10.]
- Provisions of an ILA, if any, that are included as Plan or zoning code amendments are subject to the provisions of RCW 36.70A.140 during the plan or zoning code amendment process. [*Burien, 8310,* FDO, at 9.]
- RCW 36.70A.020(7) provides guidance for processing applications for permits, not plan amendments]. [*LMI/Chevron, 8312,* FDO, at 9.]
- The docketing and consideration of suggested amendments referenced in RCW 36.70A.470 pertains to comprehensive plan or development regulation deficiencies or improvements identified during the project review process. These docketed suggestions must be reviewed, at least annually, and scheduled for consideration as

possible future amendments during the jurisdiction's next RCW 36.70A.130(2) plan amendment review process or development regulation review. [*LMI/Chevron, 8312,* FDO, at 10.]

- Each local government has discretion in establishing and designing its .130 plan amendment process. [*LMI/Chevron, 8312,* FDO, at 12.]
- The plain language of RCW 36.70A.130(2)(a) limits consideration of plan amendments to no more frequently than once every year; it does not require annual review. [*LMI/Chevron, 8312,* FDO, at 12.]
- RCW 36.70A.020(7), .470, and 130, read individually or collectively, [do not] establish a duty [for jurisdictions] to consider specific plan amendments on an annual basis. [*LMI/Chevron, 8312,* FDO, at 12.]
- RCW 36.70A.070 provides that a comprehensive plan "shall be an internally consistent document." Amendments to a plan are not exempt from this requirement and must not result in an internally inconsistent plan. *See* RCW 36.70A.130(1). For internal consistency challenges pursuant to RCW 36.70A.070(preamble), it is appropriate and necessary for the Board to review plan amendments for consistency with preexisting plan provisions. [*LMI/Chevron, 8312,* FDO, at 39.]
- The GMA requires that comprehensive plans, as a whole, be consistent with CPPs and MPPs. Amendments to a comprehensive plan may not cause the comprehensive plan to be inconsistent with CPPs and MPPs. [*LMI/Chevron, 8312,* FDO, at 44.]
- To determine consistency of a Plan, as amended, with the CPPs and MPPs, the Board will examine the challenged amendments to determine, if on their face, the amendments are consistent with the CPPs and MPPs identified. If the challenged amendments are consistent with the identified CPPs and MPPs, the challenge fails. If a challenged amendment is facially inconsistent, the Board will examine the challenged amendment in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the CPPs and MPPs identified. [*LMI/Chevron, 8312,* FDO, at 44.]
- In evaluating plans of adjacent jurisdictions for consistency; the Board will examine the challenged amendments to determine if, on their face, the amendments are inconsistent with [thwart] the adjacent jurisdictions' provisions identified. If the challenged amendments are consistent with the identified policies, the challenge fails. If the challenged amendments are facially inconsistent, the Board will examine the challenged amendments in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the identified adjacent jurisdiction policies. [*LMI/Chevron, 8312,* FDO, at 48.]
- When a plan revision amends one of the mandatory elements set forth in RCW 36.70A.070, the element, as amended, must comply with the requirements of RCW 36.70A.070. [*LMI/Chevron, 8312,* FDO, at 50-51.]
- [Limiting the length of oral testimony and limiting the subject of oral testimony allowed at public hearings is fair and reasonable, so long as written testimony is accepted throughout the jurisdiction's process.] [*Bremerton/Alpine, 5339c/8332c,* FDO, at 26.]
- Public participation requirements regarding changes made by the legislative body are contained in RCW 36.70A.035. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 27.]

- As long as the amendments adopted by the legislative body are within the scope of alternatives available for public comment, additional opportunity for public notice and comment is not required. RCW 36.70A.035(2)(b)(ii). [*Bremerton/Alpine, 5339c/8332c*, FDO, at 27.]
- When a change is proposed to an amendment to a comprehensive plan, the public must have an opportunity to review and comment on the proposed change before the legislative body votes on the proposed change. RCW 36.70A.035(2)(a), *but see* RCW 36.70A.035(2)(b)(i-iii) for exceptions. [*Andrus, 8330*, FDO, at 7.]
- [Given the facts of this case,] [a]t best the public was notified of the City's consideration of revisions to the [plan] . . . as early as six days and as late as one day prior to the April 16 public meeting. A citizen receiving all forms of notice published by the City would reasonably conclude that no comments would be accepted after the April 17 [published written comment] deadline. Although the April 16 meeting was continued, no explicit revision of the April 17 deadline for written comments was issued by the City, and the record does not show that the City indicated by any means that it would accept written comments during the time between the announced April 17 deadline and the May 21, 1998 adoption [date]. [*Andrus, 8330*, FDO, at 9.]
- Review of the reasonableness of the opportunity provided for review and comment is measured against all the proposed revisions to the [plan]; it is not measured against only the proposed revisions to [one area or provision]. [*Andrus, 8330*, FDO, at 10, *footnote 5*.]
- Under the facts of this case, the Board concludes that the opportunity provided for public review and comment on the proposed revisions to the [plan] was not reasonable. [*Andrus, 8330*, FDO, at 10.]
- [RCW 36.70A.470] recognizes a distinction between specific project review [subject to RCW 36.70B] and comprehensive land use planning. The action challenged. . . was a legislative action involving comprehensive land use planning; the action was not a project review pursuant to Chapter 36.70B RCW. [*Andrus, 8330*, FDO, at10.]
- Petitioners make no attempt to explain how .470 precludes any citizen, including one with a pending development proposal, from commenting on proposed land use planning legislation; neither do petitioners explain how .470 prohibits the City from considering comments from all citizens when it considers a proposed legislative action. [*Andrus, 8330*, FDO, at 11.]
- [The Board may refer to the Civil Rules for guidance, but it is not bound by them.] The Board is not a court; its jurisdiction and authority is prescribed by the Legislature. The explicit statutory filing period for a petition is sixty days yet [petitioner] asks that the Board in effect, extend it. . . . To allow the addition of [or substitution of] a new petitioner at this time and allow this change to relate back to [the original filing date of the PFR], would substantially expand the jurisdictional limits the Legislature established for the Boards. This the Board cannot do. [*Montlake, 9302c*, 4/23/99 Order, at 6.]
- Local governments have discretion in designing and establishing their required RCW 36.70A.130 plan amendment procedures, including setting different submittal and review timeframes. However, the Act does require [the governing body] to consider all Plan amendments concurrently. It is during this final deliberative phase that the decision-makers must have all proposals before them, at the same time, in order to

ascertain the cumulative effects of the various proposals and make their decisions. [*WRECO, 8335,* FDO, at 8-9.]

- The City's decision to enable the Planning Agency to hold its public hearings on plan amendments without requiring a public hearing before the City Council is not clearly erroneous. [*WRECO, 8335,* FDO, at 14.]
- **[**S]ome cities have delegated to a Planning Commission (or planning agency) the responsibility for conducting public hearings on amendments to plans and regulatory codes. Others have chosen to have the legislative bodies themselves conduct such hearings, either in addition to or in place of those held by the planning commission. While neither might constitute a clear error of law under the GMA, taking either approach to extremes could have serious negative consequences. For example, consistently refusing to <u>ever</u> have a public hearing on plan amendments could undermine the public's faith in the accessibility and accountability of its elected officials. Conversely, <u>always</u> conducting duplicative hearings by the legislative body on actions already heard by the planning commission could erode the credibility and effectiveness of an important advisory body. [*WRECO, 8335,* FDO, footnote 7, at 13.]
- The Board has generally upheld local government in the situation where a petitioner has proposed a Plan amendment to a local government and the local government had declined to adopt the proposed amendment. . . . The GMA, pursuant to RCW 36.70A.130, requires local governments to have a process for amending their Plans. However, the Act does not require local government to adopt a particular proposed amendment offered by a petitioner, absent an explicit non-discretionary GMA duty compelling such amendment. [*AFT, 9302,* 6/18/99 Order, at 4.]
- [Interim Rural Forestry – IRF] is not an invalid land use designation and Petitioners have not shown that it is not an appropriate designation for their property. However the continued application of the term "interim" can lead to confusion in the GMA context. As used here by the County, "interim" is meant to notify the public that the County intends to revisit this rural designation now that it has designated its GMA forest lands. The County may revisit any of its land use designations during its annual plan amendment cycle, regardless of whether the term "interim" is attached to any given designation. [*Screen II, 9312,* FDO, at 9.]
- [Where] the subject matter of a [planning commission's] public hearing includes the possible redesignation of property; "consideration" of a revision to a land use designation includes the possibility of not revising the designation. [*Screen II, 9312,* FDO, at 11.]
- When any local government in the Central Puget Sound region adopts amendments to policies and regulations that purport to protect critical areas pursuant to RCW 36.70A.060(2), those enactments will be subject to meeting the best available science requirements of RCW 36.70A.172 and the potential of appeal to this Board pursuant to RCW 36.70A.280. [*Tulalip II, 9313,* 1/28/00 Order, at 4.]
- Neither RCW 36.70A.130(1) nor *WSDF III* stand for the proposition that subarea plans must contain, in every case, each of the mandatory comprehensive plan elements set out in RCW 36.70A.070 (footnote pertaining to *LMI* omitted). [*Tulalip II, 9313,* 1/28/00 Order, at 11.]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or

interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]

- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]
- [A challenge to an Ordinance amending the Capital Facilities Element cannot be a vehicle to challenge the jurisdiction's Housing, Utilities and Transportation Element. Such challenges to these elements are untimely, since they were not amended in the challenged Ordinance.] [*McVittie, 9316c, FDO*, at 15-17.]
- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317*, FDO, at 7-8.]
- These provisions [RCW 36.70A.035] require the opportunity for the public to review and comment on proposed amendments and changes to those proposed amendments. However, an additional opportunity for public review and comment is not required if the proposed change is within the scope of the alternatives available for public comment. RCW 36.70A.035(2)(b)(ii). In other words, if the public had the opportunity to review and comment on the changes to the proposed amendments, then the County is not required to provide an additional opportunity for public participation. There is no GMA requirement that the County must have prepared a document for public inspection specifically proposing all elements of the amendments ultimately adopted by the County; it is enough that the changes to the County-proposed amendments were within the scope of alternatives available for public comment. [*Burrow, 9318*, FDO, at 10.]
- [A jurisdiction] is under no GMA duty to adopt the amendments proposed [by petitioners]. [*Tacoma II, 9323c*, 3/10/00 Order, at 2.]
- When a local government adopts an optional element, such as a neighborhood plan, it must be consistent with both the GMA and the provisions of the City-wide comprehensive plan. [Subarea Plan policies] may not over-ride, amend or "modify" such city-wide provisions [or policies.] [*Radabaugh, 0302*, FDO, at 7.]

- The Board also rejects the City's curious argument that, in case of an internal plan inconsistency, the most recent policy prevails. While there may be circumstances wherein a local government chooses to cure such an inconsistency by amending the older, rather than the newer policy, it is unsupportable to suggest that previously adopted policies must yield to newer ones. [*Radabaugh, 0302*, FDO, at 8.]
- The Board understands that the City wishes to provide non-urban village citizens with some assurances that capital facility investments can be made outside of designated urban village boundaries. However, such a policy choice would have implications for existing (city-wide) comprehensive plan policies. For this and other reasons, not the least of which is the public notice requirements of RCW 36.70A.035, the avenue to pursue that end would be in a proposed amendment to the adopted city-wide policy rather than incremental, ad-hoc amendment to thirty-seven individual neighborhood plans. [*Radabaugh, 0302,* FDO, at 10.]
- Although both RCW 36.70A.130 and .215 require counties and cities to systematically review their comprehensive plans, and to take action to amend them when appropriate, neither provision requires that amendment actually occur. Significantly, neither .130 nor .215 make explicit mention of reviewing or amending agricultural resource lands designations. More significantly, neither .170 nor .060 describe a process or criteria to amend or "de-designate" agricultural lands. Does the lack of an explicit GMA mention, much less mandate, to review and amend prior agricultural lands designations mean that ag lands may never be "de-designated"? [The Board answers this question in the negative.] [*Grubb, 0304,* FDO, at 10-11.]
- [Petitioner tried to distinguish this case from *AFT, 9304*, and *Cole, 6309c*, arguing that it is more like *Port of Seattle II, 7314*. In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Poet wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]
- The salient facts in the Bidwell case are indistinguishable from the facts before the Board in the AFT, 9304, case. [The City has no duty to docket or adopt the proposed amendment.] [*Bidwell, 0309*, 7/14/00 Order, at 3-4.]
- [Publication of the City Council Agenda, with the notation "Revision to Critical Areas Ordinance," without describing the nature of the proposed changes is insufficient notice.] It would be difficult for a potentially interested member of the public at large to ascertain what the pending ordinance was proposing. [*Homebuilders, 0314,* FDO, at 10-11.]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA

participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5.]

- General discussion and overview of the difference between Plans and regulations and the importance of public participation in the processes. [*McVittie V, 0316*, FDO, at 13-15.]
- The GMA 20-year plan is a guiding light; it is a long-term vision for [a jurisdiction, it is generally] not something that you need to change on an emergency basis. However, development regulations may need to be changed on an emergency, but temporary, basis to respond to unforeseen circumstances. [Once a jurisdiction enacts] temporary controls or a moratorium, the jurisdiction should proceed through the [amendment or] docketing process to make the regulations permanent, if necessary, and to amend the plan if necessary. [This is a very reasonable approach that is consistent with the decision-making regime of the GMA.] [*McVittie V, 0316*, FDO, at 15.]
- [RCW 36.70A.130] outlines the procedures for consideration and adoption of proposed plan amendments. This process *amplifies* and *refines* the broader .140 public participation process that applies to the adoption and amendment of plans and development regulations. Providing the opportunity for public participation is a condition precedent to adoption or amendment of a plan. Here, a special process for plan amendments is required. The limitation on considering proposed plan amendments "no more frequently than once every year," or annual concurrent review provision, necessitates the establishment of deadlines and schedules for filing and review of such amendments so they can be considered concurrently. Although this section provides exceptions to the annual concurrent plan review limitation, none of these exceptions are excused from public participation requirements. [*McVittie V, 0316*, FDO, at 19.]
- [RCW 36.70A.390] does not apply to plan amendments. It does not apply to permanent changes in development regulations or controls. It applies only to the adoption or amendment of temporary controls or development regulations, those measures that are adopted for an interim period – generally six-months. This section of the Act is unique in that it permits a deviation from the norm of providing the opportunity for public participation prior to action; here a jurisdiction can act or adopt first, then provide the opportunity for public participation after adoption. However, this post-adoption opportunity for public participation must occur within 60-days of adoption. [*McVittie V, 0316*, FDO, at 20.]
- [Plan] Amendments precipitated by emergencies are clearly governed by .130(2)(b), not .140 or even .130(2)(a). Within the confines of the goals and requirements of the Act, local governments have discretion to determine what "appropriate public participation" to provide before they take action on emergency plan amendments. The word "after" [in .130(2)(b)'s phrase "after appropriate public participation] evidences the clear and explicit Legislative intent to prohibit adoption of a plan amendment until "after" (behind in place or order, subsequent in time, late in time than, following) (citation omitted) appropriate public participation takes place. [*McVittie V, 0316*, FDO, at 23-24.]

- [A jurisdiction] has discretion to define "appropriate," but deciding to provide "zero" opportunity for public participation is not "appropriate" and an abuse of that discretion and contrary to the Act. [Providing no notice or opportunity for public participation before the adoption of the emergency plan amendment emasculates the GMA. [It is irreconcilable with the public participation requirements and renders the GMA's public participation provisions absolutely meaningless. [*McVittie V, 0316*, FDO, at 24.]
- In order to maintain consistency between its plan and implementing development regulations, as required by RCW 36.70A.040, the County correctly considered the [Plan and implementing regulation] amendments concurrently. [In a footnote, the Board noted that some development regulation amendments implement existing Plan policies and do not necessitate a reciprocal amendment to the Comprehensive Plan. Here, however, the proposal required both a Plan and development regulation amendment, thereby calling for concurrent consideration of both proposed amendments to maintain consistency, as required by RCW 36.70A.040.] [*McVittie V, 0316*, FDO, at 7.]
- *See also:* **Public Participation** [*McVittie V, 0316*]
- The initial adoption of a subarea plan is explicitly excepted from [the] annual concurrent review process RCW 36.70A.130(2)(a)(i). [*Kitsap Citizens, 0319c*, FDO, at 12.]
- [During the amendment review and discussion process several proposed amendments were withdrawn and several of these were subsequently revived.] The amendments at issue arose during the County's lengthy public process of developing Comprehensive Plan amendments and were debated for six-months by proponents and opponents. The Board concurs [with the County] that notice for the public hearing . . .was adequate ant the County complied with the requirements of RCW 36.70A.035. The County provided reasonable opportunity for public participation and the County complied with the requirements of RCW 36.70A.140. [*Forster Woods, 1308c*, FDO, at 12.]
- [The challenged Plan and zoning amendments altered designations for 4,374 acres within Pierce County – Map amendment M-8. The parties sought to have the Board review the Master Planned Resort designation as it applied to two tracts of land – Gold Hill and Eagles Lair.] The Board is authorized and required to examine [the MPR designations] as a whole. The Board's review is not limited by the desires or preferences of the parties to only address portions of the MPR designation. [*Kenyon II, 1301*, FDO, at 5.]
- When there is confusion and a lack of analysis [on whether the MPR was designated pursuant to RCW 36.70A.360, RCW 36.70A.362 or both statutes], it is within the Board's jurisdiction and purview to determine whether the County applied and imposed the correct legal framework for the MPR designation and not limit its analysis only to whether [two tracts] were correctly designated MPR pursuant to the GMA. [*Kenyon II, 1301*, FDO, at 5.]
- [The Plan text amendments, future land use map amendment, expansion of the UGA, and the amended Plan and zoning map amendments occurred at the same time in two separate ordinances.] These amendments were made as a comprehensive package,

they became effective together and none preceded another. [*Maltby UGA Remand*, 12/19/02 Order, at 6.]

- Notwithstanding its explicit annual amendment process, the City does not dispute that it amended its Plan *twice* during calendar year 2001. The City does not contend that the adoption of two Plan amendments at separate times fall within any of the exceptions of RCW 36.70A.130(2)(a)(i-iii). . . . Nor does the City suggest that the dual amendments in 2001 were necessitated due to an emergency or pursuant to Board or Court Order, as anticipated in RCW 36.70A.130(2)(b). Bremerton merely asserts that the effects of [the first ordinance] were considered cumulatively along with other amendments in the public process of [the second ordinance]. Since the Policy amendment of [the first ordinance] was adopted and incorporated into its Plan in August, any "consideration" that Bremerton did of the relationship between [that ordinance and the latter amendatory ordinances] would have been for consistency purposes, not for the purpose of concurrently evaluating the cumulative effects of the entire package of 2001 Plan changes. [The first ordinance] had already been adopted and had the effect of governing future amendments. Bremerton's actions are in direct contradiction of the explicit requirements of RCW 36.70A.130(2) and [the amendment procedures of its own Comprehensive Plan]. [*Miller, 02303*, FDO, at 11-12.]
- The Planning Commission is an advisory body that makes recommendations and proposals to the County Council that the Council may or may not agree with and adopt. The County Council has discretion, and is not bound only to the Planning Commission's recommendations. However, RCW 36.70A.035 does place bounds on the County Council's discretion. RCW 36.70A.035 generally requires the Council to provide the opportunity for public review and comment if the Council chooses to change or amend a proposal *after* the opportunity for public review and comment is closed. This additional review and comment period is required *unless* the proposed change is within the range of alternatives considered in an EIS or the proposed change is within the scope of alternatives previously available for public comment. RCW 36.70A.035(2)(b)(i) and (ii). [*Hensley IV* and *V*, *1304c/02304*, 6/17/02 Order, at 10.]
- [Adoption of emergency ordinances is exempt from the concurrent review requirements of RCW 36.70A.130(2)(b), however] this section does require that city and county legislative bodies may only adopt emergency amendments *after appropriate public participation*. [*Clark, 02305*, FDO, at 7.]
- [Six-days notice and the opportunity to comment, prior to enactment of the first emergency ordinance, and ten-days notice and the opportunity to comment, prior to enactment of the second emergency ordinance, in this case] met the "after appropriate public participation" requirements of RCW 36.70A.130(2)(b) in enacting its emergency ordinances, adopting the [interim FLUM]. [*Clark, 02305*, FDO, at 16.]
- On its face, the Memorandum of Agreement (MOA) establishes a *planning process* for the area; it does not, in and of itself, amend the Kitsap County Plan or implementing regulations. It is reasonable to expect that the product of this planning process will be a recommendation or proposal to amend the Kitsap County Plan and development regulations, which if challenged, would be subject to Board review. But

the MOA does not accomplish this result and does not fall within the Board's jurisdiction. [*Harless, 02318c*, 1/23/03 Order, at 7.]

- [The challenged ULID Ordinance] clearly directs the preparation of amendments to the County's Plan and development regulations, it does not adopt any proposed amendments. Neither the Plan nor development regulations are amended, thus this Ordinance has no binding effect, as would be the case if the Plan or regulations were adopted. [Consequently the Ordinance is not subject to Board review.] [*Harless, 02318c*, 1/23/03 Order, at 7.]
- The Board holds that for area-wide rezones that are intended to remove a development phasing overlay or other timing mechanism that will allow deferred development to proceed, the action removing the development phasing restriction or area-wide rezone and an action amending the governing Plan must occur *concurrently* to maintain consistency and ensure implementation of the Plan. [*Citizens, 03313*, FDO, at 45.]
- The Board holds that any action to amend either the text or map of a comprehensive plan or the text of a development regulation is a legislative action subject to the goals and requirements of RCW 36.70A, including the subject matter jurisdiction provisions of RCW 36.70A.280. Any amendment to the official zoning map that is proposed and processed concurrently with enabling plan map or text amendments or development regulation text amendments is necessarily a legislative action subject to the goals and requirements of the GMA. [*BridgeportWay, 04303*, FDO, at 8.]
- The whole focus of [Petitioners'] challenge is to the potential application of existing Plan policies and regulations specifically regarding clustering and density bonuses in the [areas newly designated as being] Rural -10 designation. These provisions [i.e. clustering and density bonuses] were not amended by the action of the County in amending its Plan in 2003. At best [Petitioners'] challenge is a collateral attack on existing Plan policies and regulations. Had [Petitioners] wanted to challenge the clustering provisions of the R-10 classification, it should have done so when those provisions were enacted. Petitioner cannot challenge those provisions in the context of this present action [2003 Annual Plan Review]. [*Orton Farms, 04307c*, FDO, at 41-42.]
- The GMA requires a jurisdiction's development regulations to be consistent with, and implement, its comprehensive Plan. [Citation omitted.] . . . [T]he Act does not specifically mandate that Plans and development regulations be adopted concurrently. However, the Board has previously indicated, concurrent adoption of Plan amendments and implementing development regulations may be the wisest course of action to avoid inconsistencies between the Plan and development regulations. [Citation omitted.] However, concurrent adoption of development regulations may not be necessary if the existing development regulations continue to implement the Plan as amended. This is the situation posed here. [Plan policies that allow clustering and bonus densities are inoperative until such time as development regulations are adopted to implement these provisions – the base densities control in the meantime.] [*Bremerton II, 04309c*, FDO, at 14.]
- The Board has previously stated that a city has no duty to adopt a party's proposed amendment, absent an explicit GMA directive compelling such an amendment and, the Board has delineated whether, and when, the GMA creates a duty for a city to

amend. Without this explicit duty, a city has the authority to reject any amendment that it determines lacks merit. [Orchard Beach, 06319, 7/6/06 Order, at 5.]

- [The challenged rezone ordinance] was adopted concurrently with and to implement [the comprehensive plan amendment ordinance]. The Ordinances shift land in and out of the UGA, affecting the entire UGA area, beyond the scope of any individual parcel or property. Additionally, [the rezone ordinance] was expressly billed as an area-wide (not site-specific) rezone and expressly adopted in a legislative (as opposed to quasi-judicial) process. . . .Further, inasmuch as these Ordinances were adopted in implementation of a negotiated settlement between Snohomish County and Intervenor Camwest, Camwest's repudiation of the wording of the Rezone Ordinance is not well taken. [*McNaughton, 06327*, 10/30/06 Order, at 7.]
- The statutory exemption [from the concurrent annual review] applies when an appeal has been filed before the Board and subsequent city/county action is taken that resolves the appeal. Here, Camwest had an appeal pending before the Board, a settlement agreement was reached, and the County took legislative action in an effort to resolve the pending appeal – adopting Ordinance Nos. 06-053 and 06-054). Subsequently, CamWest withdrew its appeal before the Board and the Board dismissed the appeal; the appeal was resolved. [*Citations* omitted.] The language of the statue cannot be read to apply the exemption *only* when a matter is remanded subject to a Board order [McNaughton, 06327, 10/30/06 Order, at 17.]
- [As to the "appeal exemption" from concurrent annual review – RCW 36.70A.130(2)(b)] The Board agrees with [Petitioner] that there is a risk of abuse and of instances of the kind of zoning-by-deal-making that the GMA was enacted to avoid; but if this loophole has unintended consequences, correction is up to the Legislature. The Board notes that there are two statutory boundaries to the appeal exemption of RCW 36.70A.130(2)(b): "*after appropriate public participation* a county or city may adopt amendments or revisions to its comprehensive plan *that conform with this chapter* …. to resolve an appeal … filed with a growth management hearings board …." County action taken outside the annual concurrent review in order to resolve an appeal must not only actually resolve the pending matter (i.e. result in a dismissal) but must involve <u>appropriate public process</u> and must <u>conform with the GMA</u>. [McNaughton, 06327, 10/30/06 Order, at 17.]
- In *Alexanderson, et al., v. Clark County*, 2006 Wash. App. Lexis 2285, at 4, (***Alexanderson***), the Division II Court of Appeals required the Western [Washington Growth Management Hearings] Board to look beyond the face of a similar settlement agreement and to analyze the effect of the agreement. Because the [memorandum of understanding] in that case was directly counter to an express provision of the County's comprehensive plan, the Court ruled that it was a "de-facto" amendment to the comprehensive plan and therefore, the challenge should have been reviewed by the Western Board. [The question before this Board is whether the present agreement is] a "*de facto*" amendment to the City of Everett's Comprehensive Plan. The Board concludes that it is not. [The land at issue here is tribal trust land not within the City's jurisdiction; the City's Plan authorizes the provision of municipal water services through interlocal agreement; the proposed water line expansion is in the City's CFE.] [*Campbell, 06331*, 11/9/06 Order, at 7-8.]

- The parties agree that the pivotal issue here is whether the County's adoption of the [challenged] Ordinances is to be evaluated and processed in the context and under the standards of the preceding action – the ten-year-update of the urban growth area – or in the context of concurrent UGA applications – the 2006 Docket process. The Board cannot find – and the parties have not identified – any controlling provision of the GMA that directs the County as to which process to use. The GMA requires action consistent with County CPPs. While the GMA directs the adoption of CPPs, it is local governments which develop the substance and content of the CPPs by which they agree to be bound. The CPPs at issue here were developed and ratified by Snohomish County and its cities. [*McNaughton, 06327*, FDO, at 14.]
- The Board shares [Petitioner's] concern that this decision widens the GMA loophole already opened with the Appeal Exception to concurrent annual review. The Board's Order on Motions acknowledged the "risk of abuse" that is possible if "proponents can achieve isolated consideration of development applications by simply filing GMA challenges and negotiating settlements behind closed doors and in isolation from consideration of cumulative impacts." Order on Motions, at 17. The County may want to consider amending its CPPs to avoid exposing itself to multiple appeals filed simply to extort favorable settlements. [*McNaughton, 06327*, FDO, at 16.]

- **Amicus Curiae**

- *Edmonds, 3305c.*
- *Rural Residents, 3310.*
- *Tacoma, 4301.*
- *KCRP, 4305.*
- *Kitsap/OFM, 4314.*
- *WSDF I, 4316c.*
- *Vashon-Maury, 5308c.*
- *Children's I, 5311.*
- *Benaroya I, 5372c.*
- *Children's II, 6323.*
- *Port of Seattle, 7314.*
- *LMI/Chevron, 8312.*
- *Everett Shorelines Coalition, 02309c*.
- [Respondent and Intervenors objected to CTED's motion for amicus status during reconsideration.] The Board notes that accommodating population growth and the sizing, location and expansion and contraction of UGAs are a key component in the GMA and clearly within *CTED's interests and expertise* in assisting with the implementation of the GMA. Additionally, as a state agency with a significant statutory role in GMA, CTED is *familiar with the issues* involved in the reconsideration request. Finally, CTED contends that *additional argument is necessary to clarify the wording of the Board's holdings and the possible consequences of them being misinterpreted*. The Board agrees. [CTED was granted status as amicus curiae.] [*Hensley VI, 03309c*, 10/21/03 Order, at 3-4.]
- *Hood Canal, 06312*.

- **Annexation**

- The eventual and logical culmination of 'cities as the primary providers of urban services requires that annexation and incorporation occur rather than service agreements sufficing as more than a transitional device. [*Poulsbo, 2309c,* FDO, at 26.]
- Annexation is an exercise of the land use powers of cities, and therefore a CPP cannot express a preference or otherwise provide direction to cities as to the methods of annexation. If a county wishes to discuss methods of annexation within the CPPs, it may do so, provided that such language serves to facilitate rather than frustrate the legislative directive of "that which is urban should be municipal." In any event, such language must not alter the land use powers of cities. [*Poulsbo, 2309c,* FDO, at 26.]
- The regulatory effect of IUGAs ceases upon adoption of the FUGA boundary with regard to annexations, and upon adoption of implementing regulations with regard to prohibiting urban development beyond the boundary. [*Rural Residents, 3310,* FDO, at 15.]
- Annexations are prohibited beyond UGAs. RCW 35.13.005 and RCW 35A.14.005. [*Rural Residents, 3310,* FDO, at 42.]
- The Board does not have jurisdiction over Title 35 as it relates to annexation. [*Anderson Creek, 5353c,* 10/18/95 Order, at 7.]
- Nothing in the Act requires a jurisdiction to adopt annexation policies. [*Lake Forest Park, 6336,* 2/14/97 Order, at 4.]
- If a County adopts annexation policies as part of its CPPs or if annexation policies are included in an adopted comprehensive plan, the Board would have jurisdiction to review such annexation policies. [*Lake Forest Park, 6336,* 2/14/97 Order, at 4.]
- Annexation, although encouraged by the GMA, is not a condition precedent to urban development in a UGA. [*Johnson II, 7302,* FDO, at 10.]
- A county may take precautions (i.e., requiring interlocal agreements) regarding the allocation of responsibility for services, and the process of transfer of jurisdiction, especially where the potential annexing city lies outside that county. [*Kelly, 7312c,* FDO, at 12 -13.]
- The GMA does not require a county to actively support annexation, nor does it make such support a predicate to a GMA-compliant annexation. [*Kelly, 7312c,* FDO, at 14.]
- [U]nequivocal and directive language that, on its face, imposes conditions precedent to city annexations in urban growth areas . . . fail to comply with RCW 36.70A.110. [*Bremerton/Alpine,* 5339c/8332c, FDO, at 48.]
- Once a UGA has been designated, the provisions of a county plan may not condition or limit the exercise of a city's annexation land use power. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 48.]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a

GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5.]

- [There is] interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. The Growth Boards have jurisdiction to determine compliance with the GMA, including UGA designations. UGA designation enables city annexations, since cities are prohibited from annexing areas beyond designated UGAs. Boundary Review Board decisions must be consistent with provisions of the GMA, including the UGA provisions. This system is consistent and coordinated and yields certainty in situations where UGAs have been found by the Board to comply with the Act, or where UGA designations have not been challenged. However, this system yields uncertainty where the UGA designation has been challenged, but not resolved as the annexation process proceeds. It is a situation that the Legislature has not, to date, addressed. [This uncertainty is prevalent in this case. In this case, the Board cannot, and will not, address the effect of the annexation, nor will it speculate on the outcome of pending litigation. However, the Board must carry out its mandated responsibilities.] Determining compliance with the goals and requirements of the GMA is the primary responsibility of the Board; it cannot shirk this duty. The Board must determine whether the challenged UGA designation complies with the goals and requirements of the Act. [*Kitsap Citizens, 0319c*, 2/16/01 Order, at 9-11.]
- The UGA amendment in this case is essentially the same situation as posed in *Kitsap Citizens* [*0319c*, 2/16/01 Order]. Snohomish County's action of amending its previous UGA designation also precipitated two courses of action. One course led to the City of Arlington's annexation of the area; the other course led to a PFR before this Board challenging the Ordinance that enabled the annexation to occur. Consequently, as in *Kitsap Citizens*, here the Board will proceed to carry out its GMA mandated duty to review the challenged actions for compliance with the goals and requirements of the Act. [*McVittie V, 0316*, FDO, at 11.]
- Here, the City is requiring annexation as a condition of providing sewer service within the UGA. The City is responsible for providing urban services to development within the UGA at the time such development is available for use and occupancy and within the twenty year horizon of the City's Plan for the UGA. The approach the City has chosen in managing growth, specifically the provision of sewer service, is a valid option which the City may choose in order to transform governance and phase development within the UGA. As such, the premise upon which [Petitioner] builds its case – the amendment [requiring annexation as a condition of sewer service] is a denial of services and a moratorium – is false. In fact, such provision is consistent with, and complies with, the GMA as the Board has interpreted it. [*MBA/Larson, 04301*, FDO, at 11.]
- Requiring annexation as a condition of providing sewer service is a valid option which the City may choose in order to transform governance and phase development within the UGA. It is not a denial of sewer service or *de facto* moratorium on development within the UGA. [*MBA/Larson, 04301*, FDO, at 18.]
- Petitioners' appeal to GMA Goal 6 reflects a flaw in the legislative scheme for annexations. Cities may annex non-contiguous territory only if the land is needed for municipal purposes. RCW 35.15.180. But what if the municipal purpose is

abandoned? Should that "nullify" the prior annexation, as Petitioners propose? There is no statutory provision addressing such a situation. The de-annexation statute – Chapter 35A. 16 RCW – is unworkable under the circumstances. In the case of non-contiguous territory, where the impacted neighbors are not City voters, they have no remedy. Nor do the procedures for surplussing municipal property. Adjacent owner most impacted have no vote. The GMA does not fill the gap in the legislative scheme for island annexations. Petitioners frustration is understandable – "there ought to be a law." [*SOS, 04319*, FDO, at 24-25.]

- ## Appeal to Court

- No entries [*See* Appendix C]

- ## Aquifer Recharge Area

- *See also:* **Critical Areas**
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, at 79.]
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c,* FDO, at 20.]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, at 41-42.]
- When environmentally sensitive systems are large in scope (e.g., a watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may also choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre. Such designation must be supported by adequate justification. [*Litowitz, 6305,* FDO, at 12.]
- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 31.]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical

areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 32.]

- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 32.]
- The County's approach, to rely on identification of [aquifer recharge areas] on a site-by-site basis, is within the range of choices available to local governments to satisfy the designate and protect mandates for critical areas. [*Sakura, 02321*, 2/12/03 Order, at 4.]
- [The Board found that in updating the CAO the County considered the CTED guidelines in protecting critical aquifer recharge areas. The classification based on vulnerability to contamination was based upon best available science. The County is not restricted to reliance upon sole source aquifers and wellhead protection zones.] [*Keesing CAO, 05301,* FDO, at 11-12.]

- ## Archeology

- No entries

- ## Average Net Density

- On parcels large enough to have more than one density designation, the Board will look at the average net density of that entire ownership. [*Benaroya I, 5372c,* FDO, at 33.]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in visual character. The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New England towns that Pope and Talbot used as templates for their company town. The Board finds that Port Gamble's mix of uses and physical forms clearly qualify as a "village," a "hamlet" or a "rural activity" center within the meaning of RCW 36.70A.070(5)(d)(i). [*Burrow, 9318,* FDO, at 18-19.]
- [General Discussion of gross versus net density calculations.] [*Fuhriman II, 05325c,* FDO, at 23-33.]
- [In its Plan Update, the City defined "net buildable area" as "the gross land area, measured in acres, minus the land area in roads and other rights-of-way, surface stormwater retention/detention/water quality facilities, critical areas, critical area buffers, and land dedicated to the City." The Board discussed the definition and the effect of its application.] Once again it is not disputed by any of the parties that 4 du/acre is an appropriate urban residential density. The disputed issue here is how that urban residential density is calculated. Although the parties have characterized the conflict as being whether urban residential density is calculated on a *gross* acreage basis [permitted density divided into total acres] or a *net* acreage basis

[permitted density divided into buildable acres; buildable meaning gross acreage minus unbuildable acreage], there is no persuasive argument offered indicating that the GMA, or this Board, has ever indicated that urban residential density must be calculated based upon gross acreage. [*Fuhriman II, 05325c*, FDO, at 23-24.]

- The GMA is silent. It does not define urban density or the basis for calculating urban density. [The Board then reviews several CPS cases where the distinction between gross and net density was discussed.] [B]ased upon experience in reviewing UGAs, the Board again acknowledged and recognized that net acreage equated to buildable acreage, which involved the deduction of unbuildable areas [*i.e.* rights of way and certain critical areas] from the gross acreage. . . . [T]he Board has discussed density in terms of a net yield of units on buildable acreage. [*Fuhriman II, 05325c*, FDO, at 24-25.]
- The Board has interpreted various means of calculating density for various purposes, and acknowledged certain "deductions" from gross area as an appropriate means of determining buildable area and determining the net density yield in units per acre. However, which factors are deducted in the calculations is a policy choice for local governments to make, so long as they are supported by evidence in the record and consistent with the goals and requirements of the Act. [*Fuhriman II, 05325c*, FDO, at 26.]
- [The City's definition of net buildable area] equates net acreage with buildable acreage and reflects the concept of buildable density. The definition clearly allows for the deduction of roads, rights-of-way and critical areas, which are generally acknowledged, and recognized by the Board, as being "unbuildable" areas that are not available for housing. Therefore, these areas could appropriately be deducted from gross acreage to determine net buildable area. . . . The Board notes that public facilities have generally been recognized as unavailable for housing and may be deducted from gross acreage to determine buildable acreage. (Citations omitted.) The Board finds there is supporting evidence for the City's decision to include areas encumbered by stormwater retention/detention/water quality facilities and lands dedicated to the City as deductions in its "net buildable area" definition; . . . including these components falls within the scope of the City's discretion. [The most disputed "deduction" included by the City was *critical area buffers*.] . . . The Board finds that the City's decision to deduct critical area buffers in determining net buildable density was not unreasonable. There was ample evidence in the record to support the decision of the City to include critical area buffers as a deduction in the definition of net buildable area to be used in calculating net residential density. [Adoption of the definition was not clearly erroneous.] [*Fuhriman II, 05325c*, FDO, at 26-27.]
- Although the Board concludes that the deductions in the City's definition of "net buildable area" were reasonable, not clearly erroneous, and fall within the scope of the City's discretion; that does not mean that the Board is not concerned with a very practical problem voiced by Petitioners. Namely, that, different definitions of "net buildable area" with varying deductions could be adopted by each jurisdiction. This uncoordinated and inconsistent approach in methodology could create a balkanization in the Central Puget Sound region, and could undermine coordinated planning under the GMA. [The Board mentioned instances where coordination and cooperation regarding methodology and calculations were enhanced through the use of agreed

upon county-wide planning policies (*i.e*. urban growth areas, and buildable lands program) and offered that CPPs might be used for setting parameters for density transfers or credits in buffers areas or for transferable development rights programs). [*Fuhriman II, 05325c*, FDO, at 27-29.]

- [The City's minimum lot size designations of R-9,600 (square feet), R-8,400, R-7,200 and R-5,400 arrayed *on one net buildable acre yields* a residential density of 4 du/acre or more – 4.5, 5.2, 6.0 and 8.0 dwelling units per *net buildable acre*, respectively. On their face they are appropriate urban densities. Nonetheless, Petitioners asserted that the R-9,600 minimum lot size would not yield 4 du/acre. The Board concluded. . .] Net buildable area calculations that *yield* a density of 4 du/acre is an appropriate urban density. Review of the relevant provisions of the City's 2004 Plan Update suggest that the City has taken appropriate steps, such as eliminating the R-1, R-2 and R-3 [1 du, 2 du and 3 du/acre, respectively] designations, and has provided for a yield of 4 du/acre with the [new] R-9,600 residential designation *in its Plan*. The City's pending implementing development regulations must be consistent with and implement the Plan. [*Fuhriman II, 05325c*, FDO, at 31.]
- While the Board concludes that the Plan's R-9,600 minimum lot size is intended to yield an appropriate urban density of 4 du/acre; the Board is also mindful that *de minimus* variations may occur. However, such variations should be minimized through techniques such as lot-size averaging, density bonuses or credits, cluster development, perhaps maximum lot sizes and other innovative techniques. [*Fuhriman II, 05325c*, FDO, at 32.]
- [The City designated a 357 acre area with an R-40,000 minimum lot size – Fitzgerald Subarea. The basis for the designation to protect large-scale, complex, high rank value critical areas that could not be adequately protected by existing critical areas regulations.] It seems apparent to the Board that, at least for the 357-acres disputed here, the City's present critical areas regulations were believed to be inadequate in protecting the critical areas at issue. This is evidenced by the *Litowitz* Test Report [which identified the area as having large-scale, complex and high rank value critical areas] and the fact that even the Planning Commission [which did not support the designation] recommended a "special overlay designation" and "special protections and regulations" to be developed to adequately protect the critical areas in question. The Commission's recommendation by itself evidences perceived inadequacies in the City's existing critical areas regulations that can support the added protection of the R-40,000 designation. Further, the overall size and interconnectedness of the affected hydrologic system is well documented; it is not inappropriate to look at a sub-basin or related hydrologic feature to assess critical areas in a specific area. [The Board upheld the R-40,000 designation for the affected area.] [*Fuhriman II, 05325c*, FDO, at 34-36.]
- [The City designated a portion of the Norway Hill area with an R-40,000 minimum lot size. Steep slopes, erosive soils, difficulty in providing urban services and connection to an aquifer and salmon stream were the basis for the designation. The Board noted that only a portion of the area designated was within the city limits, the remainder being within the unincorporated county, but within the UGA and planned annexation area of the City.] There is no question that the area designated R-40,000 within the Norway Hill Subarea is not a large scale, complex, high rank order value

critical area as analyzed in the Board's *Litowitz* case. The City's *Litowitz* Test Report confirms this conclusion. However, in a recent Board decision [*Kaleas, 05307c*, FDO.], the Board acknowledged that the critical areas discussed in the Litowitz case, and several cases thereafter, were linked to the hydrologic ecosystem, and that the Board could conceive of unique geologic or topographical features that would also require the additional level of protection of lower densities in those limited geologically hazardous landscapes. [To qualify, geologically hazardous critical areas would have to be mapped, and use best available science, to identify their function and values. The Board concluded that the geologically hazardous areas on Norway Hill were mapped, and the area contained aquifers connected to salmon bearing streams. The Board upheld the R-40,000 designation for the affected area.] [*Fuhriman II, 05325c*, FDO, at 37-39.]

- ## Best Available Science - BAS

- *See also*: **Critical Areas**
- RCW 36.70A.172 does not impose a requirement that cities and counties adopt policies to protect critical areas; therefore, the Board does not have jurisdiction to hear an appeal of the City's resolution adopting such policies. Such a requirement cannot be implied by RCW 36.70A.170 or .060. [*HEAL, 6312*, FDO, at 15.]
- Amendments to a previously adopted critical areas ordinance, after the effective date of a legislative amendment (BAS – RCW 36.70A.172) of the GMA, are subject to the best available science requirement of RCW 36.70A.172(1). [*HEAL, 6312*, FDO, at 17.]
- The language of RCW 36.70A.172 that states: "shall include best available science in developing policies and development regulations" is interpreted by the Board as not mandating any substantive outcome or product, but rather requiring jurisdictions to make the best available science a part of their process of developing policies and development regulations to protect the functions and values of critical area. [*HEAL, 6312*, FDO, at 19.]
- The Board interprets the legislature's intent to be that counties and cities include the best available science in their process of developing critical areas regulations, so that this information can be considered before any legislative action is taken. [*HEAL, 6312*, FDO, at 20.]
- The GMA requires the Board to give deference to a local government's choice of scientific data. [*HEAL, 6312*, FDO, at 21.]
- A jurisdiction is required to include as part of the record of its development of its [critical areas regulations or amendments] the scientific information that was developed by the jurisdiction and presented to the jurisdiction by others during its development of its regulations. The City included the best available science when it developed its amendments to its critical areas regulations, and did not violate RCW 36.70A.172. [*HEAL, 6312*, FDO, at 21.]
- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 31.]

- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 32.]
- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 32.]
- When any local government in the Central Puget Sound region adopts amendments to policies and regulations that purport to protect critical areas pursuant to RCW 36.70A.060(2), those enactments will be subject to meeting the best available science requirements of RCW 36.70A.172 and the potential of appeal to this Board pursuant to RCW 36.70A.280. [*Tulalip II, 9313*, 1/28/00 Order, at 4.]
- [The Court of Appeals Division I] found that the Board had erroneously concluded that it did not have jurisdiction to review a resolution amending the City of Seattle's critical area policies. The Court found that where a jurisdiction chooses to adopt critical area policies the Growth Boards have jurisdiction to review such policies and determine whether the policies comply with the requirements of RCW 36.70A.172. [*HEAL, 6312*, 10/4/01 Remand Order, at 4.]
- Evidence of the best available science must be included in the record and must be considered substantively in the development of critical areas policies and regulations. (Citation omitted.) [*HEAL, 6312*, 10/4/01 Remand Order, at 4.]
- [The question before the Board was whether Seattle's policy preference for preventing harm to steep slopes by minimizing disturbance and maintaining and enhancing existing ground cover was developed and derived from a process where the evidence of best available science was in the record and was considered substantively – was it discussed, deliberated upon and balanced with other factors? The Board found BAS was included in the record and considered substantively in developing the policy preference.] [*HEAL, 6312*, 10/4/01 Remand Order, at 4-7.]
- The Board properly applied the <u>State of Louisiana v. Verity</u> to the record before it in this case. [If there are scientifically respectable conclusions disputed by rival scientific evidence of presumably equal dignity, the court will not displace the administrative choice.] The Board found that the City took evidence and included it in the record. HEAL presented evidence contrary to the evidence relied upon by the City. The Board properly concluded it could not displace the City's judgment about which science the City would rely upon as the best available science. The Board rejected the idea that the statute required any particular substantive outcome or product. The Board is correct. The legislature passed RCW 36.70A.172(1) five years after the GMA was adopted. It knew of the other factors [goals and specific requirements], but neither made best available science the sole factor, the factor above all other factors nor made it purely procedural. Instead the legislature left the cities and counties with the authority and obligation to take scientific evidence and to balance that evidence among the many goals and factors to fashion locally appropriate regulations based on the evidence not on speculation and surmise. (Citations omitted.) [*HEAL, 6312*, 10/4/01 Remand Order, at 6-7.]

- [The record contained scientific evidence based on "natural systems sciences" and "engineering sciences," the City discussed both sciences, discussed and deliberated on the capital and operational costs of each, then chose and used the "natural systems sciences" in developing its steep slope regulations.] The same evidence of best available science was included and substantively considered by the City when it simultaneously adopted amendments to the steep slope portion of its critical areas regulations and the amendment to its steep slope policy. Consequently, the Board concludes that the City's adoption of the steep slope (critical area) policy amendment, complies with [the BAS requirement of .172(1). [*HEAL, 6312*, 10/4/01 Remand Order, at 7.]
- [Respondent asserted that RCW 36.70A.172 only applies to critical area regulations and argued] "A Comprehensive Plan is a policy statement, and therefore any critical area policies are not subject to Board review." [Citing the Court of Appeals in the HEAL case, the Board concluded] Respondent is wrong on the law. [*Lewis, 1320*, FDO, at 14.]
- [Petitioner cited to science in the record from the City's Surface Water Management Plan, recommending regulation based upon the 500-year flood plain. Yet the City designated the 100-year flood plain as its frequently flooded area.] Although there may well be a scientific basis to support this designation, Edgewood fails to cite to a scientific basis for this 100-year flood plain designation. Consequently, the Board concludes that Edgewood's Plan declaration and designation of the 100-year flood plain, as its frequently flooded area – critical area, does not comply with the requirements of RCW 36.70A.172. [*Lewis, 1320*, FDO, at 15.]
- The protection and regulation of "shorelines of state-wide significance [a critical area and ecosystem] is to be based on the scientific method derived from the supportive and harmonious provisions of RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26.]
- [A]ll "shorelines of state-wide significance" designated under Chapter 90.58 RCW are "critical areas" pursuant to RCW 36.70A.030(5). Therefore, the shoreline master program element of comprehensive plans, and all designations and development regulations that purport to control the use of land in such areas, are subject to the requirements of RCW 36.70A.060 and .172. Consequently, all shoreline master program element plan provisions and development regulations designed to govern shorelines of state-wide significance must: 1) be guided substantively by the protect, preserve, enhance and restore goals of RCW 36.70A.020(8), (10) and (14); and 2) utilize the scientific method derived from RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26; *See also Everett Shorelines Coalition, 02309c*, 2/10/03 Order.]
- Regarding the critical areas regulations that are incorporated into the SMP as shoreline management implementing regulations, and the separate shoreline regulations within the SMP, the Board concludes that it cannot allow these regulations that have not been reviewed and evaluated for consistency with the GMA's [best available science] requirement to stand as significant implementing tools for the SMP. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- But for the critical areas/BAS error discussed supra, the Board would find the following regarding the City's core scientific documents: 1) that the [Snohomish

Estuary Wetland Integration Program – SEWIP] complies with RCW 90.58.100(1) and constitutes BAS [RCW 36.70A.172] in support of certain use designations established by the City's SMP; 2) that concerning the compensatory mitigation measures in the [Salmon Overlay to the SEWIP – SOSEWIP], the Board does not have the same degree of confidence in concluding the SOSEWIP constitutes BAS; and 3) regarding the actual regulatory measures to be applied within the various shoreline use designations, the Board again is not confident that it can conclude that the [Use of Best Available Science in City of Everett's Buffer Regulations – Pentec Report] constitutes BAS. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]

- The City never contended it amended its critical areas regulations as part of the SMP update. As discussed previously, this is a fatal flaw in the City's action. Consequently, it is undisputed that the City's shorelines implementing development regulations, including critical areas regulations and shorelines regulations in the SMP (reference omitted), were not adopted as critical areas regulations pursuant to RCW 36.70A.060, nor were they supported by best available science pursuant to RCW 36.70A.172. Moreover, the Board concludes that critical area regulations must assure no net loss of the functions and values of shorelines of state-wide significance. [*Everett Shorelines Coalition, 02309c*, FDO, at 45.]
- Neither the PFR nor the Petitioner's arguments and exhibits properly puts in issue the scientific basis for the County's critical areas regulations concerning wetland and stream buffer widths and vegetation management. [Petitioner did not raise BAS issues, instead challenged whether the CAO was arbitrary or inconsistent with Plan goals and policies supporting agricultural and rural lifestyles. The Board found that Petitioner did not sustain the burden of proof.] [*Keesing CAO, 05301*, FDO, at 36.]
- The Board recognizes that difficult questions may arise in establishing the evidentiary record in a "best available science" challenge which must be decided primarily on the basis of the record before the challenged city or county. The Board notes that the County's record here [and in other "best available science" challenges] is replete with studies that contain bibliographical references to other works by the same authors or related topics, which County staff may or may not have reviewed. The Board also notes that much science in the County's record consists of print-outs from web sites of other governmental agencies, and that these websites are updated from time to time. Pierce County states that it also received CDs from citizens and participants in its public process which purport to present relevant science. The Board is likely to be presented some difficult questions of proof as to whether city or county officials are aware of, or are required by RCW 36.70A.172(1) to be aware of, updated scientific findings. In the present challenges, however, the Board determined it was able to make its decision without considering the proffered extra-record studies. [*Tahoma/Puget Sound, 05304c*, FDO, at 7-8.]
- The Board finds that "best available science' was included in the designation of Lahar Inundation Zones and Lahar Travel Time Zones. To the extent the new regulations were built around that mapping exercise, they reflect best available science as required by RCW 36.70A.172(1). . . . The more troubling question is what land use regulations are required, once a hazard is acknowledged. . . . The County reasons that the only remaining question – reasonable occupancy limits [for a covered assembly in the lahar zone] – is a policy choice based on weighing risks. In the County's

calculus, the low frequency of lahar events, the likelihood of early warning, and the opportunity for evacuation must be weighed against the economic opportunity presented by new tourist facilities. . . . The Board agrees with Pierce County that land use policy and responsibility with respect to Mount Rainier Case II lahars – "low probability, high consequence" events – is within the discretion of the elected officials; they bear the burden of deciding "How many people is it okay to sacrifice." [*Tahoma/Puget Sound, 05304c*, FDO, at 23-25.]

- The Board reads the cautionary approach recommended in the CTED guidelines [WAC 365-195-920] to refer to situations where incomplete science may result in inadequate protection for the "functions and values" of critical areas. In this case, we are not concerned with protecting the "function and values" of volcanic debris flows. Here, the science of lahar inundation hazards on Mount Rainier is sufficiently detailed; the question dealt with in the County occupancy regulations is the feasibility of rapid evacuation from sites very close to the mountain – identified by the URS report as an engineering and life-safety question rather than an issue of vulcanology.. [*Tahoma/Puget Sound, 05304c*, FDO, at 28.]
- [Pursuant to RCW 36.70A.480] the Board agrees with Pierce County that marine shorelines are not *per se* fish and wildlife habitat conservation areas [critical areas]. The Board then asks (1) whether Pierce County used best available science to protect critical fish and wildlife habitat conservation areas on its marine shorelines; (2) whether Pierce County's regulations gave priority to anadromous fish; (3) whether Pierce County's regulations protect the functions and values of marine shorelines as salmon habitat, and (4) whether a vegetative buffer is required. [The County's CAO] identifies a number of critical fish and wildlife conservation areas on its marine shorelines. These include eelgrass beds, shellfish beds, surf smelt spawning areas and the like. However, [the CAO] was drafted to designate and protect *all* Pierce County marine shorelines. When the County Council voted to remove the marine shorelines from critical areas, it did so (a) without ascertaining whether the remaining protected salt-water areas included all the areas important for protection and enhancement of anadromous fisheries and (b) without assessing whether the overlay of elements remaining in the CAO [i.e. steep slopes, erosion areas, eelgrass beds, etc.] would protect the "values and functions" necessary for salmon habitat. [A discussion of *WEAN v. WWGMHB*, 122 Wn. App. 173, (2004) follows.] [*Tahoma/Puget Sound, 05304c*, FDO, at 37.]
- [The Board reviewed the detailed scientific evidence in the record regarding salmon habitat along marine shorelines to determine whether the County gave "special consideration to anadromous fish."] Despite the detailed information about the function and values of salmonids habitat specific to each shoreline reach, Pierce County eliminated "marine shorelines" from the fish and wildlife habitat conservation areas listed in its critical areas ordinance without determining whether the remaining designated critical areas adequately met the needs of salmon. Undoubtedly some of Pierce County's remaining designated and mapped salt-water critical areas, such as eelgrass beds, surf smelt beaches, salt marshes and steep bluffs, overlap with habitats critical to the survival of anadromous fish. But there is nothing in the record to indicate that the high-value shoreline reaches identified by the Pentec Report for salmonids habitat [much less the restorable habitat stretches] are designated and

protected in the Pierce County critical areas regulations. [*Tahoma/Puget Sound, 05304c*, FDO, at 38-40.]

- Deferring salmon habitat protection to a site-by-site analysis based on disaggregated factors is inconsistent with Pierce County's best available science. Nothing in the science amassed by the County supports disaggregating the values and functions of marine shorelines. [Various studies are reviewed pertaining to the integrated function and value of salmon habitat [*Tahoma/Puget Sound, 05304c*, FDO, at 40.]
- The Board finds that Pierce County's site-by-site assessment of marine shorelines during the permit application process, as established in (the CAO), does not meet the requirement of using best available science to devise regulations protective of the integrated functions and values of marine shorelines as critical salmon habitat. [*Tahoma/Puget Sound, 05304c*, FDO, at 40-41.]
- While the 2003 GMA amendments [ESHB 1933, amending RCW 36.70A.480] prohibit blanket designation of all marine shorelines (or indeed, all freshwater shorelines) as critical fish and wildlife habitat areas, the GMA requires the application of best available science to designate critical areas, explicitly recognizing that some of these will be shorelines. The legislature sought to ensure that this correction did not create loopholes. "Critical areas within shorelines" must be protected, with buffers as appropriate, if they meet the definition of critical areas under RCW 36.70A.030(5). RCW 36.70A.480(5) and (6). [The BAS in the County's record supported the conclusion that near-shore areas meet this definition, and the BAS] may provide the basis for designating less than all of Pierce County's marine shorelines as critical habitat for salmon. ESHB 1933 does not justify Pierce County's blanket deletion of marine shorelines and marine shoreline vegetative buffer requirements from its [CAO]. [*Tahoma/Puget Sound, 05304c*, FDO, at 49.]
- Although Mukilteo argues that the best available science was "included" in providing the basis for the 40% buffer reduction provision from DOE Buffer Alternative 3 methodology, nothing in the record shows that best available science was even considered in making the decision. The 50% reduction that appeared very early in the City's revision process was not informed by best available science, as discussed supra, and nothing in the record indicates a reduction of more than 25% is an appropriate deviation from DOE Buffer Alternative 3 methodology. The City's argument that changes can be made from best available science recommendations without any justification for the changes would eliminate the stated purpose of the best available science requirement – protection of the function and values of critical areas. A jurisdiction must provide some rationale for departing from science based regulations. (Citation and quote from Court of Appeals Division I decision in *WEAN v. Island County*). [*Pilchuck V, 05329*, FDO, at 10-11.]
- In remanding the noncompliant regulations to [the County], the Board pointed out that . . . the record already contained abundant science concerning the matters at issue. Nevertheless, [the County] undertook additional public process and re-analysis in developing the proposal for [the remand Ordinance]. Base on the prior well-developed record, as refined in the compliance process, [the County] has now enacted both designation of critical salmon habitat in [the County] marine shorelines and measures to protect the functions and values of that habitat. While there are various ways that the science in the record might have been applied by [the County] to

comply . . . the Board is persuaded that Ordinance No. 2005-80s meets the GMA standard. [*Tahoma/Puget Sound, 05304c*, 1/12/06 Order, at 6.]

- [A thorough discussion as to balancing of the GMA's goals and requirements in light of several decisions of the Courts including *Quadrant (2005), King County (2000),* and *Bellevue (2003).* The Board concluded that these decisions of the Supreme Court and Court of Appeals established the rule that a jurisdiction may not assert the need to balance competing GMA goals as a reason to disregard specific GMA requirements.] [*DOE/CTED, 05334*, FDO, at 11-13.]
- [The Board concludes that GMA goals provide a framework for plans and regulations, and many of the goals are backed and furthered by specific and directive GMA requirements and mandates. Therefore cities and counties may not merely rely upon GMA goals, standing alone, to dilute or override GMA requirements.] [*DOE/CTED, 05334*, FDO, at 52-53.]
- [The Board acknowledges the language used by the Court of Appeals in both the *HEAL* case and subsequently in *WEAN* that apparently allows "balancing" in the context of critical areas regulation. In the CAO context, such "balancing" is clearly appropriate if GMA requirements are in conflict, but there is no hard evidence here to support such a divergence from wetland ranking and buffers based on best available science.] [*DOE/CTED, 05334*, FDO, at 53.]
- [A thorough discussion of the GMA's Best Available Science (BAS) requirement in the context of *HEAL (1999)* and *Ferry County (2005).* The Board reiterated the Supreme Court's holding in *Ferry County*, finding that the Court's 3-factor analysis - (1) The scientific evidence contained in the record; (2) Whether the analysis by the local decision-maker of the scientific evidence and other factors involved a reasoned process; and (3) Whether the decision made by the local government was within the parameters of the Act as directed by the provisions of RCW 36.70A.172(1) - is a case-by-case, rather than a bright-line, review.] [*DOE/CTED, 05334*, FDO, at 13-15.]
- The GMA mandate at issue in the present case, as in *WEAN*, is the requirement that local jurisdictions include best available science in designating critical areas and protecting their functions and values. Once a challenger has demonstrated that there is no science or outdated science in the City's record in support of its ordinance, or that the City's action is contrary to what BAS supports, it does not impermissibly shift the burden of proof for the Board to review the City's record to determine what science, if any, it relied upon. This is precisely the process undertaken in the *Ferry County* case. See generally, *Ferry County*, *supra*. It is Petitioners' burden to prove by clear and convincing evidence that the City's ordinance does not comply with the GMA because it does not include BAS for wetlands protection. [*DOE/CTED, 05334*, FDO, at 17.]
- The GMA imposes a requirement to protect critical area functions and values based on best available science. Wetland classification schemes are not necessary, but if used, they must be based on BAS in order to ensure that the related buffer requirements provide the needed protections. [*DOE/CTED, 05334*, FDO, at 31]
- [T]he Petitioners have met their burden of proof by demonstrating that the City's record lacks a current scientific basis for its wetlands rating system and that the three-tier system is designed "with specific and narrow functions in mind," rather than protecting "the entirety of functions" of the City's wetlands. The Board does not find

in the City's record any current science supporting the truncated wetland rating system or indicating how wetland functions will be identified and protected with this system. [*DOE/CTED, 05334*, FDO, at 33.]

- In reenacting its three-tier wetlands ranking system, Kent failed to account for the full range of wetland functions and therefore failed in its GMA obligation to protect critical area functions and values. [As clarified in the following section, protection of functions could possibly have been provided, even under a three-tier system, with wider required buffers and other adjustments.] Retaining this outdated system ignores the advances of science and understanding of wetland functions and values that have occurred over the last decade. Retention of an obsolete, albeit "comfortable" system makes a mockery of, and totally ignores, the requirement of RCW 36.70A.130(1) that local cities and counties must update CAOs based upon BAS, which is continually being refined. [*DOE/CTED, 05334*, FDO, at 34.]
- The Board reviews this case under the framework laid down by the Supreme Court last year in *Ferry County* and adds a fourth consideration based on *WEAN* and on the CTED guidelines at WAC 395-195-915(c):

  > (1) The scientific evidence contained in the record; (2) Whether the analysis by the local decision-maker of the scientific evidence and other factors involved a reasoned process; (3) Whether the decision made by the local government was within the parameters of the Act as directed by the provisions of RCW 36.70A.172(1); AND (4) Whether there is justification for departure from BAS. [*DOE/CTED, 05334*, FDO, at 42.]

- [W]here science deals with complex, multi-faceted phenomena, scientific analysis and findings are likely to be complex. And where private economic interests or deeply-held beliefs are impacted, scientific conclusions are sure to be contentious. [*DOE/CTED, 05334*, FDO, at 38.]
- [T]he complexity of wetlands protection is a function of the interplay between land uses, the specific wetland functions at risk, the degree of effectiveness, and other factors that might be more accurately assessed on a case-by-case basis. Where prescriptive regulation is enacted, a first step is designing a ranking system that reflects the full range of wetland functions and so addresses the protection of all functions. [*DOE/CTED, 05334*, FDO, at 39.]
- The Legislature determined that scientific understanding of the necessary critical area protections would improve over time; thus, cities do not have to answer *all* the scientific questions they can think of but only need to apply the *best science available* at a particular time and place. [*DOE/CTED, 05334*, FDO, at 39.]
- Mere recitals on the part of the local government that it "considered" BAS and chose to depart from it in the service of other GMA goals are inadequate. The justifications for departure must be supported by evidence in the record. [*DOE/CTED, 05334*, FDO, at 53.]
- [An analysis is required to demonstrate how the various regulations, projects, and programs, together or separately, protect the specific hydrologic, water quality and habitat functions and values of a City's wetlands allow for, under *WEAN*, a departure from protections that are within the range of best available science.] [*DOE/CTED, 05334*, FDO, at 48-49.]

- [BAS is required in developing measures to protect the function and value of critical areas. BAS is not a prerequisite for a rezone.] If Petitioners believed that the City's identification, designation and protection of geologically hazardous areas along the western edge of the City was clearly erroneous, Petitioner's could have challenged the City's adoption of its critical areas regulations, the City's identification and designation of geologically hazardous areas, or the Comprehensive Plan's land use designations for the area. Petitioner did none of the above, and it is untimely to challenge any of those actions at this time. To now challenge the zoning designations that implement the unchallenged Plan designations, which are admittedly based upon BAS, is without merit. Both parties have demonstrated that BAS, as reflected in adopted documents, was part of the record in this rezoning action. [*Abbey Road*, 05348, FDO, at 11.]
- [The County exempted from regulation very small, truly isolated and poorly functioning wetlands. The County was advised by state agencies that such exemptions were not supported by BAS. The Board reviewed the case of *Clallam County v. Western Washington Growth Management Hearings Board*, 130 Wash. App. 127, 140, 121 P.3d 764 (2005), pertaining to the limitations on exemptions from critical areas regulations.] The Board reads the Court's opinion to require CAO exemptions to be supported by some analysis of cumulative impacts and corresponding mitigation or adaptive management. Here, Kitsap County has not expanded its small wetlands exemption; in fact the exemption has been somewhat narrowed. But there is no evidence in the record of the likely number of exempt wetlands, no cumulative impacts assessment or adaptive management, and no monitoring program to assure no net loss. In light of the Court's guidance in Clallam County, which the Board finds controlling, the Board is persuaded that a mistake has been made; Kitsap's wetland exemption is clearly erroneous. [*Hood Canal, 06312c*, FDO, at 19-20.]
- Petitioner KAPO contends that the County may not rely on federal habitat designations undertaken for another purpose but must conduct its own shoreline inventory or "independent analysis" and show in the record its owned "reasoned process." The Board however, reasons that the "best *available* science" requirement includes the word "available" as an indicator that a jurisdiction is not required to sponsor independent research but may rely on competent science that is provided from other sources. . . .The Board concludes that the County appropriately relied on available science. [*Hood Canal, 06312c*, FDO, at 30.]
- *HEAL* reminds us that the choice of a city or a county, when faced with competing options for protecting critical areas – *each based on competent and current science* – is entitled to deference. Kitsap County chose the prescriptive buffer approach, with flexible alternatives, because it found the BAS supporting that approach more persuasive and because it was administratively feasible. The Board is not persuaded that the County's choice was erroneous. [*Hood Canal, 06312c*, FDO, at 35-36.]
- Kitsap County's marine buffers buffer widths are assigned based on SMA land use classifications, not based on the functions and values of the critical areas designation – here, fish and wildlife habitat conservation areas. . . .The County has not differentiated among the functions and values that may need to be protected on shorelines that serve, for example, as herring and smelt spawning areas, juvenile

chum rearing areas, Chinook migratory passages, shellfish beds or have other values. Rather they have chosen an undifferentiated buffer width that is at or below the bottom of the effective range for pollutant and sediment removal cited in [BAS]. And they have applied that buffer to SMP land use classifications, not to the location of specific fish and wildlife habitat. . . .The flaw [in this approach] is illustrated by the fact that eelgrass, kelp, and shellfish beds are protected by larger buffers if they happen to be off shores designated Natural or Conservancy [in the SMP], while the same critical resources – eelgrass, kelp, shellfish – have just 35 feet of buffer off the Urban, Semi-rural or Rural shore. Protection for critical areas functions and values should be based first on the needs of the resource as determined by BAS. . . .Here Kitsap County has opted to designate its whole shoreline as critical area but then has not followed through with the protection of *all* the applicable functions and values. [*Hood Canal, 06312c*, FDO, at 39-41.]

- [Discussion of "immature science" dilemma. It is always evolving, with more questions being raised, requiring more data and analysis.] [*Hood Canal, 06312c*, FDO, at 41-42.]
- [T]he GMA requires that critical areas regulations be updated periodically, RCW 36.70A.130(3), and that cities "shall include" best available science in designating critical areas, RCW 36.70A.172(1). Here, the City of Seattle is aware of a great deal of new science concerning the existence and location of surficial faults and concerning the past occurrence and future risks of tsunamis and lahars. But the City has not included this new science, even provisionally, in its designations of geological hazard areas. [*Seattle Audubon, 06324*, FDO, at 19.]

• Best Management Practices - BMPs

- No entries

• Board Rules

- Although a dispositive motion before a board and a motion for summary judgment before a superior court may be similar, the Board is not constrained by CR 56 time limits or case law interpretation of that rule. [*Twin Falls, 3303c*, 6/11/93 Order, at 19.]
- WAC 242-02-650 does not require the strict application of the Washington Rules of Evidence in hearings before the Board. [*Northgate, 3309*, 11/8/93 Order, at 8.]
- General discussion and recap of the quasi-judicial nature of the Board, jurisdictional issues and the APA. [*Sky Valley, 5368c*, FDO, at 6-20.]
- The Board's Rules of Practice and Procedure require that, as part of a petition for review, a petitioner must show standing. WAC 242-02-210(d). However, no such requirement exists for an intervenor. [*Benaroya I, 5372c*, 1/9/96 Order, at 6.]
- [When intervention is granted after the deadline for filing motions, and a motion is filed by an intervenor, the Board's Rules require approval of the Presiding Officer for consideration of the motion; if granted, consideration may be deferred until the hearing on the merits – WAC 242-02-532(2) and (3).]

- A Board Order on Dispositive Motions is a final decision of the Board subject to reconsideration. [*Hanson, 8315c,* 10/15/98 Order, at 2.]
- [The GMA, specifically RCW 36.70A.290, does not provide for service requirements. However, the Board's rules, at WAC 242-02-230, do establish service requirements. The Board views failure to comply with the WAC service requirements as jurisdictional, not merely procedural.] [*Lane, 8333c,* 1/20/99 Order, at 2.]
- [The Board denied the motion because, absent the FDO, the County's action is presumed valid and Posten would be in the same position as after the FDO issued. The Order did not address the timeliness issue or the fact that numerous other parties besides Posten were affected by the FDO.] [*Alpine, 8332c,* 3/24/99 Order, at 2.]
- It is unfortunate that Petitioner's counsel could not find the Board's decisions until respondent noted them in the dismissal motion, but Petitioner's statements are simply wrong. The Board's Rules of Practice and Procedure indicate where the Board's orders are available and published. [*Montlake, 9302c*, 4/23/99 Order, at 5.]
- [Filing motions (dispositive or to supplement the record) are untimely if filed after the deadline established in the prehearing order, unless written permission is granted by the Board.] [*WRECO, 8335,* FDO, at 2-3.]
- Without any explanation, Petitioners filed their response brief with the Board two days after the Board's deadline. The Board may dismiss any action for failure to comply with any order of the Board. WAC 242-02-720. Because Petitioners' brief was filed late and without prior approval of the Board, the Board has not considered Petitioners' response brief. [*Tacoma II, 9323c*, 3/10/00 Order, at 2.]
- [On reconsideration, the Board considered Petitioners' response brief, but affirmed its decision to dismiss the PFRs alleging the County failed to adopt the amendments proposed by Petitioners.] [*Tacoma, 9323c*, 3/27/00 Order, at 1-2.]
- Pursuant to WAC 242-02-532(4), a motion, other than a dispositive motion or a motion to supplement the record, is deemed denied unless the Board takes action within twenty days of filing the motion. (The Board did not act on the request for expedited review.) [*McVittie, 0316*, 1/4/01 Order, at 2.]
- There is nothing in the GMA nor the Board's rules to suggest that the City waived its rights to bring a dispositive motion simply because it did not, at the time of the prehearing conference, declare its intention to file such a motion. [*Mesher, 1307*, 8/2/01 Order, at 9.]
- The Board's rules do not permit the filing [or serving] of any documents with the Board or any of the parties by e-mail. [Petitioner failed to properly serve notice of the PFR on the City.] [*Robison II, 02320*, 3/6/03 Order, at 4.]
- The Board's PHO was dated March 25, 2003. Petitioner's letter objecting to the PHO and requesting a revision was received on April 24, 2003 – 30 days after issuance of the PHO. [WAC 242-02-558 requires objections to a PHO must be made within seven days of issuance.] The time to object or request revisions to the PHO lapsed on April 1, 2003. Petitioner's request is untimely. The request to amend Legal Issue 11 in the PHO is denied. [*Moyer, 03306c*, 4/25/03 Order, at 2-3.]
- Petitioner failed to allege SEPA standing in the PFR, reference any relevant exhibits or even address this issue in response to the motion to dismiss. Petitioner's SEPA claims are dismissed. [*Hensley VI, 03309c*, 5/19/03 Order, at 11.]

- The Board holds that the term "detailed" as used in RCW 36.70A.290(1) and WAC 242-02-210(2)(c) means: concise, to the point and containing the essential components that appear in the Board's guidelines for framing legal issues. (Reference to Appendix omitted.) "Detailed" does not mean "lengthy" or including argument and evidence within the body of the issue statement. A legal issue is an allegation, not an argument. (Footnotes omitted.) The appropriate place for argument is in the briefs, not the issue statement. [*Nicholson, 04301*, 4/19/04 Order, at 5.]
- Future Petitioners should take to heart the Board's dismissal of this case, and be certain to articulate in their petitions for review "a detailed statement of the issues presented for resolution by the Board that specifies the provision of the [GMA] allegedly being violated, and if applicable, the provision of the document that is being appealed." WAC 242-02-210. Failure of a party to comply with the Board's rules of practice and procedure or a Board order, may lead to dismissal of an action on the Board's own motion. WAC 242-02-720. [*Nicholson, 04301*, 4/19/04 Order, at 6.]
- The Board's rules indicate that it will entertain a petition for review that alleges a "failure to act" when a jurisdiction *fails to take action by a deadline specified in the GMA*. WAC 242-02-220(5). This rule also allows such a petition to be filed at any time after the deadline has passed. [*FEARN, 04304*, 5/20/04 Order, at 6.]
- The Board's Rules of Practice and Procedure provide, "A facsimile document will only be stamped "received" by the Board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped on the following business day. The date and time indicated on the Board's facsimile machine shall be presumptive evidence of the time and date of receipt of transmission." *See* WAC 242-02-240(2)(a). [A PFR transmitted by fax was received by the Board after the close of business on a Friday; it was stamped received on Tuesday following a legal holiday. The PFR was dismissed as untimely.] [*LCC, 05318*, 3/14/05 Order, at 3-4.]
- [Petitioner's prehearing brief was due October 24, 2005, as of November 3, 2005, the Board had not received the brief.] Nor has the Board received a timely request for an additional settlement extension. Consequently, the Board will dismiss this matter for lack of prosecution – all issues have been abandoned. Dismissal is required since [Petitioner] has failed to pursue its case and failed to comply with the Board's 3rd Extension Order. [*Gateway, 05324*, 11/3/05 Order, at 2.]

- **Boards**

- Nothing in the GMA suggests that a growth planning hearings board has the authority to waive the 180-day limit to issue its final order as specified in RCW 36.70A.300. [*Snoqualmie, 2304c*, 11/4/92 Order, at 3.]
- General discussion of Board powers. [*Twin Falls, 3303c*, 6/11/93 Order, at 7.]
- The phrase "judicial review" in RCW 43.21C.075(4) refers to both review by courts and by this quasi-judicial growth planning hearings board. Thus, the doctrine of exhaustion of administrative remedies applies to petitions before the Board. [*Rural Residents, 3310*, 2/16/94 Order, at 6.]
- The CPSGMHB's jurisdiction is limited to the four-county Central Puget Sound region by RCW 36.70A.250. Thus, the precedential impact of this Board's decisions

is limited to King, Pierce, Snohomish and Kitsap counties. This is consistent with the regional diversity that is one of the hallmarks of the Growth Management Act. [*Kitsap/OFM, 4314*, FDO, at 5.]

- General discussion of GMA and summary of prior Board holdings. [*Bremerton, 5339,* FDO, at. 20-24.]
- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c, FDO,* at 13.]
- The Board's role is not to judge the wisdom or advisability of every detail of a program such as the HIP – rather it is the Board's role to review the policy choices, as set forth in the HIP, for compliance with RCW 36.70A.040(3). [*LIHI II, 1223*, FDO, at 13.]
- [At the HOM, the parties asked the Board to reconsider its Order Regarding Disqualification of Board. The respondent wanted the Board disqualified, and Petitioner wanted the struck portions of its prehearing brief reinstated. The Board denied the reconsideration request.] [*Fallgatter V, 06303,* FDO, at 5-6.]

• Buffers – *See:* Critical Areas

• Buildable Lands – *See:* Re-affirm or Re-evaluate

- [The buildable lands review requirement of RCW 36.70A.215 requires certain counties "to adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program." The first review and evaluation must be completed no later than September 1, 2002. A challenge to compliance with the requirements of .215 is only timely after a jurisdiction adopts its .215 CPP or after September 1, 2002.] [*Kitsap Citizens, 0319c*, FDO, at 11-12.]
- [Pursuant to RCW 36.70A.215, the County adopted a CPP to govern UGA expansions. To maintain consistency with the UGA expansion CPP, the County also adopted an identical Plan policy. The CPP and Plan policy include review and analysis requirements for the expansion of UGAs for residential, commercial and industrial lands. The (Maltby) UGA expansion, designation and rezone indicate commercial designations. However, a concomitant agreement limited the area in dispute for use as a church, thereby allegedly precluding other commercial uses. Consequently, the issue for the Board was whether the existence of the concomitant agreement made the UGA review and analysis required by CPP and Plan policy necessary. The Board determined the County CPP and Plan policy both apply and govern the expansion of the UGA.] [*Hensley IV, 1304c*, FDO, at 29.]
- Full compliance with [the provisions of] RCW 36.70A.215 is not required to be completed until September 1, 2002. However, portions of the County's "buildable lands" process have been completed, adopted and are effective, including the guiding principle of [the CPP and Plan policy, which state:] "Expansion of the boundary of an individual UGA to include additional residential, commercial and industrial land shall

not be permitted unless it complies with the [GMA] and one of the following four conditions are met." If the conditions have not yet been fully defined, by necessity, the [CPPs and Plan policy's] prohibition on UGA expansion is operative until such time as they have are established and applied. [*Hensley IV, 1304c*, FDO, at 33.]

- The Board notes that RCW 36.70A.130(3) was amended in 1997 to provide: "The review required by this subsection *may be combined* with the review and evaluation required by RCW 36.70A.215." (Emphasis supplied.) RCW 36.70A.215 further supports the principle that *periodic* review and evaluation for UGA sizing and designation, *not continuous updates*. [*Master Builders Association, 1316*, FDO, at 10.]
- The review and evaluation mandate [of RCW 36.70A.215] focuses on the following components: 1) whether there is sufficient suitable land to accommodate the county-wide population projection; 2) the actual density of *housing* that has been constructed and the actual amount of land developed for *commercial and industrial uses* within the urban growth area; and 3) evaluation of the *commercial, industrial and housing* needs by type and density range to determine the amount of land needed for *commercial, industrial and housing* for the remaining portion of the twenty-year planning period. [*Hensley VI, 03309c*, FDO, at 15.]
- The review and evaluation program [of RCW 36.70A.215] is designed to require the assessment of at least the three most significant consumers of urban land – residential, commercial and industrial uses. These three use types provide the core of urban development and the basis for the possible expansion of UGAs. [*Hensley VI, 03309c*, FDO, at 16.]
- The purpose of the reasonable measures [requirement in RCW 36.70A.215] is to identify mechanisms to accommodate growth without expanding UGAs. Consequently, any reasonable person would expect consideration of these measures to include, at a minimum, an indication of which reasonable measures were already adopted by the City or County and what steps, if any, were being taken to adopt additional reasonable measures to avoid expanding UGAs. This type of review and consideration is lacking. The only reference to review of reasonable measures pertains to the [City's] (Footnote omitted) existing use of one, of a possible 25, reasonable measure - planned unit development techniques - to encourage infill. (Footnote omitted) Also, there is no expression of the need for additional residential land due to residential land capacity shortages. The lack of reasonable measures in the CPPs, the after-the-fact adoption of reasonable measures in the BLR [Buildable Lands Report] and even the lack of the County's application of these measures lead the Board to conclude that the County acted prematurely. [*Hensley VI, 03309c*, FDO, at 27.]
- [The Board has held, and the Supreme Court has affirmed, that CPPs have a binding and substantive effect on local government's comprehensive plans. Also, CPPs must comply with the requirements of RCW 36.70A.210 and .215. CPPs designed to implement orderly development and urban growth areas must comply with the requirements of RCW 36.70A.110, because implementation of .110 is specifically referenced in .210(3)(a).] [*CTED, 03317*, FDO, at 13-14.]

- General Discussion of the relationship between land capacity analyses and the buildable lands review and evaluations required by the Act – RCW 36.70A.110 and .215. [*CTED, 03317*, FDO, at 20-22.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land to include a church or a school property, with restrictions, is permissible without conducting a land capacity analysis as required by RCW 36.70A.110 or evaluation per .215.] [*CTED, 03317*, FDO, at 26-28.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to reach adjacent land containing significant cultural or natural features for the purpose of protecting it as open space is permissible if a need for additional residential, commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken. (Note: The Board remanded this CPP to the County to clarify that the open space to be preserved would be outside the UGA, as the County intended.) A potential UGA expansion pursuant to this CPP] would seem to restrain the County's discretion by directing the County to pursue such a needed and documented UGA expansion in a location so as to maximize its ability to preserve the significant natural and cultural features as open space. This is more of a UGA *locational constraint*, rather than a UGA *sizing constraint*. Nonetheless, if the County chooses to constrain its discretion in this manner, it is free to do so. [*CTED, 03317*, FDO, at 31-32.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land for an affordable housing crisis did not comply with the Act – RCW 36.70A.215. (Note: A CPP, allowing an individual UGA to be potentially expanded for additional residential land is permissible if a need for additional residential land is demonstrated in a land capacity and reasonable measures have been taken. The challenged CPP bypassed .215's reasonable measures requirement.) The Board also commented that a land capacity analysis for residential *land* is off point in relation to a potential expansion of a UGA pursuant to an "affordable housing crisis," which is the basis for this potential UGA expansion.] Whether the existing and projected housing stock is affordable falls within the parameters of RCW 36.70A.070(2) – the Housing Element. A GMA Plan's Housing Element is required to *identify sufficient land for housing, including government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities*. RCW 36.70A.070(2)(c). Also the Housing Element requires jurisdictions have adequate provision for existing and projected housing needs for *all economic segments of the community*. RCW 36.70A.070(2)(d). Therefore, reliance upon just a land capacity analysis without supporting documentation in the County's Housing Element would be inadequate to implement [a UGA expansion pursuant to this CPP. The Board found this CPP noncompliant.] [*CTED, 03317*, FDO, at 35-36.]
- [The County's CPP, allowing an individual UGA to be potentially expanded for economic development purposes to adjacent land that had previously been designated as resource lands, is permissible if a need for additional commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken.] [*CTED, 03317*, FDO, at 39.]
- [I]f the buildable lands review and evaluation that is completed by September 1, 2002 demonstrates inconsistencies as noted in RCW 36.70A.215(3), *then* jurisdictions must

adopt and implement the identified measures [reasonable measures] to increase consistency. A duty to act is stated, but RCW 36.70A.130(3), which provides, "The review required by this subsection [December 1, 2004 (for CPS jurisdictions)] may be combined with the review and evaluation required by RCW 36.70A.215." Therefore, the Board concludes that the outside limit for a local government to adopt reasonable measures to avoid the need to adjust the UGA is December 1, 2004 deadline established in .130(4). [*FEARN, 04304*, 5/20/04 Order, at 7-8.]

- The land capacity analysis required by RCW 36.70A.110(1) and (2), now underscored by the buildable lands reports required by RCW 36.70A.215, is a vital component of the work that must be shown. (Citations omitted.) [*Bremerton II, 04309c*, FDO, at 35.]
- [Petitioner] argues the BLR [County's buildable land report] reveals the following inconsistencies: 1) failure to accommodate 5/6 (83%) of the new growth within UGAs as directed by the CPPs and Comprehensive Plan; 2) failure to achieve appropriate (non-sprawl) urban densities within UGAs; and 3) inappropriate (urban sprawl) development in rural areas. (Citations omitted.) . . . The BLR certainly supports [Petitioners'] contention that the BLR reveals inconsistencies between what is occurring and what the County's Plan is designed to achieve. The BLR identifies development patterns inconsistent with the GMA, the County's CPPs and its Plan. For the County to contend that there are no inconsistencies revealed by the BLR and that reasonable measures are not necessary is in error. The BLR reveals inconsistencies, therefore the County must not only identify reasonable measures, but take action to implement them as required by RCW 36.70A.215(4) [by December 1, 2004.] [*Bremerton II, 04309c*, FDO, at 54-55.]
- The Buildable Lands program is a review and evaluation program directed at certain GMA planning jurisdictions requiring an inventory of growth and development during a set timeframe. This information is to be used as a basis for assessing their plans and regulations – particularly as they relate to Urban Growth Areas (UGAs). The BLR process, parameters and methodology are to be jointly developed by the County in coordination with its cities and ultimately to be reflected in the County's County-wide Planning Policies. The BLR effort is largely an internal governmental data-gathering exercise, but the Act does direct jurisdictions, in undertaking the program, to "consider information from other *appropriate jurisdictions and sources*." *See* RCW 36.70A.215(1)(emphasis supplied). The Board notes that while RCW 36.70A.215 does not directly reference the BLR program to the GMA public participation requirements, the BLR provides important information for updates, amendments and revisions to GMA Plans and regulations which are clearly within the gambit of the GMA's notice and public participation requirements. [*S/K Realtors, 04328*, FDO, at 9.]
- [G]iven Petitioners continuing, active and visible participation in the County's GMA planning process, it is reasonable to conclude that Petitioners' input, including the White Paper, was taken into account by the County decision-makers. It appears to the Board that S/K Realtors simply did not persuade the County that their perspective was the "right" view of the usefulness of the BLR. . . . No one questions whether Petitioners have special expertise in relation to the housing market. As a business association, S/K Realtors clearly are representatives from the private sector.

However, in the GMA public process at issue here, Petitioners have no different status than neighborhood groups or citizen organizations or any other member of the general public. Consequently, not having a decision "go your way" does not equate to a failure of the GMA's public participation process. [*S/K Realtors, 04328*, FDO, at 10-11.]

- [The County asserted that it *completed* its BLR by September 2002, and to challenge it in 2004 was untimely, since no appeal was brought within 60-days of its *completion*.] [RCW 36.70A.290(2)(a) and (b) and .130(1) provide guidance to the Board on this question. These publication requirements] provide the means to limit a jurisdiction's exposure to challenges before the Board. Likewise, if a jurisdiction wants to establish a limitation on its exposure to appeal, a similar course should be followed for its BLR. Therefore, it logically follows that to establish a timeframe for appeals to the Board, the completion of a BLR should be acknowledged through legislative action and the adoption of a resolution or ordinance finding that the review and evaluation has occurred and noting its major conclusions. Consequently, the Board cannot accept the timely "completion" of a document as a basis for determining timeliness of a petition for review. The basis for the Board to determine the timeliness of a petition is confined to the provisions of RCW 36.70A.290(2)(a) and (b). The County did not acknowledge completion of the BLR through legislative action, nor publish notice of completion. Therefore, the County did not establish a timeframe for its appeal. S/K Realtors PFR challenging King County's BLR, specifically Legal Issue 8, is timely. [*S/K Realtors, 04328*, FDO, at 15.]
- If the legal sufficiency of a BLR is challenged, the Board's scrutiny will focus on whether the resulting BLR fulfills the *purposes* of the program and whether the BLR contains the key evaluation components – *i.e.* compliance with RCW 36.70A.215(1) and (3). Simply put, based upon the review and evaluation contained in a BLR, have the jurisdictions been able to determine whether they are achieving urban densities within the UGAs and are reasonable measures needed to avoid adjusting the UGA? Thus, if a county and its cities agree upon an evaluation methodology that satisfy the minimum evaluation components of RCW 36.70A.215(3) [BLR], and the results of that review and evaluation meet the purposes [achieving urban densities within UGAs and are reasonable measures needed to avoid adjusting UGAs] of RCW 36.70A.215(1), the Board will find compliance. [*S/K Realtors, 04328*, FDO, at 15.]
- [A jurisdiction's BLR] should be part of the record and used to verify the basis for a variety of proposed Plan or development regulation amendments – especially UGA adjustments. [*S/K Realtors, 04328*, FDO, at 16.]
- The BLR is not intended to be a comprehensive market feasibility study, a predictor of the economic climate in the future, or source for identifying parcels ripe for development. The BLR is a tool for monitoring policy outcomes – it looks *back*, not forward, to see if the policies embodied in a jurisdiction's Plan and implementing development regulations are being achieved. The BLR simply provides information about prior development activity that may influence future decision-making. [*S/K Realtors, 04328*, FDO, at 18.]
- The BLR was not intended to be an assessment of infrastructure capacity. [*S/K Realtors, 04328*, FDO, at 18.]

- Affordable housing, while a significant issue in the state and the CPS region, is not an issue the BLR was designed to address. Neither the BLR statute nor the County's methodology requires the collection of data regarding income, land costs, housing prices or occupants of various housing types. This type of data is critical in evaluating affordable housing, but it is not information required to be collected in the context of a BLR. [*S/K Realtors, 04328*, FDO, at 19.]
- The market factor is a subjective judgment about how much of the total land in the jurisdiction may be held off the market for various reasons and therefore not be "available" for development. The statute does not specify any particular market factor to be used in conducting the BLR review and assessment. The King County BLR includes a range of market factors established and employed by different cities and for different zones. Therefore, the Board concludes that the market factor(s) selected by the County in doing the review and evaluation is a policy judgment that falls within the jurisdiction's discretion to determine. Using a market factor that was less than that used on previous occasions for different purposes does not run afoul of any of the provisions of RCW 36.70A.215. [*S/K Realtors, 04328*, FDO, at 19-20.]
- The Board notes that the BLR has specific information about the unincorporated areas of the County, yet Petitioners do not appear to challenge this evaluation. It appears to the Board that Petitioners' concerns are misplaced with the County. While the County as a whole is achieving urban densities and has adequate land within unincorporated areas to accommodate growth, the BLR acknowledges "A few individual cities have a potential shortfall with respect to their [growth] target." (Citation omitted.) Nonetheless, Petitioners launch their challenge against the County, not against any of the individual cities. [*S/K Realtors, 04328*, FDO, at 20.]
- Not following specific recommendations from the public or special interest groups in making decisions does not equate to a GMA violation. [*S/K Realtors, 04328*, FDO, at 21.]
- The BLR addresses the entire county, including all its cities, but Petitioners seem to be attempting to enforce a provision of the GMA related to the adoption and implementation of reasonable measures against [the county] instead of against particular cities that it has concerns about. Perhaps, Petitioners challenge on this point [not accommodating growth] would have been better directed at the individual cities believed to be "behind schedule." [*S/K Realtors, 04328*, FDO, at 23.]
- [The phrase] "taken collectively" [RCW 36.70A.115] could be read two ways. One meaning could be that a county and its cities, collectively, are to ensure that they accommodate the OFM forecasted growth. . . . Another reading of "taken collectively". . . is that each jurisdiction is direct to consider its Plan and development regulations amendments collectively to ensure that there is sufficient land to accommodate the growth allocated by the County. [Under either reading the County complied.] [*S/K Realtors, 04328*, FDO, at 124-25.]
- Plans and development regulations are subject to the goals of the Act, not the BLR. [*S/K Realtors, 04328*, FDO, at 32.]
- [In arguing that the City had failed to adopt reasonable measures to increase urban densities; Petitioner neglected to identify any inconsistencies noted in the buildable lands reports of either King or Snohomish County that would compel the adoption or implementation of reasonable measures.] [*Fuhriman II, 05325c*, FDO, at 43-44.]

- [Petitioner references the County's 2002 Buildable Lands Report in challenging the Plan Update.] The question of whether the County's 2002 BLR complies with RCW 36.70A.215 is not an issue before the Board. Therefore, the County's motion to dismiss is unnecessary since the question is not one the Board will address. [*Pilchuck VI, 06315c*, 5/4/06 Order, at 7.]
- Petitioner has challenged the City of Everett's Plan Update, not its 2003 Buildable Lands Program. Therefore, challenging the Plan Update's compliance with the provisions of RCW 36.70A.215, which sets forth the requirements for the GMA's Buildable Lands Program, is misplaced. [The legal issue was dismissed.] [*Strahm, 05342*, FDO, at 10.]
- Just as RCW 36.70A.110 requires a land capacity analysis for counties in designating UGAs, it compels a land capacity analysis for cities [cities with and without unincorporated urban areas adjacent to their city limits] to ensure they can accommodate newly projected growth allocations. The required land capacity analysis in .110 is also reflected in .130, for Plan Updates, again, to assure that the latest projected growth can be accommodated. This supporting documentation is required to enable cities and counties to discharge their respective duties to accommodate projected growth. There is a sound and logical link between the BLR's assessment of past activities, or periodic "check-in" and the land capacity analysis evaluation of accommodating growth. The information derived from the BLR should provide the basis for modifying planning assumptions, policies and designations and testing them against future land capacity analysis to determine whether jurisdictions have the capacity to accommodate newly assigned growth within their jurisdictions. [*Strahm, 05342*, FDO, at 11.]
- There is a sound and logical link between the BLR's assessment of past activities and the land capacity analysis' evaluation of accommodating future growth. The information derived from the BLR should provide data better than theoretical densities and serve as a basis for modifying planning assumptions, policies and designations and testing them with a future land capacity analysis to determine whether jurisdictions have planned for the capacity to accommodate newly assigned growth. [*Pilchuck VI, 06315c*, FDO, at 17.]

- **Burden of Proof**

- A petitioner must first show that the Act imposes a duty upon a local jurisdiction to undertake a particular action and then show by a preponderance of the evidence how the local jurisdiction has breached that duty. Conclusory statements that the Act imposes a duty are insufficient to carry the petitioner's burden of proof. [*Robison, 4325c*, FDO, at 10.]
- The Board acknowledges that at a compliance hearing, the burden of proof has shifted to the respondent city or county to show that it has procedurally complied with the Board's order. Accordingly, this Board routinely requires a city or county whose GMA enactment was not in compliance with the Act to first indicate what actions it took to bring the enactment into compliance. Petitioners and intervenors are then given the opportunity to comment on the city or county's statement of compliance. Finally, the city or county is given the opportunity to reply to any responses that were

filed. This shifting in the burden of proof does not, however, alter the presumption of validity to which the action of local government is entitled. [*Vashon-Maury, 5308c,* 5/24/96, FOC, at 8.]

- To successfully challenge a local government's GMA actions, a petitioner must first demonstrate that the local government had a duty to act under the GMA and then must show, by a preponderance of the evidence, how the city violated that duty. [*Litowitz, 6305,* FDO, at 5.]
- It is not the jurisdiction's burden to demonstrate the effectiveness of a TDR program. [*Cosmos, 6319,* 6/17/96 Order, at 4.]
- The burden rests on a petitioner to identify those provisions of the challenged comprehensive plan that are uncoordinated or inconsistent. To do this, petitioners must identify the provision in the challenged plan and explain how it is uncoordinated with or inconsistent with a provision in another jurisdiction's comprehensive plan. [*Hensley III, 6331,* FDO, at 13.]
- As to invalidation, the jurisdiction has the burden of demonstrating that the [legislative action] taken in response to the Board's finding of invalidity no longer substantially interferes with the fulfillment of the [specified] goals of the GMA. [*Port of Seattle, 7314,* 5/26/98 Order, at 2.]
- The burden of proof is on petitioner to demonstrate that the actions taken by the local government are not in compliance with the requirements of the GMA. RCW 36.70A.320(2). [*Burien, 8310,* FDO, at 4.]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, at 30.]
- This Board has addressed the application of the 1997 amendment to the standard of review in several prior cases. All of these prior cases shared a common procedural posture: except for the issuance of the Board's final order, all events, including all briefing and oral argument, had occurred prior to the effective date of the amended standard of review (citations omitted). The Board's review and deliberation of whether the local government was in compliance with the GMA had already commenced prior to the effective date of the amended standard of review. Unlike these prior cases, the briefing of the substantive issues now on remand from the Supreme Court, the hearing on the merits, and the Board's review and deliberation have not yet begun. [*Bear Creek,* 5308c, 1/24/00 Order, at 3.]
- ESB6094 provided that most of the Legislature's 1997 GMA amendments "are prospective in effect and shall not effect the validity of <u>actions taken or decisions made</u> before the effective date of this section." 1997 Wash. Laws ch. 429 § 53 (emphasis added). The amendment to the standard of review clearly affects "action taken and decisions made" by the Board. There is nothing in RCW 36.70A.320(3), the codification of the amended standard of review that speaks to actions or decisions of the local governments. Consequently, the Board's deliberation and review in this case, where briefing, oral arguments, and the issuance of the Board's order will occur after the effective date of the 1997 amendment, the Board is obligated to apply the Legislature's amended standard of review – clearly erroneous in view of the entire

record before the Board and in light of the goals and requirements of the GMA. [*Bear Creek*, 5308c, 1/24/00 Order, at 3.]

- [Except for the Board's standard of review] the Board will apply the provisions of the GMA that were in effect at the time the County took the challenged actions. [*Bear Creek*, 5308c, 1/24/00 Order, at 4.]
- Conclusory statements in a footnote are not sufficient to sustain Petitioner's burden of proof in demonstrating noncompliance with provisions of the GMA. [*MBA/Brink, 02310*, FDO, at 21-24.]
- [Petitioners] failed to identify any authority, GMA or otherwise, that requires the County to conduct a broad fiscal analysis necessary to evaluate economic impacts of a community plan. [*MBA/Brink, 02310*, FDO, at 31.]
- [T]estimony or written materials suggesting that a few individual parcels may be more expensive to develop does not make the case that virtually all the nonresidential [subarea plan] land use designations and the nonresidential zoning designations "unduly restrict commercial development," "require development that is not economically viable," "inhibit economic development," or "restricting economic development." [Petitioner] has failed to persuade the Board that the requirement for design standards, landscaping, pedestrian access, *etc*., would do otherwise than to increase the livability of the area. [*MBA/Brink, 02310*, FDO, at 31.]
- [I]n order to overcome the presumption of validity, a petitioner must persuade the Board that the local government has acted erroneously, and to do so it must present clear, well reasoned legal argument supported by appropriate reference to the relevant facts, statutory and case law provisions. Written or oral pleadings that lack these attributes will not suffice. [*FACT, 02314*, FDO, at 6.]
- [T]o argue that the record does not support a jurisdiction's action, does not amount to "burden shifting." Additionally it is extremely important, in managing growth, for the public to understand the basis for legislative policy decisions and how they relate to the jurisdiction's goals and policies as articulated in its adopted plans and regulations. The burden of proof plainly lies with Petitioner. [*Hensley VI, 03309c*, FDO, at 26.]
- The burden of proof in a GMA challenge is the petitioner's to carry, and fundamental to doing so successfully is pointing to which statutory provision is the focus of an allegation of noncompliance. Because Petitioners did not meet this most basic of requirements with respect to [a Legal Issue], they did not carry the burden of proof. [*Kent CARES III, 03312*, FDO, at 7.]
- The [parties acknowledge and agree] that the GMA, specifically RCW 36.70A.320(1), accords a presumption of validity to the adoption of comprehensive plans and implementing development regulations, but does not accord a presumption of validity to the County in adopting CPPs. [The parties then offered varying interpretations of whether a presumption of validity existed for the challenged ordinances.] . . . The question of the effect of the challenged Ordinance's validity during the Board's review is not one presented to the Board. In this case, the parties may be disputing a distinction without a difference, since notwithstanding the presumption of validity, RCW 36.70A.320(2) clearly places the burden of proof on Petitioner to demonstrate that the actions taken by the County are not in compliance with the requirements of the GMA. [*CTED, 03317*, FDO, at 3-4.]

- Petitioners have made a *prima facia* case supporting the assertion that there have been no changes to the soil condition, nor any changed circumstances that could support the County's revision of [the] agricultural resource lands to non-agricultural resource lands commercial uses. [*1000 Friends, 03319c*, FDO, at 27.]
- The Board continues to believe that de-designation of previously designated resource lands is possible under the Act. Given the importance of soils data and mapping, and the large scale of such maps, it seems reasonable that as Plans are reviewed and evaluated in terms of more current and refined information, a jurisdiction may realize that mistakes have been made or circumstances have changed that warrant revision to prior resource land designations. However, since agricultural lands were identified and designated pursuant to the GMA's criteria and requirements it follows that the de-designation of such lands demands additional evaluation and analysis to ascertain whether the GMA criteria and requirements are, or are not, still applicable to the lands being considered for change. A rationale process evaluating objective criteria is essential for designating or de-designating agricultural resource lands. . . . It logically follows that if [a jurisdiction] is required to conduct an analysis based upon GMA mandated criteria to designate agricultural lands of long-term commercial significance; it cannot simply adopt an ordinance that undoes, undermines or contradicts analysis performed to support the original designation decisions. [*Orton Farms, 04307c*, FDO, at 37.]

- ## Capital Facilities Element – CFE

- If a county elects to utilize tiering within its UGAs, it is best served at the FUGA stage, when the capital facilities plan element of the comprehensive plan has been prepared. It is premature to require tiering at the IUGA level. [*Tacoma, 4301*, FDO, at 35.]
- For purposes of conducting the inventory required by RCW 36.70A.070(3)(a), "public facilities" as defined at RCW 36.70A.030(13) are synonymous with "capital facilities owned by public entities." [*WSDF I, 4316*, FDO, at 45.]
- The phrase "existing needs" from RCW 36.70A.070(3)(e) refers not only to the construction of new or expanded capital facilities that can be currently identified as needed, but also the maintenance of existing capital facilities. . . . Determining the appropriate level of maintenance for capital facilities falls within the local government's discretion. [*WSDF I, 4316*, FDO, at 47.]
- As a matter of law, when "probable funding falls short of meeting existing needs" then the jurisdiction in question must reassess its land use element. [*WSDF I, 4316*, FDO, at 47.]
- Although OFM's population projections and those used in county-wide planning policies tend to have a 20-year time frame, the Act at a minimum requires only a six-year capital facilities plan. [*WSDF I, 4316*, FDO, at 49.]
- Unless a specific policy in the CPPs prohibits a city from planning for a greater population capacity than the allocation granted it by the county, the city may plan for more than the allocation. [*WSDF I, 4316*, FDO, at 55.]
- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all

the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, at 60.]

- [Where a large percentage of population and employment growth is concentrated by a city's comprehensive planning process, a city's comprehensive plan must at least discuss what impact its concentrated population growth strategy will have on future traffic forecasts.] [*WSDF I, 4316,* FDO, at 63.]
- If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed must be included in the Plan. [*WSDF I, 4316,* FDO, at 65.]
- Although urban growth should be located where there is adequate infrastructure to support it, the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. [*Robison, 4325c,* FDO, at 20-21.]
- A jurisdiction is not required to tabulate "certificates of water availability" in order to measure water supply. [*Vashon-Maury, 5308c,* FDO, at 48.]
- Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place "at the time development is available for occupancy and use" and second, adequacy is measured by "locally established minimum standards." [*Gig Harbor, 5316c,* FDO, at 13.]
- All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. (citations omitted) A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning. [*Bremerton, 5339c,* FDO, at 77.]
- The lack of a fully completed capital facilities plan is more than a conceptual shortcoming – it is a fatal legal defect in a comprehensive plan. It alone is sufficient cause for the Board to find that the land use element and every other component of a plan violates the requirements of the Act. [*Bremerton, 5339c,* FDO, at 77.]
- Regarding RCW 36.70A.070(3)(a-b), counties and cities must include an inventory and needs analysis of existing publicly-owned capital facilities, regardless of ownership, in their CFE. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at at 39.]
- Regarding RCW 36.70A(3)(c-d), if a county does not own or operate a facility, it should not be required to include the locational or financing information in its CFE

since these decisions are beyond its authority. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at p. 39.]

- When a jurisdiction that owns and/or operates a specified capital facility cooperates with the county and discloses information pertaining to location or financing (RCW 36.70A.070(3)(c-d)), the county may include such information in its CFE. Indeed, aside from being sound growth management and public policy, it may be a necessary prerequisite to access a new funding source – e.g., impact fees. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 39.]
- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 41.]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 42.]
- The Board interprets RCW 36.70A.070(3)(c) as if the phrase "owned or operated by the city or county" existed at the end [i.e., the capital facilities element shall contain the proposed locations and capacities of expanded or new capital facilities "owned or operated by the city or county"]. [*Sky Valley, 5368c,* FDO, at 66.]
- [A]fter the initial inventory and forecast requirements of section .070(3(a)(b) are completed, the Act permits a county to choose to shift some of the facility components that it has inventoried to other categories within the overall mandatory elements of .070 if there is adequate supporting rationale. [*Sky Valley, 5368c,* FDO, at 67.]
- In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development, the duty to accommodate the population and employment that is allocated to them by a county, the duty to accommodate a county allocation and reflect it in both a city's comprehensive plan land use designations and capital facility plans, the Act imposes a duty on cities to encourage urban growth within UGAs. [*Benaroya I, 5372c,* 3/25/96 Order, at 8.]
- The Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. [*Hensley III, 6331,* FDO, at 9.]
- The Board surmises that the Urban Village strategy is intended to be realized through various implementation approaches, including not only the traditional regulatory-zoning reclassifications, but also including targeted or focused City capital

investment as an incentive to private investment, and various administrative incentives. [*WSDF IV, 6333,* FDO, at 20-21.]

- The public facilities required to be inventoried in a capital facilities element includes: parks and recreation facilities, domestic water supply systems, storm and sanitary sewer systems, and schools. [*WSDF IV, 6333,* FDO, at 22.]
- To determine whether existing capital facilities are adequate to meet the future needs of the projected population and employment growth, the Board looks to the language of the plan itself, its appendices, departmental letters, departmental functional plans and the capital improvement program. [*WSDF IV, 6333,* FDO, at 24.]
- If existing capital facilities are adequate to meet the needs of the projected future population and employment growth, and if no new or expanded facilities are needed, the jurisdiction need not specify the location or capacity, nor indicate financing of any such facilities. Further, a reassessment of the land use element is only required if funding falls short for the new or expanded facilities. [*WSDF IV, 6333,* FDO, at 28.]
- The results or conclusions of a jurisdiction's capital facilities needs analysis (i.e., determinations of adequacy, or identification, location, capacity and six-year financing or new or expanded facilities) must be contained directly in the plan or incorporated CIP. Additionally, the Plan must also cite, reference or otherwise identify and indicate the source document(s) containing the required capital facilities needs analysis. [*WSDF IV, 6333,* FDO, at 28.]
- The Act does not impose a duty or requirement upon local governments to eliminate or substantially reduce capital facilities maintenance backlogs, nor to guarantee the funding or financing of capital facilities maintenance projects. [*WSDF IV, 6333,* FDO, at 31.]
- The Act requires local jurisdictions to plan for and accommodate new growth – that projected by OFM and allocated by the County. There is no provision in the GMA to suggest that the Act allows a jurisdiction not to accommodate new growth because it has a capital facilities maintenance backlog or has not guaranteed funding to remove any maintenance backlog, or it is postponing indefinitely its duty to accommodate new growth until its maintenance backlog is removed or reduced. To do so would fly in the face of one of the cornerstones of the GMA. [*WSDF IV, 6333,* FDO, at 32.]
- Although an Interlocal Agreement may address the timing of, and allocation of responsibility for, infrastructure planning in a UGA, the requirements of the GMA govern infrastructure planning within a UGA. [*Johnson II, 7302,* FDO, at 19-20.]
- "Front-end loading" of population [in the CFP] is not a GMA violation. . . . Neither the GMA nor the Procedural Criteria requires or suggests that the OFM population be evenly distributed over the planning period. The County clearly has discretion to distribute the population over the planning horizon as it sees fit, so long as the urban growth is accommodated. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 75.]
- [Although] the GMA does not designate a specific six-year period for CFE planning, it is illogical, and contrary to one of the bedrock purposes of the GMA – *planning* to manage *future* growth – to suggest that the CFE's six-year financing *plan* can be, in whole or in part, an historical report of capital facility financing for prior years. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 77.]
- The "at least six-year plan" period [of RCW 36.70A.070(3)(d)] begins with the date of the adopted Plan. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 77.]

- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c, FDO,* at 13.]
- [Where a jurisdiction's challenged six-year financing program has been repealed and superceded by a more current six-year financing program, the Board cannot provide effective relief; therefore, issues relating to compliance with the capital facilities element, inconsistency and whether capital budget decisions in compliance with the comprehensive plan are moot.] [*McVittie, 9316c, FDO,* at 14.]
- A threshold issue for determining whether [Snohomish] County has made its capital budget decisions, pertaining to roads, in conformity with its comprehensive plan, is the relationship of the County's Transportation Element, the six-year financing plan in the 1999-2004 Capital Plan Detail and the Transportation Improvement Plan (TIP). Conceptually, the starting point for this inquiry is the County's Transportation Element, [as adopted in 1995]. Within this document, the County identifies its proposed transportation improvements for the short range (1995-2000 Phase) and long range (2001-2012 Phase). The transportation improvements identified in the Transportation Element are the baseline Plan provisions against which conformity of capital budget decisions are measured. The next question for assessing [a RCW 36.70A.120] challenge is which documents contain the capital budget decisions that must conform to the comprehensive plan? [Here these decisions were contained in the County's TIP, and summarized in the CFE's six-year financing plan. In this case, Petitioner did not challenge the TIP; consequently, the issue was dismissed.] [*McVittie, 9316c, FDO,* at 18-20.]
- *See also:* **Goals** [*McVittie, 9316c*]
- While Board review of a challenge to RCW 36.70A.070(3) or (6) focuses on the specific requirements of the section, the Board's review must be done in light of Goal 12, not in lieu of Goal 12. [*McVittie, 9316c, FDO,* at 22.]
- [R]eading RCW 36.70A.070(3) in light of Goal 12, the Board concludes that the CFE must include locally established minimum standards, a baseline, for included public facilities, so that an objective measurement test of need and system performance is available. [*McVittie, 9316c, FDO,* at 25.]
- The capital facilities element also specifies a "trigger" for reevaluation action by the local government – RCW 36.70A.070(3)(e). (Quotation omitted.) [I]t is clear that a local government must take action to ensure that existing identified needs are met, if (the "trigger") probable capital facility funding falls short of meeting capital facility needs. [*McVittie, 9316c, FDO,* at 26.]
- It is important to recognize that local government may use various regulatory techniques to avoid the situation where funding shortfalls occur. However, once local action is forced by a probable funding shortfall, a local government has numerous options to consider in reassessing and reevaluating its plan. In reassessing or reevaluating its plan, a local government is not automatically required to revise its land use element. There are other options that may be considered to meet identified capital facility needs and maintain plan consistency. [Options include: reducing standard of service (LOS); increase revenue; reduce average cost of the capital

facility; reduce demand – reallocate or redirect population within the jurisdiction; reduce consumption; combinations of these options.] [*McVittie, 9316c, FDO,* at 26-27.]

- If reassessment action is triggered, the local government's response must culminate in public action in the public forum. [Pursuant to RCW 36.70A.020(11), .035, .130 and .140] This includes, but is not limited to, disclosure of the need for a reassessment, disclosure of options under consideration, and public participation prior to local legislative action. (Footnote omitted.) [*McVittie, 9316c, FDO,* at 27.]
- Unlike the transportation element, the capital facilities element does not use the phrase "concurrent with development" and does not specify an enforcement procedure. [However, read in light of Goal 12] a local government is obligated to take steps to ensure that those facilities and services it has identified as being necessary to support development are adequate and available to serve development. [*McVittie, 9316c, FDO,* at 29.]
- [For capital facilities, adoption of a concurrency ordinance is not required, but it is not prohibited; such action is within local discretion. In any case, an enforcement mechanism is required.] [*McVittie, 9316c, FDO,* at 30.]
- The record before the Board does not make clear whether the "Sidewalk Inventory" map was produced, or available, during the pendency of the adoption of the Greenwood/Phinney Ridge Urban Village. Even if the Board were to agree with Petitioner that the necessary inventory was not available during that process, the fact that it presently exists arguably renders legal issue 4 [alleging no inventory of sidewalks] moot. [*Radabaugh, 0302,* FDO, at 11.]
- In order to determine whether [a jurisdiction] is experiencing a shortfall in funding, the question is simply, have the needs identified in the capital improvement program, as derived from the capital facilities element (and supporting documents) been funded. [*McVittie IV, 0306c,* FDO, at 14.]
- The choice of what is funded during a six-year financing plan cycle is a discretionary choice of the County. It is not for Petitioner to decide which projects are to be funded in a six-year cycle. So long as the needs identified in the CFE are reflected in the capital improvement program, the scheduling of their implementation, including the delay of project to later years, is a discretionary choice of the County. However, the County should be mindful that those needs identified in the 20-year Plan (CFE), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan. [*McVittie IV, 0306c,* FDO, at 14-15.]
- While project backlogs are a problem faced by most local governments, the GMA does not provide the remedy. (Citing: *WSDF IV, 6333,* at 31.) [*McVittie IV, 0306c,* FDO, at 15.]
- [O]nce a shortfall is established and a reassessment precipitated, the GMA's public participation requirements come into play. [Conversely, if a shortfall is not established, and reassessment is unnecessary, public participation is not required.] [*McVittie IV, 0306c,* FDO, at 23.]
- At the heart of this issue is the question of whether the notices the County published told the general public what it needed to know about the pending County action to amend the standards in its CFP. The Board agrees with the County that a capital facility planning is a complex subject and that the notices it published did mention the

general topics under discussion. The Board also presumes that the County has made a good faith attempt to engage the public in the capital facilities dialogue. However, a notice that is *reasonably calculated* to reach the intended public must be measured against something more than the good faith intent of the local government publishing it. Rather, it must also be measured against whether it is *effective* in alerting the public to the key questions in play. It is this latter bar that the County's notices fail to clear. [*McVittie VI, 1302*, FDO, at 9.]

- The Board holds that effective notice of an amendment to a Capital Facilities Element involving the addition or subtraction of facilities deemed to be "necessary for development" or a change in a level of service (LOS) for a listed facility must clearly and concisely describe the nature or magnitude of modifications being considered. Likewise, if a jurisdiction wishes to consider amending a previously adopted standard, by increasing or decreasing a level of service, by revising the methods used to measure performance, or by deletion of the standard altogether, it must explicitly say so in its notice. It is not sufficient for a notice to simply say that the jurisdiction is considering updating or changing previously adopted facilities, standards or methods. It must give a clear indication of WHAT, HOW and, if applicable, HOW MUCH the facility, standard or method might be changed. [*McVittie VI, 1302*, FDO, at 9-10.]
- The County's notice, while lengthy and exhaustively detailed in some ways, misses the mark by not clearly conveying to the average citizen that the County proposed to distinguish in its CFP between certain public facilities as "necessary to support development" and others that are not, and to characterize "parks" as one of the latter. Such changes are too fundamental and persuasive in their effect to be excused by the "errors in exact compliance" language of .140. [*McVittie VI, 1302*, FDO, at 10.]
- One of [the Board's] fundamental conclusions was the Board review of a challenge to RCW 36.70A.020(3) or (6) must be done "in light of Goal 12, not in lieu of Goal 12. [*McVittie VI, 1302*, FDO, at 11.]
- [In *McVittie I, 9316c*, FDO, 23-30.] [T]he Board reached four other basic conclusions about the cumulative effect of Goal 12 and the capital facilities requirements of the Act: (1) Goal 12 creates a duty beyond the capital facility planning that is required by RCW 36.70A.070(3) and requires substantive, as well as procedural compliance; (2) Goal 12 requires the designation of a locally established single Level of Service (LOS) standard for the facilities and services contained in the Capital Facilities Element, below which the jurisdiction will not allow service to fall; (3) Goal 12 operating through RCW 36.70A.070(3) and (6), requires an enforcement mechanism or "trigger" to compel either concurrency implementation or reevaluation of numerous options; and (4) Goal 12 does **not** require a development-prohibiting concurrency ordinance for non-transportation facilities and services, rather, it allows local governments to determine what facilities and services are necessary to support development and the enforcement mechanism for ensuring that identified necessary facilities and services for development are adequate and available. (Footnotes omitted). [*McVittie VI, 1302*, FDO, at 11-12.]
- The Board holds that a Capital Facilities Element must include <u>all</u> facilities that meet the definition of public facilities set forth in RCW 36.70A.030(12). <u>All</u> facilities included in the CFE must have a minimum standard (LOS) clearly labeled as such

(i.e., not "guidelines" or "criteria"), must include an inventory and needs assessment and include or reference the location and capacity of needed, expanded or new facilities. (RCW 36.70A.070(3)(a), (b) and (c). In addition, the CFE must explicitly state which of the listed public facilities are determined to be "necessary for development" and each of the facilities so designated must have either a "concurrency mechanism" or an "adequacy mechanism" to trigger appropriate reassessment if service falls below the baseline minimum standard. Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may choose to adopt a concurrency mechanism for other facilities. [*McVittie VI, 1302*, FDO, at 17.]

- To clarify, the Board did not intend that the degree of detail of the notice mimic the actual ordinance. The "reasonable notice" standard or .035 presumes that the County will exercise some judgment about what the essential features of the Ordinance are that require summarization in the notice. The example provided by the County would meet the reasonably calculated standard because it alerts the citizens to the nature of the change (a lowering of the standard) and the likely consequence (approval of more development that would otherwise be allowed). This would be more meaningful to the lay public than a technically precise phrase such as "the change in LOS will be from .076 V/C to .074 V/C." However, to the extent that the changes contemplated in LOS can be expressed with commonly used terminology (e.g. a change from LOS "C" to LOS "D" it would be appropriate to include such information in the notice. [*McVittie VI, 1302*, 10/11/01 Order, at 4.]
- The Lake Stevens UGA Plan includes a Capital Facilities Element. Within this element, the County states, "The following are key findings of the capital facilities plan *for the Lake Stevens UGA*: *There is a gap between the capital facility needs and the public funding available for surface water and transportation*." When a "gap" or "revenue shortfall" between needed facilities and ability to finance them occurs, the GMA requires the jurisdiction to "reassess the land use element" to respond to such revenue shortfalls. *See* RCW 36.70A.070(3)(e). Reduction of the size of the UGA is one obvious response to address a revenue shortfall. However, in lieu of reducing the size of the UGA, there are several other accepted options available as part of the reassessment process. These options are recognized and set forth in the LSUGA Plan. The LSUGA Plan's key findings continue: [This Plan] describes a number of options as a *response to the revenue shortfall*, including:
    - Reducing the LOS [level of service standards].
    - Increasing the revenues available to pay for the necessary facilities.
    - Reducing the average cost of facilities.
    - *Reducing demand by timing development* or redistributing growth to other areas.
    - Reducing demand for services through conservation programs

  Thus, one means of addressing a revenue shortfall is to time or phase development to reduce demand. This is the approach Snohomish County undertook in relation to the Lake Stevens UGA in relation to its revenue shortfall for transportation and surface water. [The County used a Development Phasing Overlay (DPO) in the unincorporated Lake Stevens UGA to phase development. "Green" areas had adequate transportation and surface water facilities and could develop; "Red" areas

did not have adequate facilities and development was deferred until financing of the needed facilities was assured.] [*Citizens, 03313*, FDO, at 7-8.]

- Notwithstanding the "development within the UGA will occur only when adequate public facilities are *in place*" statement from the two FEIS Addenda, the GMA and the LSUGA Plan provide otherwise. The GMA allows a six-year window to provide capital and transportation facilities. The GMA requires a six-year financing plan for capital facilities and a multi-year financing plan for transportation improvements. [*Citizens, 03313*, FDO, at 31.]
- [T]he DPO must be linked to the capital facilities plan or CIP for the LSUGA and . . . necessary capital projects may be reviewed and updated annually. It is also not disputed that the LSUGA Plan requires that a "director's list" identifying the facilities required for removal of the DPO be prepared. If annual review and updates indicate changes in the projects affecting the DPO in the LSUGA, such changes must be reflected in the LSUGA and its associated capital plan. Those newly needed or completed projects must be identified and included for the entire DPO to be kept it current. The GMA requires that plans be internally consistent. *See* RCW 36.70A.070(preamble). Likewise, the director's list that pinpoints needed projects within an identified area must be based upon the projects identified in the UGA plans, as may be updated. This assures that the amendments removing the DPO implement the updated and revised plans, pursuant to RCW 36.70A.130(1). The existing language was clear and unambiguous. Prior to the amendments, for the County to engage in the lifting of a DPO through an area-wide rezone, it was required to look to the projects listed in the UGA Plan *and* a list created by the director based upon the UGA Plan. The director's list would obviously be based upon the projects identified in the UGA Plan, but tailored to the reflect projects necessary to support development within the proposed area-wide rezone area – a more refined list. This process is clear. However, deletion of these two reference points only obscures and confuses the basis for the Council's area-wide DPO lifting process. . . The deleted language . . .clearly linked the director's project list to area-wide rezones, it required a list developed pursuant to SCC 30.33C.125. Now this clear linkage is gone. . . . Now it is not clear that the director's list or the UGA Plan list is a prerequisite to a lifting of the DPO through an area-wide rezone. [The Board found noncompliance.] [*Citizens, 03313*, FDO, at 31-32.]
- [The City's Plan] contains a capital facilities element that incorporates by reference the City's water and sewer plans. The City recognized the need for consistency in the plans. In its January 27, 2005, task orders with [its consultant], the City agreed that the consultants must "[R]econcile the land use and proposed GMA additions adopted by the City in the 2004 Comprehensive Plan with the [Water Plan/Sewer Plan] documentation and revise as necessary." [*Fallgatter V, 06303*, 4/24/06 Order, at 7.]
- It is important for both Petitioners and the City to understand that the Board has no jurisdiction to review the challenged sewer or water plans for compliance with chapters 90.48, 35.67 or 43.20 RCW. However, since these plans were incorporated into the City's capital facilities element to fulfill certain GMA requirements, they fall within the Board's review parameters. [*Fallgatter V, 06303*, 1/24/06 Order, at 7.]
- The Board recognizes that the timing and precise location of development cannot be predicted with certainty, and cities will want to guard against premature commitment

of public funds. Thus, to prevent the premature commitment of funds, Sultan's consultants wisely set a conservative six-year capital improvement program. However, long-range, coordinated planning *is the Legislature's choice* for reducing the fiscal and environmental risks of haphazard development. This long-range, coordinated planning is the reason that the GMA was initially adopted and provides the foundation for the planning decisions of cities and counties throughout the state. By failing to look at the "big 20-year picture" the City fails to comply with one of the most basic tenets of the GMA. [*Fallgatter V, 06303*, FDO, at 16.]

- By adopting Water and Sewer Plans which are inconsistent with and do not conform to the Comp Plan population targets and urban service areas, and then proposing to amend its Comp Plan to resolve these inconsistencies, the City has turned the GMA process on its head. . . . Such functional plans are intended to implement GMA comp plans, not amend them. . . . The Board finds that the City's uncoordinated and "backward" process does not comply with the GMA public process of RCW 36.70A.035, .130, .140 or the .130 options for amending comprehensive plans. [*Fallgatter V, 06303*, FDO, at 16-17.]

- **Clustering**

- The whole focus of [Petitioners'] challenge is to the potential application of existing Plan policies and regulations specifically regarding clustering and density bonuses in the [areas newly designated as being] Rural -10 designation. These provisions [i.e. clustering and density bonuses] were not amended by the action of the County in amending its Plan in 2003. At best [Petitioners'] challenge is a collateral attack on existing Plan policies and regulations. Had [Petitioners] wanted to challenge the clustering provisions of the R-10 classification, it should have done so when those provisions were enacted. Petitioner cannot challenge those provisions in the context of this present action [2003 Annual Plan Review]. [*Orton Farms, 04307c*, FDO, at 41-42.]
- [T]he Act permits the County to include cluster development and density bonus incentive programs for "Rural" lands (*i.e.*, in the Rural Element of the Plan), as mechanisms to provide for a variety of rural densities. See RCW 36.70A.070(5)(b) and .090. The County can rely on local circumstances to help shape its rural density provisions. [*Bremerton II, 04309c*, FDO, at 23.]
- It is clear that density bonuses and cluster development [in the rural area] are permitted under the Act, but they are limited to the extent they "will accommodate *appropriate rural densities* and uses that are *not characterized by urban growth* and that are *consistent with rural character*." RCW 36.70A.070(5)(b). [The Board found that the lack of environmental review and development regulations as well as the ambiguity in the policies themselves did not address whether the rural character would be preserved and urban growth prevented in the rural area.] [*Bremerton II, 04309c*, FDO, at 24-26.]

- **Community, Trade & Economic Development, Department of – CTED**

- [The CTED] Minimum Guidelines are advisory only; to be considered by counties when classifying and designating natural resource lands. [*Twin Falls, 3303c,* FDO, at 21.]
- RCW 36.70A.110(2) implicitly requires the written justification before a legislative action establishing UGAs is taken so that the dissatisfied city can decide whether to formally object to DCTED. [*Tacoma, 4301,* FDO, at 36.]
- The Act does not require a planning jurisdiction to submit any draft copies of proposed plans or regulations to CTED, much less a copy of each and every revision that a comprehensive plan or development regulation undergoes during the legislative process. All that the Act requires of a city proposing to adopt development regulations is that it provide notice of its intent to CTED. [*Children's I, 5311,* FDO, at 21.]
- The land capacity analysis should be related to the CTED models, other accepted models, or the methodology, if any, established in the CPPs. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 17.]
- RCW 36.70A.106 requires a jurisdiction to provide CTED notice of intent to adopt amendments. [*Children's II, 6323,* FDO, at 14.]
- When both the statutory definition [RCW 36.70A.030(10)] and the factors set forth in the Department's regulations [the Department of Community, Trade and Economic Developments – WAC 365-190-050(1)] are considered, it is apparent that [generally,] the Northern Sammamish Valley no longer has long-term commercial significance for agricultural production. [*Grubb, 0304,* FDO, at 7.]
- The Board has interpreted (RCW 36.70A.106) in (*Children's I, 5311*). In that decision, the Board did not elaborate on what a jurisdiction must actually submit to CTED as "notice of intent," but the Board recognizes that CTED must be fully apprised and fully aware of the substance of any proposed amendment. A city or county notice must describe *what* it is proposing to do. The Board sees two aspects to the issue of notification of [CTED]: timeliness and sufficiency. [*Homebuilders, 0314,* FDO, at 6-7.]
- [Regarding timeliness] the GMA stipulates that notice of any amendments for permanent changes to a comprehensive plan or development regulation "shall" be submitted "at least sixty-days" prior to its final adoption. [*Homebuilders, 0314,* FDO, at 7.]
- [Regarding sufficiency] Local governments cannot give CTED proper notice of a proposed amendment to a comprehensive plan or development regulation simply by sending a copy of an environmental notice as embodied in a [DNS]. The DNS is a creature of SEPA, and would typically only be sent to the Department of Ecology. [*Homebuilders, 0314,* FDO, at 7.]
- The Board is mindful that in the year 2002 all local government jurisdictions in the Central Puget Sound region must review their comprehensive plans and regulations, including critical areas ordinances (citations omitted). CTED will need to coordinate these notices with other state agencies who may be affected and to properly review the substance of all proposed amendments submitted by local government entities.

The Board would in no way undermine the statutorily mandated 60-day timeframe that CTED needs to carry out its duty under the GMA. [*Homebuilders, 0314,* FDO, at 7.]

- The interim FLUM, as its name implies is an interim measure, not a permanent FLUM. Consequently, the Office of Community Development notification requirements of RCW 36.70A.106 are not applicable. [*Clark, 02305*, FDO, at 18.]
- Providing CTED with notice of pending actions is a critical part of CTED's GMA coordination function, and it is not one to be dismissed lightly by the Board. It is a rare record presented to this Board that does not have a copy of CTED's comments and recommendations on any given proposed action. However, in the context of this rather extended case, the Board will **dismiss** Petitioner's Legal Issue 4 for the following reasons. First, as Petitioner points out, RCW 36.70A.106 is silent as to whether its provisions include actions taken pursuant to a Board remand. Often, the Board prescribed period for corrective legislative action is compressed, and off the typical and regular annual cycle of review. Here, the challenged ordinances were adopted in the context of a Board Order of remand. During remand, *the Board has continuing jurisdiction over the County to see to it that compliance with the GMA is achieved*. In this matter, the Board concluded that the County's action did address the basis for noncompliance found in the Board's prior Orders and therefore complied with the goals and requirements of the Act. Second, as the County points out, Petitioner did not raise this "deficiency" in the context of the compliance proceedings. A procedural defect or error during the remand proceedings, such as this or lack of notice and opportunity for public comment, is especially appropriate to raise in the context of the Board's compliance process – before the Board renders its decision. This Petitioner did not do. Third, the Board has already concluded in its [*Hensley IV*] 7/24/03 Order Rescinding Invalidity and Finding Compliance, that the substantive provisions of these Ordinances addressed the basis for finding noncompliance and invalidity as set forth in the Board's 8/15/01 FDO and the Board's 12/19/02 Order on Remand and Reconsideration. There are no substantive GMA compliance issues remaining in this case. If noncompliance with RCW 36.70A.106 is the only GMA issue in *Hensley VIII*, the only remedy available to the Board, is to remand the Ordinances to the County and allow CTED 60-days to comment. In light of the Board's prior conclusions regarding compliance and invalidity, this course merely institutes unwarranted and unnecessary delay. [*Hensley VIII, 03315*, 10/8/03 Order, at 5-6.]
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- [Respondent and Intervenors objected to CTED's motion for amicus status during reconsideration.] The Board notes that accommodating population growth and the sizing, location and expansion and contraction of UGAs are a key component in the GMA and clearly within *CTED's interests and expertise* in assisting with the implementation of the GMA. Additionally, as a state agency with a significant statutory role in GMA, CTED is *familiar with the issues* involved in the reconsideration request. Finally, CTED contends that *additional argument is necessary to clarify the wording of the Board's holdings and the possible consequences of them being misinterpreted*. The Board agrees. [CTED was granted status as amicus curiae.] [*Hensley IV, 03309c*, 10/21/03 Order, at 3-4.]
- The CTED submittal is an important and straightforward procedural requirement of the Act that is easy to document and comply with. The County has the duty and obligation to comply with the GMA; here, Petitioners have clearly shown that the County has breached this duty, and the County cannot deny it – it failed to act. Given this admission of noncompliance the Board will not and need not address the standing question. However, the Board notes that it is the jurisdiction that controls the schedule for drafting, review, processing and adopting amendments, if any. Given the inherent duty upon a jurisdiction to adhere to this notice and submittal mandate, the Board finds it hard to conceive of a situation where it could entertain argument challenging participation standing on this particular GMA requirement. [*Citizens, 03313*, FDO, at 51-52.]
- The County contends that the Board's decision varies from the CTED Guidelines for essential public facilities - WAC 365-195-340(2)(b)(vi). The County is correct in noting the distinction, but should be aware that the Board determined that the "procedural criteria are recommendations; they are advisory only, and do not impose a GMA duty or requirement on any local jurisdiction. (*Citations omitted*.) Further, this Board has been consistently rendering decisions interpreting the provisions of RCW 36.70A.200; since 1995, these decisions have distinguished local, regional and

state siting decisions. (*Citations omitted*.) [*King County, 03311*, 12/15/03 Order, at 4.]

- The Board reads the cautionary approach recommended in the CTED guidelines [WAC 365-195-920] to refer to situations where incomplete science may result in inadequate protection for the "functions and values" of critical areas. In this case, we are not concerned with protecting the "function and values" of volcanic debris flows. Here, the science of lahar inundation hazards on Mount Rainier is sufficiently detailed; the question dealt with in the County occupancy regulations is the feasibility of rapid evacuation from sites very close to the mountain – identified by the URS report as an engineering and life-safety question rather than an issue of vulcanology.. [*Tahoma/Puget Sound, 05304c*, FDO, at 28.]
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- [If, under RCW 36.70A.106, a jurisdiction submits a comprehensive plan amendment to CTED and CTED indicates it will not provide comment on the submittals at the present time, it is not unreasonable for a city to conclude that it has discharged its duty to notify CTED under .106.] [*Cossalman/McTee, 05346c*, FDO, at 13.]
- The bedrock of GMA planning is public participation. The GMA's public participation provisions require cities and counties to adopt specific procedures to ensure "early and continuous" public involvement. Thus, a jurisdiction's failure to follow the public participation procedures it has adopted pursuant to RCW 36.70A.040 constitutes noncompliance with the statute. [*McNaughton, 06327*, FDO, at 22.]
- The present case is plainly distinguishable [from prior Board decisions pertaining to CTED review]. What is at issue here is not iterations of an ordinance during the legislative process, but ***new*** ordinances proposed and adopted without any notice of intent being afforded to CTED. It is undisputed that Ordinance Nos. 06-053 [amending the County's Plan] and 06-054 [amending the County's development regulations] were not submitted to CTED sixty-days prior to their adoption. The Board has no alternative to remand to the County to complete this important review step. [*McNaughton, 06327*, FDO, at 26.]
- The fact that the [challenged] Ordinances were enacted to settle a Board appeal does not excuse the notice requirement. The Board's cases frequently involve requests for settlement extensions to accommodate the 60 days needed to comply with the jurisdiction's obligation to notify CTED before adopting an ordinance to settle a GMA dispute. [*McNaughton, 06327*, FDO, at 26.]

- **Compliance**

- The GMA authorizes the Board to determine whether an enactment by a local jurisdiction is in compliance with the requirements of the act. In so doing, the Board will necessarily consider whether a local jurisdiction planning under the GMA has exceeded the requirements of that act. The Board will do this by examining whatever action was taken by the local jurisdiction and comparing it to the purposes, requirements and goals of the GMA as a whole. If the local action is consistent with the requirements of the GMA, this Board will find that the local government was in compliance with the GMA. Conversely, inconsistent actions will be remanded. [*Tracy, 2301,* FDO, at 21.]
- At the time of the compliance hearing, for the purposes of determining whether the state agency, county or city is in compliance with the requirements of the Act, the respondent jurisdiction must comply not just with the statutory language but also with the Board's final decision and order, however specific it might be. The Board nonetheless notes that the final decision and order itself must comply with the requirements of the Act. [*Tacoma, 4301,* 1/18/94, Order, at 7.]
- The scope of a compliance hearing will be limited to whether the subsequent action was taken by the compliance deadline and, in taking such action, whether the minimal requirements of pre-hearing notice, a public hearing and post adoption publication of notice of adoption took place. [*WSDF I, 4316,* 11/2/95, Order, at 5.]
- The Board acknowledges that at a compliance hearing, the burden of proof has shifted to the respondent city or county to show that it has procedurally complied with the Board's order. Accordingly, this Board routinely requires a city or county whose GMA enactment was not in compliance with the Act to first indicate what actions it took to bring the enactment into compliance. Petitioners and intervenors are then given the opportunity to comment on the city or county's statement of compliance. Finally, the city or county is given the opportunity to reply to any responses that were filed. This shifting in the burden of proof does not, however, alter the presumption of validity to which the action of local government is entitled. [*Vashon-Maury, 5308c,* 5/24/96, FOC, at 8.]
- Generally, the Board will continue to determine only procedural compliance in the compliance findings it issues pursuant to RCW 36.70A.330(2). Substantive compliance will be determined only if a new petition for review is timely filed. On occasion, the Board may determine both procedural and substantive compliance in a compliance finding if it determines that the circumstances are appropriate. The Board will consider the following factors in deciding whether it will consider substantive compliance at a compliance hearing: the Board's own schedule, the number of parties in the case, the scope and nature of the legal issues before the Board, and (if possible to determine at the time) whether new petitions for review challenging the substance of the remand amendment have been timely filed. [*Vashon-Maury, 5308c,* 5/24/96, FOC, at 9.]
- When portions of a comprehensive plan have been remanded with instructions to bring those provisions into compliance with the Act, and when other portions of the plan have been found to comply with the Act, the Board must determine on a case-by-

case basis whether the contested portions of implementing development regulations comply with the GMA. [*WSDF II, 5340,* 6/16/95 Order, at 6.]

- [Anticipated, but not yet achieved, compliance with a remand order in a previous case cannot moot issues in a subsequent case where the Board's statutory deadline for filing its final order in the subsequent case precedes the deadline established by the Board for the jurisdiction to comply with the previous remand order.] [*PNA II, 5371,* FDO, at 6-8.]
- A jurisdiction's action to achieve compliance with a remand is presumed valid upon adoption. [*Hapsmith I, 5375c,* 2/13/97 Order, at 4.]
- [Although the Board's Determination of Invalidity has been rescinded, the Board must inquire as to whether these remanded provisions comply with the goals and requirements of the Act.] [*Bremerton/Alpine, 5339c/8332c,* FDO, at 21-22.]
- The County's decision to attempt to comply with the FDO and address the land use of the [property] in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy. The time and effort expended on the present process illustrate the difficulty and complexity of developing an optional Lake Stevens UGA subarea plan. The Board does not want to dissuade the County from subarea planning and notes that neither the substance or the Lake Stevens subarea plan nor the appropriateness of that public process is presently before the Board. Unfortunately, the action needed for the County to address the Board's finding that the notice was defective for the County's amendment to 33.7 acres in Ordinance No. 96-074 had been needlessly enmeshed in the subarea planning process. The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan. Further, the County's Lake Stevens UGA subarea plan process had interjected broader GMA and subarea planning issues into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance No. 96-074. [The Board directed the County to repeal those portions of Ordinance 96-074 that were invalidated due to defective notice.] [*Kelly, 7312c,* 3/31/99 Order, at 6-7.]
- While the Board suggested the repeal **or** amendment of [the ordinance] as a means of achieving compliance with the GMA, it did not direct the Town to rescind [the ordinance]. Likewise, the Board viewed [a portion of the ordinance] as an improvement to the Town's Plan; on remand, the Board merely directed the Town to amend its Plan to remove inconsistencies, it did not direct the Town to rescind [the portion of the ordinance]. *See LMI/Chevron,* FDO, at 55-57. It was the Town's choice, and within its discretion, to rescind all, or part, of these ordinances in its effort to remove inconsistencies and achieve compliance with the GMA. [*LMI/Chevron, 8312,* 12/20/99 Order, at 6.]
- Implicit in the remand was the assumption that the [designation] criteria would remain unchanged. Consistency between the Plan text and map is what the GMA and the Board's FDO required. Nothing in the [FDO] restricts the County's ability to achieve compliance with the GMA through means other than those discussed in the Board's Order. [*Screen II, 9312,* FDO, at 6.]

- [While the Board may acknowledge a petitioner's skepticism], the Board presumes that the [jurisdiction] will act in good faith to comply with the requirements of the Board's Orders. [*Bear Creek, 3508c*, 11/3/00 Order, at 11.]
- The Board found the *County's* action . . .noncompliant and invalid. Consequently, the Board directed the *County to take legislative action*, not merely rely upon the Board's determination of invalidity, to bring the Plan and development regulations (zoning) into compliance. . . .How the County chooses to comply with the Board's FDO [and the Act] is left to the County's discretion; however, providing effective notice and the opportunity for public participation for the citizens of Snohomish County on the County's chosen legislative action to comply with the Board's FDO is not a meaningless act. [*McVittie V, 0316*, 5/4/01 Order, at 2-3.]
- [Pursuant to a stipulation of the parties the Board remanded the challenged ordinance and entered a finding of noncompliance. Due to the unusual scope and complexity of the issues involved, the Board gave the County 270 days to comply, from the date the Order issued.] (*Tacoma III, 03302*, 7/23/03 Order, at 2.]
- RCW 36.70A.106 requires that [CTED] be notified of a jurisdiction's "intent to adopt" a plan, regulation or amendment thereto. The notice is provided to allow the state to review and comment on proposals. This review and comment period allows the state the opportunity, as well as the public, to influence the outcome of the proposed legislation. [*WHIP/Moyer, 03306c*, FDO, at 31.]
- [A] new PFR at the compliance phase *may* be appropriate if new issues arise or new petitioners appear opposing the legislative action taken on remand. In these situations, a new index, record, clarification of the issues and briefing schedule allow the parties to fully articulate their positions, and the Board has adequate time to thoroughly deliberate and resolve the issues. In short, in collaboration with the parties, the Board will exercise its judgment and discretion to use the method that will resolve the issues as expeditiously as possible. [*Hensley VII, 03310*, 8/11/03 Order, at 7.]
- The Board did not view this case as one of unusual scope or complexity and consequently gave the County 93 days to achieve compliance with the Act. Notwithstanding Snohomish County's arguments to the contrary, this matter is not one of unusual scope or complexity, and the Board is not persuaded that remedial action necessitates additional time. [*King County, 03311*, 12/15/03 Order, at 4.]
- [Pursuant to] RCW 36.70A.302(7)(a) . . .the Board retains jurisdiction over "interim controls on development affected by the order of invalidity" including, in this case [the adopted moratorium ordinance.] [*King County, 03311*, 12/15/03 Order, at 5.]
- [The Board had established a deadline for filing as a participant in a compliance hearing.] In subsequent Board Orders, the Board will indicate that the deadline established for commenting on the SATC [statement of actions taken to comply] will also be the deadline for requesting participant status in a compliance hearing. Failure to make such request by the established comment deadline will result in participation status being denied. [*MBA/Brink, 02310*, 1/21/04 Order, at 6.]
- The Board did not determine that this matter was of unusual scope or complexity in its FDO and gave the City the full statutory limit (180-days) to take action to comply with the requirements of the Act. The Board has no latitude to extend the present matter beyond the statutory deadline. [The Board noted that the City could stipulate

to continuing noncompliance, which would allow the Board to establish a new compliance schedule.] [*Laurelhurst II, 03316*, 8/3/04 Order, at 2.]

- The Board did not determine that this matter was of unusual scope or complexity in its FDO and gave the County essentially the full statutory limit (179-days) to take action to comply with the requirements of the Act. The Board has no latitude to extend the present matter beyond the statutory deadline. [The Board noted that the County could stipulate to continuing noncompliance, which would allow the Board to establish a new compliance schedule.] [*CTED I, 03317*, 8/16/04 Order, at 2.]
- RCW 36.70A.130 GMA imposes a duty upon [CPS jurisdictions] to undertake certain actions by the statutory deadline. On or before December 1, 2004, [CPS jurisdictions are] required to: 1) complete its Plan and development regulation review to determine whether the Plan and implementing development regulations comply with the goals and requirements of the GMA; 2) *take legislative action indicating its determination regarding whether the Plan and development regulations comply with the Act*; and 3) if necessary, take legislative action to *revise the comprehensive plan and/or development regulations to achieve compliance with the goals and requirements of the Chapter 36.70A RCW – the GMA*. [*FEARN, 04304*, 5/20/04 Order, at 9.]

• Comprehensive Plan

- Just as a comprehensive plan must be internally consistent (see first paragraph of RCW 36.70A.070), so too does this Board hold that interim development regulations must be internally consistent. [*Tracy, 2301*, FDO, at 27.]
- Two of the most profound impacts of the GMA upon planning are that: (1) planning is now required of all cities and counties and (2) consistency is now required of that planning. The mandated county-wide planning policies and comprehensive plans, as defined and developed under the authority of Chapter 36.70A RCW, are fundamentally different than the voluntary comprehensive plans authorized under the Planning Enabling Act, Chapter 36.70 RCW. [*Snoqualmie, 2304c*, FDO, at 15.]
- Prior to GMA, plans were voluntary and advisory and there was no requirement that plans be guided by state goals or be consistent with the plans of others. Under GMA, plans are now mandatory (RCW 36.70A.040) and directive. RCW 36.70A.100, .103 and .120. Plans must now be guided by planning goals (RCW 36.70A.020) and be mutually consistent. RCW 36.70A.110 and .210. [*Rural Residents, 3310*, FDO, at 17.]
- A purpose of any section of the Act, therefore, is to further growth and land use decision-making that is comprehensive, coordinated and consistent. [*Rural Residents, 3310*, FDO, at 17.]
- Comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve compact urban development. [*Tacoma, 4301*, FDO, at 12.]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of

counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, at 6.]

- The comprehensive plans provide the mechanism for balancing local, regional and state interests into coherent policies to guide specific actions. [*Aagaard, 4311c,* FDO, at 7.]
- The Act does not require, and the Board does not expect, that the plans of a county and its cities, based on the most objective data, credible assumptions and analytical methods, will guarantee a specific population result twenty years hence. [*Kitsap/OFM, 4314,* FDO, at 9.]
- If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed must be included in the Plan. [*WSDF I, 4316,* FDO, at 65.]
- Comprehensive plans must be consistent with county-wide planning policies. [*Vashon-Maury, 5308c,* FDO, at 34.]
- A local jurisdiction's comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities. [*Children's I, 5311,* 5/17/95 Order, at 12.]
- The GMA requires communities to manage change and change to manage – general discussion. [*Children's I, 5309,* FDO, at 4.]
- Discussion of UGAs in other states – evaluation. [*Gig Harbor, 5316c,* FDO, at 55.]
- Compact Urban Development v. Sprawl – general discussion of the literature. [*Bremerton, 5339c,* FDO, at 24-32.]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, at 28.]
- When portions of a comprehensive plan have been remanded with instructions to bring those provisions into compliance with the Act, and when other portions of the plan have been found to comply with the Act, the Board must determine on a <u>case-by-case basis</u> whether the contested portions of implementing development regulations comply with the GMA. [*WSDF II, 5340,* 6/16/95 Order, at 6.]

- A county cannot adopt development regulations that are consistent with and implement its comprehensive plan until that plan itself is adopted under the GMA. [*Hensley II, 5343,* 6/9/95 Order, at 5.]
- While it is not the Board's responsibility to identify each and every development regulation which would be necessary to achieve full implementation of the Plan, the Board can and will conclude that, lacking a comprehensive zoning code or its functional equivalent, a county has not adopted implementing development regulations that "work together in a coordinated fashion to achieve a common goal." [*Hensley II, 5343,* 11/3/95 Order, at 7.]
- Because comprehensive plans are controlling documents under the GMA, rather than discretionary advice, or "a basic source of reference," they now have the force of law, unlike the comprehensive plans adopted pursuant to Chapters 36.70 RCW and 35A.63 RCW. It is both appropriate and necessary that such binding laws be codified, as ordinances are and resolutions are not. [*BNRR, 5350,* 8/30/95 Order, at 3.]
- The Central Puget Sound Board respectfully disagrees with the Western Board's conclusion that "ordinance" is a generic term. The Board holds that a GMA comprehensive plan can only be adopted by ordinance. [*BNRR, 5350,* 8/30/95 Order, at. 3.]
- Cities are required to plan under both the GMA mandate for comprehensive plans and must also follow the mandates of the CPPs applicable to its jurisdiction. [*Benaroya I, 5372c,* FDO, at 25.]
- Nothing in the GMA or the CPPs requires a jurisdiction to show a detailed plan as to how affordable housing policies will be achieved. There is nothing in the Plan or in the record that suggests the housing affordability policies are not capable of being carried out. [*Benaroya I, 5372c,* FDO, at 26.]
- If GMA stands for nothing else, it stands for the proposition that the citizens of a neighborhood are also citizens of a larger community, be it a city and/or county, a region and indeed, the state itself. To allow the City to proceed with a neighborhood planning process that is segmented and insulated from the goals and requirements of the Act, and the policy documents that the Act requires of cities and counties, would ignore this basic axiom of comprehensive planning. [*WSDF III, 5373,* FDO, at 28.]
- General discussion of the Board's treatment of plans and local discretion. [*Litowitz, 6305,* FDO, at 3-5.]
- There is no GMA prohibition from a jurisdiction using its pre-GMA zoning designations a starting point or a benchmark in the development of its GMA-required comprehensive plan. [*Litowitz, 6305,* FDO, at 13.]
- RCW 36.70A.010 is not a substantive or even a procedural requirement of the Act, and it creates no specific local government duty for compliance apart from the subsequent goals and requirements of the Act. Neither RCW 36.70A.010 nor Board decisions in prior cases impose a duty on a jurisdiction to avoid the use of previous plans and regulations in preparing its GMA plan. [*Litowitz, 6305,* FDO, at 14.]
- RCW 36.70A.130 authorizes a local government to amend comprehensive plans annually, it does not require amendments. Moreover, it does not dictate that a specific proposed amendment be adopted. [*Cole, 6309c,* FDO, at 10.]

- The GMA's planning goals guide the development and adoption of comprehensive plans, and guide the adoption of amendments to comprehensive plans. [*Cole, 6309c*, FDO, at 15.]
- A city may plan for areas outside of its city limits if it chooses to do so; however, such planning has no GMA effect. [*Hensley III, 6331*, FDO, at 14.]
- In the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the GMA. [*WSDF IV, 6333*, FDO, at 11.]
- The sizing of the UGA must be supported by analytical rigor and an explicit accounting, yet [the sizing of UGAs] is an inexact science. The specificity and precision important to the accounting are tempered by the imprecise nature of long-range population projections, and indeed comprehensive planning itself. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 37.]
- The fact that an area is urbanized [does not] compel the County to designate it as a UGA. The Board affirms its prior holding to that effect. Likewise, the mere fact that a [prior version or draft plan] designated [an area] as UGA. . . does not mandate the same outcome in [a subsequent] plan. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 58.]
- [The fact that an area is adjacent to a UGA does not compel its designation as a UGA.] [*Bremerton/Alpine, 5339c/8332c*, FDO, at 59.]
- [The fact that an area was designated within a UGA and designated industrial in a prior version or draft plan, does not mandate the same outcome in a subsequent plan.] [*Bremerton/Alpine, 5339c/8332c*, FDO, at 65-66.]
- While there is an important directive linkage between them, policies (i.e. plans) and regulations are distinct GMA creatures. The Acts consistency requirements give plans directive effect over regulations, however this does not convert policy documents into land use controls. Simply put, plans are not regulations. [The City's critical areas regulations are not before the Board.] [*Tulalip II, 9313*, 1/28/00 Order, at 4.]
- The critical area scheme set out by the GMA for [jurisdictions] is: (1) designate critical areas by September 1, 1991; (2) adopt development regulations to protect these designated critical areas by September 1, 1991; and (3) when adopting a comprehensive plan by the July 1, 1994 deadline, review the critical area designations and protective development regulations. In other words, the requirement of RCW 36.70A.060(3) applies to the adoption of the <u>initial</u> comprehensive plan required by RCW 36.70A.040; nothing in RCW 36.70A.060(3) creates a duty for the [jurisdiction] to review its critical area designations and development regulations upon adoption of a subsequent subarea plan. [*Tulalip II, 9313*, 1/28/00 Order, at 10.]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]

- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]
- The Supreme Court stated, "Upon a determination that the [UGA] provision violates the GMA, it should be stricken from both the comprehensive plan <u>and the CPPs</u>. The Board has determined that the County's UGA provision for Bear Creek violates the GMA. Therefore, by operation of law, the urban designation has effectively been stricken from both the plan and CPP. A CPP that directs an unlawful outcome is inoperative. [*Bear Creek, 3508c*, 11/3/00 Order, at 11-12.]
- Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl. The Act's lengthy definitions and requirements regarding urban growth areas and natural resource lands also date to 1990. However, the Act's initial description of future rural uses and development patterns was spare. While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. [*Burrow, 9318*, FDO, at 18.]
- The Board understands that the City wishes to provide non-urban village citizens with some assurances that capital facility investments can be made outside of designated urban village boundaries. However, such a policy choice would have implications for existing (city-wide) comprehensive plan policies. For this and other reasons, not the least of which is the public notice requirements of RCW 36.70A.035, the avenue to pursue that end would be in a proposed amendment to the adopted city-wide policy rather than incremental, ad-hoc amendment to thirty-seven individual neighborhood plans. [*Radabaugh, 0302*, FDO, at 10.]
- The choice of what is funded during a six-year financing plan cycle is a discretionary choice of the County. It is not for Petitioner to decide which projects are to be funded in a six-year cycle. So long as the needs identified in the CFE are reflected in the capital improvement program, the scheduling of their implementation, including the delay of project to later years, is a discretionary choice of the County. However, the County should be mindful that those needs identified in the 20-year Plan (CFE), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan. [*McVittie IV, 0306c*, FDO, at 14-15.]
- [Jurisdictions] should be aware that those needs identified in the 20-year Plan (transportation element ending in 2012), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan i.e. by 2012. If these needs are not met by 2012, at a minimum, the [jurisdiction] will be

noncompliant in meeting the funding requirements of RCW 36.70A.070(6). [*McVittie IV, 0306c*, FDO, at 21.]

- *See also*: **GMA Planning** [*LIHI I, 0317*, 2/21/02 Order]
- [The requirements of RCW 36.70A.070(preamble), .070(1) and .110(3)] apply to comprehensive plans and UGA designations; they do not apply to development regulations – *i.e.* rezones. [The Board dismissed these issues *sua sponte*.] [*Forster Woods, 1308c*, FDO, at 29.]
- Notwithstanding its explicit annual amendment process, the City does not dispute that it amended its Plan *twice* during calendar year 2001. The City does not contend that the adoption of two Plan amendments at separate times fall within any of the exceptions of RCW 36.70A.130(2)(a)(I-iii). . . . Nor does the City suggest that the dual amendments in 2001 were necessitated due to an emergency or pursuant to Board or Court Order, as anticipated in RCW 36.70A.130(2)(b). Bremerton merely asserts that the effects of [the first ordinance] were considered cumulatively along with other amendments in the public process of [the second ordinance]. Since the Policy amendment of [the first ordinance] was adopted and incorporated into its Plan in August, any "consideration" that Bremerton did of the relationship between [that ordinance and the latter amendatory ordinances] would have been for consistency purposes, not for the purpose of concurrently evaluating the cumulative effects of the entire package of 2001 Plan changes. [The first ordinance] had already been adopted and had the effect of governing future amendments. Bremerton's actions are in direct contradiction of the explicit requirements of RCW 36.70A.130(2) and [the amendment procedures of its own Comprehensive Plan]. [*Miller, 02303*, FDO, at 11-12.]
- [CPPs provide substantive direction to Plans, not zoning.] [*MBA/Brink, 02310*, FDO, at 27.]
- [T]he Board will look to the integrated whole of the Plan to determine whether the challenged ordinances are consistent with, and implement the LSUGA Plan. [*Citizens, 03313*, FDO, at 18.]
- [The challenged Plan Policy] reserves discretion to the County in deciding the timing of *when*, and the boundaries of *where*, such [subarea] planning should occur. [*Windsong, 03307*, FDO, at 11.]
- [The challenged Plan Policy] *does not prohibit* the County from approving commercial development in the unincorporated UGA until more detailed UGA planning is done – so long as such change is consistent with, and implements the GPP. [*Windsong, 03307*, FDO, at 12.]
- Plans provide policy direction to land use decision-making by providing guidance and direction to development regulations, which must be consistent with and implement the Comprehensive Plan. In turn, these development regulations govern the review and approval process for development permits. [Citations omitted.] [*Bremerton II, 04309c*, FDO, at 15.]
- Comprehensive plans have long used overlay zones, subarea plans, and similar underlying zoning or classification may remain the same. (Citation omitted.). . . mechanisms to tailor regulations to particular situations. . . the Board finds that different and more restrictive dock regulations for Blakely Harbor are consistent with the Comprehensive Plan and Bainbridge SMP policies and compliant with the

consistency requirements of the RCW 36.70A.070 and .040. [*Samson, 04313*, FDO, at 22-23.]

- The GMA "Comprehensive Plan" is a single subject, covered in one chapter of the RCWs, which is defined in the statute as a "generalized *coordinated* land use policy statement of the governing body." RCW 36.70A.030(4); emphasis supplied. Nevertheless, the County chose to accomplish its Plan Update by adopting multiple ordinances on components, elements and pieces of its overall GMA Comprehensive Plan. At least *fifteen* of the "Plan Update Ordinances" were cited and challenged in the present consolidated matter. While this multiple ordinance approach may assist the County in tracking issues and amendments arising out of its review process, the Board has witnessed that it can be challenging for the public to follow which issue of concern is addressed in which ordinance and when testimony and comment is appropriate. [*Pilchuck VI, 06315c*, FDO, at 56.]

- **Concurrency**

- Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place "at the time development is available for occupancy and use" and second, adequacy is measured by "locally established minimum standards." [*Gig Harbor, 5316c,* FDO, at 13.]
- [The City's "screenline" LOS methodology and Concurrency Regulations were adopted in 1994. The Ordinance challenged here, which adopted the Plan amendments, did not amend the LOS provisions of the Transportation Element or Concurrency Regulations as adopted in 1994. Petitioner cannot now challenge these provisions.] [*Montlake, 9302c,* FDO, at 10-12.]
- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c,* FDO, at 13.]
- The transportation element requires a local government to adopt a "concurrency" ordinance that will prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan. (Footnote omitted.) [*McVittie, 9316c,* FDO, at 29.]
- Unlike the transportation element, the capital facilities element does not use the phrase "concurrent with development" and does not specify an enforcement procedure. [However, read in light of Goal 12] a local government is obligated to take steps to ensure that those facilities and services it has identified as being necessary to support development are adequate and available to serve development. [*McVittie, 9316c,* FDO, at 29.]
- The answer to question 4 – Does Goal 12 require "concurrency" for all public facilities and services, beyond the explicit concurrency requirement of RCW 36.70A.070(6)(b) for transportation" is no. Goal 12 does not require a development-prohibiting concurrency ordinance for non-transportation facilities and services. Goal

12 allows local governments to determine what facilities and services are necessary to support development and develop an enforcement mechanism for ensuring that identified necessary facilities and services for development are adequate and available. [*McVittie, 9316c*, FDO, at 30.]

- [For capital facilities, adoption of a concurrency ordinance is not required, but it is not prohibited; such action is within local discretion. In any case, an enforcement mechanism is required.] [*McVittie, 9316c*, FDO, at 30.]
- [Sidewalks are a critical component of successful compact urban development. However,] the Board cannot, with the facts and argument presented in this case, discern a GMA duty that would oblige the City to adopt "levels of service" for sidewalks in urban villages nor subject projects in urban villages to a "concurrency" requirement for the installation of such facilities. [*Radabaugh, 0302*, FDO, at 14.]
- The Board holds that a Capital Facilities Element must include <u>all</u> facilities that meet the definition of public facilities set forth in RCW 36.70A.030(12). <u>All</u> facilities included in the CFE must have a minimum standard (LOS) clearly labeled as such (i.e., not "guidelines" or "criteria"), must include an inventory and needs assessment and include or reference the location and capacity of needed, expanded or new facilities. (RCW 36.70A.070(3)(a), (b) and (c). In addition, the CFE must explicitly state which of the listed public facilities are determined to be "necessary for development" and each of the facilities so designated must have either a "concurrency mechanism" or an "adequacy mechanism" to trigger appropriate reassessment if service falls below the baseline minimum standard. Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may choose to adopt a concurrency mechanism for other facilities. [*McVittie VI, 1302*, FDO, at 17.]
- The Board finds it significant that Bellevue was aware of its option, as described in *West Seattle* [*4316*], to amend its Plan to adjust the level of service standards for East Bellevue [to allow greater levels of congestion], but chose not to do so. Instead, without revision to previously adopted LOS for East Bellevue set forth in the Plan and again in the [traffic standard code], the City simply exempted from its locally-adopted concurrency requirements what can only be described as potentially a very considerable amount of commercial development. [*Bennett, 1322c*, FDO, at 11.]
- The actual conflict in this instance is between Bellevue's preferred *mechanism* to achieve its redevelopment objective and the Act's concurrency requirements. In crafting development regulations, local governments may choose to give greater weight to one GMA goal than to another GMA goal. [Here Goal 1 and 2 versus Goal 12] However, such a local goal preference does not remove the duty to comply with a specific and unequivocal GMA requirement. Furthermore, conflicts, if any, between a general GMA goal and a specific GMA requirement must be resolved in favor of the latter. [*Bennett, 1322c*, FDO, at 11.]
- The Act makes no mention of "exemptions" from the requirement that a local ordinance . . . "prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan . . ." RCW 36.70A.070(6)(b). [*Bennett, 1322c*, FDO, at 12.]

- The importance of the GMA's concurrency provisions were underscored by a recent Court of Appeals decision which commented on RCW 36.70A.070(6)(b), "The [GMA] requires that the City prohibit development that causes a decline in level of service standards. An action-forcing ordinance of this type is known as a concurrency ordinance because its purpose is to assure that development permits are denied unless there is concurrent provision for transportation impacts . . ." *Montlake Community Club v. CPSGMHB*, 110 Wash App. 731, 43 P.2d 57, (2002). [*Bennett, 1322c*, FDO, at 12.]
- For the Board to agree that a city can exempt from concurrency requirements commercial (re)development of the nature and order of magnitude described in this record would eviscerate the concurrency requirement of the Act. This the Board will not do. [*Bennett, 1322c*, FDO, at 12-13.]
- Unlike the situation for state highways and the state government, the GMA requires transportation concurrency for development at the local level. All local jurisdictions in the Central Puget Sound region, must "*prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan*, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development." RCW 36.70A.070(6)(b). Petitioners' assumption that development (infill development or redevelopment) will occur immediately, and such development will proceed unchecked and without regard for transportation concurrency is erroneous. The GMA requires growth to be managed. [*Hensley IV* and *V*, *1304c/2304*, 6/17/02 Order, at 20.]
- [Since the County had a concurrency program requiring denial of permits if LOS declined, and funding in its transportation improvement program (TIP) for some of the area, the Board concluded that the County had maintained consistency between the land use and transportation elements of its Plan and the transportation element continues to implement the land use plan.] The Board notes that if ongoing traffic concurrency problems (*i.e.*, segments of arterials in arrears with no funding for improvements programmed) stifle development opportunities [*i.e.*, denying permits] in the Clearview [LAMIRDs], then Petitioners' preferred solution (*i.e.*, not designating the two Clearview intersections as LAMIRDs) could be considered a more straightforward approach. However, since the County has a concurrency management system and it has funding for improvements for into its TIP (i.e., no funding shortfall), the County's approach is not prohibited by the GMA. [*Hensley IV* and *V*, *1304c/2304*, 6/17/02 Order, at 21-22.]

- **Concurring Opinions**

- *Hapsmith I, 5375c*, FDO, Philley concurring (and dissenting)
- *Port of Seattle, 7314*, FDO, Tovar concurring
- *Bear Creek, 5308c*, 6/15/00 Order, McGuire concurring, North concurring.
- *MacAngus, 9317*, FDO, North concurring.
- *Shoreline pdr, 0301pdr*, Tovar concurring.
- *Bidwell pdr, 0302pdr*, North concurring.

- *Homebuilders, 0314,* FDO, McGuire concurring.
- *HEAL, 6312,* 10/4/01 Order, Tovar concurring.
- *McVittie V, 0316,* FDO, Tovar concurring.
- *Shoreline II, 1313,* 12/28/01 Order, McGuire concurring (and dissenting).
- *McVittie VIII, 1317,* FDO, Tovar concurring.
- *Hensley IV & V, 1304c/02304,* FDO, Tovar concurring.
- *Miller, 02303,* 8/26/02 Order, Tovar concurring.
- *Hensley VI, 03309c,* FDO, Tovar concurring, McGuire concurring.
- *Hensley VII, 03310,* 8/11/03 Order – McGuire concurring.
- *King County I, 03311,* 5/26/04 Order – McGuire concurring.
- *1000 Friends I, 03319c,* 6/24/04 Order – McGuire concurring.
- *CTED II, 03320,* FDO - Tovar concurring.
- *Bremerton II, 04309c,* FDO – McGuire concurring.
- *Jensen, 04310,* FDO – Pageler concurring.
- *Kaleas,* 05307c, FDO, – Pageler concurring.
- *Camwest III, 05341,* FDO – Pageler concurring.
- *Cossalman/McTee, 05346c,* FDO – McGuire concurring

- ## Consistency

- The GMA authorizes the Board to determine whether an enactment by a local jurisdiction is in compliance with the requirements of the act. In so doing, the Board will necessarily consider whether a local jurisdiction planning under the GMA has exceeded the requirements of that act. The Board will do this by examining whatever action was taken by the local jurisdiction and comparing it to the purposes, requirements and goals of the GMA as a whole. If the local action is consistent with the requirements of the GMA, this Board will find that the local government was in compliance with the GMA. Conversely, inconsistent actions will be remanded. [*Tracy, 2301,* FDO, at 21.]
- Just as a comprehensive plan must be internally consistent (see first paragraph of RCW 36.70A.070), so too does this Board hold that interim development regulations must be internally consistent. [*Tracy, 2301,* FDO, at 27.]
- The CPP "framework" of .210(1) is to ensure the consistency (required by .100) of the comprehensive plans of cities and counties that have common borders or related regional issues. [*Snoqualmie, 2304c,* FDO, at 8.]
- Two of the most profound impacts of the GMA upon planning are that: (1) planning is now required of all cities and counties and (2) consistency is now required of that planning. The mandated county-wide planning policies and comprehensive plans, as defined and developed under the authority of Chapter 36.70A RCW, are fundamentally different than the voluntary comprehensive plans authorized under the Planning Enabling Act, Chapter 36.70 RCW. [*Snoqualmie, 2304c,* FDO, at 15.]
- The CPPs provide substantive direction not to development regulations, but rather to the comprehensive plans of cities and counties. Thus, the consistency required by RCW 36.70A.100 and RCW 36.70A.210 is an external consistency between

comprehensive plans. The CPPs do NOT speak directly to the implementing land use regulations of cities and counties. [*Snoqualmie, 2304c*, FDO, at 16.]

- County wide planning policies are policy documents that have both a procedural and a substantive effect on the comprehensive plans of cities and the county. The immediate purpose of the CPPs is to achieve consistency between and among the plans of cities and the county on regional matters. A long-term purpose of the CPPs is to facilitate the transformation of local governance in urban growth areas so that cities become the primary providers of urban governmental services and counties become the providers of regional and rural services and the makers of regional policies. [*Poulsbo, 2309c*, FDO, at 23.]
- Annexation is an exercise of the land use powers of cities, and therefore a CPP cannot express a preference or otherwise provide direction to cities as to the methods of annexation. If a county wishes to discuss methods of annexation within the CPPs, it may do so, provided that such language serves to facilitate rather than frustrate the legislative directive of "that which is urban should be municipal." In any event, such language must not alter the land use powers of cities. [*Poulsbo, 2309c*, FDO, at 26.]
- The Act's requirements for consistency and coordination oblige cities and counties to balance local interests with regional and state interests when implementing the GMA. [*Rural Residents, 3310*, FDO, at 14.]
- UGAs take direction from the Act's planning goals at RCW 36.70A.020 and from CPPs. UGAs therefore also serve the three purposes of CPPs: (1) to achieve consistency between plans as required by RCW 36.70A.100; (2) to achieve a transformation of local governance within the UGA; and (3) to direct urban development to urban areas and to reduce sprawl. [*Rural Residents, 3310*, FDO, at 14.]
- A purpose of any section of the Act, therefore, is to further growth and land use decision-making that is comprehensive, coordinated and consistent. [*Rural Residents, 3310*, FDO, at 17.]
- Comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve compact urban development. [*Tacoma, 4301*, FDO, at 12.]
- The provisions of any GMA enactment must be internally consistent. [*Tacoma, 4301*, FDO, at 32.]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's

requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.

4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, at 9.]

- Local jurisdictions are required to meet both the preamble and subsequently specified elements of RCW 36.70A.070. [*Aagaard, 4311c,* FDO, at 13.]
- The amount of growth a city plans for in its comprehensive plan must be consistent with the CPPs, including a population allocation, if any, and any interlocal agreement the city may have reached with the county or counties, and must meet the external consistency requirements of RCW 36.70A.100 and internal consistency requirements of RCW 36.70A.070. [*Aagaard, 4311c,* FDO, at 14-15.]
- A comprehensive plan, including both mandatory elements and optional elements or features, must be internally consistent. [*WSDF I, 4316,* FDO, at 14.]
- Internal consistency means that provisions are compatible with each other-that they fit together properly. In other words, one provision may not thwart another. Consistency can also mean more than one policy not being a roadblock for another; it can also mean that policies of a comprehensive plan, for instance, must work together in a coordinated fashion to achieve a common goal. [*WSDF I, 4316,* FDO, at 27.]
- Comprehensive plans must be consistent with county-wide planning policies. [*Vashon-Maury, 5308c,* FDO, at 34.]
- RCW 36.70A.100 does not apply to development regulations. [*Children's I, 5311,* 5/17/95 Order, at 6.]
- A development regulation must be internally consistent and all development regulations must be consistent with each other. [*WSDF II, 5340,* FDO, at 7.]
- Consistency can mean that one policy cannot be a roadblock for another; it can also mean that the policies of a comprehensive plan, must work together in a coordinated fashion to achieve a common goal. [*Alberg, 5341c,* FDO, at 17.]
- The Act imposes five major consistency requirements on a jurisdiction undertaking adoption of comprehensive plans and development regulations under the Act: (1) a comprehensive plan must be internally consistent (RCW 36.70A.070); (2) comprehensive plans of one jurisdiction must be consistent with comprehensive plans of cities and counties with common borders or related regional issues (RCW 36.70A.100); (3) development regulations must be consistent with the comprehensive plan (RCW 36.70A.040); (4) a development regulation must be internally consistent; and (5) a development regulation must be consistent with other relevant development regulations. [*Alberg, 5341c,* FDO, at 17.]
- A development regulation must be internally consistent; and all development regulations must be consistent with each other. A development regulation must be consistent with other relevant development regulations. [*Alberg, 5341c,* FDO, at 26.]
- Comprehensive plans of cities and counties must be consistent with adopted CPPs. [*Anderson Creek, 5353c,* FDO, at 22.]

- Internal consistency involves the consistency of the provisions within one document rather than between the provisions of two different documents. [*Anderson Creek, 5353c,* FDO, at 29.]
- The burden rests on a petitioner to identify those provisions of the challenged comprehensive plan that are uncoordinated or inconsistent. To do this, petitioners must identify the provision in the challenged plan and explain how it is uncoordinated with or inconsistent with a provision in another jurisdiction's comprehensive plan. [*Hensley III, 6331,* FDO, at 13.]
- RCW 36.70A.100 requires that comprehensive plans be coordinated and consistent; this does not require a jurisdiction's comprehensive plan to be coordinated with the desires of citizens living adjacent to the jurisdiction. [*Hensley III,* FDO, at 13.]
- Interim designations and implementing regulations may be altered at the time of comprehensive plan adoption if and to the extent that such alteration is necessary to insure consistency with the comprehensive plan and its implementing development regulations. [*Sky Valley, 5368c,* FDO, at 115.]
- So long as the failure to complete an optional element or innovative land use technique does not create an internal inconsistency in the Plan, or constitute a failure to comply with the mandatory requirements of the Act, such failure is not a violation of the Act. [*Sky Valley, 5368c,* FDO, at 119.]
- Just as a failure to complete an optional element of a comprehensive plan does not constitute a violation of the Act, a failure to adopt implementing development regulations for such an optional element is not a violation. However, at such time as the Plan is amended to incorporate such an optional element, the requirement to adopt implementing development regulations must be met. [*Sky Valley, 5368c,* FDO, at 120.]
- A city may choose to undertake optional neighborhood planning, pursuant to RCW 36.70A.080; however, those neighborhood plans must comply with the Plan and the requirements of the GMA. Conversely, a city cannot "pick and choose" – to adopt some and not other neighborhood plans under the authority of the GMA. [*Benaroya I, 5372c,* FDO, at 22.]
- The ultimate designation of any property remains in the local jurisdiction's discretion so long as the designation complies with the requirements of the Act and is internally consistent. [*Hapsmith I, 5375c,* FDO, at 25.]
- RCW 36.70A.100 requires comprehensive plans of cities and counties to be coordinated with and consistent with, the comprehensive plans or the counties or cities with which the county or city has common borders or related regional issues. [*Buckles, 6322c,* FDO, at 22.]
- RCW 36.70A.100 requires that comprehensive plans be coordinated and consistent; this does not require a jurisdiction's comprehensive plan to be coordinated with the desires of citizens living adjacent to the jurisdiction. [*Hensley III, 6331,* FDO, at 13.]
- The burden rests on a petitioner to identify those provisions of the challenged comprehensive plan that are uncoordinated or inconsistent. To do this, petitioners must identify the provision in the challenged plan and explain how it is uncoordinated with or inconsistent with a provision in another jurisdiction's comprehensive plan. [*Hensley III, 6331,* FDO, at 13.]

- External plan consistency may be best exemplified by plan-to-plan comparisons. [*Hensley III, 6331,* FDO, at 13.]
- The Department of Ecology's approval of an amendment to a SMP for a shoreline of state-wide significance is not subject to the consistency requirements of the GMA. The requirement to achieve consistency among a city's comprehensive plan elements is the city's duty, not Ecology's. Instead, Ecology's action must be reviewed for consistency with the policy of RCW 90.58.020 and the applicable guidelines. [*Gilpin, 7303,* FDO, at 6-7.]
- The Board will review the challenged enactments to "determine whether [they] achieve the legislature's intended results: consistency with the planning goals of the Act." In other words, to show substantive noncompliance with a planning goal, a petitioner must identify that portion of the challenged enactment that is not consistent with, or thwarts, the planning goal, and explain why the identified portion does not comply with that goal. Citing: *Rural Residents, 3310,* FDO. [*Rabie, 8305c,* FDO, at 6.]
- [Delayed implementation of a Plan, by failure to enact consistent zoning regulations, is not a violation of RCW 36.70A.070, which governs mandatory elements. The appropriate challenge on this issue is to compliance with RCW 36.70A.040.] [*Rabie, 8305c,* FDO, at 14.]
- [Where the language of a Plan's amended goals, policies and text is ambiguous, the Board may interpret the ambiguity consistently with the goals and requirements of the Act, and remand the ambiguous amendatory language for clarification that is consistent with the goals and requirements of the GMA.] [*LMI/Chevron, 8312,* FDO, at 37-38.]
- RCW 36.70A.070 provides that a comprehensive plan "shall be an internally consistent document." Amendments to a plan are not exempt from this requirement and must not result in an internally inconsistent plan. *See* RCW 36.70A.130(1). For internal consistency challenges pursuant to RCW 36.70A.070(preamble), it is appropriate and necessary for the Board to review plan amendments for consistency with preexisting plan provisions. [*LMI/Chevron, 8312,* FDO, at 39.]
- The GMA requires that comprehensive plans, as a whole, be consistent with CPPs and MPPs. Amendments to a comprehensive plan may not cause the comprehensive plan to be inconsistent with CPPs and MPPs. [*LMI/Chevron, 8312,* FDO, at 44.]
- To determine consistency of a Plan, as amended, with the CPPs and MPPs, the Board will examine the challenged amendments to determine, if on their face, the amendments are consistent with the CPPs and MPPs identified. If the challenged amendments are consistent with the identified CPPs and MPPs, the challenge fails. If a challenged amendment is facially inconsistent, the Board will examine the challenged amendment in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the CPPs and MPPs identified. [*LMI/Chevron, 8312,* FDO, at 44.]
- In evaluating plans of adjacent jurisdictions for consistency, the Board will examine the challenged amendments to determine if, on their face, the amendments are inconsistent with [thwart] the adjacent jurisdictions provisions identified. If the challenged amendments are consistent with the identified policies, the challenge fails. If the challenged amendments are facially inconsistent, the Board will examine the

challenged amendments in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the identified adjacent jurisdiction policies. [*LMI/Chevron, 8312,* FDO, at 48.]

- When a plan revision amends one of the mandatory elements set forth in RCW 36.70A.070, the element, as amended, must comply with the requirements of RCW 36.70A.070. [*LMI/Chevron, 8312,* FDO, at 50-51.]
- Subarea plan refinements must be consistent with the jurisdiction's comprehensive plan and comply with the goals and requirements of the Act. Where the subarea plan modifies only portions of a jurisdiction's comprehensive plan for the subarea, the unaffected provisions of the comprehensive plan continue to apply and govern in the subarea. [*LMI/Chevron, 8312,* FDO, at 51.]
- RCW 36.70A.100 and .210 refer to consistency of Plans with adjacent jurisdictions; they do not relate to the application of a Plan within a jurisdiction. [*Sky Valley,* 5368c, 4/22/99 Order, at 12.]
- Implicit in the remand was the assumption that the [designation] criteria would remain unchanged. Consistency between the Plan text and map is what the GMA and the Board's FDO required. Nothing in the [FDO] restricts the County's ability to achieve compliance with the GMA through means other than those discussed in the Board's Order. [*Screen II, 9312,* FDO, at 6.]
- [If more than one zoning designation implements a plan designation, a change from one implementing zoning designation to another does not create an inconsistency with the plan.] [*MacAngus, 9317,* FDO, at 10.]
- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c,* FDO, at 10.]
- The Board rejects the argument that, in the case of internal plan inconsistency, the most recent policy prevails. While there may be circumstances wherein a local government chooses to cure such an inconsistency by amending the older, rather than the newer policy, it is unsupportable to suggest that previously adopted policies must yield to newer ones. [*Radabaugh, 0302,* FDO, at 8.]
- In order to maintain consistency between its plan and implementing development regulations, as required by RCW 36.70A.040, the County correctly considered the [Plan and implementing regulation] amendments concurrently. [In a footnote, the Board noted that some development regulation amendments implement existing Plan policies and do not necessitate a reciprocal amendment to the Comprehensive Plan. Here, however, the proposal required both a Plan and development regulation amendment, thereby calling for concurrent consideration of both proposed amendments to maintain consistency, as required by RCW 36.70A.040.] [*McVittie V, 0316*, FDO, at 7.]
- [The consistency requirement of RCW 36.70A.210(1)] requires that the policies from the two documents – a CPP and Plan policy – be compatible; a policy in one document may not thwart the other. [*Hensley IV, 1304c*, FDO, at 20.]
- The internal consistency requirement [of RCW 36.70A.070(preamble)] means that the policies within a Plan – one document – be compatible; one Plan policy may not thwart another. [*Hensley IV, 1304c*, FDO, at 20.]

- [Challenging whether a jurisdiction has adopted development regulations that implement its Plan or whether the jurisdiction is performing its planning activities and making capital budget decisions in conformity with its Plan are appropriately brought by challenging compliance with RCW 36.70A.040(3) or .120, not through a challenge to the consistency provisions of RCW 36.70A.210(1) or .070(preamble).] [*Hensley IV, 1304c*, FDO, at 20.]
- *See also*: **Interjurisdictional** [*Shoreline II, 1313*]
- [The Board's conclusion that only periodic reviews, not continuous update, are required by the GMA] does not insulate the County from a UGA challenge based upon whether development regulations implement the Plan and are consistent with the Plan and Goals of the Act. [*Master Builders Association, 1316*, FDO, at 13.]
- Given that Edgewood's interim plan was a Pre-GMA document, its basis for evoking a coordination and consistency challenge against Sumner per .100 is without merit. [*Edgewood, 1318*, FDO, at 9.]
- [The Board will not review an interim future land use map for compliance with the consistency requirements of the Act. This review would be appropriate once the final or permanent map is adopted.] [*Clark, 02305*, FDO, at 19.]
- The Board notes that adding 5.8 acres for residential housing to the Arlington UGA, given the site constraints and its proximity to existing facilities and services is not counter to good growth management. The language of the GMA itself does not prohibit what the Board might agree is a logical or sensible solution. However, the GMA does require *local actions to be consistent with locally adopted CPPs and Plans*. The County's own CPPs and own Policies provide ways for this change to be accomplished, individually or in the context of its pending 2004 UGA review. However, given that the County chose to ignore implementing its own stated policies, processes and procedures, which the GMA requires, and the Board is compelled to find that the County is not in compliance with the noted provisions of the Act. [*Hensley VI, 03309c*, FDO, at 28.]
- [T]he Board will look to the integrated whole of the Plan to determine whether the challenged ordinances are consistent with, and implement the LSUGA Plan. [*Citizens, 03313*, FDO, at 18.]
- If a county Plan is consistent with the CPPs and a city Plan is consistent with the CPPs; there is a presumption that the city and county Plans are consistent as required by .100. [*Bremerton II, 04309c*, FDO, at 12.]
- The City has not identified a CPP that the County's Rural Wooded Lands amendments are inconsistent with, nor has the City identified any provision in its Plan that is made incompatible with, or is thwarted by, the County's Rural Wooded Lands amendments. [Petitioner failed to carry the burden of proof.] [*Bremerton II, 04309c*, FDO, at 12.]
- The "in lieu" provisions of the Ordinances lack clear criteria or processes governing their administration and thus tend to thwart the specific goals of the on-site dedications that are otherwise required under [the City's code] and so fail to implement the LOS standards for Parks and Open Space in . . . the Plan. [The ordinances are internally inconsistent.] [*Fallgatter, 04321*, FDO, at 20.]
- [The Board noted that the Town's Plan and zoning are inconsistent.] The Town is on notice that the inconsistency between the Plan and regulations must be reconciled in

the Town's update so that the Plan and development regulations are consistent and the development regulations implement the Plan. [*Cossalman/Van Cleve, 05332*, 6/20/05 Order, at 4.]

- The Board has ruled that "functional plans" such as sewer or water system plans or TIPs [transportation improvement programs] (developed and adopted pursuant to other Titles of the RCWs) *that are relied upon and intended to fulfill, in whole or in part, GMA requirements*, such as the Capital Facilities Element requirements, must be included directly, or incorporated by reference, into the jurisdiction's GMA plan. [Citation omitted.] At the very least, such functional plans must be *consistent with* a city's comprehensive plan. While state agencies have reviewing authority, in some instances, and provide grant funding in others, state agencies are also required to comply with local comprehensive plans. RCW 36.70A.103. [*Fallgatter V, 06303*, FDO, at 11-12.]

• Consolidation/Coordination

- No entries

• County-wide Planning Policies – CPPs

- No provision of the GMA prohibits or restricts amendment of the county-wide planning policies (unlike comprehensive plans that can be amended no more frequently than once every year). [*Snoqualmie, 2304c*, 11/4/92 Order, at 5.]
- The CPP "framework" of .210(1) is to ensure the consistency (required by .100) of the comprehensive plans of cities and counties that have common borders or related regional issues. [*Snoqualmie, 2304c*, FDO, at 8.]
- A long-term purpose of county-wide planning policies is to facilitate the transformation of local governance in the urban growth area so that urban governmental services are provided by cities and rural and regional services are provided by counties. [*Snoqualmie, 2304c*, FDO, at 9.]
- CPPs can only be as directive as they are clear. [*Snoqualmie, 2304c*, FDO, at 13.]
- The CPPs provide substantive direction not to development regulations, but rather to the comprehensive plans of cities and counties. Thus, the consistency required by RCW 36.70A.100 and RCW 36.70A.210 is an external consistency between comprehensive plans. The CPPs do NOT speak directly to the implementing land use regulations of cities and counties. [*Snoqualmie, 2304c*, FDO, at 16.]
- CPPs [county-wide planning policies] are part of a hierarchy of substantive and directive policy. Direction flows first from the CPPs to the comprehensive plans of cities and counties, which in turn provide substantive direction to the content of local land use regulations, which govern the exercise of local land use powers, including, zoning, permitting and enforcement. [*Snoqualmie, 2304c*, FDO, at 17.]
- Interlocal agreements are a satisfactory mechanism for "establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy." RCW 36.70A.210(2)(a). [*Snoqualmie, 2304c*, FDO, at 23.]
- County wide planning policies are policy documents that have both a procedural and a substantive effect on the comprehensive plans of cities and the county. The

immediate purpose of the CPPs is to achieve consistency between and among the plans of cities and the county on regional matters. A long-term purpose of the CPPs is to facilitate the transformation of local governance in urban growth areas so that cities become the primary providers of urban governmental services and counties become the providers of regional and rural services and the makers of regional policies. [*Poulsbo, 2309c,* FDO, at 23.]

- Another long-term purpose of the CPPs is to direct urban development to urban areas and to reduce sprawl. [*Edmonds, 3305c,* FDO, at 25.]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, at 6.]
- Comprehensive plans must be consistent with county-wide planning policies. [*Vashon-Maury, 5308c,* FDO, at 34.]
- On reconsideration, the Board now concludes that the CPP did not "make the county do it" with respect to the Bear Creek island UGA. [*Vashon-Maury, 5308c,* 12/1/95 Order, at 8.]
- A local jurisdiction's comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities. [*Children's I, 5311,* 5/17/95 Order, at 12.]
- The County's intention to conserve agricultural lands does not prohibit the County from establishing policies for the conversion of some agricultural lands to other uses, when the CPPs mandate such conversion policies. [*Gig Harbor, 5316c,* FDO, at 33.]
- The land capacity analysis should be related to the CTED models, other accepted models, or the methodology, if any, established in the CPPs. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 17.]
- Comprehensive plans of cities and counties must be consistent with adopted CPPs. [*Anderson Creek, 5353c,* FDO, at 22.]
- Cities are required to plan under both the GMA mandate for comprehensive plans and must also follow the mandates of the CPPs applicable to its jurisdiction. [*Benaroya I, 5372c,* FDO, at 25.]
- Nothing in the GMA or the CPPs requires a jurisdiction to show a detailed plan as to how affordable housing policies will be achieved. There is nothing in the Plan or in the record that suggests the housing affordability policies are not capable of being carried out. [*Benaroya I, 5372c,* FDO, at 26.]
- A city or county cannot rely on an unfinished process of another jurisdiction to meet the Act's requirements. However, a city or county can, if it elects or is required to by county-wide planning policy to do so, utilize the completed process of another jurisdiction to meet the requirements of RCW 36.70A.200(1). [*Hapsmith I, 5375c,* FDO, at 38.]

- The Act requires interjurisdictional planning for public facilities that are of a county or statewide nature, through the development of CPPs. [*Hapsmith I, 5375c,* 2/13/97 Order, at 8.]
- RCW 36.70A.210(6) permits only a city or the governor to appeal an adopted county-wide planning policy. [*Sundquist, 6301,* 2/21/96 Order, at 3.]
- CPPs are not a subset of comprehensive plans. If the legislature intended county-side planning policies to be included within the definition of comprehensive plans, it would have done so. [*Sundquist, 6301,* 2/21/96 Order, at 4.]
- RCW 36.70A.210(6) is specific to CPPs, therefore it controls over the more general language of RCW 36.70A.280(1)(a) and (2). [*Sundquist, 6301,* 2/21/96 Order, at 4.]
- If a County adopts annexation policies as part of its CPPs or if annexation policies are included in an adopted comprehensive plan, the Board would have jurisdiction to review such annexation policies. [*Lake Forest Park, 6336,* 2/14/97 Order, at 4.]
- A city incorporated subsequent to adoption of a county's CPPs must comply with those CPPs. [*Renton, 7326,* FDO, at 6.]
- As important as the affordable housing policy is, CPPs can only be as directive as they are clear. [*Renton, 7326,* FDO, at 7.]
- Having CPPs that encourage cities to identify PAAs is a reasonable method to promote "contiguous and orderly development" and to prepare cities to provide services to this development. [*Renton, 7326,* FDO, at 10.]
- A jurisdiction which creates overlap or conflict with a CPP should not benefit from its disregard of the law. [*Renton, 7326,* FDO, at 10.]
- The County must adhere to the plan amendment process set forth in its CPPs. If the CPPs are not clear, the Board will defer to the County's reasonable interpretation of its CPPs. Citing *King County v. Friends of the Law,* Wash. App. ___ (1998). [*Fircrest, 8302,* 3/27/98 Order, at 4.]
- County-wide planning policies (CPPs) may provide substantive direction to city and county comprehensive plans if it: (1) meets a legitimate regional objective; (2) is limited to providing substantive direction to the provisions of the comprehensive plan without directly affecting the provisions of an implementing regulation or other exercise of the police power; and (3) is consistent with other relevant provisions of the Growth Management Act. *King County v. Central Puget Sound Growth Management Hearings Board,* __ Wn. App. __, 951 P.2d 1151, 1158 (1998) (citing and adopting three-part test articulated in *Snoqualmie v. King County,* CPSGMHB Case No. 93-3-0004c, Final Decision and Order (Mar. 1, 1993), at 62-63). [*Burien, 8310,* FDO, at 16.]
- The GMA requires that comprehensive plans, as a whole, be consistent with CPPs and MPPs. Amendments to a comprehensive plan may not cause the comprehensive plan to be inconsistent with CPPs and MPPs. [*LMI/Chevron, 8312,* FDO, at 44.]
- To determine consistency of a Plan, as amended, with the CPPs and MPPs, the Board will examine the challenged amendments to determine if, on their face, the amendments are consistent with the CPPs and MPPs identified. If the challenged amendments are consistent with the identified CPPs and MPPs, the challenge fails. If a challenged amendment is facially inconsistent, the Board will examine the challenged amendment in the context of the entire Plan (identified provisions) to

determine if the amendment causes the Plan to be inconsistent with the CPPs and MPPs identified. [*LMI/Chevron, 8312,* FDO, at 44.]

- Notwithstanding the CPPs, the County's selection of the 2012 population target is a discretionary choice of the County's, so long as it is within the OFM population range and encourages development in urban areas. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 38.]
- RCW 36.70A.100 and .210 refer to consistency of Plans with adjacent jurisdictions; they do not relate to the application of a Plan within a jurisdiction. [*Sky Valley,* 5368c, 4/22/99 Order, at 12]
- The Supreme Court stated, "Upon a determination that the [UGA] provision violates the GMA, it should be stricken from both the comprehensive plan <u>and the CPPs</u>. The Board has determined that the County's UGA provision for Bear Creek violates the GMA. Therefore, by operation of law, the urban designation has effectively been stricken from both the plan and CPP. A CPP that directs an unlawful outcome is inoperative. [*Bear Creek, 3508c,* 11/3/00 Order, at 11-12.]
- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c,* FDO, at 10.]
- A city cannot . . . reject the siting of an essential public facility on the grounds that other jurisdictions have not taken an equitable share of such facilities. (Citation omitted.) [Jurisdictions may not rely upon their own independent interpretations of "fair share" as the basis for EPF siting decisions.] The Board disagrees with Tacoma's [concession and] assertion that future changes to EPF siting based upon "fair share" may only be accomplished by the Legislature. [Through its CPPs, a county and the cities within that county, in conjunction with relevant state agencies,] could conceivably establish a process or procedure for the equitable distribution of EPFs within the County and among the cities within the County, absent involvement of the Legislature. [*DOC/DSHS, 0307,* FDO, at 12.]
- [The buildable lands review requirement of RCW 36.70A.215 requires certain counties "to adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program." The first review and evaluation must be completed no later than September 1, 2002. A challenge to compliance with the requirements of .215 is only timely after a jurisdiction adopts its .215 CPP or after September 1, 2002.] [*Kitsap Citizens, 0319c,* FDO, at 11-12.]
- [A County's CPPs typically establish the scope and extent of interjurisdictional coordination and joint planning required between or among potentially affected jurisdictions.] [*Kitsap Citizens, 0319c,* FDO, at 24.]
- The Board is aware that the "first in time, first in right" result may not always achieve the best public policy outcome. However, "first in time, first in right" must be the result here, under the present facts and absent the sort of multi-lateral dialogue advocated by Chevron or direct regional oversight of the MUGA process by the County. If such a dialogue is to take place, it must be initiated by the parties, for the Board cannot require it. [*Shoreline II, 1313,* FDO, at 11.]
- [Pierce County CPP requires joint planning between cities and the County in unincorporated UGAs. Joint planning between cities in other circumstances is

permissive, if the jurisdictions agree it would be beneficial. Joint planning was not required here since the area in question was within Sumner's city limits, not the unincorporated UGA, and both cities had not agreed that such planning would be beneficial.] [*Edgewood, 1318*, FDO, at 10-11.]

- [CPPs provide substantive direction to Plans, not zoning.] [*MBA/Brink, 02310*, FDO, at 27.]
- [The Board has held, and the Supreme Court has affirmed, that CPPs have a binding and substantive effect on local government's comprehensive plans. Also, CPPs must comply with the requirements of RCW 36.70A.210 and .215. CPPs designed to implement orderly development and urban growth areas must comply with the requirements of RCW 36.70A.110, because implementation of .110 is specifically referenced in .210(3)(a).] [*CTED, 03317*, FDO, at 13-14.]
- Both the CPPs [RCW 36.70A.210(1)] and goals [RCW 36.70A.020] must be used to guide the development of locally adopted plans. Those comprehensive plans must adhere to both the CPPs and the goals of the Act. The locally established CPPs cannot contradict the goals of the statute and still fulfill their statutory obligations. (Footnote omitted.) . . .[I]f CPPs are required to establish a framework for guiding the development and amendment of comprehensive plans so as to ensure GMA compliance and consistency among jurisdictions; then the CPP guiding framework must also adhere to the goals and requirements of the Act. CPPs cannot be blind to the goals of the Act – the GMA's goals provide substantive context in the development and adoption of CPPs. This is in keeping with the interpretation of the Supreme Court which, in construing the Act, has consistently read the goals into substantive provisions. (Footnote omitted.) . . . To give effect to these GMA requirements [RCW 36.70A.020 and .210(1)] the Board holds that county-wide planning policies must be guided by, and be consistent with, the planning goals set forth in RCW 36.70A.020. Although the goals are not listed in order of priority for purposes of comprehensive plans, certain goals will have greater relevance than others at the county-wide scale. (Footnote omitted.) [*CTED, 03317*, FDO, at 15-16.]
- The Act [RCW 36.70A.110(4)] is clear, extension of sewer into the rural area is inappropriate *except* when a sewer extension *is necessary to protect the public health, safety or environment* and the sewer extension is financially supportable at rural densities and will not permit urban growth. (*Citation* omitted.) . . . [The language in the first part of the challenged CPP] captures the only statutorily recognized exception (footnote omitted) of extending sewers into the rural area - when they are necessary to protect the public health, safety and environment. It also recognizes that such extensions must be financially supportable and not allow urban development. [*CTED, 03317*, FDO, at 18-19.]
- [T]he remaining language of this CPP goes beyond the single statutory exception. It allows the extension of sewers to churches in a rural area that abut a UGA. Under this CPP, to extend a sewer line to a church outside the boundaries of the UGA, there need not be a showing that the extension is necessary to protect the public health, safety or environment, which is the only exception .110(4) recognizes. . . .The amendment to [the challenged CPP] creates an entirely new exception for churches that goes beyond the limited exception stated in RCW 36.70A.110(4). [The CPP does not comply with the Act.] [*CTED, 03317*, FDO, at 19.]

- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land to include a church or a school property, with restrictions, is permissible without conducting a land capacity analysis as required by RCW 36.70A.110 or evaluation per .215.] [*CTED, 03317*, FDO, at 26-28.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to reach adjacent land containing significant cultural or natural features for the purpose of protecting it as open space is permissible if a need for additional residential, commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken. (Note: The Board remanded this CPP to the County to clarify that the open space to be preserved would be outside the UGA, as the County intended.) A potential UGA expansion pursuant to this CPP] would seem to restrain the County's discretion by directing the County to pursue such a needed and documented UGA expansion in a location so as to maximize its ability to preserve the significant natural and cultural features as open space. This is more of a UGA *locational constraint*, rather than a UGA *sizing constraint*. Nonetheless, if the County chooses to constrain its discretion in this manner, it is free to do so. [*CTED, 03317*, FDO, at 31-32.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land for an affordable housing crisis did not comply with the Act – RCW 36.70A.215. (Note: A CPP, allowing an individual UGA to be potentially expanded for additional residential land is permissible if a need for additional residential land is demonstrated in a land capacity and reasonable measures have been taken. The challenged CPP bypassed .215's reasonable measures requirement.) The Board also commented that a land capacity analysis for residential *land* is off point in relation to a potential expansion of a UGA pursuant to an "affordable housing crisis," which is the basis for this potential UGA expansion.] Whether the existing and projected housing stock is affordable falls within the parameters of RCW 36.70A.070(2) – the Housing Element. A GMA Plan's Housing Element is required to *identify sufficient land for housing, including government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities*. RCW 36.70A.070(2)(c). Also the Housing Element requires jurisdictions have adequate provision for existing and projected housing needs for *all economic segments of the community*. RCW 36.70A.070(2)(d). Therefore, reliance upon just a land capacity analysis without supporting documentation in the County's Housing Element would be inadequate to implement [a UGA expansion pursuant to this CPP. The Board found this CPP noncompliant.] [*CTED, 03317*, FDO, at 35-36.]
- [The last challenged County CPP] is premised on the notion that some type of designated resource land (agricultural, forest or mineral lands) no longer meets the criteria for designation as that resource land, and may be redesignated to a rural or urban designation. As the parties are well aware, any such reclassification of resource lands to either a rural or urban designation is an event that is appealable to the Board. Depending on the facts and circumstances surrounding the specific revised designation of natural resource lands, the Board may, or may not, find that the change complies with the goals and requirements of the Act. This CPP merely acknowledges the possibility of redesignation from resource land to a designation that

would allow different economic development uses. Therefore, the Board need not consider this aspect of [the challenge.] [*CTED, 03317*, FDO, at 39.]

- [The County's CPP, allowing an individual UGA to be potentially expanded for economic development purposes to adjacent land that had previously been designated as resource lands, is permissible if a need for additional commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken.] [*CTED, 03317*, FDO, at 39.]
- [A new analysis regarding large lots cured an inconsistency with one of the County's CPPs regarding UGA expansion.] However, achieving consistency between [the new ordinance designation and the CPP], does not cure the County's noncompliance with RCW 36.70A.110 because it does not address the "UGA location" deficiencies identified in the FDO. . . .No new facts or reasoning are presented to disturb the Board's conclusions that Island Crossing continues to have agricultural lands of long-term commercial significance, that the presence of a sewer line is irrelevant, particularly given its limitations, that the freeway service uses do not rise to the status of "urban growth," and that Island Crossing is not "adjacent" to the Arlington UGA or a residential "population" of any sort. In fact, the private lands within this proposed UGA expansion would be connected to the Arlington UGA only by means of a 700 foot long "cherry stem" consisting of nothing but public right-of-way. While such dramatically irregular boundaries were common in the pre-GMA era, the meaning of "adjacency" under the GMA precludes such behavior. [*1000 Friends I, 03319c*, 6/24/04 Order, at 22-23.]
- The Supreme Court has held that a CPP that "mandates" the inclusion of specific lands within a UGA cannot trump the statutory requirements of RCW 36.70A.110. (Citation omitted.) [*1000 Friends I, 03319c*, 6/24/04 Order, at 23.]
- If a county Plan is consistent with the CPPs and a city Plan is consistent with the CPPs; there is a presumption that the city and county Plans are consistent as required by .100. [*Bremerton II, 04309c*, FDO, at 12.]
- The City has not identified a CPP that the County's Rural Wooded Lands amendments are inconsistent with, nor has the City identified any provision in its Plan that is made incompatible with, or is thwarted by, the County's Rural Wooded Lands amendments. [Petitioner failed to carry the burden of proof.] [*Bremerton II, 04309c*, FDO, at 12.]
- Although the Board concludes that the deductions in the City's definition of "net buildable area" were reasonable, not clearly erroneous, and fall within the scope of the City's discretion; that does not mean that the Board is not concerned with a very practical problem voiced by Petitioners. Namely, that, different definitions of "net buildable area" with varying deductions could be adopted by each jurisdiction. This uncoordinated and inconsistent approach in methodology could create a balkanization in the Central Puget Sound region, and could undermine coordinated planning under the GMA. [The Board mentioned instances where coordination and cooperation regarding methodology and calculations were enhanced through the use of agreed upon county-wide planning policies (*i.e.* urban growth areas, and buildable lands program) and offered that CPPs might be used for setting parameters for density transfers or credits in buffers areas or for transferable development rights programs). [*Fuhriman II, 05325c*, FDO, at 27-29.]

- CPPs have directive authority so long as they do not violate the GMA. [*Strahm, 05342*, FDO, at 30.]
- The Board has concluded that Comprehensive Plan Policies UT 3.B.1 and LU 1.C.4 are noncompliant with RCW 36.70A.110(4). The County has argued that these Plan Policies were to implement CPP OD-4. The Board therefore concludes, as suggested by the Thurston County Court, that CPP OD-4 is directive, not precatory. The Supreme Court stated in *King County* that "A UGA designation that blatantly violates GMA requirements should not stand simply because CPPs mandated its adoption. Rather, upon a determination that the provision violates the GMA, it should be stricken from both the comprehensive plan and CPPs." *King County*, 138 Wn 2d, at 177. Reasoning by analogy, since the County acknowledges UT 3.B.1 and LU 1.C.4 were necessary to implement the policy direction of CPP OD-4 and the Board has determined that Plan Policies UT 3.B.1 and LU 1.C.4 violate the GMA and must be stricken, likewise CPP OD-4 must be stricken. *The Board notes that school or church property that is adjacent to a UGA may be *included* within the UGA without running afoul of RCW 36.70A.110(4). Apparently, the County is also aware of this approach to dealing with the situation where a school or church is adjacent to the UGA, since it: 1) added five acres to the Arlington UGA for school purposes (Ordinance No. 05-073, Section 1, Finding II 3, at 13; and attached UGA map); and 2) added 67 acres to the Marysville UGA for church and school purposes (Ordinance No. 05-077, Section 1, Finding EE 4, at 10; and attached UGA map). This approach does not conflict with RCW 36.70A.110, since the school or church properties are drawn into the UGA where the needed urban services are available. [*Pilchuck VI, 06315c*, FDO, at 53.]
- To provide the consistent, coordinated planning that is at the heart of the GMA, comprehensive plan amendments, including those enacted to resolve appeals and those enacted as part of the ten-year UGA review and update, must be consistent with Countywide Planning Policies. [*McNaughton, 06327*, FDO, at 13.]
- The Board finds that the County's interpretation and application of its own CPPs was reasonable, when it treated the [challenged] Ordinances as a reconsideration and amendment of the challenged TYU. Here, linkage to the TYU is rational, as that is what [prior Petitioners] appealed; therefore, CPP UG-14(d)(2) is an appropriate CPP criterion for the County to apply. The Board notes that the . . .settlement was processed promptly, while the full record of the TYU process was still current and available for re-analysis. The Board finds nothing in the GMA or in the CPPs that compels a different outcome, and so concludes that the choice was within the County's discretion. [*McNaughton, 06327*, FDO, at 15.]

• Court Decisions – *See:* Appendix C - Court Decisions (GMA)

• Critical Areas - CAs

- The GMA's definition of "critical areas" at RCW 36.70A.030(5) is not exclusive and prescriptive: local governments must consider, but are not bound by, that definition

and the definitions used in the minimum guidelines developed by CTED. Local governments also have the authority to modify existing definitions or adopt their own to meet local requirements as long as those definitions comply with the GMA. [*Tracy, 2301,* FDO, at 23.]

- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, at 9.]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, at 79.]
- Whether a county or city elects to include critical areas maps that it has prepared in other documents within its comprehensive plan is left to the jurisdiction's discretion. Counties are not precluded from including designated critical areas within UGAs, so long as they protect them as required by RCW 36.70A.060. [*Gig Harbor, 5316c,* FDO, at 28.]
- Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." [*Bremerton, 5339c,* FDO, at 31.]
- The Act requires local governments to designate all lands within their jurisdiction which meet the definition of critical areas. Any exemptions, exclusions, limitations on applicability or other regulatory provisions which result in not designating all critical areas, are prohibited. The requirement to designate may be met by

designating or mapping known critical areas now or by adopting a process to designate or map them as information becomes available. [*Pilchuck II, 5347c,* FDO, at 19.]

- All lands that are designated critical areas pursuant to RCW 36.70A.170 must be protected by critical area development regulations adopted pursuant to RCW 36.70A.060, and such lands may not be exempted or excluded from protection. However, not all critical areas must be protected in the same manner or to the same degree. [*Pilchuck II, 5347c,* FDO, at 19.]
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c,* FDO, at 20.]
- It is the structure, value and functions of critical areas that are inviolate, not the critical areas themselves. The "protect critical areas" mandate does not equate to "do not alter or negatively impact critical areas in any way." While the preservation of the structure, value and functions of wetlands, for example, is of paramount importance, the Act does not flatly prohibit any alteration of or negative impacts to such critical areas. [*Pilchuck II, 5347c,* FDO, at 20.]
- The Act's requirement to protect critical areas means that the structure, value and functions of such natural systems are inviolate. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in a net loss of the structure, value and functions of such natural systems within a watershed or other functional catchment area. [*Pilchuck II, 5347c,* FDO, at 21.]
- The GMA requires designation and protection of critical areas and makes no qualifying statement that, for example, urban wetlands are any less important or deserving of protection than rural ones. As a practical matter, past development practices may have eliminated and degraded wetlands in urban areas to a greater degree than rural areas, but the Board rejects the reasoning that this provides a GMA rationale for not protecting what is left. [*Pilchuck II, 5347c,* FDO, at 23.]
- The requirement that critical areas are to be protected in the urban area is not inconsistent with the Act's predilection for compact urban development. [*Pilchuck II, 5347c,* FDO, at 24.]
- The legislature required cities and counties to designate fish and wildlife habitat conservation areas only; the legislature did not mandate that cities and counties designate every parcel of land that constitutes fish and wildlife habitat. [*Pilchuck II, 5347c,* FDO, at 31.]
- RCW 36.70A.170 and .060 require cities and counties to designate fish and wildlife habitat conservation areas and adopt development regulations to protect them for all species of fish and wildlife found within them. [*Pilchuck II, 5347c,* FDO, at 32.]
- The Act's mandate for protection requires either a buffer, or a functionally equivalent protection for all wetlands, including category 4 wetlands. It may well be that some or even most category 4 wetlands can be protected by means other than a buffer.

However, . . . some mechanism is needed to protect these areas. [*Pilchuck II, 5347c,* FDO, at 35.]

- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, at 41-42.]
- The fact that a portion of a parcel of land contains critical areas does not preclude any development whatsoever on the parcel. Instead, the Act requires that critical areas be protected. As long as that mandate is met, other, non-critical portions of land can be developed as appropriate under the applicable land use designation and zoning requirements. Furthermore, development of critical areas is not absolutely prohibited as long as those areas are adequately protected. [*Anderson Creek, 5353c,* FDO, at 19.]
- The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide adequate justification for residential densities under 4 du/acre within a UGA. [*Benaroya I, 5372c, 3/13/97, Order,* at 13.]
- Neither goal (1) and (2) nor *Anderson Creek* establish a GMA duty that precludes a jurisdiction from limiting the scope and magnitude of development in critical areas or environmentally sensitive areas. [*Litowitz, 6305,* FDO, at 9.]
- When environmentally sensitive systems are large in scope (e.g., a watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may also choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre. Such designation must be supported by adequate justification. [*Litowitz, 6305,* FDO, at 12.]
- RCW 36.70A.172 does not impose a requirement that cities and counties adopt policies to protect critical areas; therefore, the Board does not have jurisdiction to hear an appeal of the City's resolution adopting such policies. Such a requirement cannot be implied by RCW 36.70A.170 or .060. [*HEAL, 6312,* FDO, at 15.]
- Amendments to a previously adopted critical areas ordinance, after the effective date of a legislative amendment (BAS – RCW 36.70A.172) of the GMA, are subject to the best available science requirement of RCW 36.70A.172(1). [*HEAL, 6312,* FDO, at 17.]
- The Act's requirement to protect critical areas, <u>particularly</u> <u>wetlands</u> <u>and</u> <u>fish</u> <u>and</u> <u>wildlife</u> <u>habitat</u> <u>conservation</u> <u>areas,</u> means that the ~~structure,~~ values and functions of such ~~natural~~ <u>eco</u>systems ~~are inviolate~~ <u>must</u> <u>be</u> <u>maintained.</u> While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ <u>eco</u>systems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, at 11, amending a holding in *Pilchuck II*, FDO *5347*, pursuant to a Superior Court remand]
- Local governments have the flexibility to adopt critical area development regulations that would permit the reduction of the geographic extent of, for example, a wetland. This could result in the loss of all or a portion of an individual site-specific critical

area, so long as the values and functions of the ecosystem in which the critical area is located is not diminished. [*Tulalip, 6329,* FDO, at 11.]

- Certain critical areas, such as wetlands and fish and wildlife habitat areas, constitute ecosystems that transcend the boundaries of individual properties and jurisdictions, and that it is therefore necessary to address certain critical area issues on a watershed level. [*Tulalip, 6329,* FDO, at 11-12.]
- The GMA requires jurisdictions to adopt development regulations that protect critical areas; jurisdictions have the authority to supplement the GMA's mandated regulatory protection of critical areas with non-regulatory programs. [*Tulalip, 6329,* FDO, at 12.]
- RCW 36.70A.050, .170, and .172 provide the required analytical rigor and scientific scrutiny for identifying, designating and protecting critical areas. While local governments have some discretion in identifying, designating and protecting critical areas they may not [use alternative means or] ignore the critical areas requirements (RCW 36.70A.050, .060, .170 and .172) of the GMA. [*LMI/Chevron, 8312,* FDO, at 17.]
- Application of the GMA's scientific and analytic critical areas process may, in certain limited instances, provide information to justify supplementary use of land use designations on the Plan's future land use map as an additional layer of critical areas protection. [*LMI/Chevron, 8312,* FDO, at 17.]
- When critical areas are large in scope, with a high rank order value and are complex in structure and function, a city may use its future land use map designations to afford a higher level of critical areas protection than is available through its regulations to protect critical areas. In these limited circumstances, the resulting residential density will be deemed an appropriate urban density. [*LMI/Chevron, 8312,* FDO, at 25.]
- [Absent the requisite environmental attributes of a critical area that is large in scope, of high rank order value and is complex in structure and function, [a city's] future land use map density designations must permit appropriate urban densities. [*LMI/Chevron, 8312,* FDO, at 26.]
- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 31.]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 32.]
- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 32.]
- Under the sequencing scheme of the GMA, the land does speak first; but, on the rare occasion, as is the case here, where the land may speak late – it will be heard. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 35.]
- [The Tribe] has raised important and provocative questions about the responsibility of a city to protect fish habitat in view of the recent federal listings of Chinook salmon,

bull trout, and other species. The GMA contains specific requirements for local governments to designate and protect critical areas, including fish and wildlife habitat. . . . Significantly, the Tribes insist that they are not challenging the City's critical areas regulations adopted pursuant to [the GMA]. They instead assert that the City' [adoption of a Subarea Plan] violates the GMA because the Subarea Plan and critical areas regulations are inextricably intertwined. [*Tulalip II, 9313*, 1/28/00 Order, at 4.]

- When any local government in the Central Puget Sound region adopts amendments to policies and regulations that purport to protect critical areas pursuant to RCW 36.70A.060(2), those enactments will be subject to meeting the best available science requirements of RCW 36.70A.172 and the potential of appeal to this Board pursuant to RCW 36.70A.280. [*Tulalip II, 9313*, 1/28/00 Order, at 4.]
- The critical area scheme set out by the GMA for [jurisdictions] is: (1) designate critical areas by September 1, 1991; (2) adopt development regulations to protect these designated critical areas by September 1, 1991; and (3) when adopting a comprehensive plan by the July 1, 1994 deadline, review the critical area designations and protective development regulations. In other words, the requirement of RCW 36.70A.060(3) applies to the adoption of the <u>initial</u> comprehensive plan required by RCW 36.70A.040; nothing in RCW 36.70A.060(3) creates a duty for the [jurisdiction] to review its critical area designations and development regulations upon adoption of a subsequent subarea plan. [*Tulalip II, 9313*, 1/28/00 Order, at 10.]
- [Respondent asserted that RCW 36.70A.172 only applies to critical area regulations and argued] "A Comprehensive Plan is a policy statement, and therefore any critical area policies are not subject to Board review." [Citing the Court of Appeals in the *HEAL* case, the Board concluded] Respondent is wrong on the law. [*Lewis, 1320*, FDO, at 14.]
- [Petitioner cited to science in the record from the City's Surface Water Management Plan, recommending regulation based upon the 500-year flood plain. Yet the City designated the 100-year flood plain as its frequently flooded area.] Although there may well be a scientific basis to support this designation, Edgewood fails to cite to a scientific basis for this 100-year flood plain designation. Consequently, the Board concludes that Edgewood's Plan declaration and designation of the 100-year flood plain, as its frequently flooded area – critical area, does not comply with the requirements of RCW 36.70A.172. [*Lewis, 1320*, FDO, at 15.]
- GMA critical areas and SMA shorelines are found in all three fundamental land use types (urban, rural and resource lands). When this occurs, the inherent natural attributes of the critical areas and shorelines will affect, and may limit, or prohibit, development of certain lands within such areas. . . .These inherent natural attributes place constraints on the development of land that are typically eliminated, minimized or mitigated as development proceeds. Nonetheless, the inherent natural attributes of the land must be given substantial weight in differentiating the fundamental land use types and the compatibility of various land uses, improvements and activities. [*Everett Shorelines Coalition, 02309c*, FDO, at 16-17.]
- From a review of the interplay between the relevant provisions of the two statutes, the Board concludes that, while development will continue to be permitted within the shorelines of the state, the primary and paramount goal, objective and purpose of the

GMA/SMA total statutory scheme is to preserve, protect, enhance and restore the resources, ecology and ecosystem functions of the shorelines of the state, with special consideration paid to habitat for anadromous fish. [*Everett Shorelines Coalition, 02309c*, FDO, at 23.]

- In addition to wetlands, such "ecosystems" include "areas with a critical recharging effect on aquifers used for potable water," "fish and wildlife habitat conservation areas," and "frequently flooded areas." These features collectively constitute the component parts of the hydrologic ecosystems that are "shorelines of state-wide significance." [*Everett Shorelines Coalition, 02309c*, FDO, at 24.]
- It is difficult to imagine a shoreline ecology, that is the subject of the SMA planning regime, that does not consist of "ecosystem" values and functions defined by wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas and frequently flooded areas. The two regulatory schemes plainly address the same natural landscape, the same natural attributes, and the same natural processes. It is an inescapable conclusion that SMA "shorelines of statewide significance," are critical areas that are "large in scope, complex in structure and functions, and of a high rank order value." (Citation omitted) The Board concludes that shorelines of state-wide significance are critical areas subject to both the GMA and the SMA. [*Everett Shorelines Coalition, 02309c*, FDO, at 24; *See also Everett Shorelines Coalition, 02309c*, 2/10/03 Order.]
- The protection and regulation of "shorelines of state-wide significance [a critical area and ecosystem] is to be based on the scientific method derived from the supportive and harmonious provisions of RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26.]
- [A]ll "shorelines of state-wide significance" designated under Chapter 90.58 RCW are "critical areas" pursuant to RCW 36.70A.030(5). Therefore, the shoreline master program element of comprehensive plans, and all designations and development regulations that purport to control the use of land in such areas, are subject to the requirements of RCW 36.70A.060 and .172. Consequently, all shoreline master program element plan provisions and development regulations designed to govern shorelines of state-wide significance must: 1) be guided substantively by the protect, preserve, enhance and restore goals of RCW 36.70A.020(8), (10) and (14); and 2) utilize the scientific method derived from RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26; *See also Everett Shorelines Coalition, 02309c*, 2/10/03 Order.]
- Regarding the critical areas regulations that are incorporated into the SMP as shoreline management implementing regulations, and the separate shoreline regulations within the SMP, the Board concludes that it cannot allow these regulations that have not been reviewed and evaluated for consistency with the GMA's [best available science] requirement to stand as significant implementing tools for the SMP. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- But for the critical areas/BAS error discussed supra, the Board would find the following regarding the City's core scientific documents: 1) that the [Snohomish Estuary Wetland Integration Program – SEWIP] complies with RCW 90.58.100(1) and constitutes BAS [RCW 36.70A.172] in support of certain use designations established by the City's SMP; 2) that concerning the compensatory mitigation

measures in the [Salmon Overlay to the SEWIP – SOSEWIP], the Board does not have the same degree of confidence in concluding the SOSEWIP constitutes BAS; and 3) regarding the actual regulatory measures to be applied within the various shoreline use designations, the Board again is not confident that it can conclude that the [Use of Best Available Science in City of Everett's Buffer Regulations - Pentec Report] constitutes BAS. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]

- The City never contended it amended its critical areas regulations as part of the SMP update. As discussed previously, this is a fatal flaw in the City's action. Consequently, it is undisputed that the City's shorelines implementing development regulations, including critical areas regulations and shorelines regulations in the SMP (reference omitted), were not adopted as critical areas regulations pursuant to RCW 36.70A.060, nor were they supported by best available science pursuant to RCW 36.70A.172. Moreover, the Board concludes that critical area regulations must assure no net loss of the functions and values of shorelines of state-wide significance. [*Everett Shorelines Coalition, 02309c*, FDO, at 45.]
- The natural systems that are purported to be regulated by the City's SMP for shorelines of state-wide significance reveals that these areas constitute critical areas and are subsumed within the hydrological ecosystems discussed at RCW 36.70A.030(5) and discussed in the FDO, at 23-26. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 5.]
- The Board's conclusion that *these* SMA shorelines of state-wide significance are GMA critical areas does not limit or skew the range of preferred or permitted land use designations adopted pursuant to the SMA nor does it preclude development within 200 feet of the ordinary high water mark. It is understandable that this may be a new and different concept, given that traditional critical areas regulations have frequently focused on such inland aquatic features as wetlands, streams, lakes and rivers, rather than estuaries and salt-water environments. Moreover, such traditional critical areas regulations have largely been concerned with matters such as buffers and setbacks. However, while development standards will continue to be an issue even in shorelines with an intensive, committed pattern of land use, the primary consequence of the critical area status for such lands will be a duty to evaluate and take necessary actions to assure protection of these ecosystems. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 7.]
- Once critical areas have been identified and designated, they must also be protected. (Citation omitted.) There are at least two levels of protection: first, the designation level, which prescribes the permitted uses allowed within the designated area(s); and second, the development standards level, which articulates the specific requirements and standards that governs the actual development of the permitted uses within the designation. In this case the Board reviewed the designation level – the designations adopted by Everett, and approved by Ecology, to five different area designations in the Shoreline Master Program. Through the use of the information portrayed and contained in the SEWIP (a BAS document), the Board concluded that either specific designations did, or did not, comply with the first level protections required by the GMA/SMA statutory scheme. However, since the City conceded it had relied, in part, upon existing sensitive area regulations (which contain the development standards), which had not been revised or updated as required by RCW 36.70A.172,

the Board found that this level of protection did not comply with the requirements of the integrated GMA/SMA statutory scheme. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 7.]

- It is generally accepted, and not disputed here, that 4 dwelling units per acre is an appropriate urban density. However, the Board has stated that, in certain circumstances, urban densities of less than 4 dwelling units per acre can be an appropriate urban density, and therefore comply with Goals 1 and 2. "Whenever environmentally sensitive systems are large in scope (e.g., watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre." *Litowitz v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order, (Jul. 22, 1997), at 12. The *Litowitz* test, although originally used to assess a land use plan designation, is also the appropriate test to apply here in relation to the challenged zoning designations. [*MBA/Brink, 02310*, FDO, at 15.]
- The County makes no pretense or effort to explain the [2-4 du/acre zone designation] by suggesting it is necessary to preserve large scale, complex and high value critical areas, as it did for the [1-3 du/acre zone designation]. Therefore the foundation for any lower density designations [below 4 du/acre], is absolutely absent. [Therefore, the designation does not comply with Goals 1 and 2.] [*MBA/Brink, 02310*, FDO, at 20.]
- The County's approach, to rely on identification of [aquifer recharge areas] on a site-by-site basis, is within the range of choices available to local governments to satisfy the designate and protect mandates for critical areas. [*Sakura, 02321*, 2/12/03 Order, at 4.]
- The large scale environmentally sensitive hydrologic system that provided the context for the Board's analysis in the FDO is the Clover Creek drainage. As noted in the MBA's quote from the Board's FDO, the 729 acres zoned RR in Area 1 contains "isolated, sporadic and scattered occurrences of flooding, wetlands or priority habitat that can be appropriately addressed through existing critical areas regulation." In essence, the Board concluded that Area 1 was not an integral and significant part of the large scale environmentally sensitive system at issue – Clover Creek. Nothing has changed. [*MBA/Brink, 02310*, 9/4/03 Order, at 7.]
- [In its FDO, the Board did not address an issue related to compliance with the GMA's critical areas provisions. Petitioners asked that this issue be addressed during the compliance phase; Respondent argued the Board no longer had jurisdiction to resolve this issue. A majority of the Board agreed.] While both sides present cogent arguments [regarding continuing jurisdiction over the issue], the most compelling is the argument that the Petitioners did not avail themselves of the opportunity to file a post-FDO motion specifically requesting that the Board also address Legal Issue No. 5 [the CA issue]. Had Petitioners done so, the Board clearly would have had jurisdiction to answer [it] in the context of clarifying or reconsidering the FDO. The Board concludes that it lacks authority to answer [the issue] during the compliance phase of this proceeding. [*1000 Friends I, 03319c*, 6/24/04 Order, at 8.]
- [In addition to the indicators of long-term commercial significance articulated at WAC 365-190-050(a through j), land-owner intent, current use, and "commercial viability" may be considered, but none of these individual factors can be conclusive in

determining long-term commercial significance. Likewise, the presence or absence of critical areas may affect decisions regarding long-term commercial significance.] [*Orton Farms, 04307c*, FDO, at 26-28.]

- [Goals 8 and 10, by themselves] do not impose a requirement upon jurisdictions to conduct a critical areas analysis of potential impacts of the adoption, or amendment of, GMA Plans and development regulations. [*Bremerton II, 04309c*, FDO, at 27.]
- [The Board found that in updating the CAO the County considered the CTED guidelines in protecting critical aquifer recharge areas. The classification based on vulnerability to contamination was based upon best available science. The County is not restricted to reliance upon sole source aquifers and wellhead protection zones.] [*Keesing CAO, 05301*, FDO, at 11-12.]
- The GMA "requires all local governments to designate all lands within their jurisdictions which meet the definition of critical areas." (Citation omitted.) Agricultural lands cannot be excluded. [The County's designation of critical areas within an agricultural production district] recognizes the dual obligation under GMA to protect agricultural resource lands and to protect long-term water quality for people and for fish and wildlife. The Board will defer to King County in the balance it has struck. [*Keesing CAO, 05301*, FDO, at 11-12.]
- [Petitioner's appeal of certain drainage and grading regulations is based on misreading the challenged provisions.] While the Board agrees with the County [in its explanation of challenged regulations], it is not unsympathetic to Petitioner in her effort to understand the County's complex regulatory regime. It would have served the County well to simplify its regulations in the first place and not have to rely upon "clarifying" and "supporting" documents to glean an understanding of the County's regulations. [*Keesling CAO, 05301*, FDO, at 22.]
- The GMA defines geologically hazardous areas as areas that are not suited to siting of . . . development consistent with public health or safety concerns," [RCW 36.70A.030(9)], but there is no affirmative mandate associated with this definition except to "protect the functions and values." Petitioners have not persuaded the Board that the requirement to protect the functions and values of critical areas has any meaning with respect to volcanic hazard areas or that the GMA contains any independent life-safety mandate. [*Tahoma/Puget Sound, 05304c*, FDO, at 25.]
- The Board finds that "best available science' was included in the designation of Lahar Inundation Zones and Lahar Travel Time Zones. To the extent the new regulations were built around that mapping exercise, they reflect best available science as required by RCW 36.70A.172(1). . . . The more troubling question is what land use regulations are required, once a hazard is acknowledged. . . . The County reasons that the only remaining question – reasonable occupancy limits [for a covered assembly in the lahar zone] – is a policy choice based on weighing risks. In the County's calculus, the low frequency of lahar events, the likelihood of early warning, and the opportunity for evacuation must be weighed against the economic opportunity presented by new tourist facilities. . . . The Board agrees with Pierce County that land use policy and responsibility with respect to Mount Rainier Case II lahars – "low probability, high consequence" events – is within the discretion of the elected officials; they bear the burden of deciding "How many people is it okay to sacrifice." [*Tahoma/Puget Sound, 05304c*, FDO, at 23-25.]

- The County has prohibited density bonuses in lahar hazard zones, provided maps of flow zones which are available on line, launched significant public and landowner information and outreach, created and installed warning systems where feasible, prohibited critical facilities, and limited special occupancies and covered assemblies. The Board finds that [Plan Policies] that might apply to the occupancies at issue here are equivocal and do not provide a basis for overturning the covered assembly occupancies in Case II, Travel Time Zone A, Lahar Inundation Zones. [*Tahoma/Puget Sound, 05304c*, FDO, at 31.]
- [Pursuant to RCW 36.70A.480] the Board agrees with Pierce County that marine shorelines are not *per se* fish and wildlife habitat conservation areas [critical areas]. The Board then asks (1) whether Pierce County used best available science to protect critical fish and wildlife habitat conservation areas on its marine shorelines; (2) whether Pierce County's regulations gave priority to anadromous fish; (3) whether Pierce County's regulations protect the functions and values of marine shorelines as salmon habitat, and (4) whether a vegetative buffer is required. [The County's CAO] identifies a number of critical fish and wildlife conservation areas on its marine shorelines. These include eelgrass beds, shellfish beds, surf smelt spawning areas and the like. However, [the CAO] was drafted to designate and protect *all* Pierce County marine shorelines. When the County Council voted to remove the marine shorelines from critical areas, it did so (a) without ascertaining whether the remaining protected salt-water areas included all the areas important for protection and enhancement of anadromous fisheries and (b) without assessing whether the overlay of elements remaining in the CAO [i.e. steep slopes, erosion areas, eelgrass beds, etc.] would protect the "values and functions" necessary for salmon habitat. [A discussion of *WEAN v. WWGMHB*, 122 Wn. App. 173, (2004) follows.] [*Tahoma/Puget Sound, 05304c*, FDO, at 37.]
- [The Board reviewed the detailed scientific evidence in the record regarding salmon habitat along marine shorelines to determine whether the County gave "special consideration to anadromous fish."] Despite the detailed information about the function and values of salmonids habitat specific to each shoreline reach, Pierce County eliminated "marine shorelines" from the fish and wildlife habitat conservation areas listed in its critical areas ordinance without determining whether the remaining designated critical areas adequately met the needs of salmon. Undoubtedly some of Pierce County's remaining designated and mapped salt-water critical areas, such as eelgrass beds, surf smelt beaches, salt marshes and steep bluffs, overlap with habitats critical to the survival of anadromous fish. But there is nothing in the record to indicate that the high-value shoreline reaches identified by the Pentec Report for salmonids habitat [much less the restorable habitat stretches] are designated and protected in the Pierce County critical areas regulations. [*Tahoma/Puget Sound, 05304c*, FDO, at 38-40.]
- Deferring salmon habitat protection to a site-by-site analysis based on disaggregated factors is inconsistent with Pierce County's best available science. Nothing in the science amassed by the County supports disaggregating the values and functions of marine shorelines. [Various studies are reviewed pertaining to the integrated function and value of salmon habitat [*Tahoma/Puget Sound, 05304c*, FDO, at 40.]

- The Board finds that Pierce County's site-by-site assessment of marine shorelines during the permit application process, as established in (the CAO), does not meet the requirement of using best available science to devise regulations protective of the integrated functions and values of marine shorelines as critical salmon habitat. [*Tahoma/Puget Sound, 05304c*, FDO, at 40-41.]
- A final issue is whether vegetative buffers are required. Pierce County declined to establish a regulatory requirement for vegetative buffers on marine shorelines, except to the extent they might be required in connection with a narrower protective regime (eelgrass beds, for example, or bald eagle nesting sites), and has substituted a 50-foot setback from ordinary high water mark. There is a wealth of scientific opinion in the County's record supporting vegetative buffers to protect multiple functions and values of marine shoreline salmon habitat. [The Board reviewed the record documents provided to the County; and concludes that the County rejected the recommendations of experts and agencies with expertise without any sound reasoned process.] [*Tahoma/Puget Sound, 05304c*, FDO, at 41-44.]
- While the 2003 GMA amendments [ESHB 1933, amending RCW 36.70A.480] prohibit blanket designation of all marine shorelines (or indeed, all freshwater shorelines) as critical fish and wildlife habitat areas, the GMA requires the application of best available science to designate critical areas, explicitly recognizing that some of these will be shorelines. The legislature sought to ensure that this correction did not create loopholes. "Critical areas within shorelines" must be protected, with buffers as appropriate, if they meet the definition of critical areas under RCW 36.70A.030(5). RCW 36.70A.480(5) and (6). [The BAS in the County's record supported the conclusion that near-shore areas meet this definition, and the BAS] may provide the basis for designating less than all of Pierce County's marine shorelines as critical habitat for salmon. ESHB 1933 does not justify Pierce County's blanket deletion of marine shorelines and marine shoreline vegetative buffer requirements from its [CAO]. [*Tahoma/Puget Sound, 05304c*, FDO, at 49.]
- [The City's Conservancy Residential District (47 acres @ 1 du/5 acres) and the Single Family Estates District (393 acres @ 1.24 du/acre) account for approximately 6% of the City's total land. About 10% of the vacant land in the City is within these designations. Approximately 81% of the land designated by the City for single family residential use, permits densities ranging from 4.5 to 7.26 du/acre. Multi-family, mixed uses and urban village designations, which all allow residential development, account for almost 20% of the land in the City. The City made a policy determination, in the text describing the challenged designations, that its critical areas regulations do not adequately protect identified critical areas within some areas of the Conservancy Residential District and the Single Family Estates District and relied upon low density designations to provide added protections. With the exception of one of the areas with the challenged designations, the Board found the designations to be appropriate urban densities, due to critical areas constraints. For one area the Board found noncompliance.] [*1000 Friends VII, 05306*, FDO, at 25-29.]
- While the Board concludes that the Plan's R-9,600 minimum lot size is intended to yield an appropriate urban density of 4 du/acre; the Board is also mindful that *de minimus* variations may occur. However, such variations should be minimized through techniques such as lot-size averaging, density bonuses or credits, cluster

development, perhaps maximum lot sizes and other innovative techniques. [*Fuhriman II, 05325c*, FDO, at 32.]

- [The City designated a 357 acre area with an R-40,000 minimum lot size – Fitzgerald Subarea. The basis for the designation to protect large-scale, complex, high rank value critical areas that could not be adequately protected by existing critical areas regulations.] It seems apparent to the Board that, at least for the 357-acres disputed here, the City's present critical areas regulations were believed to be inadequate in protecting the critical areas at issue. This is evidenced by the *Litowitz* Test Report [which identified the area as having large-scale, complex and high rank value critical areas] and the fact that even the Planning Commission [which did not support the designation] recommended a "special overlay designation" and "special protections and regulations" to be developed to adequately protect the critical areas in question. The Commission's recommendation by itself evidences perceived inadequacies in the City's existing critical areas regulations that can support the added protection of the R-40,000 designation. Further, the overall size and interconnectedness of the affected hydrologic system is well documented; it is not inappropriate to look at a sub-basin or related hydrologic feature to assess critical areas in a specific area. [The Board upheld the R-40,000 designation for the affected area.] [*Fuhriman II, 05325c*, FDO, at 34-36.]
- [The City designated a portion of the Norway Hill area with an R-40,000 minimum lot size. Steep slopes, erosive soils, difficulty in providing urban services and connection to an aquifer and salmon stream were the basis for the designation. The Board noted that only a portion of the area designated was within the city limits, the remainder being within the unincorporated county, but within the UGA and planned annexation area of the City.] There is no question that the area designated R-40,000 within the Norway Hill Subarea is not a large scale, complex, high rank order value critical area as analyzed in the Board's *Litowitz* case. The City's *Litowitz* Test Report confirms this conclusion. However, in a recent Board decision [*Kaleas, 05307c*, FDO.], the Board acknowledged that the critical areas discussed in the Litowitz case, and several cases thereafter, were linked to the hydrologic ecosystem, and that the Board could conceive of unique geologic or topographical features that would also require the additional level of protection of lower densities in those limited geologically hazardous landscapes. [To qualify, geologically hazardous critical areas would have to be mapped, and use best available science, to identify their function and values. The Board concluded that the geologically hazardous areas on Norway Hill were mapped, and the area contained aquifers connected to salmon bearing streams. The Board upheld the R-40,000 designation for the affected area.] [*Fuhriman II, 05325c*, FDO, at 37-39.]
- In remanding the noncompliant regulations to [the County], the Board pointed out that . . . the record already contained abundant science concerning the matters at issue. Nevertheless, [the County] undertook additional public process and re-analysis in developing the proposal for [the remand Ordinance]. Base on the prior well-developed record, as refined in the compliance process, [the County] has now enacted both designation of critical salmon habitat in [the County] marine shorelines and measures to protect the functions and values of that habitat. While there are various ways that the science in the record might have been applied by [the County] to comply

. . . the Board is persuaded that Ordinance No. 2005-80s meets the GMA standard. [*Tahoma/Puget Sound, 05304c*, 1/12/06 Order, at 6.]

- In designating critical areas, cities and counties "shall consider" the minimum guidelines promulgated by CTED in consultation with DOE pursuant to RCW 36.70A.050(1) and (3); .170(2). In particular, wetlands "shall be delineated" pursuant to the DOE manual. RCW 36.70A.175. [*DOE/CTED*, 05334, FDO, at 10.]
- [The Board acknowledges the language used by the Court of Appeals in both the *HEAL* case and subsequently in *WEAN* that apparently allows "balancing" in the context of critical areas regulation. In the CAO context, such "balancing" is clearly appropriate if GMA requirements are in conflict, but there is no hard evidence here to support such a divergence from wetland ranking and buffers based on best available science.] [*DOE/CTED, 05334*, FDO, at 53.]
- [A thorough discussion of the GMA's Best Available Science (BAS) requirement in the context of *HEAL (1999)* and *Ferry County (2005)*. The Board reiterated the Supreme Court's holding in *Ferry County*, finding that the Court's 3-factor analysis - (1) The scientific evidence contained in the record; (2) Whether the analysis by the local decision-maker of the scientific evidence and other factors involved a reasoned process; and (3) Whether the decision made by the local government was within the parameters of the Act as directed by the provisions of RCW 36.70A.172(1) - is a case-by-case, rather than a bright-line, review.] [*DOE/CTED, 05334*, FDO, at 13-15.]
- The GMA mandate at issue in the present case, as in *WEAN*, is the requirement that local jurisdictions include best available science in designating critical areas and protecting their functions and values. Once a challenger has demonstrated that there is no science or outdated science in the City's record in support of its ordinance, or that the City's action is contrary to what BAS supports, it does not impermissibly shift the burden of proof for the Board to review the City's record to determine what science, if any, it relied upon. This is precisely the process undertaken in the *Ferry County* case. See generally, *Ferry County*, *supra*. It is Petitioners' burden to prove by clear and convincing evidence that the City's ordinance does not comply with the GMA because it does not include BAS for wetlands protection. [*DOE/CTED, 05334*, FDO, at 17.]
- [Regulations affecting nuisance odors from a wastewater treatment facility such as hydrogen sulfide or ammonia are not regulations protecting critical areas, and BAS is not applicable.] Odor does not fit within the GMA's definition of critical areas (*See* RCW 36.70A.030(5), nor has the County defined it as such. [*Sno-King, 06305*, 5/25/06 Order, at 12-13.]
- Since the enactment of ESHB 1933 in 2003, the Board has been presented with a number of challenges to local CAO enactments involving critical areas, as defined by the GMA, that are within shorelines, as defined by the SMA. Since ESHB 1933, at least six CAO updates have been challenged before this Board – three counties and three cities. First, no jurisdiction whose CAO has been appealed to this Board has omitted CAO regulations for wetlands, freshwater shorelines, or floodplains on the basis of ESHB 1933. Similarly, no jurisdiction, to our knowledge, has submitted its CAO update to DOE for approval under the SMA. Central Puget Sound counties and cities appear to agree that – *for wetlands, freshwater shorelines, and floodplains* – the current round of CAO updates is a GMA process that must be based on the GMA best

available science provisions notwithstanding the interaction with SMA land use designations. [*Hood Canal, 06312c*, FDO, at 26.]

- [The Board discussed various approaches used by different Puget Sound jurisdictions to protect marine shorelines.] The Board finds that there is no single interpretation of the ambiguity inherent in ESHB 1933 – specifically RCW 36.70A.480(5) – but a range of reasonable responses by local cities and counties in the Central Puget Sound region. The Board will defer to the County's decision, [the County designated all saltwater shorelines, stream segments with flow greater than 20 cubic feet per second, and lakes greater than 20 acres as critical areas under the category of "fish and wildlife habitat conservation areas."] based on local circumstances, unless persuaded by Petitioners that the County's approach was clearly erroneous. [The County had in its record ample BAS to support its designation of marine shorelines and Petitioners failed in this effort.] [*Hood Canal, 06312c*, FDO, at 26-29.]
- Petitioner KAPO contends that the County may not rely on federal habitat designations undertaken for another purpose but must conduct its own shoreline inventory or "independent analysis" and show in the record its owned "reasoned process." The Board however, reasons that the "best *available* science" requirement includes the word "available" as an indicator that a jurisdiction is not required to sponsor independent research but may rely on competent science that is provided from other sources. . . .The Board concludes that the County appropriately relied on available science. [*Hood Canal, 06312c*, FDO, at 30.]
- Kitsap County has developed and adopted regulations relying on prescriptive buffer widths to protect the functions and values of wetlands, streams, lake and marine shorelines. The County relies on science concerning the functions generally performed by vegetative buffers – sediment and pollutant capture, wildlife habitat and the like. Contrary to KAPO's assertions, there is site-specific flexibility, through buffer averaging, habitat conservation plans, off-site mitigation options, variances and reasonable use provisions. [*Hood Canal, 06312c*, FDO, at 35.]
- Kitsap County's marine buffers buffer widths are assigned based on SMA land use classifications, not based on the functions and values of the critical areas designation – here, fish and wildlife habitat conservation areas. . . .The County has not differentiated among the functions and values that may need to be protected on shorelines that serve, for example, as herring and smelt spawning areas, juvenile chum rearing areas, Chinook migratory passages, shellfish beds or have other values. Rather they have chosen an undifferentiated buffer width that is at or below the bottom of the effective range for pollutant and sediment removal cited in [BAS]. And they have applied that buffer to SMP land use classifications, not to the location of specific fish and wildlife habitat. . . .The flaw [in this approach] is illustrated by the fact that eelgrass, kelp, and shellfish beds are protected by larger buffers if they happen to be off shores designated Natural or Conservancy [in the SMP], while the same critical resources – eelgrass, kelp, shellfish – have just 35 feet of buffer off the Urban, Semi-rural or Rural shore. Protection for critical areas functions and values should be based first on the needs of the resource as determined by BAS. . . .Here Kitsap County has opted to designate its whole shoreline as critical area but then has not followed through with the protection of *all* the applicable functions and values. [*Hood Canal, 06312c*, FDO, at 39-41.]

- Whether FEMA changes its density fringe designation along the Snohomish River floodway, or whether the FAA approves expansion of Harvey Airfield are interesting wrinkles that the County will have to iron out when those federal decisions are ultimately made. However, the issue before the Board is whether the County's retention of some 50 acres within the City of Snohomish's UGA is clearly erroneous. The Board concludes that it is not. The focus of Petitioners' argument is that the area within the UGA is a critical area and its inclusion in the UGA indicates it is not, will not, or cannot be protected. Pilchuck has not made its case on this point, nor could it in the context of the present ordinance. Further, the Board finds that Petitioners' theory is unsupported by the GMA. The GMA acknowledges that critical areas occur throughout the landscape, within urban, rural and resource land designations. The GMA does not discriminate; it simply requires that their functions and values be protected *wherever they are found*. [*Pilchuck VI, 06315c*, FDO, at 68.]
- In Category IV wetlands (the most degraded) of less than 1000 square feet, the City allows development impacts if they are mitigated by on-site replacement, bioswales, revegetation, or roof gardens. SMC 25.09.160.C.3. However, no buffers are required. In *Hood Canal*, the Board acknowledged the potential disproportionality of requiring buffers as the means of protecting functions of the smallest, most degraded wetlands. *Hood Canal*, at 19, fn. 23. The Board noted that other mitigating strategies, such as best management practices or compensatory on-site or off-site mitigation might be scientifically supported. *Id*. Here, Seattle has opted for alternative protection mechanisms for these limited cases of small, isolated, low-functioning wetlands. The Petitioners have not carried their burden of proving that the City's regulations for small Category IV wetlands are clearly erroneous. [*Seattle Audubon, 06324*, FDO, at 24.]
- [Seattle's CAO exempts hydrologically isolated wetlands of less than 100 square feet relying on science that states that wetlands down to 200 square feet may provide habitat for amphibians but that BAS cannot yet assess ecological functions os very small wetlands.] Nevertheless, Seattle has undertaken a study to map wetlands in Seattle, in collaboration with the U.S. Fish and Wildlife Service. Doc. 3h, at 7. Preliminary findings of the survey identified 733 possible wetlands in the City, of which 197 were estimated to be smaller than 1,000 square feet. *Id.* at 9. Wetlands smaller than 100 square feet – and hydrologically isolated - would necessarily be a smaller subset of the 197. To require the City to address specific harm from possible loss of this subset of very small isolated wetlands, when best available science cannot assess their ecological functions, would stretch the Board's authority. A fee-in-lieu compensatory mitigation program would of course be preferable, as it would enable the City to mitigate any cumulative impacts that future scientific understandings might bring to light. However, in the context of a narrowly-tailored exemption based on science, the Board is not persuaded that the GMA requires more. [*Seattle Audubon, 06324*, FDO, at 26.]
- The GMA mandates that local governments must protect the function and values of critical areas, and buffers around certain critical areas are scientifically supported as a preferred protection strategy. The GMA does not mandate that critical area buffers must be "no-build" or "no touch" areas. The Board reviews the BAS in the City's record to determine whether the particular buffer regulation adopted – whether "no

build" or fully mitigated – provide protections for functions and values within the scope of the science. [*Seattle Audubon, 06324*, FDO, at 35.]

- The question of reliance on stormwater regulations for protection of critical areas functions and values has come before the Board in several recent decisions. The Court of Appeals set the standard in *WEAN v. Island County*, 122 Wn.App. 156, 180, 93 P.3d 885 (2004), stating that if a local government is relying substantially on pre-existing regulations to satisfy its obligations under RCW 36.70A.172, then "those regulations must be subject to the applicable critical areas analysis to ensure compliance with the GMA." [*Seattle Audubon, 06324*, FDO, at 37.]

- **Declaratory Ruling**

- *Overton, 6301pdr*
- *Renton, 7301pdr*
- *Alpine/Posten, 8301pdr*
- *Shoreline, 0301pdr*
- [The Board has authority to issue declaratory rulings.] [*Shoreline pdr, 0301pdr*, at 3.]
- [Declaratory rulings] enables the Boards to provide clarification as to whether the GMA, and related rules, *apply* to a given situation. Although this *discretionary* authority exists, the Boards have seldom been called upon to apply it. However, the question posed by Shoreline does not ask about the *applicability* of the GMA to a given situation – it is undisputed that Snohomish County, Shoreline and Woodway are GMA planning jurisdictions subject to the provisions of the GMA. Rather, Shoreline asks the Board to declare *its* own plan not only valid but also binding on Snohomish County cities. Answering this question is beyond the scope of what the Board deems an appropriate use of a declaratory ruling – clarifying the applicability of laws within the Board's purview to certain circumstances, not determining compliance. [*Shoreline pdr, 0301pdr*, at 3.]
- While the Board clearly has authority to hear and determine *compliance* with the GMA, here we lack the circumstances to do so. Absent a properly framed legal issue, couched in a timely PFR, the Board has no means to reach Shoreline's questions. Lacking such a PFR, the Board cannot evaluate whether Shoreline's Plan (or Woodway's 1994 Plan, Snohomish County's Plan or the County's County-wide Planning Policies) comply with the goals and requirements of the Act; nor address the Plan's validity or binding effect, if any, beyond its corporate limits. For these reasons, the lack of an appropriate PFR and an inappropriate question for a PDR, the While the Board clearly has authority to hear and determine *compliance* with the GMA; here we lack the circumstances to do so. Absent a properly framed legal issue, couched in a timely PFR, the Board has no means to reach Shoreline's questions. Lacking such a PFR, the Board cannot evaluate whether Shoreline's Plan (or Woodway's 1994 Plan, Snohomish County's Plan or the County's County-wide Planning Policies) comply with the goals and requirements of the Act; nor address the Plan's validity or binding effect, if any, beyond its corporate limits. For these reasons, the lack of an appropriate PFR and an inappropriate question for a PDR, the Board declines to issue a declaratory ruling in this matter. [*Shoreline pdr, 0301pdr*, at 3.]

- *Bidwell, 0302pdr*.
- *Salish Village, 03322pdr*.

• Default

- Motion to dismiss for lack of prosecution was granted; petitioner failed to appear at the prehearing conference, therefore defaulting. [*Bigford, 5348,* 8/7/95 Order, at 2.]

• Deference

- The legislative bodies of counties and cities enjoy broad discretion; however, choices are now made within the framework of GMA mandates and are subject to diminished deference. [*Rural Residents, 3310,* FDO, at 14.]
- Counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act. [*Tacoma, 4301,* FDO, at 10.]
- Although a county has discretion in determining the physical size of a UGA, it does not have discretion in how much population it should plan for. OFM's twenty-year population projection is the exclusive number to use when designating UGAs. [*Tacoma, 4301,* FDO, at 25.]
- A county can delegate the responsibility to negotiate an agreement with each city on the location of UGAs to whomever it decides is best suited for the task. However, only the legislative body of the county can make the ultimate decision to adopt UGAs as required by the Act. [*Tacoma, 4301,* FDO, at 45-46.]
- Cities enjoy broad discretion in comprehensive plan making, both in terms of the subjective criteria used and the range of specific choices selected. [*Aagaard, 4311c,* FDO, at 8.]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.

5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, at 9.]

- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, at 60.]
- If a local legislative body wishes to make changes to the draft of a proposed comprehensive plan that, to that point, has ostensibly satisfied the public participation requirements of RCW 36.70A.020(11) and .140, it has the discretion to do so. However, if the changes the legislative body wishes to make are substantially different from the recommendations received, its discretion is contingent on two conditions: (1) that there is sufficient information and/or analysis in the record to support the Council's new choice (e.g., SEPA disclosure was given, or the requisite financial analysis was done to meet the Act's concurrency requirements); and (2) that the public has had a reasonable opportunity to review and comment upon the contemplated change. If the first condition does not exist, additional work is first required to support the Council's subsequent exercise of discretion. If the second condition does not exist, effective public notice and reasonable time to review and comment upon the substantial changes must be afforded to the public in order to meet the Act's requirements for "early and continuous" public participation pursuant to RCW 36.70A.140. [*WSDF I, 4316,* FDO, at 76-77.]
- Local governments cannot use verbatim GMA language and assign it a different meaning. [*Robison, 4325c,* FDO, at 32.]
- Determining how to distribute projected population growth among existing cities falls within the ultimate discretion of counties, subject to the requirements of RCW 36.70A.110(2) to attempt to reach agreement with cities. The Act does not require proportionate distributions. [*Vashon-Maury, 5308c,* FDO, at 34.]
- While it is not the Board's responsibility to identify each and every development regulation which would be necessary to achieve full implementation of the Plan, the Board can and will conclude that, lacking a comprehensive zoning code or its functional equivalent, a county has not adopted implementing development regulations that "work together in a coordinated fashion to achieve a common goal." [*Hensley II, 5343,* 11/3/95 Order, at 7.]
- The Board rejects the theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas and the Act's explicit prohibition of urban growth outside the UGAs. [*Sky Valley, 5368c,* FDO, at 45.]
- The establishment of nonconforming use regulations is a historic part of land use planning in the State of Washington. However, with the passage of the GMA, the discretion of local jurisdictions to craft nonconforming use provisions has been limited, at least in areas outside of designated UGAs. [*PNA II, 5371,* FDO, at 27.]

- The GMA creates multiple duties which local governments must meet, and these duties are sometimes in tension if not outright conflict; the Act also reserves significant discretion to local governments to determine specifically how they will meet their multiple obligations. [*Benaroya I, 5372c,* 8/13/97, FOC, at 9.]
- So long as local governments do not breach any of their duties, local governments are free to reflect local circumstances and priorities in the choices they embody in their comprehensive plans. [*Benaroya I, 5372c,* 8/13/97, FOC, at 9.]
- By whatever name (e.g., neighborhood plan, community plan, business district plan, specific plan, master plan, etc.) a land use policy plan that is adopted after the effective date of the GMA and purports to guide land use decision-making in a portion of a city or a county, is a subarea plan within the meaning of RCW 36.70A.080. While a city or a county has discretion whether or not to adopt such optional enactment, once it does so, the subarea plan is subject to the goals and requirements of the Act and must be consistent with the comprehensive plan. [*WSDF III, 5373,* FDO, at 25.]
- The discretion conferred upon cities and counties by RCW 36.70A.080(2) is the discretion to undertake new detailed subarea land use policy plans. If they do so, such plans must be adopted as part of the comprehensive plan; the GMA has removed the discretion of cities and counties to undertake new localized land use policy exercises disconnected from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan. [*WSDF III, 5373,* FDO, at 26.]
- The ultimate designation of any property remains in the local jurisdiction's discretion so long as the designation complies with the requirements of the Act and is internally consistent. [*Hapsmith I, 5375c,* FDO, at 25.]
- General discussion of the Board's treatment of plans and local discretion. [*Litowitz, 6305,* FDO, at 3-5.]
- Nothing in the Act suggests that either the planning goal [housing .020(4)] or the housing element requirements [.070(20(c) and (d), specifically] are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions suggests that the above cited provision provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-side level. Thus, the Board construes these sections to read, in effect: ". . . identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction...*". [*Litowitz, 6305,* FDO, at 19.**]**
- The discretion of cities, as recognized by the Board in *Aagaard,* also applies to counties; counties enjoy the same broad discretion to make many specific choices about how growth is to be accommodated within UGAs. [*Cole, 6309c,* FDO, at 15.]
- The GMA requires the Board to give deference to a local government's choice of scientific data. [*HEAL, 6312,* FDO, at 21.]
- When a local government includes a self-imposed duty in its plan, such as a deadline, the consistency requirements of RCW 36.70A.070 and .120 oblige it to meet that duty; however, it retains the discretion to amend its plan, including the revision or deletion of such self-imposed duty, provided that it does so pursuant to the authority and requirements of RCW 36.70A.130. [*COPAC, 313c,* FDO, at 12-13.]

- The Act's requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the ~~structure,~~ values and functions of such ~~natural~~ ecosystems ~~are inviolate~~ must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ ecosystems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, at 11, amending a holding in *Pilchuck II*, FDO *5347*, pursuant to a Superior Court remand]
- Local governments have the flexibility to adopt critical area development regulations that would permit the reduction of the geographic extent of, for example, a wetland. This could result in the loss of all or a portion of an individual site-specific critical area, so long as the values and functions of the ecosystem in which the critical area is located is not diminished. [*Tulalip, 6329,* FDO, at 11.]
- Each local government has discretion in establishing and designing its .130 plan amendment process. [*LMI/Chevron, 8312,* FDO, at 12.]
- RCW 36.70A.050, .170, and .172 provide the required analytical rigor and scientific scrutiny for identifying, designating and protecting critical areas. While local governments have some discretion in identifying, designating and protecting critical areas they may not [use alternative means or] ignore the critical areas requirements (RCW 36.70A.050, .060, .170 and .172) of the GMA. [*LMI/Chevron, 8312,* FDO, at 17.]
- "Front-end loading" of population [in the CFP] is not a GMA violation. . . . Neither the GMA nor the Procedural Criteria requires or suggests that the OFM population be evenly distributed over the planning period. The County clearly has discretion to distribute the population over the planning horizon as it sees fit, so long as the urban growth is accommodated. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 75.]
- [The locational criteria adopted by the County apply specifically to UGAs, not FCC designations. The County's Policy on locational criteria include the .110 FCC "exception."] . . . Since the Legislature, not the County, created the FCC "exception" in RCW 36.70A.110, it is not necessary for the County to justify, explain, or provide a rationale for, why the FCC "exception" is included in its Plan Policies. [*Bear Creek, 5803c,* 6/15/00 Order, at 26-27.]
- To suggest that the legislature has "expressly directed" the granting of "considerable" deference is wrong. The word "considerable" does not appear in the statute, nor was it used by the *Manke* Court, as cited by the County in its brief. To characterize the degree of deference that attaches to the clearly erroneous standard codified at RCW 36.70A.320(2) the law simply uses the relative term "more" in reference to the earlier "preponderance of the evidence standard of review. [*Burrow, 9318,* FDO, at 5.]
- The Planning Commission is an advisory body that makes recommendations and proposals to the County Council that the Council may or may not agree with and adopt. The County Council has discretion, and is not bound only to the Planning Commission's recommendations. However, RCW 36.70A.035 does place bounds on the County Council's discretion. RCW 36.70A.035 generally requires the Council to provide the opportunity for public review and comment if the Council chooses to change or amend a proposal *after* the opportunity for public review and comment is

closed. This additional review and comment period is required *unless* the proposed change is within the range of alternatives considered in an EIS or the proposed change is within the scope of alternatives previously available for public comment. RCW 36.70A.035(2)(b)(i) and (ii). [*Hensley IV* and *V*, *1304c/2304*, 6/17/02 Order, at 10.]

- In contrast to the SMA, the GMA directs a balancing of statutory goals and a larger degree of deference to local decisions. [*Everett Shorelines Coalition, 02309c*, FDO, at 18.]
- In contrast to the GMA, neither the words "balancing" nor "balance" appear in the SMA, nor are local government decisions accorded as much deference as under the GMA. [*Everett Shorelines Coalition, 02309c*, FDO, at 20.]
- Cities have many important and challenging duties under the Act, including the accommodation of urban development. While the range of certain city choices will be constrained by detailed and directive GMA provisions, comprehensive plans embody many other local choices not subject to such specific GMA provisions. In such instances, the Board will grant broad deference to choices about how growth is to be accommodated within city limits. (Footnotes omitted.) [*WHIP/Moyer, 03306c*, FDO, at 19.]
- The question of whether any one property is better suited for a given urban designation than another is one the Board will not answer. As discussed in *WHIP III*, *supra*, if (following notice and the opportunity for public review and comment, and supported by the record) a city chooses a particular type of urban designation permitting certain urban uses within city-limits, the Board will defer to the City's judgment. It is within the discretion of local government under the GMA. [*WHIP/Moyer, 03306c*, FDO, at 35.]
- EPFs that are sited by a regional or state agency are distinct from those that are "sited by" a local jurisdiction or a private organization or individual. When a local jurisdiction is contemplating its own EPF, public or private, it is free to establish a non-preclusive siting process with any criteria it deems relevant. However, when the siting decision is made by a state or regional agency, the role of the host jurisdiction is much more limited. It may attempt to influence the siting decision "by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan." *Sound Transit*, at 6. But once a site has been chosen regionally, local plans and regulations cannot preclude it, even if those plans predate the EPF's conception. "If a decision regarding an EPF follows the adoption of a plan, and if the plan violates the .200 duty 'not to preclude,' the jurisdiction has a duty to amend its plan." *Port of Seattle*, at 8. [*King County, 03311*, FDO, at 15.]
- Deciding where the "cut-off" point for public testimony [during the legislative body's consideration of an action, or even prior to it] is one logically left to the local government. This decision is one in which the Board will typically defer to the local government's choice. Here, the City Council opted for no public testimony prior to making its decision on Plan amendments. However, as Petitioners' argued, the City has an explicit provision in its code, which is consistent with RCW 36.70A.140, directing that the City Council provide its citizens *a reasonable opportunity to be heard at any meeting in regard to any matter being considered there at*. [Citation

omitted.] This the City did not do. Significantly, the City did not respond to this argument. [Citations omitted.] Therefore, the Board concludes the City clearly erred in precluding public comment on the proposed Plan amendments in this instance, due to failure to follow its own GMA compliant public process procedures. [*BridgeportWay, 04303*, FDO, at 13.]

- [Changing the Plan designation for Petitioners' property from high density residential to medium density residential to make it consistent with the City's development regulations, is within the City's discretion; especially since either designation maintains appropriate urban densities.] [*Jensen, 04310*, FDO, at 16.]
- [Although the Board declined to dismiss a challenge to the City's abolition of its Planning Commission, the Board commented.] Based on the materials presented to the Board in the motions practice, the Board would be inclined to defer to the City's discretion in its reorganization of the City's planning function, including abolishing the Planning Commission. Although [the City] modified its administrative structure and public process for guiding planning and development, the GMA does not mandate a specific process. The Board does not decide what the process should be; this is left to the local jurisdiction's discretion. [*Fallgatter VI, 06317*, 6/29/06 Order, at 4.]
- The Board finds that the County's interpretation and application of its own CPPs was reasonable, when it treated the [challenged] Ordinances as a reconsideration and amendment of the challenged TYU. Here, linkage to the TYU is rational, as that is what [prior Petitioners] appealed; therefore, CPP UG-14(d)(2) is an appropriate CPP criterion for the County to apply. The Board notes that the . . .settlement was processed promptly, while the full record of the TYU process was still current and available for re-analysis. The Board finds nothing in the GMA or in the CPPs that compels a different outcome, and so concludes that the choice was within the County's discretion. [*McNaughton, 06327*, FDO, at 15.]

- **Definitions**

- The GMA's definition of "critical areas" at RCW 36.70A.030(5) is not exclusive and prescriptive: local governments must consider, but are not bound by, that definition and the definitions used in the minimum guidelines developed by CTED. Local governments also have the authority to modify existing definitions or adopt their own to meet local requirements as long as those definitions comply with the GMA. [*Tracy, 2301*, FDO, at 23.]
- Cities and counties planning under the Act must consider the planning goals listed at RCW 36.70A.020 before adopting comprehensive plans and development regulations. (The easiest way to show that a jurisdiction has "considered" planning goals is to acknowledge their existence in writing.) [*Gutschmidt, 2306*, FDO, at 14-15.]
- The Act's definition of "long-term commercial significance" at RCW 36.70A.030(10) has two components: the physical characteristics of the land and the human element (i.e., the land's proximity to population areas, and the possibility of more intense uses of the land). [*Twin Falls, 3303c*, FDO, at 32.]

- The phrase "uses legally existing on any parcel" means activities or improvements that actually exist on the land, as opposed to legal use rights. [*Twin Falls, 3303c,* FDO, at 41.]
- "Take into account public input" means "consider public input." "Consider public input" means "to think seriously about" or "to bear in mind" public input; "consider public input" does not mean "agree with" or "obey" public input. [*Twin Falls, 3303c,* FDO, at 77.]
- "Nonurban lands" includes all natural resource lands, whether designated as such pursuant to RCW 36.70A.170 or not, and rural lands. [*Rural Residents, 3310,* FDO, at 41.]
- The Board treats the language "regarding the matter" narrowly to mean the specific matter before the local government. It does not mean the general subject matter such as land use planning or the GMA. [*FOTL I, 4303,* 4/22/94 Order, at 11.]
- For purposes of conducting the inventory required by RCW 36.70A.070(3)(a), "public facilities" as defined at RCW 36.70A.030(13) are synonymous with "capital facilities owned by public entities." [*WSDF I, 4316,* FDO, at 45.]
- The phrase "existing needs" from RCW 36.70A.070(3)(e) refers not only to the construction of new or expanded capital facilities that can be currently identified as needed, but also the maintenance of existing capital facilities. . . . Determining the appropriate level of maintenance for capital facilities falls within the local government's discretion. [*WSDF I, 4316,* FDO, at 47.]
- City comprehensive plans must contain an assessment of its impact on adjacent jurisdictions. . . . At the very least, a plan must indicate which jurisdictions are adjacent to the city, what the present traffic volumes and system capacities of major arterials in those jurisdiction connected to the city's are, and an analysis of what impact, if any, the city's transportation plan will have on those neighboring jurisdictions. [*WSDF I, 4316,* FDO, at 68.]
- Cities and counties are required to undertake "early and continuous" public participation in the development and amendment of comprehensive plans and development regulations, and that while the requirement to consider public comment does not require elected officials to agree with or obey such comment, local government does have a duty to be clear and consistent in informing the public about the authority, scope and purpose of proposed planning enactments. [*WSDF I, 4316,* FDO, at 71.]
- In RCW 36.70A.140, the Act envisions a "response" to public comments and "open discussion" to occur within a variety of forums including vision workshops, open houses, focus groups, opinion surveys, charettes, committee meetings and public hearings. It does not entitle citizens to a face-to-face confrontation and verbal exchange with elected officials about the Plan. [*Robison, 4325c,* FDO, at 30.]
- Local governments cannot use verbatim GMA language and assign it a different meaning. [*Robison, 4325c,* FDO, at 32.]
- The reference in RCW 36.70A.070(1) to "timber production" is not synonymous with "forest lands." The latter is a term of art unique to the GMA, for which specific requirements have been adopted, particularly RCW 36.70A.060 and .170. In contrast, the former, "timber production," is used within the definition of the phrase "forest

lands." "Forest lands" are a subset of broader category of lands, those devoted to timber production. [*Sky Valley, 5368c,* FDO, at 103.]

- Just because land is available for timber production does not mean that it constitutes "forest lands" as defined by the Act for which the designations specified at RCW 36.70A.170 and development regulations specified at RCW 36.70A.060 must be adopted. [*Sky Valley, 5368c,* FDO, at 104.]
- The Board reversed its holding in the FDO to the extent that it was based upon the determination that the Benaroya and Cosmos properties were not agricultural land within the meaning of that term in RCW 36.70A.030(2). [*Benaroya I, 5372c,* 12/31/98 Order – Court Remand, at 4.]
- CPPs are not a subset of comprehensive plans. If the legislature intended county-wide planning policies to be included within the definition of comprehensive plans, it would have done so. [*Sundquist, 6301,* 2/21/96 Order, at 4.]
- Nothing in the Act suggests that either the planning goal [housing .020(4)] or the housing element requirements [.070(20(c) and (d), specifically] are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions suggests that the above cited provision provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-side level. Thus, the Board construes these sections to read, in effect: ". . . identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction...*". [*Litowitz, 6305,* FDO, at 19.]
- Use of the word "should" in a Plan does not create a GMA duty; on the contrary, it provides for non-compulsory guidance, and establishes that the jurisdiction has some discretion in making decisions.] [*Green Valley, 8308c,* FDO, at 11.]
- The GMA does not list the goals in any rank order; it is also true that there is no conflict between Goals 8 and 9 in the abstract, or where they are applied to different parcels of land. The conflict arises when they are both invoked as the goal rationale for a specific land use on a single parcel. In such an instance, it is notable that, by their very choice of words, Goals 8 and 9 do not convey an equal level of guidance. Comparing the active verbs, we find that Goals 9 conveys that local governments are to *encourage* the development of recreational opportunities while Goal 8 conveys that local governments are to *maintain and enhance* resource-based industries. It is plain that less directive and specific language, such as *encourage,* must yield to more specific and directive language, such as *maintain and enhance.* [*Green Valley, 8308c,* FDO, at 16.]
- [For purposes of analyzing challenges to RCW 36.70A.020(6),] a clearly erroneous action is not necessarily an arbitrary action. "Arbitrary" means to be determined by whim or caprice. Washington's courts have further defined "arbitrary or capricious" action to mean willful and unreasoning action taken without regard to or consideration of the facts and circumstances surrounding the action. Citing cases. [*LMI/Chevron, 8312,* FDO, at 31.]
- RCW 36.70A.030 defines terms used in the GMA. Definitions, by themselves, do not create GMA duties. The substantive significance of the definition section of the GMA is to give meaning to words and terms used within the GMA. [A definition cannot be violated.] [*Hanson, 8315c,* FDO, at 10.]

- The Act is unambiguous: the Goals of the GMA, RCW 36.70A.020, are to guide the adoption of development regulations as well as comprehensive plans. [*Hanson, 8315c*, FDO, at 12.]
- [T]he most appropriate definition of "respond" within the context of RCW 36.70A.140 is "to react in response." Applying this definition does not mean that jurisdictions must react in response to all citizens questions or comments; applying this definition means only that citizens comments and questions must be considered and, where appropriate, jurisdictions must take action in response to those comments and questions. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 24.]
- "Response" may, but need not, take the form of an action, either a modification to the proposal under consideration, or an oral or written response to the [citizen] comment or question. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 24.]
- The Washington Supreme Court has determined that land is devoted to agricultural use under the GMA "if it is an area where the land is actually used or capable of being used for agricultural production. *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.* 136 Wn.2d 38, 56 (1998). It is irrelevant that a parcel has not been farmed for 25 years. The question is whether the land is actually used or capable of being used for agriculture. [*Sky Valley*, 5368c, 4/22/99 Order, at 8-9.]
- [The Act's definitions of "urban growth' and "characterized by urban growth'] used in the context of designating urban growth areas, pursuant to the locational criteria [of RCW 36.70A.110(1)], do not contemplate prospective urban development. [*Bear Creek, 5803c*, 6/15/00 Order, at 10.]
- The GMA, unfortunately, does not define "new fully contained community." The WACs define an FCC as "a development proposed for location outside of the existing designated urban growth area which is characterized by urban densities, uses and services and meets the criteria of RCW 36.70A.350." WAC 365-195-210. However, this definition provides little guidance on what "fully contained" means, other than compliance with .350. It may well be that *if* the undefined concept of "fully contained" is interpreted to mean "total independence or complete self-sufficiency" it is a misnomer, especially in the interdependent Central Puget Sound region. [*Bear Creek, 5803c*, 6/15/00 Order, at 20.]
- [The County defines what it believes "fully contained" means in its Plan.] To paraphrase, it does not mean that interaction between the FCC site and adjacent lands is prohibited; it means that the impacts of the FCC should be confined to the site and limited off-site. It means that containment should be achieved through permit conditions that do not increase pressure for urban development on adjacent lands. It does not mean that all public facilities and services be borne by and accommodated within the FCC. . . . The Board does not find the County's interpretation and definition of "fully contained" to be unreasonable in the context of this case. [*Bear Creek, 5803c*, 6/15/00 Order, at 20-21.]
- The Act's definitions (RCW 36.70A.030(17)) expressly state that development within LAMIRDs is not urban. The Act does not put an explicit limit on the absolute residential density permitted in LAMIRDs. The limit is unique to each LAMIRD and is established by the conditions that existed on July 1, 1990. [*Burrow, 9318*, FDO, at 19.]

- There are two criteria for local governments to [use when designating] agricultural resource lands. The first is the requirement that the land be "devoted to" agricultural usage. The second is that the land must have "long-term commercial significance" for agriculture. [*Grubb, 0304*, FDO, at 11.]
- [The Washington Supreme Court has held that] land is "devoted to" agricultural use under RCW 36.70A.030 if it is in an area where the land is actually used or capable of being used for agricultural production. (Citation omitted). [*Grubb, 0304*, FDO, at 11.]
- [There are two components to "lands of long-term commercial significance."] The first addresses the viability of the lands as a function of intrinsic attributes, i.e., "growing capacity" and "productivity" which in turn are largely a function of the suitability of the soils for growing agricultural products. The second involves consideration of the off-site factors and some degree of judgment about how those factors affect the long-term viability of agriculture. [*Grubb, 0304*, FDO, at 9.]
- The term "lands" in the definition of "long-term commercial significance," means more than an individual parcel – it means the patterns of contiguous parcels, regardless of jurisdictional boundaries, that are "devoted to" agriculture. [Several parcels that are immediately adjacent to King County's agricultural production districts are visually, functionally and effectively a part of these lands with long-term commercial significance. [*Grubb, 0304*, FDO, at 13.]
- The Board has interpreted "preclude" to mean: render impossible or impracticable; "impracticable" has been interpreted to mean: not practicable, incapable of being performed or accomplished by the means employed or at command. (Citation omitted). [*DOC/DSHS, 0307*, FDO, at 6.]
- "Dismiss with prejudice," means a removal from the docket in such a way that petitioner is foreclosed from filing a suit again on the same claim or claims. (Citation omitted.) Within the context of a PFR before the Board, a new "claim" may arise from any new "action" by the State, a County or City. For example, the enactment of a Comprehensive Plan [development regulation] or Plan [or development regulation] amendment would constitute a new action within the Board's jurisdiction to review. [*Gawenka, 0311*, 10/10/00 Order, at 3.]
- The Board here coins the term "delineation" rather than "designation" to recognize that the process set forth at RCW 36.70A.350 is unique in the GMA. It is a two-step process, which is very different from the "designations" done for "resource lands" pursuant to RCW 36.70A.170 or the "Future land use map designations" done pursuant to RCW 36.70A.070. The initial "designation" (or what we call here "delineation") of an FCC on the Future land use map does not create rights for urban uses. Rather, that initial "delineation" is simply the precedent to a potential second step, which is the subsequent processing and issuance of an "FCC permit." If and when such FCC permit is issued, the subject property becomes urban by operation of law and at that point is appropriately "designated" as urban. [*FOTL VI, 1310*, FDO, at 7, footnote 4.]
- The term "de-designated," rather than simply "re-designated" was first used by the Board in *Grubb* [0314, FDO]. Under the GMA all lands are either: (1) *urban* lands (i.e. within urban growth areas); (2) *rural* lands; or *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-

designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as either urban or rural. In contrast, a "**de**-designation" of lands from resource land to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction. [*Forster Woods, 1308c*, FDO, at 14, footnote 4.]

- Petitioner seems to misunderstand that [action] refers to the final adoption of the legislation, not the scheduling of public hearings. Notice and public hearings, as well as environmental review, are part of the process that leads to the final action – the decision, here, the adoption of the legislation. [*Miller, 02303*, FDO, at 9.]
- To sum up, it is overstating matters to contend that [the GMA and SMA] advocate either the "stoppage" of growth or unbridled growth. What these laws contemplate, separately and collectively, is the coordinated planning for, and control of the use of land to achieve articulated state-wide goals, objectives and purposes. [T]he "management" contemplated by both the GMA and the SMA is coordinated planning and the differential *control of the use of land* to achieve state-wide goals, objectives and purposes. Management is achieved through local comprehensive plans, including the shoreline master program element, development regulations and public spending priorities. In this management scheme, substantial weight must be given to the *inherent natural attributes of the land* in differentiating the fundamental land use types and the compatibility of various land uses, improvements and activities. [*Everett Shorelines Coalition, 02309c*, FDO, at 17.]
- [A]ll "shorelines of state-wide significance" designated under Chapter 90.58 RCW are "critical areas" pursuant to RCW 36.70A.030(5). Therefore, the shoreline master program element of comprehensive plans, and all designations and development regulations that purport to control the use of land in such areas, are subject to the requirements of RCW 36.70A.060 and .172. Consequently, all shoreline master program element plan provisions and development regulations designed to govern shorelines of state-wide significance must: 1) be guided substantively by the protect, preserve, enhance and restore goals of RCW 36.70A.020(8), (10) and (14); and 2) utilize the scientific method derived from RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26; *See also Everett Shorelines Coalition, 02309c*, 2/10/03 Order.]
- [A]mendments to its appeal procedures regarding the Uniform Building Code are outside the Board's jurisdiction. . . . Here the Board is not persuaded that the "permit processes" contemplated by RCW 36.70A.070(7) [*sic* .020(7)] include life/safety codes, such as the Uniform Building Code or Fire Safety Codes, as opposed to development regulations such as those specifically named at RCW 36.70A.030(7) [footnote omitted]. Indeed, by its specific terms, that GMA definition excludes "a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city." [*Kent CARES II, 02319*, 3/14/03 Order, at 7-8.
- [Jurisdictions have a duty not to adopt regulations that preclude EPFs.] The Board has previously held that "local governments lack authority to deny a development permit for EPFs that are sponsored by state or regional entities." (Citation omitted.)

[Here, the County] acknowledges it has a duty to approve a "regional, state or federal EPF." (Citations omitted.) However, to allow a local government to define "regional entities" as [the Ordinance] does, (i.e., acceding to the regional authority of only those entities that the local government voluntarily recognizes through an interlocal agreement) would vitiate the GMA's imperative to accommodate these needed facilities. Signing an interlocal agreement under Chapter 39.34 RCW is a voluntary local government exercise. Accommodating a regional EPF under Chapter 36.70A RCW is not. [*King County I, 03311*, 5/26/04 Order, at 13.]

- [The Board defined "more intense rural development" in the context of LA*MIRD*s.] The Board notes with interest that while the GMA defines "rural development" and "rural character," it does not define "more intense." Neither the definitions of "rural development" nor "rural character" shed much light on the meaning of "more intense." However, .030(14) suggests *the County* as the entity that identifies rural character, and refers to the GMA's rural element provisions. RCW 36.70A.070(5)(a) provides, in relevant part, "Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances. . . ." Thus, the determination of what "more intense rural development" is falls to the counties. Consequently, absent other relevant authority, resort to the County's current zoning code is the appropriate document for making this decision. [*1000 Friends II, 03326*, FDO, at 11-12.]
- The Board holds that the term "detailed" as used in RCW 36.70A.290(1) and WAC 242-02-210(2)(c) means: concise, to the point and containing the essential components that appear in the Board's guidelines for framing legal issues. (Reference to Appendix omitted.) "Detailed" does not mean "lengthy" or including argument and evidence within the body of the issue statement. A legal issue is an allegation, not an argument. (Footnotes omitted.) The appropriate place for argument is in the briefs, not the issue statement. [*Nicholson, 04301*, 4/19/04 Order, at 5.]
- Allegation: The assertion, claim, declaration or statement of a party to an action, made in a pleading, setting out what he expects to prove. Black's Law Dictionary, Fifth Edition, 1979, at 68. [*Nicholson, 04301*, 4/19/04 Order, footnote 2, at 5.]
- Argument: An effort to establish belief by a course of reasoning. (Black's Law Dictionary, Fifth Edition, 1979, at 98. [*Nicholson, 04301*, 4/19/04 Order, footnote 3, at 5.]
- The GMA defines geologically hazardous areas as areas that are not suited to siting of . . . development consistent with public health or safety concerns," [RCW 36.70A.030(9)], but there is no affirmative mandate associated with this definition except to "protect the functions and values." Petitioners have not persuaded the Board that the requirement to protect the functions and values of critical areas has any meaning with respect to volcanic hazard areas or that the GMA contains any independent life-safety mandate. [*Tahoma/Puget Sound, 05304c*, FDO, at 25.]
- Wetlands are defined in Section .030(21) and are required to be delineated according to Ecology's manual. RCW 36.70A.175. WAC 365-190-080(1) states that city and county designation of wetlands "shall use the definition" in Section .030(21). Expanding the statutory exemption results in a failure of accurate designation and, thus, a failure to protect the functions and values of these critical areas, as required by RCW 36.70A.172(1). [*DOE/CTED, 05334*, FDO, at 26.]

- Identifying and designating wetlands in order to protect their functions and values is a requirement of the GMA. Jurisdictions are not free to rewrite the statutory definition where its terms are explicit, as they are with respect to the exemption for accidentally-created wetlands. [*DOE/CTED, 05334*, FDO, at 27.]
- The Board, like the Courts, will "avoid readings of statutes that result in unlikely, strained, or absurd consequences," and will "favor an interpretation that is consistent with the spirit or purpose of the enactment . . . over a literal reading that results in unlikely or strained consequences." [Applying these principles, the Board did not find KAPO's challenge to the County's definition of terms persuasive.] [*Hood Canal, 06312c*, FDO, at 49.]

• Density – *See:* Rural Densities and Urban Densities

• Design

- Specific design standards and scale of development within a city are not legitimate regional issues that should be addressed by the CPPs. Instead, they should be left to the discretion of the individual cities. [*Snoqualmie*, 2304, FDO, at. 31.]
- The Board notes that the Department of Community Development, in its Procedural Criteria at WAC 365-195-345(3)(d), strongly recommends inclusion of a comprehensive plan design element. Every community has characteristics that are the product of its unique physical setting and human history. The future to which a community aspires could build upon those existing characteristics or consciously impose a thematic affectation. In either case, defining community character and selecting design strategies for enhancing or changing that character are local prerogatives. [*Snoqualmie*, 2304, FDO, at 31, fn. 20]
- The history of human settlement and the literature of city and regional planning is replete with clustered development as an organizing principle. The Board takes official notice of *The Design of Cities*, Edmund N. Bacon, Penguin Books, New York, 1967; *Design with Nature*, Ian L. McHarg, Natural History Press, Philadelphia, Pa. 1969; and *Rural by Design*, Randall Arendt, Planners Press, Chicago, 1994. Traditional objectives of such innovative techniques, such as the protection and conservation of natural resources, have been augmented by more recent public policy priorities such as housing affordability, air quality and transportation goals. [*KCRP I, 4305*, FDO, at 18, fn. 15]
- "Compact urban development" does not require that the urban environment be exclusively a built environment, nor that the built environment be of a homogenous intensity, form or character. Other provisions of the Act will require that the urban landscape be interspersed with natural systems, passive and active open space and a variety of public facilities. For example, UGAs must include "greenbelts and open space areas" (RCW 36.70A.110(2)), and critical areas must be protected (RCW 36.70A.060), regardless of whether they are inside or outside of the UGA. [*Rural Residents, 3310*, FDO, at 19]

- Frank Lloyd Wright's design for Broadacre City is an accurate prediction of post - World War II suburban sprawl. The GMA intends to reduce, rather than perpetuate sprawl, no matter how well designed. [*Aagaard, 4311c*, FDO, at 8, fn. 7]
- [A] city enjoys broad discretion in its comprehensive plan to make many specific choices about how growth is to be accommodated. These choices include the specific location of particular land uses and development intensities, community character and design, spending priorities, level of service standards, financing mechanisms, site development standards and the like. [*Aagaard, 4311c*, FDO at 9.]
- As society and technology have changed over time, so too have communities and residential neighborhoods changed. This has been reflected in changes in statute and case law at both the federal and state levels. In the GMA, there are a number of specific references that address housing and residential land uses, some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population. [*Children's Alliance I*, FDO, 7/25/95, at 5, footnote omitted]
- "[R]ural character" has . . . a visual component [which] describes the visual attributes of the traditional rural landscape. If the visual character of the rural landscape is unduly disrupted or altered by a proposed use, then that use is also incompatible with "such lands." Site and building design and development have a great deal to do with the degree to which any given use blends in with the rural landscape rather than sticks out. [*Vashon-Maury, 5308c*, FDO, at 68, footnotes omitted]
- The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. Neither this vision nor this reality are new to Western civilization. It describes two millennia of European growth and most of the past two centuries of North American growth. As this country has moved from an agrarian economy to an industrial to a post-industrial economy, the technological reasons that development located in central places have been superseded in the latter half of this century by equally compelling environmental, societal and public finance rationales for compact urban development. [*Bremerton, 5339c*, FDO, at 29, footnote omitted]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in *visual character*. [*Burrow, 9318*, FDO, at 18.]
- The Act requires the LOB [Logical Outer Boundary] to minimize and contain the existing areas of commercial development. The [challenged] LOB goes beyond the existing area creating a commercial strip – the "infill" goes beyond the existing development, it is not limited . . . the County does attempt to justify a change to the FLUM for this strip commercial infill area, but this justification does not comply with the requirements of .070(5) for including the area in a LAMIRD . . . . [*Hensley IV, 1304*, FDO, at 2]

- The "character" of these neighborhoods will inevitably change over time, and the City's policy of having new industrial uses as a part (not the whole) of that character is not inconsistent with preserving a residential character for the remaining two-thirds of the area. Because "character" is largely a matter of the scale and design of specific projects, the GMA policy objective of ensuring that future growth that is "in character" with an existing residential neighborhood must be the focus for the specific development regulations that the City has yet to adopt. [*LIHI I, 0317,* FDO, at 13.]

- **Development Regulations – *Also see:* Zoning**

- The GMA's enhanced public participation requirements, as specified in RCW 36.70A.140, do not apply to the process for adopting development regulations pursuant to RCW 36.70A.060. [*Tracy, 2301,* FDO, at 13.]
- The CPPs provide substantive direction not to development regulations, but rather to the comprehensive plans of cities and counties. Thus, the consistency required by RCW 36.70A.100 and RCW 36.70A.210 is an external consistency between comprehensive plans. The CPPs do NOT speak directly to the implementing land use regulations of cities and counties. [*Snoqualmie, 2304c,* FDO, at 16.]
- No provision of the GMA bars a city from requiring individuals to bear the cost of preparing reports and surveys, and it is a common expectation that permit applicants will bear the costs of technical studies necessitated by their development proposals. [*Gutschmidt, 2306,* FDO, at 23.]
- A development regulation, whether interim or implementing, must be a binding legislative enactment. The Board is not ruling that a resolution or motion can never be used to comply with GMA critical areas and natural resource lands requirements. The test is whether the public has advance notice providing the opportunity to comment before the matter is adopted; whether a public hearing is held; whether the legislative action has the force and effect of law; and whether notice of adoption is published – regardless whether the enactment took place by way of ordinance, motion or resolution. [*FOTL I, 4303,* 4/22/94 Order, at 20-21.]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, at 6.]
- The Board rejects the argument that because RCW 36.70A.070(2)(c) requires jurisdictions to identify "sufficient land for housing" in their comprehensive plans, that their development regulations must also do so. The sufficiency of land supply required by RCW 36.70A.070(2)(c) is a mandate that the city, as a matter of policy, identify sufficient land for this purpose. Development regulations are to then impose controls to assure that the land identified in the plan for housing is available for that purpose. Because development regulations must be consistent with the comprehensive plan, they cannot decrease the land supply available for housing. RCW 36.70A.040(3). [*Children's I, 5311,* 5/17/95 Order, at 6.]

- RCW 36.70A.100 does not apply to development regulations. [*Children's I, 5311,* 5/17/95 Order, at 6.]
- RCW 36.70A.200(1) does not apply to development regulations, while (2) does. [*Children's I, 5311,* 5/17/95 Order, at 7.]
- RCW 36.70A.210 does not apply to development regulations. [*Children's I, 5311,* 5/17/95 Order, at 7.]
- Procedural criteria are recommendations; they are advisory only and do not impose a GMA duty or requirement on any local jurisdiction. [*Children's I, 5311,* 5/17/95 Order, at 12.]
- A local jurisdiction's comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities. [*Children's I, 5311,* 5/17/95 Order, at 12.]
- Any development regulations that attempt to implement such a fully noncomplying comprehensive plan cannot stand as a matter of law during the period that the plan fails to comply with the Act. Regulations that attempt to implement and be consistent with a fatally flawed comprehensive plan are in turn poisoned by the plan's defects. [*Bremerton, 5339c,* FDO, at 82.]
- When portions of a comprehensive plan have been remanded with instructions to bring those provisions into compliance with the Act, and when other portions of the plan have been found to comply with the Act, the Board must determine on a <u>case-by-case basis</u> whether the contested portions of implementing development regulations comply with the GMA. [*WSDF II, 5340,* 6/16/95 Order, at 6.]
- A development regulation must be internally consistent and all development regulations must be consistent with each other. [*WSDF II, 5340,* FDO, at 7.]
- Planning jurisdictions may adopt contingent implementing development regulations that do not take effect until some future amendment to a comprehensive plan has been formally adopted. [*WSDF II, 5340,* FDO, at 17.]
- The Act imposes five major consistency requirements on a jurisdiction undertaking adoption of comprehensive plans and development regulations under the Act: (1) a comprehensive plan must be internally consistent (RCW 36.70A.070); (2) comprehensive plans of one jurisdiction must be consistent with comprehensive plans of cities and counties with common borders or related regional issues (RCW 36.70A.100); (3) development regulations must be consistent with the comprehensive plan (RCW 36.70A.040); (4) a development regulation must be internally consistent; and (5) a development regulation must be consistent with other relevant development regulations. [*Alberg, 5341c,* FDO, at 17.]
- A development regulation must be internally consistent; and all development regulations must be consistent with each other. A development regulation must be consistent with other relevant development regulations. [*Alberg, 5341c,* FDO, at 26.]
- A county cannot adopt development regulations that are consistent with and implement its comprehensive plan until that plan itself is adopted under the GMA. [*Hensley II, 5343,* 6/9/95 Order, at 5.]

- Development regulations adopted pursuant to RCW 36.70A.060 must be adopted by ordinance, not by resolution. [*AFT, 5356,* FDO, at 13.]
- Interim designations and implementing regulations may be altered at the time of comprehensive plan adoption if and to the extent that such alteration is necessary to insure consistency with the comprehensive plan and its implementing development regulations. [*Sky Valley, 5368c,* FDO, at 115.]
- Just as a failure to complete an optional element of a comprehensive plan does not constitute a violation of the Act, a failure to adopt implementing development regulations for such an optional element is not a violation. However, at such time as the Plan is amended to incorporate such an optional element, the requirement to adopt implementing development regulations must be met. [*Sky Valley, 5368c,* FDO, at 120.]
- A petitioner is not precluded from challenging development regulations that implement a certain comprehensive plan policy, even though the petitioner did not challenge the specific policies in the plan (assuming the petitioner otherwise meets the standing and timely petition filing requirements of the Act). [*PNA II, 5371,* FDO, at 23.]
- There is no GMA prohibition from a jurisdiction using its pre-GMA zoning designations a starting point or a benchmark in the development of its GMA-required comprehensive plan. [*Litowitz, 6305,* FDO, at 13.]
- The alleged violations of GMA requirements (RCW 36.70A.070) do not apply to development regulations. The challenged ordinance amends development regulations; the issues framed in the prehearing order challenge the Plan. The Board's authority to issue opinions is limited to the statement of the issues. [*Keesling II, 7327*, FDO, at 4.]
- RCW 36.70A.160 does not require regulating to protect open space corridors; it does not provide that mere identification is protection of an open space corridor, nor does it provide an independent source of authority for regulating land use activities within an open space corridor. Any authorized land uses, or limitation, restriction, or prohibition of land uses that a jurisdiction might choose to employ within an identified open space corridor must be grounded in separate legal authority, not RCW 36.70A.160. [*LMI/Chevron, 8312,* FDO, at 54.]
- A development regulation subject to Board review does not include a decision to approve a project permit. *See* RCW 36.70A.030(7). [*Hanson, 8315c,* 9/28/98 Order, at 4.]
- RCW 36.70A.280(1) does not confer jurisdiction upon the Board to review a land use project permit decision, including but not limited to, conditional use permits. This Board has no authority or jurisdiction to review land use project permit decisions of a local government. [*Hanson, 8315c,* 9/28/98 Order, at 5.]
- The explicit language of RCW 36.70A.070 sets forth the mandatory elements to be included in a jurisdictions comprehensive plan, not its implementing development regulations. RCW 36.70A.070 applies to comprehensive plans and amendments thereto, not development regulations. [*Hanson, 8315c,* FDO, at 7-8 and 9.]
- While there is an important directive linkage between them, policies (i.e. plans) and regulations are distinct GMA creatures. The Acts consistency requirements give plans directive effect over regulations, however this does not convert policy

documents into land use controls. Simply put, plans are not regulations. [The City's critical areas regulations are not before the Board.] [*Tulalip II, 9313*, 1/28/00 Order, at 4.]

- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]
- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]
- RCW 36.70A.070 does not apply to development regulations. [*MacAngus, 9317*, FDO, at 9.]
- [RCW 36.70A.070(preamble)] emphasizes the importance of public participation in adopting and amending comprehensive plans. A plan cannot be adopted or amended without providing the opportunity for public participation. This section specifically emphasizes the application of .140 for adopting and amending comprehensive plans. This section of the Act does not apply to development regulations. [*McVittie V, 0316*, FDO, at 18.]
- [The requirements of RCW 36.70A.070(preamble), .070(1) and .110(3)] apply to comprehensive plans and UGA designations; they do not apply to development regulations – *i.e.* rezones. [The Board dismissed these issues *sua sponte*.] [*Forster Woods, 1308c*, FDO, at 29.]
- In order to maintain consistency between its plan and implementing development regulations, as required by RCW 36.70A.040, the County correctly considered the [Plan and implementing regulation] amendments concurrently. [In a footnote, the Board noted that some development regulation amendments implement existing Plan policies and do not necessitate a reciprocal amendment to the Comprehensive Plan. Here, however, the proposal required both a Plan and development regulation amendment, thereby calling for concurrent consideration of both proposed amendments to maintain consistency, as required by RCW 36.70A.040.] [*McVittie V, 0316*, FDO, at 7.]
- The GMA 20-year plan is a guiding light; it is a long-term vision for [a jurisdiction, it is generally] not something that you need to change on an emergency basis. However, development regulations may need to be changed on an emergency, but temporary, basis to respond to unforeseen circumstances. [Once a jurisdiction enacts]

temporary controls or a moratorium, the jurisdiction should proceed through the [amendment or] docketing process to make the regulations permanent, if necessary, and to amend the plan if necessary. [This is a very reasonable approach that is consistent with the decision-making regime of the GMA.] [*McVittie V, 0316*, FDO, at 15.]

- The actual conflict in this instance is between Bellevue's preferred *mechanism* to achieve its redevelopment objective and the Act's concurrency requirements. In crafting development regulations, local governments may choose to give greater weight to one GMA goal than to another GMA goal. [Here Goal 1 and 2 versus Goal 12] However, such a local goal preference does not remove the duty to comply with a specific and unequivocal GMA requirement. Furthermore, conflicts, if any, between a general GMA goal and a specific GMA requirement must be resolved in favor of the latter. [*Bennett, 1322c*, FDO, at 11.]
- The Act makes no mention of "exemptions" from the requirement that a local ordinance . . . "prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan . . ." RCW 36.70A.070(6)(b). [*Bennett, 1322c*, FDO, at 12.]
- The Housing Incentive Program (HIP) defines low-income as 80% or less of the average median income (AMI). [Petitioner] is correct, the HIP does not distinguish those at or below 50% AMI (very low-income) or those at or below 30% AMI (extremely low-income) persons. As [Petitioner] demonstrates, over three-quarters of the poor people who need affordable housing in Lakewood earn less than 50% of median income. American Lake Gardens, Springbrook and Tillicum contain some of the highest concentrations of poverty in the City. While those with the greatest need fall within the City's low-income definition, the bar is high enough to dilute the potential impact of the HIP program in providing affordable housing to the poorest of Lakewood's poor that are concentrated in its poorest neighborhoods. [*LIHI II, 1223*, FDO, at 10-11.]
- Further, the Board agrees with [Petitioner] that the HIP is ambiguous and unclear as to whether seniors or disabled persons must also be low-income to benefit from the program and whether or not low-income units can qualify for the density bonuses. . . . [The language contained in the HIP] seems to suggest that housing units to serve non low-income seniors or non low-income disabled persons are eligible for the density bonuses of the HIP. If this is the case, it further dilutes the potential effectiveness of the HIP in providing affordable housing to low-income persons. It is also not clear whether the fee reductions are only available to low-income tenants. Base upon these ambiguities of the HIP, the Board concludes that the HIP does not encourage the provision of affordable housing to all economic segments of Lakewood's population. [*LIHI II, 1223*, FDO, at 10-11.]
- The Board's role is not to judge the wisdom or advisability of every detail of a program such as the HIP – rather it is the Board's role to review the policy choices, as set forth in the HIP, for compliance with RCW 36.70A.040(3). [*LIHI II, 1223*, FDO, at 13.]
- Simply stated, [RCW 36.70A.480] means: 1) the provisions of RCW 90.58.020 are the 14th Goal in the GMA; 2) the goals and policies contained in a shoreline master

program (SMP) itself become an element of a GMA comprehensive plan (footnote and reference omitted); 3) other provisions of an SMP, including the SMP use regulations, are considered as GMA development regulations (reference omitted); and 4) adoption procedures for an SMP are governed by the SMA – *i.e.*, requiring Ecology's approval. [*Everett Shorelines Coalition, 02309c*, FDO, at 15.]

- Regarding the critical areas regulations that are incorporated into the SMP as shoreline management implementing regulations, and the separate shoreline regulations within the SMP, the Board concludes that it cannot allow these regulations that have not been reviewed and evaluated for consistency with the GMA's [best available science] requirement to stand as significant implementing tools for the SMP. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- The City never contended it amended its critical areas regulations as part of the SMP update. As discussed previously, this is a fatal flaw in the City's action. Consequently, it is undisputed that the City's shorelines implementing development regulations, including critical areas regulations and shorelines regulations in the SMP (reference omitted), were not adopted as critical areas regulations pursuant to RCW 36.70A.060, nor were they supported by best available science pursuant to RCW 36.70A.172. Moreover, the Board concludes that critical area regulations must assure no net loss of the functions and values of shorelines of state-wide significance. [*Everett Shorelines Coalition, 02309c*, FDO, at 45.]
- The City's SMA development regulations, whether labeled by the City as such, have been rendered by RCW 36.70A.480 as GMA development regulations. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 5.]
- The Board's conclusion that *these* SMA shorelines of state-wide significance are GMA critical areas does not limit or skew the range of preferred or permitted land use designations adopted pursuant to the SMA nor does it preclude development within 200 feet of the ordinary high water mark. It is understandable that this may be a new and different concept, given that traditional critical areas regulations have frequently focused on such inland aquatic features as wetlands, streams, lakes and rivers, rather than estuaries and salt-water environments. Moreover, such traditional critical areas regulations have largely been concerned with matters such as buffers and setbacks. However, while development standards will continue to be an issue even in shorelines with an intensive, committed pattern of land use, the primary consequence of the critical area status for such lands will be a duty to evaluate and take necessary actions to assure protection of these ecosystems. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 7.]
- Once critical areas have been identified and designated, they must also be protected. (Citation omitted.) There are at least two levels of protection: first, the designation level, which prescribes the permitted uses allowed within the designated area(s); and second, the development standards level, which articulates the specific requirements and standards that governs the actual development of the permitted uses within the designation. In this case the Board reviewed the designation level – the designations adopted by Everett, and approved by Ecology, to five different area designations in the Shoreline Master Program. Through the use of the information portrayed and contained in the SEWIP (a BAS document), the Board concluded that either specific designations did, or did not, comply with the first level protections required by the

GMA/SMA statutory scheme. However, since the City conceded it had relied, in part, upon existing sensitive area regulations (which contain the development standards), which had not been revised or updated as required by RCW 36.70A.172, the Board found that this level of protection did not comply with the requirements of the integrated GMA/SMA statutory scheme. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 7.]

- [The Kent Station planned action ordinance] implements [Kent's] existing land use policies and development regulations. This PAO is intended to expedite and simplify the land use permit process by relying on Kent's land use plan policies and its development regulations. [*Kent CARES, 02315*, 11/27/02 Order, at 6.]
- The crux of the matter before the Board here is whether all retail uses are of the same type regardless of their scale or size. If the answer is yes, then the [uses permitted] comply with RCW 36.70A.070(5). If the answer is no, then a retail use of an unlimited scale or size would constitute a use type that did not exist in Clearview in 1990 and therefore not be permitted in this LAMIRD. [*Hensley V, 02304c*, 3/28/03 Order, at 7.]
- A development regulation that establishes the time period for which a permit is valid does, in effect, control development and the use of land. And the same is true of amendments that alter previously established timeframes. Such timing regulations are "development regulations" under the GMA and are thus subject to Board review. [*Olsen, 03303*, 4/7/03 Order, at 5.]
- GMA comprehensive plans and subarea plans guide land use decision-making by providing policy guidance and direction to development regulations that, in turn, must be consistent with and implement the plan. These development regulations, in turn, directly control the use of land and govern over proposal review and approval and the issuance of permits. [*Laurelhurst, 03308*, FDO, at 9.]
- [T]he University of Washington Campus Master Plan is not a subarea plan within the meaning of RCW 36.70A.080. Rather, [it] is part of a permit application process resulting from a development regulation. [*Laurelhurst, 03308*, FDO, at 11.]
- If the Plan complies with the Goals of the Act, but the development regulations do not comply with the Goals of the Act, it logically follows that the noncompliant development regulations do not, and cannot, implement a compliant Plan. [A new PFR challenged whether the development regulations implemented the Plan. In two prior cases (Hensley IV and *Hensley V*) the Board had concluded that the Plan provisions complied with the Act, while the development regulations did not.] Therefore, the Board concludes that [the development regulations do not implement the Plan and do not comply with the Act.] The Board reaches this determination in the context of an Order on Motions, without the need for further briefing or a hearing on the merits. [*Hensley VII, 03310*, 8/11/03 Order, at 8.]
- [T]he 1998 Agreement [between City and UW] falls within the GMA's definition of development regulations [RCW 36.70A.030(7)] as being the functional equivalent to a planned unit development ordinance or binding site plan ordinance, which governs the permit application process. [*Laurelhurst II, 03316*, FDO, at 14.]
- [T]he 1998 Agreement [between the City and UW] is *specifically* incorporated by reference into [the City Code as] development regulations for major institutions. [Also, it is included under a heading entitled "application of regulations."] These

actions support the Board's conclusion that the City clearly has made the 1998 Agreement a development regulation since the City has adopted it in its *entirety* into its code. [*Laurelhurst II, 03316*, FDO, at 14.]

- [T]he word *governs*, (footnote omitted) used in the 1998 Agreement, has a meaning that is synonymous with the meaning of the word *controls* (footnote omitted) in the GMA definition of regulation. (footnote omitted). Because the 1998 Amendment, by its explicit terms is intended to "govern . . . uses on campus, uses outside the campus boundaries, off-campus land acquisition and leasing . . ." the Board further concludes that it "*controls* . . . land use activities," per RCW 36.70A.030(7). Thus, the 1998 Agreement . . .clearly has the effect of being a local land use regulation, subject to the goals and requirements of the GMA. The fact that the City has codified all aspects of the 1998 Agreement in SMC 23.69.006(B) means that it intends for the Agreement to control land use activities involving the University. [*Laurelhurst II, 03316*, FDO, at 14-15.]
- The choice [of the City] to include off-campus "land acquisition and leasing" provisions within the agreement, and then codify them as development regulations in the City code, is well within the City's discretion. Thus, the 1998 Agreement . . .control[s]. ."land use activity" namely, the University's acquisition and leasing of off-campus floor area. [*Laurelhurst II, 03316*, FDO, at 15.]
- The Board agrees that certain provisions of the 1998 Agreement do not appear to concern land use or development, however the fact remains that the City codified the entire 1998 Agreement into SMC 23.69.006(B) under the heading "Application of Development Regulations." If certain aspects of the controls imposed by SMC 23.69.006(B) give rise to a University claim against the City (*e.g.*., the "restraint on alienation" issue), the City may decide, as a matter of policy, to remove the offending provision from its Municipal Code. However, legal exposure on the City's part does not change the fact that the City made the entirety of the 1998 Agreement a development regulation by dint of codifying it into the SMC. If the City wishes to "un-make" all or portions of this development regulation, it must do so by the same means that made it a regulation in the first place – by a GMA compliant development regulation amendment. [*Laurelhurst II, 03316*, FDO, at 16.]
- [T]he 1998 Agreement is a development regulation within the meaning of RCW 36.70A.030(7), and that the First Amendment wrought by Ordinance No. 121193 is therefore an amendment to a development regulation. Consequently, the Board has subject matter jurisdiction over the challenged Ordinance, and will dismiss the portion of the City/UW Motion to Dismiss that goes to subject matter jurisdiction. [*Laurelhurst II, 03316*, FDO, at 16-17.]
- Here, the City is requiring annexation as a condition of providing sewer service within the UGA. The City is responsible for providing urban services to development within the UGA at the time such development is available for use and occupancy and within the twenty year horizon of the City's Plan for the UGA. The approach the City has chosen in managing growth, specifically the provision of sewer service, is a valid option which the City may choose in order to transform governance and phase development within the UGA. As such, the premise upon which [Petitioner] builds its case – the amendment [requiring annexation as a condition of sewer service] is a denial of services and a moratorium – is false. In fact, such provision is consistent

with, and complies with, the GMA as the Board has interpreted it. [*MBA/Larson, 04301*, FDO, at 11.]

- The Board has repeatedly determined that the requirements of .110 do not apply to development regulations, but rather to comprehensive plans and UGA sizing and designations. [Citations omitted.] The Board has also stated that the procedural criteria of Chapter 365-195 WAC are advisory only; the GMA does not require that local governments comply with the recommendations set forth in the CTED Minimum Guidelines. [Citations omitted.] [*MBA/Larson, 04301*, FDO, at 13.]
- The GMA requires a jurisdiction's development regulations to be consistent with, and implement, its comprehensive Plan. [Citation omitted.] . . . [T]he Act does not specifically mandate that Plans and development regulations be adopted concurrently. However, the Board has previously indicated, concurrent adoption of Plan amendments and implementing development regulations may be the wisest course of action to avoid inconsistencies between the Plan and development regulations. [Citation omitted.] However, concurrent adoption of development regulations may not be necessary if the existing development regulations continue to implement the Plan as amended. This is the situation posed here. [Plan policies that allow clustering and bonus densities are inoperative until such time as development regulations are adopted to implement these provisions – the base densities control in the meantime.] [*Bremerton II, 04309c*, FDO, at 14.]
- Plans provide policy direction to land use decision-making by providing guidance and direction to development regulations, which must be consistent with and implement the Comprehensive Plan. In turn, these development regulations govern the review and approval process for development permits. [Citations omitted.] [*Bremerton II, 04309c*, FDO, at 15.]
- [W]hen an ordinance amends or expands portions of an existing development code, the amendment is subject to appeal within sixty days of publication. *1000 Friends IV, 04318*, FDO, at 5.]
- The "in lieu" provisions of the Ordinances lack clear criteria or processes governing their administration and thus tend to thwart the specific goals of the on-site dedications that are otherwise required under [the City's code] and so fail to implement the LOS standards for Parks and Open Space in . . . the Plan. [The ordinances are internally inconsistent.] [Fallgatter, 04321, FDO, at 20.]
- Regardless of ownership, the Town's Plan and development regulations will govern the property's ultimate use and development. [*Cossalman/Van Cleve, 05332*, 6/20/05 Order, at 3.]
- [The Board noted that the Town's Plan and zoning are inconsistent.] The Town is on notice that the inconsistency between the Plan and regulations must be reconciled in the Town's update so that the Plan and development regulations are consistent and the development regulations implement the Plan. [*Cossalman/Van Cleve, 05332*, 6/20/05 Order, at 4.]
- By its explicit terms, the Ordinance imposes a moratorium, or freeze, on the filing of an application for the siting of a correctional facility in the Public Institutional zone. As such, it is clearly a "control placed on development." Therefore, [the moratorium Ordinance] is a development regulation as defined in RCW 36.70A.030(7) [and subject to Board review.] [*DOC III/IV, 05343c*, FDO, at 13.]

- ## Discovery

- No entries

- ## Discretion (of Local Government)

- The legislative bodies of counties and cities enjoy broad discretion; however, choices are now made within the framework of GMA mandates and are subject to diminished deference. [*Rural Residents, 3310,* FDO, at 14.]
- Counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act. [*Tacoma, 4301,* FDO, at 10.]
- Although a county has discretion in determining the physical size of a UGA, it does not have discretion in how much population it should plan for. OFM's twenty-year population projection is the exclusive number to use when designating UGAs. [*Tacoma, 4301,* FDO, at 25.]
- A county can delegate the responsibility to negotiate an agreement with each city on the location of UGAs to whomever it decides is bested suited for the task. However, only the legislative body of the county can make the ultimate decision to adopt UGAs as required by the Act. [*Tacoma, 4301,* FDO, at 45-46.]
- Cities enjoy broad discretion in comprehensive plan-making, both in terms of the subjective criteria used and the range of specific choices selected. [*Aagaard, 4311c,* FDO, at 8.]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, at 9.]
- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all

the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, at 60.]

- If a local legislative body wishes to make changes to the draft of a proposed comprehensive plan that, to that point, has ostensibly satisfied the public participation requirements of RCW 36.70A.020(11) and .140, it has the discretion to do so. However, if the changes the legislative body wishes to make are substantially different from the recommendations received, its discretion is contingent on two conditions: (1) that there is sufficient information and/or analysis in the record to support the Council's new choice (e.g., SEPA disclosure was given, or the requisite financial analysis was done to meet the Act's concurrency requirements); and (2) that the public has had a reasonable opportunity to review and comment upon the contemplated change. If the first condition does not exist, additional work is first required to support the Council's subsequent exercise of discretion. If the second condition does not exist, effective public notice and reasonable time to review and comment upon the substantial changes must be afforded to the public in order to meet the Act's requirements for "early and continuous" public participation pursuant to RCW 36.70A.140. [*WSDF I, 4316,* FDO, at 76-77.]
- Local governments cannot use verbatim GMA language and assign it a different meaning. [*Robison, 4325c,* FDO, at 32.]
- Determining how to distribute projected population growth among existing cities falls within the ultimate discretion of counties, subject to the requirements of RCW 36.70A.110(2) to attempt to reach agreement with cities. The Act does not require proportionate distributions. [*Vashon-Maury, 5308c,* FDO, at 34.]
- The Board acknowledges the problem inherent in not designating all sites with mineral resources, and, as a result, zoning each site as Mineral use in the implementing regulations. Those properties not zoned as Mineral are not afforded the protection available to sites with Mineral zoning. (A county may exercise discretion in including some but not all mineral resource lands in a Mineral zoning designation.) [*Alberg, 5341c,* FDO, at 41.]
- While it is not the Board's responsibility to identify each and every development regulation which would be necessary to achieve full implementation of the Plan, the Board can and will conclude that, lacking a comprehensive zoning code or its functional equivalent, a county has not adopted implementing development regulations that "work together in a coordinated fashion to achieve a common goal." [*Hensley II, 5343,* 11/3/95 Order, at 7.]
- The Board rejects the theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas and the Act's explicit prohibition of urban growth outside the UGAs. [*Sky Valley, 5368c,* FDO, at 45.]
- The establishment of nonconforming use regulations is a historic part of land use planning in the State of Washington. However, with the passage of the GMA, the

discretion of local jurisdictions to craft nonconforming use provisions has been limited, at least in areas outside of designated UGAs. [*PNA II, 5371,* FDO, at 27.]

- The GMA creates multiple duties which local governments must meet, and these duties are sometimes in tension if not outright conflict, the Act also reserves significant discretion to local governments to determine specifically how they will meet their multiple obligations. [*Benaroya I, 5372c*, 3/13/97 Order, at 9.]
- So long as local governments do not breach any of their duties, local governments are free to reflect local circumstances and priorities in the choices they embody in their comprehensive plans. [*Benaroya I, 5372c,* 3/13/97 Order, at 9.]
- By whatever name (e.g., neighborhood plan, community plan, business district plan, specific plan, master plan, etc.) a land use policy plan that is adopted after the effective date of the GMA and purports to guide land use decision-making in a portion of a city or a county, is a subarea plan within the meaning of RCW 36.70A.080. While a city or a county has discretion whether or not to adopt such optional enactment, once it does so, the subarea plan is subject to the goals and requirements of the Act and must be consistent with the comprehensive plan. [*WSDF III, 5373,* FDO, at 25.]
- The discretion conferred upon cities and counties by RCW 36.70A.080(2) is the discretion to undertake new detailed subarea land use policy plans. If they do so, such plans must be adopted as part of the comprehensive plan; the GMA has removed the discretion of cities and counties to undertake new localized land use policy exercises disconnected from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan. [*WSDF III, 5373*, FDO, at 26.]
- The ultimate designation of any property remains in the local jurisdiction's discretion so long as the designation complies with the requirements of the Act and is internally consistent. [*Hapsmith I, 5375c,* FDO, at 25.]
- General discussion of the Board's treatment of plans and local discretion. [*Litowitz, 6305,* FDO, at 3-5.]
- Nothing in the Act suggests that either the planning goal [housing .020(4)] or the housing element requirements [.070(20(c) and (d), specifically] are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions suggests that the above cited provision provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-side level. Thus, the Board construes these sections to read, in effect: ". . . identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction...*". [*Litowitz, 6305,* FDO, at 19.]
- The discretion of cities, as recognized by the Board in *Aagaard*, also applies to counties; counties enjoy the same broad discretion to make many specific choices about how growth is to be accommodated within UGAs. [*Cole, 6309c,* FDO, at 15.]
- When a local government includes a self-imposed duty in its plan, such as a deadline, the consistency requirements of RCW 36.70A.070 and .120 oblige it to meet that duty; however, it retains the discretion to amend its plan, including the revision or deletion of such self-imposed duty, provided that it does so pursuant to the authority and requirements of RCW 36.70A.130. [*COPAC, 6313c,* FDO, at 12-13.]

- The Act's requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the ~~structure,~~ values and functions of such ~~natural~~ ecosystems ~~are inviolate~~ must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ ecosystems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, at 11, amending a holding in *Pilchuck II*, FDO *5347*, pursuant to a Superior Court remand]
- Local governments have the flexibility to adopt critical area development regulations that would permit the reduction of the geographic extent of, for example, a wetland. This could result in the loss of all or a portion of an individual site-specific critical area, so long as the values and functions of the ecosystem in which the critical area is located is not diminished. [*Tulalip, 6329,* FDO, at 11.]
- Each local government has discretion in establishing and designing its .130 plan amendment process. [*LMI/Chevron, 8312,* FDO, at 12.]
- RCW 36.70A.050, .170, and .172 provide the required analytical rigor and scientific scrutiny for identifying, designating and protecting critical areas. While local governments have some discretion in identifying, designating and protecting critical areas they may not [use alternative means or] ignore the critical areas requirements (RCW 36.70A.050, .060, .170 and .172) of the GMA. [*LMI/Chevron, 8312,* FDO, at 17.]
- "Front-end loading" of population [in the CFP] is not a GMA violation. . . . Neither the GMA nor the Procedural Criteria requires or suggests that the OFM population be evenly distributed over the planning period. The County clearly has discretion to distribute the population over the planning horizon as it sees fit, so long as the urban growth is accommodated. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 75.]
- The City Council has exercised its discretion and adopted (portions of the neighborhood plan) which is distinct and separate from the unadopted (neighborhood plan). The City is also clear that it recognizes . . . that the unadopted (neighborhood plan) represents "the *wishes* of the citizens of the University Community," and that the (unadopted neighborhood plan) provides the basis for "a *desired* work program . . . for the neighborhood." However, the City has explicitly chosen **not** to include the neighborhood's . . . planning document, including the work program . . ., as part of the City-wide Comprehensive Plan. It is the City-wide Comprehensive Plan that the City must use to guide land use decision-making in the University Community Plan area. [*Montlake, 9302c,* FDO, at 8.]
- Cities are not regional decision-making bodies under the GMA and thus do not make decisions regarding system location or design of regional essential public facilities; nevertheless, the Act does contemplate a collaborative role for cities in making and implementing regional decisions. Before a regional decision is made, a city may attempt to influence that choice by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the essential public facility, and the exercise of its land use powers may only impose reasonable conditions and

mitigations that will not effectively preclude the essential public facility by rendering it impracticable. [*Sound Transit, 9303,* FDO, at 6-7]

- Sound Transit is the authority vested with the responsibility to make routing and system design decisions for regional light-rail service. [Cities have a duty not to preclude the light-rail alignment or system design selected by Sound Transit.] [*Sound Transit, 9303,* FDO, at 7.]
- Where comprehensive plan policies and development regulations allow [a jurisdiction] a range of discretion in their application, from lawful to unlawful, the Board cannot assume the [jurisdiction] will elect to act unlawfully. "Instead, the Board will assume that prospective governmental actions will be taken in good faith in an effort to comply with the Act." *Pilchuck, 5347,* FDO, at 38. [*Sound Transit, 9303,* FDO, at 7.]
- Until a regional decision is made, the City may lobby Sound Transit to adopt the City's favored alignment and, to the extent that its comprehensive plan expresses the City's aspiration for its future development, Tukwila may express its preferences in its plan. However, once that regional decision is made, the City has a duty not to preclude the light-rail alignment and system design selected by Sound Transit. [*Sound Transit, 9303,* FDO, at 7-8.]
- RCW 36.70A.110 provides a statutory *exception* for FCCs from the UGA locational criteria contained in .110. . . . [T]he locational criteria contained in .110 of the Act do not apply to the identification and designation of potential FCC areas. . . . [T]he Act does not contain any explicit locational requirements for FCCs, other than those factors enumerated in .350(1), including .350(1)(g) "containment" which could affect location. . . . [A] jurisdiction has discretion to adopt its own locational criteria or constraints for identifying and designating potential FCC areas. [*Bear Creek, 5803c,* 6/15/00 Order, at 24.]
- It is important to recognize that local government may use various regulatory techniques to avoid the situation where funding shortfalls occur. However, once local action is forced by a probable funding shortfall, a local government has numerous options to consider in reassessing and reevaluating its plan. In reassessing or reevaluating its plan, a local government is not automatically required to revise its land use element. There are other options that may be considered to meet identified capital facility needs and maintain plan consistency. [Options include: reducing standard of service (LOS); increase revenue; reduce average cost of the capital facility; reduce demand – reallocate or redirect population within the jurisdiction; reduce consumption; combinations of these options.] [*McVittie, 9316c, FDO,* at 26-27.]
- Goal 12 enables local governments to exercise their discretion in making the reasoned determination of which public facilities and services are necessary to support development within the jurisdiction. (Concurring with the Western Washington Growth Management Hearings Board's decision in *Taxpayers for Responsible Growth v. City of Oak Harbor,* WWGMHB Case No. 96-2-0002, Final Decision and Order (Jul. 16, 1996), at 10-11.) [*McVittie, 9316c, FDO,* at 28.]
- Goal 12 requires enforcement and, just as it allows discretion in identifying necessary facilities to support development, it allows local discretion in developing the type of enforcement mechanism or programs to ensure public facilities are adequate and

available to support development. These enforcement mechanisms and programs . . . may involve the use of existing regulatory techniques that are authorized, or even required, by other statutory authority. (Footnote omitted.) [*McVittie, 9316c, FDO,* at 30.]

- [For capital facilities, adoption of a concurrency ordinance is not required, but it is not prohibited; such action is within local discretion. In any case, an enforcement mechanism is required.] [*McVittie, 9316c, FDO,* at 30.]
- To suggest that the legislature has "expressly directed" the granting of "considerable" deference is wrong. The word "considerable" does not appear in the statute, nor was it used by the *Manke* Court, as cited by the County in its brief. To characterize the degree of deference that attaches to the clearly erroneous standard codified at RCW 36.70A.320(2) the law simply uses the relative term "more" in reference to the earlier "preponderance of the evidence standard of review. [*Burrow, 9318,* FDO, at 5.]
- The Board has previously determined that it is within a city's sound discretion to adopt as part of its comprehensive plan optional elements such as sub-area plans. [It is correct] that neither the Act, nor the [City's Plan itself, contain standards, or even generalized parameters, for the boundaries of an urban village or neighborhood plan. The Board holds that decisions about the geographic extent or shape of such sub-areas, absent explicit direction elsewhere in the plan, are also within the sound discretion of the City. [*Radabaugh, 0302,* FDO, at 5.]
- [In *Green Valley, 8308c*] the Board examined and rejected the argument that the discretion that the GMA affords to local governments to "balance the goals of the Act" somehow elevates recreational uses to an equal with agricultural uses. [*Grubb, 0304,* FDO, at 9.]
- The choice of what is funded during a six-year financing plan cycle is a discretionary choice of the County. It is not for Petitioner to decide which projects are to be funded in a six-year cycle. So long as the needs identified in the CFE are reflected in the capital improvement program, the scheduling of their implementation, including the delay of project to later years, is a discretionary choice of the County. However, the County should be mindful that those needs identified in the 20-year Plan (CFE), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan. [*McVittie IV, 0306c,* FDO, at 14-15.]
- [Jurisdictions] should be aware that those needs identified in the 20-year Plan (transportation element ending in 2012), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan i.e. by 2012. If these needs are not met by 2012, at a minimum, the [jurisdiction] will be noncompliant in meeting the funding requirements of RCW 36.70A.070(6). [*McVittie IV, 0306c,* FDO, at 21.]
- The Board found the *County's* action . . .noncompliant and invalid. Consequently, the Board directed the *County to take legislative action,* not merely rely upon the Board's determination of invalidity, to bring the Plan and development regulations (zoning) into compliance. . . .How the County chooses to comply with the Board's FDO [and the Act] is left to the County's discretion; however, providing effective notice and the opportunity for public participation for the citizens of Snohomish County on the County's chosen legislative action to comply with the Board's FDO is not a meaningless act. [*McVittie V, 0316,* 5/4/01 Order, at 2-3.]

- The conversion of up to one third [of the land area in two neighborhoods] to industrial uses is strong, albeit necessary, medicine. Had it been in a larger dosage, the Board would have seriously questioned whether these areas could remain viable as residential neighborhoods. [LIHI's concern was focused on the City's willingness to follow through on the commitments made in the Plan, the subject of a subsequent proceeding.] [*LIHI I, 0317*, FDO, at 4.]
- The Board rejects the argument that the 1994 designation of the . . .parcel as forest resource lands was a "mistake." The record supporting that prior designation is not before the Board and the time to challenge the GMA sufficiency of that designation has long since passed. [The Board notes that the original property owner did not characterize the prior resource lands designation as a "discrepancy" or "mistake" in 1994, nor in 1995 when it sold the property with that designation intact. Nor did Intervenor characterize the prior designation as a "mistake" until after the property was logged in reliance upon that resource land designation. To advance such argument at this time is ironic, if not disingenuous.] [*Forster Woods, 1308c*, FDO, at 16 and footnote 5.]
- The Planning Commission is an advisory body that makes recommendations and proposals to the County Council that the Council may or may not agree with and adopt. The County Council has discretion, and is not bound only to the Planning Commission's recommendations. However, RCW 36.70A.035 does place bounds on the County Council's discretion. RCW 36.70A.035 generally requires the Council to provide the opportunity for public review and comment if the Council chooses to change or amend a proposal *after* the opportunity for public review and comment is closed. This additional review and comment period is required *unless* the proposed change is within the range of alternatives considered in an EIS or the proposed change is within the scope of alternatives previously available for public comment. RCW 36.70A.035(2)(b)(i) and (ii). [*Hensley IV* and *V, 1304c/2304*, 6/17/02 Order, at 10.]
- The Board notes that the addition of the extension process "diminishes" the predictability originally set forth in [the City's Code]. Nonetheless, it is clearly within the City of Kenmore's discretion to determine whether it desires a permit extension process or not, and to establish the criteria for granting, denying or otherwise limiting the frequency or duration of such extensions. [*Olsen, 03303*, FDO, at 7.]
- [The County has] discretion to determine what criteria it includes as part of the DPO process. However, notwithstanding the alleged controversy surrounding the 40-acre minimum criterion, when the County adopted the LSUGA Plan and the initial DPO regulations it chose to include and explain the 40-acre minimum requirement in both the DPO regulations and the Plan. Thus, the 40-acre minimum requirement was treated and addressed consistently in both the Plan and regulations. The Plan explains in more detail how the entire DPO process is to work. By amending [its regulations] to delete the 40-acre minimum requirement for removal of the DPO, the County has created an inconsistency with the LSUGA Plan, an inconsistency that no longer implements the DPO process as described in the Plan. The Plan itself was not altered. [The Board found noncompliance.] [*Citizens, 03313*, FDO, at 23.]

- [T]he Board recognizes that that the deleted criterion included the phrase "to the extent practicable," which suggests to the Board that the County anticipated some degree of difficulty in implementing this particular criterion. [Removal of the DPO required abutting properties on both sides of the street to be included.] Deletion of this criterion is within the County's discretion and does not create an inconsistency with the LSUGA Plan, nor does its deletion fail to implement the Plan. [*Citizens, 03313*, FDO, at 26.]
- [The challenged Plan Policy] reserves discretion to the County in deciding the timing of *when*, and the boundaries of *where*, such [subarea] planning should occur. [*Windsong, 03307*, FDO, at 11.]
- The Board expresses no opinion regarding the advisability of the City's decision to incorporate the 1998 Agreement into SMC 23.69.006(B), nor the advisability of specific provisions regarding off-campus leasing or acquisition. Inclusion into the City's Code language addressing the subject matter of the 1998 Agreement as something within the City's sole discretion; it is neither mandated by nor prohibited by GMA. However, if and when the City exercises that discretion, it is obliged to do so under the authority of and subject to the requirements of the Act. [*Laurelhurst II, 03316*, FDO, at 25.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to reach adjacent land containing significant cultural or natural features for the purpose of protecting it as open space is permissible if a need for additional residential, commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken. (Note: The Board remanded this CPP to the County to clarify that the open space to be preserved would be outside the UGA, as the County intended.) A potential UGA expansion pursuant to this CPP] would seem to restrain the County's discretion by directing the County to pursue such a needed and documented UGA expansion in a location so as to maximize its ability to preserve the significant natural and cultural features as open space. This is more of a UGA *locational constraint*, rather than a UGA *sizing constraint*. Nonetheless, if the County chooses to constrain its discretion in this manner, it is free to do so. [*CTED, 03317*, FDO, at 31-32.]
- While consistency is an important central organizing concept of the GMA, equally important GMA premises are that urban growth is to be directed to urban areas (RCW 36.70A.020(1) and (2)), that cities are to be the primary location of urban growth by virtue of being the preferred providers of urban governmental services (RCW 36.70A.210), and that cities enjoy broad discretion within their city limits regarding how to locate, configure and serve the urban growth that is allocated to it. The Board affirms its prior holdings in this latter regard [footnote omitted], and further clarifies that, absent a clear and compelling state interest [footnote omitted], the range of land use choices available to a local legislative body is far broader within urban growth areas than is the case with the natural resource lands and rural lands parts of the GMA landscape. [The Board noted that even within the UGA, local choices are limited by the GMA's requirements regarding concurrency, critical areas and essential public facilities.] [*BridgeportWay, 04303*, FDO, at 17-18.]
- [Changing the Plan designation for Petitioners' property from high density residential to medium density residential to make it consistent with the City's development

regulations, is within the City's discretion; especially since either designation maintains appropriate urban densities.] [*Jensen, 04310*, FDO, at 16.]

- [Where the Plan identifies the need for "grade separations" for rail crossings at east-west arterials, the City has discretion to choose the grade separations it will pursue.] [*Shaffer II, 04323*, FDO, at 7-10.
- Although there were various ways the City could have revised the land use designation on its FLUM and in its Plan text to achieve compliance with the Board's Order, the City exercised its discretion and chose to redefine the two noncompliant designations as one, rather large, "Single Family Residential" designation that requires 4-5 dwelling units per net acre throughout the designated areas – clearly an undisputed appropriate urban density. [*Jensen, 04310*, 4/26/05 Order, at 7.]
- [In a prior case, the County's BLR identified inconsistencies with the CPPs, Plan and development regulations. Therefore, reasonable measures were required to be identified and adopted.] If Kitsap County's adopted [reasonable] measures are insufficient, as these challengers allege, the annual monitoring will demonstrate the failure and the County will be obligated to take corrective action. [*1000 Friends/KCRP, 05331c*, FDO, at 24.]
- The GMA gives counties ample discretion to adopt and implement a more varied array of measures than the urban development regulations listed [in the challenged document], including measures to refocus development away from rural to urban lands. Measures to reduce rural density, such as TDRs and lot aggregation, should be on the table. [Adoption of these reasonable measures] is an appropriate beginning, especially in light of the County's acknowledgement of its intent to do more, subject to the time needed for public process. [*1000 Friends/KCRP, 05331c*, FDO, at 25-26.]
- The Board finds that "best available science' was included in the designation of Lahar Inundation Zones and Lahar Travel Time Zones. To the extent the new regulations were built around that mapping exercise, they reflect best available science as required by RCW 36.70A.172(1). . . . The more troubling question is what land use regulations are required, once a hazard is acknowledged. . . . The County reasons that the only remaining question – reasonable occupancy limits [for a covered assembly in the lahar zone] – is a policy choice based on weighing risks. In the County's calculus, the low frequency of lahar events, the likelihood of early warning, and the opportunity for evacuation must be weighed against the economic opportunity presented by new tourist facilities. . . . The Board agrees with Pierce County that land use policy and responsibility with respect to Mount Rainier Case II lahars – "low probability, high consequence" events – is within the discretion of the elected officials; they bear the burden of deciding "How many people is it okay to sacrifice." [*Tahoma/Puget Sound, 05304c*, FDO, at 23-25.]
- Cities are free to project whatever growth they choose and extrapolate whatever trends they choose, as their time and resources permit. However, for purposes of growth management planning in this state, it is the population growth forecasts prepared by OFM and allocated by the County that drive and govern GMA planning – not the projections of individual cities. [The County allocated population within city limits and to unincorporated UGAs, adjacent to cities, including satellite cities. Jurisdictions may participate in OFM's process and also appeal OFM's projections or the County allocations – which did not occur here.] Thus while the County is

encouraging increased densities, it is also acknowledging additional growth to be served by the Cities beyond their municipal limits. The County has not usurped [local authority in these adopting these allocations.] [*Bonney Lake, 05316c*, FDO, at 18.]

- [County's decision regarding application of the market/safety factor is clearly within the County's discretion to make and within the legislative intent regarding deference found in RCW 36.70A.3021. [*Bonney Lake, 05316c*, FDO, at 33.]
- [Although the Board declined to dismiss a challenge to the City's abolition of its Planning Commission, the Board commented.] Based on the materials presented to the Board in the motions practice, the Board would be inclined to defer to the City's discretion in its reorganization of the City's planning function, including abolishing the Planning Commission. Although [the City] modified its administrative structure and public process for guiding planning and development, the GMA does not mandate a specific process. The Board does not decide what the process should be; this is left to the local jurisdiction's discretion. [*Fallgatter VI, 06317*, 6/29/06 Order, at 4.]

- **Discrimination**

- RCW 36.70A.210 does not apply to development regulations. [*Children's I, 5311*, 5/17/95 Order, at 7.]
- "Residential structure occupied by persons with handicaps" means the use to which the structure is put, rather than the building itself. In other words, RCW 36.70A.410 addresses the individuals occupying the residential structure, and under what circumstances they are doing so. . . . The Board will interpret the phrase broadly so that it operates prospectively, covering residential structures that are someday intended to be occupied by handicapped persons, not just residences that may already be occupied by handicapped persons. [*Children's I, 5311*, FDO, at 11.]
- Jurisdictions are free to designate areas that are subject to additional or more detailed planning such as "special planning areas" (innovative techniques); such specialized planning does not automatically constitute discriminatory action. [*Hapsmith I, 5375c*, FDO, at 46.]
- GMA counties and cities may not treat structures that house handicapped people differently than structures that house anyone else. [*Children's II, 6323*, FDO, at 5.]
- A person with "special needs" is not synonymous with a "handicapped" person. A person is handicapped if he or she fits within one of the three criterion of 42 U.S.C. 3602(h). "Special needs" includes handicapped people as well as people who do not meet the statutory definition of handicapped. [*Children's II, 6323*, FDO, at 7.]
- [Designating localized special planning areas [Subarea Plan areas] does not constitute discriminatory action.] [*LMI/Chevron, 8312*, FDO, at 31.]
- The Housing Incentive Program (HIP) defines low-income as 80% or less of the average median income (AMI). [Petitioner] is correct, the HIP does not distinguish those at or below 50% AMI (very low-income) or those at or below 30% AMI (extremely low-income) persons. As [Petitioner] demonstrates, over three-quarters of the poor people who need affordable housing in Lakewood earn less than 50% of median income. American Lake Gardens, Springbrook and Tillicum contain some of

the highest concentrations of poverty in the City. While those with the greatest need fall within the City's low-income definition, the bar is high enough to dilute the potential impact of the HIP program in providing affordable housing to the poorest of Lakewood's poor that are concentrated in its poorest neighborhoods. [*LIHI II, 1223*, FDO, at 10-11.]

- Further, the Board agrees with [Petitioner] that the HIP is ambiguous and unclear as to whether seniors or disabled persons must also be low-income to benefit from the program and whether or not low-income units can qualify for the density bonuses. . . . [The language contained in the HIP] seems to suggest that housing units to serve non low-income seniors or non low-income disabled persons are eligible for the density bonuses of the HIP. If this is the case, it further dilutes the potential effectiveness of the HIP in providing affordable housing to low-income persons. It is also not clear whether the fee reductions are only available to low-income tenants. Base upon these ambiguities of the HIP, the Board concludes that the HIP does not encourage the provision of affordable housing to all economic segments of Lakewood's population. [*LIHI II, 1223*, FDO, at 10-11.]
- Developing programs that will provide affordable housing opportunities and special needs housing opportunities for the low-income, very low-income, extremely low-income, and disabled and senior citizens of Lakewood is, as the City acknowledges, its responsibility. The HIP program, though well intentioned, with its ambiguities and omissions, does not carry out this responsibility. [*LIHI II, 1223*, FDO, at 14.]

- **Dispositive Motion**

- Although a dispositive motion before a board and a motion for summary judgment before a superior court may be similar, the Board is not constrained by CR 56 time limits or case law interpretation of that rule. [*Twin Falls, 3303c*, 6/11/93 Order, at 19.]
- [Filing motions (dispositive or to supplement the record) are untimely if filed after the deadline established in the prehearing order, unless written permission is granted by the Board.] [*WRECO, 8335*, FDO, at 2-3.]
- The purpose of a dispositive motion is to expedite the process of having a legal issue considered by the Board. [citation omitted] In the situation where there are essentially legal issues, a limited record and uncontested facts, a dispositive motion may be an appropriate means of expediting the review process. However, here, the County and Petitioners dispute the implications of [the ordinance] and offer reasonable, but differing interpretations. Their arguments go to the heart of the effects of the financing program adopted by [the ordinance], an issue of first impression to this Board. Yet, the record before the Board at this point in these proceedings is limited. Additionally, material facts regarding how the County's Plan is organized and what the challenged ordinance amends are unclear and disputed. Given these facts and circumstances, it is not appropriate for the Board to dismiss any of the Legal Issues in a dispositive manner. [*McVittie,9316c*, 10/25/99 Order, at 3.]
- [Given the facts and circumstances, scant and untimely argument presented, the] Board will reserve its judgment on the question of Petitioner's participation standing

[and will rule on the issue in the FDO.] [*Ramey Remand, 9302*, 11/11/00 Order, at 15.]

- The heart of this case revolves around the scope of GMA public participation as set forth in several sections of the Act as they apply to the County's action. The Board will address the scope of the GMA's public participation requirements, in the context of the present case, after briefing and oral argument at the hearing on the merits. [The motion to address this issue in a dispositive manner was denied.] [*McVittie V, 0316*, 1/22/01 Order, at 2.]
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- There is nothing in the GMA nor the Board's rules to suggest that the City waived its rights to bring a dispositive motion simply because it did not, at the time of the prehearing conference, declare its intention to file such a motion. [*Mesher, 1307*, 8/2/01 Order, at 9.]
- If the Plan complies with the Goals of the Act, but the development regulations do not comply with the Goals of the Act, it logically follows that the noncompliant development regulations do not, and cannot, implement a compliant Plan. [A new PFR challenged whether the development regulations implemented the Plan. In two prior cases (Hensley IV and *Hensley V*) the Board had concluded that the Plan provisions complied with the Act, while the development regulations did not.] Therefore, the Board concludes that [the development regulations do not implement the Plan and do not comply with the Act.] The Board reaches this determination in the context of an Order on Motions, without the need for further briefing or a hearing on the merits. [*Hensley VII, 03310*, 8/11/03 Order, at 8.]
- It is not generally the practice of this Board to decide the merits of a petition through the abbreviated procedures of our motions practice. [*1000 Friends IV, 04318*, 8/6/04 Order, at 2.]

• Dissenting Opinions

- *WSDF I, 4316c*, FDO, Tovar dissenting.
- *Vashon-Maury, 5308*, FDO, Tovar dissenting.
- *Vashon-Maury, 5308*, 12/1/95 Order, Tovar dissenting and Towne dissenting.
- *Bremerton, 5339c*, 6/5/95 Order, Philley dissenting.
- *Pilchuck, 5347c*, 6/18/96 Order, Tovar dissenting.
- *Hapsmith I, 5375c*, FDO, Philley dissenting (and concurring).
- *Buckles, 6322c*, FDO, Tovar dissenting.
- *Sky Valley, 5368c*, 10/2/97 Order, McGuire dissenting.
- *Green Valley, 8308c*, FDO, McGuire dissenting
- *Bear Creek, 5308c*, 6/15/00 Order, Tovar dissenting.
- *Shoreline pdr, 0301pdr*, North dissenting.

- *Harvey Airport, 0308,* 7/13/00 Order, North dissenting.
- *McVittie, 0316,* 12/4/00 Order, North dissenting.
- *Shoreline II, 1313,* FDO, Mc Guire dissenting.
- *Shoreline II, 1313,* 12/28/01 Order, Mc Guire dissenting (and concurring).
- *Hensley IV & V, 1304c/02304,* FDO, North dissenting.
- *Hensley V, 02304,* 3/28/03 Order, McGuire dissenting.
- *SOS, 04319,* FDO, Pageler dissenting.
- *Kaleas,05307c,* Order on Remand, McGuire dissenting.

• Drainage

- No entries

• Duties

- At the time of the compliance hearing, for the purposes of determining whether the state agency, county or city is in compliance with the requirements of the Act, the respondent jurisdiction must comply not just with the statutory language but also with the Board's final decision and order, however specific it might be. The Board nonetheless notes that the final decision and order itself must comply with the requirements of the Act. [*Tacoma, 4301,* 1/18/94 FOC, at 7.]
- As a matter of law, any jurisdiction planning under the Act and within the Board's jurisdiction must comply with the current requirements of the Act and this Board's decisions, unless the latter have been reversed upon judicial review. [*FOTL II, 4309,* 11/8/94 Order, at 8.]
- Cities and counties are required to undertake "early and continuous" public participation in the development and amendment of comprehensive plans and development regulations, and that while the requirement to consider public comment does not require elected officials to agree with or obey such comment, local government does have a duty to be clear and consistent in informing the public about the authority, scope and purpose of proposed planning enactments. [*WSDF I, 4316,* FDO, at 71.]
- A petitioner must first show that the Act imposes a duty upon a local jurisdiction to undertake a particular action and then show by a preponderance of the evidence how the local jurisdiction has breached that duty. Conclusory statements that the Act imposes a duty are insufficient to carry the petitioner's burden of proof. [*Robison, 4325c,* FDO, at 10.]
- Local governments cannot use verbatim GMA language and assign it a different meaning. [*Robison, 4325c,* FDO, at 32.]
- All cities and towns planning under the Act must comply with RCW 36.70A.440 [Development permit applications – Notice to applicant] whether or not they have already adopted their GMA comprehensive plans and implementing development regulations. [*Slatten, 4328,* 2/21/95 Order, at 7.]
- Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is

to take place "at the time development is available for occupancy and use" and second, adequacy is measured by "locally established minimum standards." [*Gig Harbor, 5316c,* FDO, at 13.]

- The Act creates an ongoing duty for Washington's communities to plan for future growth, including preservation of the flexibility to increase the UGA land supply at a date beyond the immediate twenty-year planning horizon. [*Gig Harbor, 5316c,* FDO, at 56.]
- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 41.]
- It is the County's duty to establish UGA boundaries. The City's role in that process is limited to a consultative one. [*AFT, 5356,* FDO, at 10.]
- RCW 36.70A.110(2) applies only to counties; it does not impose that requirement [to *include* greenbelt and open space areas when it designates UGAs] on cities. [*AFT, 5356,* FDO, at 17.]
- The requirement to *identify* open space corridors imposed by RCW 36.70A.160 applies to both counties and cities. [*AFT, 5356,* FDO, at 17.]
- In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development, the duty to accommodate the population and employment that is allocated to them by a county, the duty to accommodate a county allocation and reflect it in both a city's comprehensive plan land use designations and capital facility plans, the Act imposes a duty on cities to encourage urban growth within UGAs. [*Benaroya I, 5372c,* 3/13/97 Order, at 8.]
- The GMA imposes an affirmative duty upon cities to give support to, foster and stimulate (encourage) urban growth throughout the jurisdictions' UGAs within the twenty-year life of their comprehensive plans. [*Benaroya I, 5372c,* 3/13/97 Order, at 8.]
- The duty to encourage urban growth throughout the jurisdictions' UGA does not direct a specific outcome as to all parcels of land within a city. [*Benaroya I, 5372c,* 3/13/97 Order, at 8.]
- The GMA creates multiple duties which local governments must meet, and these duties are sometimes in tension if not outright conflict, the Act also reserves significant discretion to local governments to determine specifically how they will meet their multiple obligations. [*Benaroya I, 5372c,* 3/13/97 Order, at 9.]
- So long as local governments do not breach any of their duties, local governments are free to reflect local circumstances and priorities in the choices they embody in their comprehensive plans. [*Benaroya I, 5372c,* 3/13/97 Order, at 9.]
- To successfully challenge a local government's GMA actions, a petitioner must first demonstrate that the local government had a duty to act under the GMA and then must show, by a preponderance of the evidence, how the city violated that duty. [*Litowitz, 6305,* FDO, at 5.]

- A Board holding in a prior case does not impose in a subsequent case a duty separate from a GMA duty. [*Litowitz, 6305,* FDO, at 9.]
- Neither goal (1) and (2) nor *Anderson Creek,* establish a GMA duty that precludes a jurisdiction from limiting the scope and magnitude of development in critical areas or environmentally sensitive areas. [*Litowitz, 6305,* FDO, at 9.]
- RCW 36.70A.010 is not a substantive or even a procedural requirement of the Act, and it creates no specific local government duty for compliance apart from the subsequent goals and requirements of the Act. Neither RCW 36.70A.010 nor Board decisions in prior cases impose a duty on a jurisdiction to avoid the use of previous plans and regulations in preparing its GMA plan. [*Litowitz, 6305,* FDO, at 14.]
- Jurisdictions are required to comply both with GMA-imposed duties and with self-imposed duties. [*COPAC, 6313c,* FDO, at 12.]
- When a local government includes a self-imposed duty in its plan, such as a deadline, the consistency requirements of RCW 36.70A.070 and .120 oblige it to meet that duty; however, it retains the discretion to amend its plan, including the revision or deletion of such self-imposed duty, provided that it does so pursuant to the authority and requirements of RCW 36.70A.130. [*COPAC, 6313c,* FDO, at 12-13.]
- RCW 36.70A.070(2)(a) does not require a jurisdiction to include in its planning goals, policies and objectives for each and every neighborhood within its jurisdiction. No such GMA duty exists. [*Buckles, 6322c,* FDO, at 21.]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban portion of the twenty years of county-wide population growth. The county, as to the unincorporated portion of the UGA, and the cities, as to their respective portions of the UGA, have a duty to adopt comprehensive plans that accommodate that allocated growth over the twenty-year life of their plans, including provision of public facilities and services. [*Hensley III, 6331,* FDO, at 8.]
- The Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. [*Hensley III, 6331,* FDO, at 9.]
- The Act does not impose a duty or requirement upon local governments to eliminate or substantially reduce capital facilities maintenance backlogs, nor to guarantee the funding or financing of capital facilities maintenance projects. [*WSDF IV, 6333,* FDO, at 31.]
- The Department of Ecology's approval of an amendment to a SMP for a shoreline of state-wide significance is not subject to the consistency requirements of the GMA. The requirement to achieve consistency among a city's comprehensive plan elements is the city's duty, not Ecology's. Instead, Ecology's action must be reviewed for consistency with the policy of RCW 90.58.020 and the applicable guidelines. [*Gilpin, 7303,* FDO, at 6-7.]
- There are two duties imposed by RCW 36.70A.200: a duty to adopt, in the plan, a process for siting essential public facilities (EPFs); and a duty not to preclude the

siting of EPFs in a plan or implementing development regulations. [*Port of Seattle, 7314*, FDO, at 7.]

- The GMA duty for cities and counties not to preclude the siting of essential public facilities encompasses: new EPFs; existing EPFs; the expansion of existing EPFs; and necessary support activities for expansion of an EPF. [*Port of Seattle, 7314*, FDO, at 7.]
- RCW 36.70A.200 imposes a duty on cities and counties not to preclude EPFs, even when the decision regarding the EPF was made subsequent to the initial adoption of the jurisdiction's plan. In other words, if a decision regarding an EPF follows the adoption of the plan, and if the plan violates the .200 duty 'not to preclude', the jurisdiction has a duty to amend its plan. [*Port of Seattle, 7314*, FDO, at 8.]
- [T]he regional decision regarding STIA [an EPF] triggered Des Moines' duty to review its Plan for preclusive policies and amend its Plan to eliminate the preclusive effect of any of its policies. [*Port of Seattle, 7314*, 5/26/98 Order, at 1.]
- Because the City is under a continuing duty, imposed by RCW 36.70A.200, not to preclude EPFs, any and all Plan policies that direct the City to use them to preclude EPFs, such as the expansion of STIA, even if not specifically identified above, are not in compliance with the GMA and the City must amend them. [*Port of Seattle, 7314*, 5/26/98 Order, at 6.]
- Based upon the Board's prior decisions and the assertions of the parties in this case, it is undisputed that the County was not required to adopt the City's proposed amendment to the County Plan; and the County's rejection of the City's proposal did not violate any GMA duty to amend its comprehensive plan. [*Fircrest, 8302*, 3/27/98 Order, at 4.]
- RCW 36.70A.020(8), .060, and .170, when read together, create an agricultural conservation imperative that imposes an affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry. [*Green Valley, 8308c*, FDO, at 16.]
- For recreation there is no statutory duty to adopt and apply regulations to provide and conserve active recreation sites and facilities. [RCW 36.70A.020(9), 150 and .160 does not create a similar recreation imperative.] [*Green Valley, 8308c*, FDO, at 17.]
- The location-specific and directive duty of RCW 36.70A.020(8), .060 and .170 to designate and conserve agricultural lands clearly trumps the non-directive, non-site specific guidance and inventory requirements for open space and recreation of .020(9), .150 and .160. [*Green Valley, 8308c*, FDO, at 17.]
- The principal legal theory underlying the issues raised in this case is that the GMA establishes a duty upon the City of SeaTac to provide for mitigation of the impacts of STIA activities, in its Plan or development regulations, for its neighboring jurisdictions. Petitioners attempt to construct a duty to mitigate from the provisions of RCW 36.70A.100 and .210. The attempt to create a GMA duty on jurisdictions to provide for mitigation of impacts on surrounding communities, in their plans and development regulations fails. [*Burien, 8310*, FDO, at 5-6.]
- RCW 36.70A.020(7), .470, and 130, read individually or collectively, [do not] establish a duty [for jurisdictions] to consider specific plan amendments on an annual basis. [*LMI/Chevron, 8312*, FDO, at 12.]

- The GMA [does not] establish some extraordinary standard of fairness for legislative actions above that already required by law. [The appearance of fairness doctrine does not apply to legislative actions.] [*LMI/Chevron, 8312,* FDO, at 13.]
- RCW 36.70A.050, .170, and .172 provide the required analytical rigor and scientific scrutiny for identifying, designating and protecting critical areas. While local governments have some discretion in identifying, designating and protecting critical areas they may not [use alternative means or] ignore the critical areas requirements (RCW 36.70A.050, .060, .170 and .172) of the GMA. [*LMI/Chevron, 8312,* FDO, at 17.]
- [Pursuant to RCW 36.70A.110(1), all cities are included in UGAs. Pursuant to RCW 36.70A.110(2), each UGA must permit urban densities. Therefore, the GMA imposes a duty upon all cities to designate lands within their city limits (UGA) to permit urban densities.] The GMA requires every city to designate lands within its jurisdiction at appropriate urban densities. [*LMI/Chevron, 8312,* FDO, at 23.]
- [The GMA does not compel redevelopment of existing developed parcels, but it does require that the plans that govern new development or redevelopment allow compact urban development at appropriate urban densities in order to be consistent with the goals of the GMA.] [*LMI/Chevron, 8312,* FDO, at 37.]
- The Board has generally upheld local government in the situation where a petitioner has proposed a Plan amendment to a local government and the local government had declined to adopt the proposed amendment. . . . The GMA, pursuant to RCW 36.70A.130, requires local governments to have a process for amending their Plans. However, the Act does not require local government to adopt a particular proposed amendment offered by a petitioner, absent an explicit non-discretionary GMA duty compelling such amendment. [*AFT, 9302,* 6/18/99 Order, at 4.]
- Cities are not regional decision-making bodies under the GMA and thus do not make decisions regarding system location or design of regional essential public facilities; nevertheless, the Act does contemplate a collaborative role for cities in making and implementing regional decisions. Before a regional decision is made, a city may attempt to influence that choice by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the essential public facility, and the exercise of its land use powers may only impose reasonable conditions and mitigations that will not effectively preclude the essential public facility by rendering it impracticable. [*Sound Transit, 9303,* FDO, at 6-7]
- Sound Transit is the authority vested with the responsibility to make routing and system design decisions for regional light-rail service. [Cities have a duty not to preclude the light-rail alignment or system design selected by Sound Transit.] [*Sound Transit, 9303,* FDO, at 7.]
- Where comprehensive plan policies and development regulations allow [a jurisdiction] a range of discretion in their application, from lawful to unlawful, the Board cannot assume the [jurisdiction] will elect to act unlawfully. "Instead, the Board will assume that prospective governmental actions will be taken in good faith in an effort to comply with the Act." *Pilchuck, 5347,* FDO, at 38. [*Sound Transit, 9303,* FDO, at 7.]

- Until a regional decision is made, the City may lobby Sound Transit to adopt the City's favored alignment and, to the extent that its comprehensive plan expresses the City's aspiration for its future development, Tukwila may express its preferences in its plan. However, once that regional decision is made, the City has a duty not to preclude the light-rail alignment and system design selected by Sound Transit. [*Sound Transit, 9303,* FDO, at 7-8.]
- RCW 36.70A.090 does not create a GMA duty; it simply encourages local jurisdictions to include "innovative land use techniques" in their comprehensive plans. [*Tulalip II, 9313*, 1/28/00 Order, at 6.]
- Unlike the transportation element, the capital facilities element does not use the phrase "concurrent with development" and does not specify an enforcement procedure. [However, read in light of Goal 12] a local government is obligated to take steps to ensure that those facilities and services it has identified as being necessary to support development are adequate and available to serve development. [*McVittie, 9316c, FDO, at* 29.]
- [A jurisdiction] is under no GMA duty to adopt the amendments proposed [by petitioners]. [*Tacoma II, 9323c*, 3/10/00 Order, at 2]
- [A] local government is obligated to take steps to ensure that those facilities and services it has identified as being necessary to support development are adequate and available to serve development. [*McVittie, 9316c, FDO, at* 29.]
- [A jurisdiction] is under no GMA duty to adopt the amendments proposed [by petitioners]. [*Tacoma II, 9323c*, 3/10/00 Order, at 2]
- [Sidewalks are a critical component of successful compact urban development. However,] the Board cannot, with the facts and argument presented in this case, discern a GMA duty that would oblige the City to adopt "levels of service" for sidewalks in urban villages nor subject projects in urban villages to a "concurrency" requirement for the installation of such facilities. [*Radabaugh, 0302,* FDO, at 14.]
- The Board has interpreted the Act to acknowledge the paramount importance of the designation, conservation and protection of agricultural lands. It is a duty local government should not take lightly. [*Grubb, 0304,* FDO, at 9.]
- The choice of what is funded during a six-year financing plan cycle is a discretionary choice of the County. It is not for Petitioner to decide which projects are to be funded in a six-year cycle. So long as the needs identified in the CFE are reflected in the capital improvement program, the scheduling of their implementation, including the delay of project to later years, is a discretionary choice of the County. However, the County should be mindful that those needs identified in the 20-year Plan (CFE), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan. [*McVittie IV, 0306c*, FDO, at 14-15.]
- [Jurisdictions] should be aware that those needs identified in the 20-year Plan (transportation element ending in 2012), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan i.e. by 2012. If these needs are not met by 2012, at a minimum, the [jurisdiction] will be noncompliant in meeting the funding requirements of RCW 36.70A.070(6). [*McVittie IV, 0306c*, FDO, at 21.]
- [Petitioners attempt to distinguish this case from *Agriculture for Tomorrow* and *Cole* by arguing that it is more like *Port of Seattle II, 7314*.] In Port of Seattle, the Puget

Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Poet wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]

- The salient facts in the Bidwell case are indistinguishable from the facts before the Board in the AFT, 9304, case. [The City has no duty to docket or adopt the proposed amendment.] [*Bidwell, 0309,* 7/14/00 Order, at 3-4.]
- RCW 36.70A.010 contain the legislative findings that support the goals and requirements established in the remainder of the GMA. These legislative findings, standing alone, impose no duty on a jurisdiction. The Board's review focuses on a local government' compliance with the goals and requirements of the Act, in the context of these findings. [*Edgewood, 1318*, FDO, at 8.]
- The duty of a County as a local government to accommodate growth within its UGA is the same as the duty of a City to accommodate growth within its city limits (Footnotes omitted). Therefore, any opportunity to *perpetuate* an "historic low-density residential" development pattern, [in the subarea], ended in 1994 when the County included the area within the UGA. Consequently, [the subarea plan and implementing regulations] must provide for appropriate urban densities. [*MBA/Brink, 02310*, FDO, at 11-12.]
- [Petitioners] failed to identify any authority, GMA or otherwise, that requires the County to conduct a broad fiscal analysis necessary to evaluate economic impacts of a community plan. [*MBA/Brink, 02310*, FDO, at 31.]
- The heart of Petitioners' complaint is the assertion that local elected officials have a duty to hear from their constituents before taking legislative action. The Board would agree that this principle is a hallmark of good government, good planning and has constitutional antecedents as well. Nevertheless, as the Board has consistently held, allegations regarding constitutional matters are beyond the Board's jurisdiction. Likewise it is not the Board's role to determine whether local government action constitutes wise policy, or the choice the Board might have made; rather, the Board's charge is to discern whether the GMA duty articulated at RCW 36.70A.020(11) and RCW 36.70A.140 has been violated. [*BridgeportWay, 04303*, FDO, at 12.]
- RCW 36.70A.130 GMA imposes a duty upon [CPS jurisdictions] to undertake certain actions by the statutory deadline. On or before December 1, 2004, [CPS jurisdictions are] required to: 1) complete its Plan and development regulation review to determine whether the Plan and implementing development regulations comply with the goals and requirements of the GMA; 2) *take legislative action indicating its determination regarding whether the Plan and development regulations comply with the Act*; and 3) if necessary, take legislative action to *revise the comprehensive plan and/or*

development regulations to achieve compliance with the goals and requirements of the Chapter 36.70A RCW – the GMA. [*FEARN, 04304*, 5/20/04 Order, at 9.]

- It is undisputed that the GMA imposes a **duty** upon [cities and counties] to identify, designate and protect agricultural resource lands of long-term commercial significance. *See* RCW 36.70A.170, .050, .060, .020(8) and .030(2) and (10). The GMA defines terms, and mandates criteria and factors that must be considered in discharging this duty. WAC 365-190-050(1) also provides direction for meeting this duty. To fulfill this obligation, the [jurisdiction] must solicit public participation and develop a record that demonstrates that the [jurisdiction] has conducted the required analysis (*i.e.*, application of the statutory criteria) in reaching its decision. [*Orton Farms, 04307c*, FDO, at 24.]
- Providing sufficient land capacity to accommodate projected growth is a jurisdiction's duty under the GMA, it is an obligation and duty that the jurisdiction must discharge. RCW 36.70A.110. However, the Board observes that: if a jurisdiction's land capacity analysis quantifies and documents that there clearly is sufficient land suitable to accommodate the projected growth within the jurisdiction's city limits *and* its unincorporated planning area; and if there is consistency and congruency between a city and county as to the planning area and population to be accommodated [i.e. no dispute or inconsistent populations or areas]; then there is no need to differentiate between the incorporated and unincorporated areas. However, that is not the situation in the present matter. [*Strahm, 05342*, FDO, at 25.]

• Economic Development Element

- *See also:* **Affordable Housing** [*LIHI I, 0317*]
- *See also:* **GMA Planning** [*LIHI I, 0317*, 2/21/02 Order]
- [Petitioners] failed to identify any authority, GMA or otherwise, that requires the County to conduct a broad fiscal analysis necessary to evaluate economic impacts of a community plan. [*MBA/Brink, 02310*, FDO, at 31.]
- [T]estimony or written materials suggesting that a few individual parcels may be more expensive to develop does not make the case that virtually all the nonresidential [subarea plan] land use designations and the nonresidential zoning designations "unduly restrict commercial development," "require development that is not economically viable," "inhibit economic development," or "restricting economic development." [Petitioner] has failed to persuade the Board that the requirement for design standards, landscaping, pedestrian access, *etc*., would do otherwise than to increase the livability of the area. [*MBA/Brink, 02310*, FDO, at 31.]
- [The County's CPP, allowing an individual UGA to be potentially expanded for economic development purposes to adjacent land that had previously been designated as resource lands, is permissible if a need for additional commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken.] [*CTED, 03317*, FDO, at 39.]

- **Emergency**

- The question of emergency ordinances, since repealed and replaced by interim ordinances, are moot; the Board will not hear and decide moot issue. [*Hayes, 5381*, 4/23/96 Order, at 4.]
- RCW 36.70A.130(2) requires local governments to establish a public participation process and procedure for plan amendments. The Board's jurisdiction extends only to determining compliance with that requirement, not to reviewing the circumstances, situations or events that may precipitate a proposed amendment. [*Wallock I, 6325*, FDO, at 10.]
- Nowhere in the GMA is "emergency" defined, nor is there a requirement for a jurisdiction to define emergency in its plan. More directly on point, RCW 36.70A.130(2)(b) does not address the procedures for declaring an emergency, nor confer jurisdiction upon the Board to review such a declaration. [*Wallock I, 6325*, FDO, at 10.]
- The public participation requirements of RCW 36.70A.140 do not apply to plan amendments adopted in response to emergencies. [*Wallock I, 6325*, FDO, p. 12]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]
- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5]
- [I]t is axiomatic that the Board has jurisdiction to review legislative actions that adopt or amend a jurisdiction's GMA comprehensive plan or implementing development regulations, regardless of the vehicle (emergency ordinance, ordinance, resolution or

motion) chosen by the jurisdiction to accomplish such action. [*McVittie V, 0316*, 1/22/01 Order, at 4.]

- [In *Wallock I*], the Board did conclude, "it does *not have jurisdiction* to review the [jurisdiction's] *declaration* of emergency as it relates to the adoption of the [challenged ordinance]." (Citation omitted.) The Board also stated it did not have jurisdiction to review "the circumstances, situations, or events that may precipitate a proposed [emergency] amendment." (Citation omitted.) The Board reaffirms this conclusion. . . . Petitioner fails to cite to any authority in the GMA, authorizing the Board to review the facts, circumstances, situations or events that underlie a jurisdiction's basis for *declaring* an emergency. [*McVittie V, 0316*, 1/22/01 Order, at 5.]
- General discussion and overview of the difference between Plans and regulations and the importance of public participation in the processes. [*McVittie V, 0316*, FDO, at 13-15.]
- The GMA 20-year plan is a guiding light; it is a long-term vision for [a jurisdiction, it is generally] not something that you need to change on an emergency basis. However, development regulations may need to be changed on an emergency, but temporary, basis to respond to unforeseen circumstances. [Once a jurisdiction enacts] temporary controls or a moratorium, the jurisdiction should proceed through the [amendment or] docketing process to make the regulations permanent, if necessary, and to amend the plan if necessary. [This is a very reasonable approach that is consistent with the decision-making regime of the GMA.] [*McVittie V, 0316*, FDO, at 15.]
- [RCW 36.70A.390] does not apply to plan amendments. It does not apply to permanent changes in development regulations or controls. It applies only to the adoption or amendment of temporary controls or development regulations, those measures that are adopted for an interim period – generally six-months. This section of the Act is unique in that it permits a deviation from the norm of providing the opportunity for public participation prior to action; here a jurisdiction can act or adopt first, then provide the opportunity for public participation after adoption. However, this post-adoption opportunity for public participation must occur within 60-days of adoption. [*McVittie V, 0316*, FDO, at 20.]
- [Plan] Amendments precipitated by emergencies are clearly governed by .130(2)(b), not .140 or even .130(2)(a). Within the confines of the goals and requirements of the Act, local governments have discretion to determine what "appropriate public participation" to provide before they take action on emergency plan amendments. The word "after" [in .130(2)(b)'s phrase "after appropriate public participation] evidences the clear and explicit Legislative intent to prohibit adoption of a plan amendment until "after" (behind in place or order, subsequent in time, late in time than, following) (citation omitted) appropriate public participation takes place. [*McVittie V, 0316*, FDO, at 23-24.]
- [A jurisdiction] has discretion to define "appropriate," but deciding to provide "zero" opportunity for public participation is not "appropriate" and an abuse of that discretion and contrary to the Act. [Providing no notice or opportunity for public participation before the adoption of the emergency plan amendment emasculates the GMA. [It is irreconcilable with the public participation requirements and renders the

GMA's public participation provisions absolutely meaningless. [*McVittie V, 0316*, FDO, at 24.]

- *See also:* **Public Participation** [*McVittie V, 0316*]
- Nothing in the GMA or case law has changed regarding the Board's authority to review declarations of emergencies since the Board issued its decision in Wallock I. Therefore, the Board declines to address this issue, as it lacks subject matter jurisdiction. [*Clark, 02305*, FDO, at 5.]
- [Adoption of emergency ordinances is exempt from the concurrent review requirements of RCW 36.70A.130(2)(b), however] this section does require that city and county legislative bodies may only adopt emergency amendments *after appropriate public participation*. [*Clark, 02305*, FDO, at 7.]
- [Six-days notice and the opportunity to comment, prior to enactment of the first emergency ordinance, and ten-days notice and the opportunity to comment, prior to enactment of the second emergency ordinance, in this case] met the "after appropriate public participation" requirements of RCW 36.70A.130(2)(b) in enacting its emergency ordinances, adopting the [interim FLUM]. [*Clark, 02305*, FDO, at 16.]
- The Act [RCW 36.70A.110(4)] is clear, extension of sewer into the rural area is inappropriate *except* when a sewer extension *is necessary to protect the public health, safety or environment* and the sewer extension is financially supportable at rural densities and will not permit urban growth. (*Citation* omitted.) . . . [The language in the first part of the challenged CPP] captures the only statutorily recognized exception (footnote omitted) of extending sewers into the rural area - when they are necessary to protect the public health, safety and environment. It also recognizes that such extensions must be financially supportable and not allow urban development. [*CTED, 03317*, FDO, at 18-19.]
- [T]he remaining language of this CPP goes beyond the single statutory exception. It allows the extension of sewers to churches in a rural area that abut a UGA. Under this CPP, to extend a sewer line to a church outside the boundaries of the UGA, there need not be a showing that the extension is necessary to protect the public health, safety or environment, which is the only exception .110(4) recognizes. . . .The amendment to [the challenged CPP] creates an entirely new exception for churches that goes beyond the limited exception stated in RCW 36.70A.110(4). [The CPP does not comply with the Act.] [*CTED, 03317*, FDO, at 19.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land for an affordable housing crisis did not comply with the Act – RCW 36.70A.215. (Note: A CPP, allowing an individual UGA to be potentially expanded for additional residential land is permissible if a need for additional residential land is demonstrated in a land capacity and reasonable measures have been taken. The challenged CPP bypassed .215's reasonable measures requirement.) The Board also commented that a land capacity analysis for residential *land* is off point in relation to a potential expansion of a UGA pursuant to an "affordable housing crisis," which is the basis for this potential UGA expansion.] Whether the existing and projected housing stock is affordable falls within the parameters of RCW 36.70A.070(2) – the Housing Element. A GMA Plan's Housing Element is required to *identify sufficient land for housing, including government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster*

care facilities. RCW 36.70A.070(2)(c). Also the Housing Element requires jurisdictions have adequate provision for existing and projected housing needs for *all economic segments of the community*. RCW 36.70A.070(2)(d). Therefore, reliance upon just a land capacity analysis without supporting documentation in the County's Housing Element would be inadequate to implement [a UGA expansion pursuant to this CPP. The Board found this CPP noncompliant.] [*CTED, 03317*, FDO, at 35-36.]

- While review by the Planning Commission and expanded public participation is encouraged by the GMA, the County is correct that the GMA does not compel such procedures when an emergency is declared or interim measures are enacted. [*Sno-King, 06305*, FDO, at 10.]
- The Board also affirms its prior decisions in *McVittie V, Wallock I* and *Clark*. In *McVittie V*, the Board held that RCW 36.70A.140 is not applicable to emergency or interim actions so long as effective notice and the opportunity for public comment is provided. In *Wallock I* and *Clark* the Board indicated it would not inquire into the facts and circumstances supporting a jurisdiction's declaration of emergency. [*Sno-King, 06305*, FDO, at 10.]

• Essential Public Facilities – EPFs

- Proposed uses that meet the definition of urban growth will be prohibited in rural areas unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility. [*Vashon-Maury, 5308c*, FDO, at 69.]
- RCW 36.70A.200(1) does not apply to development regulations, while (2) does. [*Children's I, 5311*, 5/17/95 Order, at 7.]
- "Essential state public facilities" are a subset of "essential public facilities." [*Children's I, 5311*, FDO, at 8.]
- Essential public facilities need not be listed by OFM in order to be considered an essential public facility under the Act. The Board reads the last sentence of 200(2) independently, as if it were a third subsection. [*Children's I, 5311*, FDO, at 17.]
- A city or county cannot rely on an unfinished process of another jurisdiction to meet the Act's requirements. However, a city or county can, if it elects or is required to by county-wide planning policy to do so, utilize the completed process of another jurisdiction to meet the requirements of RCW 36.70A.200(1). [*Hapsmith I, 5375c*, FDO, at 38.]
- Any railroads with facilities, such as trackage, rail yards and intermodal centers, that serve the region or state, as a matter of law, constitute state or regional transportation facilities and therefore are essential public facilities. [*Hapsmith I, 5375c*, FDO, at 39.]
- A city does not have authority to set binding legislative policy outside its city limits. Although a city is fee to acknowledge and discuss the difficulty in siting essential public facilities, it cannot require other jurisdictions to make a '"special effort" to distribute EPFs equitably throughout the region. More importantly, a city cannot utilize such policy to reject the siting of an essential public facility on the grounds

that other jurisdictions have not taken an equitable share of such facilities. [*Hapsmith I, 5375c,* FDO, at 40.]

- Jurisdictions are free to designate areas that are subject to additional or more detailed planning such as "special planning areas" (innovative techniques); such specialized planning does not automatically constitute discriminatory action. [*Hapsmith I, 5375c,* FDO, at 46.]
- The Act requires the comprehensive plans of counties and cities to include a process for siting EPFs, and prohibits provisions in local plans or development regulations that would render impossible or impractical the siting of EPFs. [*Hapsmith I, 5375c,* 5/10/96 Order, at 7.]
- The Act requires interjurisdictional planning for public facilities that are of a county or statewide nature, through the development of CPPs. [*Hapsmith I, 5375c,* Order, at 8.]
- It is not inappropriate for a process for siting EPFs to require that policies (not sites), pertaining to the regional or state EPF, be included within a state or regional plan. [*Hapsmith I, 5375c,* 5/10/96 Order, at 8.] *See also:* 4/24/98 Order.
- It is not inappropriate for a process for siting EPFs to require that a financing strategy for mitigation use (including but not limited to) non-local sources. [*Hapsmith I, 5375c,* 5/10/96 Order, at 8.]
- It is not inappropriate for a process for siting EPFs to require a mitigation measures (not incentives) to protect the jurisdiction from adverse effects of a proposed EPF. [*Hapsmith I, 5375c,* 5/10/96 Order, at 9.]
- There are two duties imposed by RCW 36.70A.200: a duty to adopt, in the plan, a process for siting essential public facilities (EPFs); and a duty not to preclude the siting of EPFs in a plan or implementing development regulations. [*Port of Seattle, 7314,* FDO, at 7.]
- The GMA duty for cities and counties not to preclude the siting of essential public facilities encompasses: new EPFs; existing EPFs; the expansion of existing EPFs; and necessary support activities for expansion of an EPF. [*Port of Seattle, 7314,* FDO, at 7.]
- A local government plan, through policies or strategy directives, cannot effectively make the siting or expansion of an EPF, or its support activities, incapable of being accomplished by means available to the EPF proponent. [*Port of Seattle, 7314,* FDO, at 8.]
- RCW 36.70A.200 imposes a duty on cities and counties not to preclude EPFs, even when the decision regarding the EPF was made subsequent to the initial adoption of the jurisdiction's plan. In other words, if a decision regarding an EPF follows the adoption of the plan, and if the plan violates the .200 duty 'not to preclude', the jurisdiction has a duty to amend its plan. [*Port of Seattle, 7314,* FDO, at 8.]
- [T]he regional decision regarding STIA [an EPF] triggered Des Moines' duty to review its Plan for preclusive policies and amend its Plan to eliminate the preclusive effect of any of its policies. [*Port of Seattle, 7314,* 5/26/98 Order, at 1.]
- If certain conditions are not met, the "mitigation" language obligates the City to oppose airport-related projects and to deny certain permits. The inescapable conclusion is that opposition . . . and denial of certain permits can result in preclusion

of STIA expansion or some other EPF. There is no Plan provision excluding EPF's from these preclusive requirements. [*Port of Seattle, 7314,* 5/26/98 Order, at 3.]

- Because the City is under a continuing duty, imposed by RCW 36.70A.200, not to preclude EPFs, any and all Plan policies that direct the City to use them to preclude EPFs, such as the expansion of STIA, even if not specifically identified above, are not in compliance with the GMA and the City must amend them. [*Port of Seattle, 7314,* 5/26/98 Order, at 6.]
- In light of the facts presently before the Board, Sound Transit's challenge under RCW 36.70A.200 fails for two reasons: (1) no regional decision has yet been made selecting the alignment of light-rail through Tukwila and (2) no amended plan policy of zoning regulation expressly requires the City to preclude any of the light-rail alignments presently being considered by Sound Transit. [*Sound Transit, 9303,* FDO, at 6.]
- Cities are not regional decision-making bodies under the GMA and thus do not make decisions regarding system location or design of regional essential public facilities; nevertheless, the Act does contemplate a collaborative role for cities in making and implementing regional decisions. Before a regional decision is made, a city may attempt to influence that choice by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the essential public facility, and the exercise of its land use powers may only impose reasonable conditions and mitigations that will not effectively preclude the essential public facility by rendering it impracticable. [*Sound Transit, 9303,* FDO, at 6-7]
- Sound Transit is the authority vested with the responsibility to make routing and system design decisions for regional light-rail service. [Cities have a duty not to preclude the light-rail alignment or system design selected by Sound Transit.] [*Sound Transit, 9303,* FDO, at 7.]
- Until a regional decision is made, the City may lobby Sound Transit to adopt the City's favored alignment and, to the extent that its comprehensive plan expresses the City's aspiration for its future development, Tukwila may express its preferences in its plan. However, once that regional decision is made, the City has a duty not to preclude the light-rail alignment and system design selected by Sound Transit. [*Sound Transit, 9303,* FDO, at 7-8.]
- The Board has interpreted "preclude" to mean: render impossible or impracticable; "impracticable" has been interpreted to mean: not practicable, incapable of being performed or accomplished by the means employed or at command. (Citation omitted). [*DOC/DSHS, 0307,* FDO, at 6.]
- It is undisputed that work release centers or facilities [and juvenile community facilities] are essential public facilities subject to the provisions of RCW 36.70A.200. [*DOC/DSHS, 0307,* FDO, at 6.]
- [DOC challenged provisions in the City's ordinance pertaining to: 1) excluding work release facilities from all areas of the City except the Heavy Industry designation; 2) a 1000' foot restrictive buffer from ten sensitive areas – including residential zones; 3) a 16 bed capacity limitation; 4) internal staffing requirements; 5) resident eligibility restrictions; 6) internal security plan provisions; 7) provisions to demonstrate need;

and 8) "fair-share" provisions. The City conceded that items 3-6 were preempted by the DOC's authority to govern its internal workings of its own facilities, but urged DOC to abide by its own internal regulations. The City did not respond to item 7. In essence, the City conceded noncompliance on these issues. Consequently, the Board only addressed items 1, 2 and 8.] [*DOC/DSHS, 0307,* FDO, at 6-7.]

- [The Board agreed with DOC that the M-3 district had limited access to needed resources for work release facilities, and available land for such facilities in the M-3 district was limited.] Limiting work release facilities to the M-3 zoning designation where the availability of non-developed, non-contaminated sites is problematic precludes the siting of work release facilities from being located within the City of Tacoma. [*DOC/DSHS, 0307,* FDO, at 8-9.]
- Regarding Tacoma's "grand-fathering" of [existing] work release facilities, the Board notes that prior to [adoption of] the present Ordinance, work release facilities were allowed in various zones, but under the Ordinance they are prohibited from *all zones* except the M-3 district. But for the new prohibitions of the Ordinance, the "grand-fathering" of existing work release facilities within their present zoning districts would not be necessary. The City should be aware that RCW 36.70A.200 prohibits the City from not allowing the expansion of existing essential public facilities as well as precluding new essential public facilities. [*DOC/DSHS, 0307,* FDO, at 9.]
- The only supporting evidence for a 1000' buffer that Tacoma cites seems to be statements based on perception, unsubstantiated fear or community displeasure. [DOC showed that there was no evidence indicating that work release facilities increase criminal activity, or that recidivism tends to occur within 1000' of a facility itself. DOC provided substantial evidence to the City regarding its work release program, success rates, number of [local] offenders, escapes from work release facilities and crimes related to escapes.] [*DOC/DSHS, 0307,* FDO, at 10.]
- A city cannot . . . reject the siting of an essential public facility on the grounds that other jurisdictions have not taken an equitable share of such facilities. (Citation omitted.) [Jurisdictions may not rely upon their own independent interpretations of "fair share" as the basis for EPF siting decisions.] The Board disagrees with Tacoma's [concession and] assertion that future changes to EPF siting based upon "fair share" may only be accomplished by the Legislature. [Through its CPPs, a county and the cities within that county, in conjunction with relevant state agencies,] could conceivably establish a process or procedure for the equitable distribution of EPFs within the County and among the cities within the County, absent involvement of the Legislature. [*DOC/DSHS, 0307,* FDO, at 12.]
- [Petitioner tried to distinguish this case from *AFT, 9304,* and *Cole, 6309c,* arguing that it is more like *Port of Seattle II, 7314*. In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Poet wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case,

there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]

- [The Board's jurisdiction was recently addressed by the Supreme Court, which held that the Boards do not have jurisdiction to hear a petition that does not involve a comprehensive plan or development regulation under the GMA.] The PFR . . . challenges [the jurisdiction's] approval of a project permit application (a conditional use permit authorizing a multi-family mental health housing facility); the PFR does not challenge a comprehensive plan or development regulation, or amendment thereto. Consequently, RCW 36.70A.280(1) does not confer jurisdiction upon this Board to review such land use project permit decisions. [*Petersville Road Residents, 0313*, at 4-5.]
- The Board has defined "preclude" as "render impossible or impracticable." (Citations omitted). The Board has also defined "impracticable." "Impracticable" is defined as "not practicable: incapable of being performed or accomplished by the means employed or at command." (Citations omitted). DOC argues that the [challenged amendatory] Ordinance "still does not *provide a practicable opportunity* to site work release facilities." However, this is not the measure of preclusion as defined above. [*DOC/DSHS, 0307*, 5/30/01 Order, at 4.]
- While DOC's analysis and inventory may be construed as going to the *practicable opportunity* for siting work release facilities, it does not demonstrate preclusion. The DOC analysis employed not only the requirements of the Ordinance, but other factors that are not required by the Ordinance. Nonetheless, DOC identified 40 parcels where work release facilities could be sited in the City of Tacoma. DOC is not incapable of siting work release facilities in the City of Tacoma under the terms [of the Ordinance]. [The Ordinance does not preclude the siting of essential public facilities – work release facilities – and complies with the requirements of .200.] [*DOC/DSHS, 0307*, 5/30/01 Order, at 5.]
- Certain of the parties' arguments help inform the proper disposition of this case. However, much of what was presented and argued is simply irrelevant to the ultimate determination of GMA compliance for the challenged ordinance. For example, every party recounted the history and relative merits of a certain wastewater treatment project, characterizing the motivations, perceptions, and behaviors underlying inter-governmental communication, coordination, and cooperation, or alleged lack thereof. While hypothetical scenarios may help illuminate the merits of alternative constructions of the law, it is important to state at the outset of this analysis that the **only** relevant facts before the Board are *the words contained in Ordinance No. 03-006*. At the end of the day, the only question properly before the Board is a very simple one – does Snohomish County's process for reviewing EPF permits, as adopted in Ordinance No. 03-006, comply with the Goals and Requirements of the Growth Management Act? [*King County, 03311*, FDO, at 12-13.]
- [T]he Board has previously held that RCW 36.70A.200's prohibition against EPF preclusion by a development regulation includes a prohibition not only on flat-out exclusion, but also a prohibition against the imposition of impracticable permit conditions. [*King County, 03311*, FDO, at 13.]

- The Board has held that jurisdictions preclude the siting of EPFs when they are rendered impossible or impracticable to site. *Children's Alliance v. Bellevue*, CPSGMHB Case No. 95-3-0011, FDO, (Jul. 25, 1995), at 12. "Impracticable" is defined as "incapable of being performed or accomplished by the means or at command." *Port of Seattle v. Des Moines*, CPSGMHB Case No. 97-3-0014, FDO, (Aug. 13, 1997), at 5 (citing *Merriam Webster's Collegiate Dictionary* 584 (10th ed. 1996)). Impracticability has taken the form of restrictive zoning (*Children's Alliance*), comprehensive plan policies directing opposition to a regional decision (*Port of Seattle*), or the imposition of unreasonable requirements (*Hapsmith v. City of Auburn*, CPSGMHB Case No. 95-3-0075c, FDO, May 10, 1996), at 31-2. In *Sound Transit v. City of Tukwila*, the Board found that policies that did not "obligate or authorize the City to deny necessary permits" for an EPF, in that case a light rail system, did not render it impracticable. *Sound Transit v. City of Tukwila*, CPSGMHB Case No. 99-3-0003, (Sep. 15, 1999), at 5. [*King County, 03311*, FDO, at 14.]
- [I]t is not appropriate for a local government to create criteria that purport to revisit or "second-guess" a siting decision that has been made by a regional or state entity. [*King County, 03311*, FDO, at 14.]
- EPFs that are sited by a regional or state agency are distinct from those that are "sited by" a local jurisdiction or a private organization or individual. When a local jurisdiction is contemplating its own EPF, public or private, it is free to establish a non-preclusive siting process with any criteria it deems relevant. However, when the siting decision is made by a state or regional agency, the role of the host jurisdiction is much more limited. It may attempt to influence the siting decision "by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan." *Sound Transit*, at 6. But once a site has been chosen regionally, local plans and regulations cannot preclude it, even if those plans predate the EPF's conception. "If a decision regarding an EPF follows the adoption of a plan, and if the plan violates the .200 duty 'not to preclude,' the jurisdiction has a duty to amend its plan." *Port of Seattle*, at 8. [*King County, 03311*, FDO, at 15.]
- The Board holds that no local government plan or regulation, including permit processes and conditions, may preclude the siting, expansion or operation of an essential public facility. Local plans and regulations may not render EPFs impossible or impracticable to site, expand or operate, either by the outright exclusion of such uses, or by the imposition of process requirements or substantive conditions that render the EPF impracticable. While there is no absolute time limit for how long an EPF permit review may take, an EPF permit process lacking provisions that assure reaching an ultimate decision may be found to be so unfair, untimely and unpredictable as to substantively violate RCW 36.70A.020(7). In addition, local governments lack authority to deny a development permit for EPF's that are sponsored by state or regional entities. [*King County, 03311*, FDO, at 16.]
- [Jurisdictions have a duty not to adopt regulations that preclude EPFs.] The Board has previously held that "local governments lack authority to deny a development permit for EPFs that are sponsored by state or regional entities." (Citation omitted.) [Here, the County] acknowledges it has a duty to approve a "regional, state or federal EPF." (Citations omitted.) However, to allow a local government to define "regional

entities" as [the Ordinance] does, (i.e., acceding to the regional authority of only those entities that the local government voluntarily recognizes through an interlocal agreement) would vitiate the GMA's imperative to accommodate these needed facilities. Signing an interlocal agreement under Chapter 39.34 RCW is a voluntary local government exercise. Accommodating a regional EPF under Chapter 36.70A RCW is not. [*King County I, 03311*, 5/26/04 Order, at 13.]

- [The Board concluded that the County's use of a conditional use permit, and the criteria used in determining whether a permit should be issued, as applied to "local EPFs" complied with the GMA. However, the Board found that applying the same conditional use permit process and criteria to "regional EPFs" could lead to denial of the permit and therefore be contrary to the GMA.] [*King County I, 03311*, 5/26/04 Order, at 16-17.]
- [T]he City's existing comprehensive plan policies, land use plan designations and implementing development regulations and zoning designations governing the location and siting of a state EPF enable the City to address the concerns the City has raised in the findings of fact. The City has clearly identified areas where EPFs should be located, including the WSH campus. It has plan policies and criteria enumerated in its development regulations, specifically the conditional use permit process, that allow reasonable conditions to be imposed to mitigate likely impacts of such an EPF. The moratorium precludes access to the City's existing EPF procedures. Consequently, the moratorium causes an unpredictable delay in the siting of the state EPF which is the equivalent to precluding the EPF. [*DOC III/IV, 05343c*, FDO, at 15.]

- **Evidence – *See:* Exhibits and Record**

- **Exhaustion**

- The phrase "judicial review" in RCW 43.21C.075(4) refers to both review by courts and by this quasi-judicial growth planning hearings board. Thus, the doctrine of exhaustion of administrative remedies applies to petitions before the Board. [*Rural Residents, 3310*, 2/16/94 Order, at 6.]
- A four-part test for determining whether the exhaustion requirement bars a SEPA claim is: (1) whether administrative remedies were exhausted; (2) whether an adequate remedy was available; (3) whether adequate notice of the appeals procedure was given; and (4) whether exhaustion would have been futile. [*WSDF I, 4316*, 12/30/94 Order, at 11.]
- [To challenge a jurisdiction's action under SEPA before this Board] [t]his Board has consistently followed the direction of the courts and has consistently required petitioners to exhaust a local jurisdiction's administrative appeal process before seeking SEPA review before this Board (citations omitted). [*Tulalip II, 9313*, 1/28/00 Order, at 5.]
- [The Board's four-part test for determining whether the exhaustion [of administrative remedies] requirement bars a SEPA claim is reiterated and set forth in the case. [*MBA/Brink, 02310*, 10/21/01 Order, at 3-4.]

- **Exhibits**

- A jurisdiction is required to include as part of the record of its development of its [critical areas regulations or amendments] the scientific information that was developed by the jurisdiction and presented to the jurisdiction by others during its development of its regulations. The City included the best available science when it developed its amendments to its critical areas regulations, and did not violate RCW 36.70A.172. [*HEAL, 6312*, FDO, at 21.]
- Each GMA case is a discrete entity and the entire record before the Board in a prior case does not automatically become part of the record before the Board in a subsequent case. A party wishing to have the Board consider an exhibit from the record in a prior case must file a motion to supplement the record pursuant to WAC 242-02-540 and attach a copy of the proposed exhibit to the motion. [*COPAC, 6313c*, FDO, at 5.]
- A jurisdiction's Index to the Record need not be organized topically. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 25.]
- Copies of the exhibits proposed for supplementing the record must accompany the motion to supplement. [*Ramey Remand, 9302*, 11/11/00 Order, at 5, 8-9.]
- [There is] a burden on the respondent jurisdiction to compile and Index that documents the proceeding undertaken by the jurisdiction. The Index should contain information obtained by the jurisdiction in its proceedings, that it used in reaching the decision that is the subject of the GMA challenge before the Board. . . . The Board does not direct the contents of the jurisdiction's Index, it accepts it as a good faith effort by the jurisdiction to document the record of the proceedings and the materials used by the jurisdiction in taking to the GMA action. Amendments to the Index, by the jurisdiction, or motions to supplement the record are the means to finalize the record for Board review. [*Ramey Remand, 9302*, 11/11/00 Order, at 9.]
- The purpose of an exhibit list is to identify those documents listed in the Index that the party intends to use as an exhibit. (Citation omitted.) It may not contain exhibits that are not listed in the Index or exhibits that have not been admitted as supplemental evidence by the Board. [*Ramey Remand, 9302*, 11/11/00 Order, at 11.]
- If in Petitioner's prehearing opening brief, Petitioner attaches as an exhibit and relies upon the recently admitted exhibits [declarations] to support argument in the opening brief; then the City may include rebuttal declarations along with its prehearing response brief and move the Board to supplement the record with such new City declarations. [*Ramey Remand, 9302*, 12/15/00 Order, at 2.]
- Certain of the parties' arguments help inform the proper disposition of this case. However, much of what was presented and argued is simply irrelevant to the ultimate determination of GMA compliance for the challenged ordinance. For example, every party recounted the history and relative merits of a certain wastewater treatment project, characterizing the motivations, perceptions, and behaviors underlying inter-governmental communication, coordination, and cooperation, or alleged lack thereof. While hypothetical scenarios may help illuminate the merits of alternative constructions of the law, it is important to state at the outset of this analysis that the **only** relevant facts before the Board are *the words contained in Ordinance No. 03-006*. At the end of the day, the only question properly before the Board is a very

simple one – does Snohomish County's process for reviewing EPF permits, as adopted in Ordinance No. 03-006, comply with the Goals and Requirements of the Growth Management Act? [*King County, 03311*, FDO, at 12-13.]

- **Existing Uses**

- The phrase "uses legally existing on any parcel" means activities or improvements that actually exist on the land, as opposed to legal use rights. [*Twin Falls, 3303c*, FDO, at 41.]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in visual character. The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New England towns that Pope and Talbot used as templates for their company town. The Board finds that Port Gamble's mix of uses and physical forms clearly qualify as a "village," a "hamlet" or a "rural activity" center within the meaning of RCW 36.70A.070(5)(d)(i). [*Burrow, 9318*, FDO, at 18-19.]
- As to the question of range of permitted uses. . . the GMA's focus is on the *types* of uses in existence on July 1, 1990, rather than on specific businesses. Therefore, the limitations imposed are upon the types of uses (i.e., office, or residential, or commercial) that existed on July 1, 1990, not on the specific businesses that can be documented. . . . In future cases, with a smaller scale development and a narrower range of historical uses, the Board may be compelled to more closely examine the actual businesses or uses to determine what the appropriate range of uses might be. [*Burrow, 9318*, FDO, at 19-20.]

- **Extensions**

- *Morris, 7329c*, [2 extensions]
- *Rabie, 8305c*, [2 extensions]
- *LMI/Chevron, 8312*, [1 extension]
- *RBI/Andrus, 8330c*, [1 extension]
- *URBPA, 8334*, [1 extension]
- *Carkeek, 8336*, [7 extensions]
- *Housing Partners, 9310*, [10 extensions]
- *Westcot, 9311*, [3 extensions]
- *Kenyon, 9320*, [4 extensions]
- *McVittie V, 0316*, [1 extension]
- *Kenyon II, 1301*, [5 extensions]
- *Nelson, 1309*, [6 extensions]
- *DOC II, 1315*, [4 extensions]
- *WHIP II, 1326*, [4 extension]
- *Crofut, 1327*, [1 extension]

- *Aagaard, 02312* [4 extensions]
- *DSHS III, 02313,* [2 extensions]
- *Tacoma III, 03302,* [2 extensions]
- *Mueller, 03321,* [1 extension]
- *HIGA, 03322,* [1 extension]
- *Granite Falls, 03323,* [2 extensions]
- *DSHS IV, 04314,* [3 extensions]
- *Evergreem, 04316,* [1 extension]
- *Sky Harbor, 04320,* [1 extension]
- *1000 Friends V, 04322,* [4 extensions]
- *Duvall Quarry, 04326,* [4 extensions]
- *Soos Creek, 04328,* [7 extensions]
- *Kitsap County III, 05318,* [1 extension]
- *Futurewise II, 05319,* [3 extensions]
- *Gateway, 05324,* [3 extensions]
- *Wellington Park Pointe, 05326,* [1 extension]
- *King County IV, 05331,* [2 extensions]
- *Futurewise IV, 05333,* [6 extensions]
- *DOE/CTED, 05334,* [2 extensions]
- *DSHS V, 05336,* [1 extension]
- *Strahm, 05342,* [1 extension]
- *Covington Golf, 05349,* [4 extensions – pending]
- *CHB, 06301,* [4 extensions – pending]
- *DSHS VI, 06304,* [4 extensions – pending]
- *Suquamish Tribe, 06306,* [4 extensions – pending]
- *Tacoma IV, 06309,* [1 extension]
- *Pruitt, 06316,* [1 extension]
- *Fallgatter VI, 06317,* [3 extensions – pending]
- *Kap II, 06326,* [2 extensions – pending]
- *Pirie, 06329,* [1 extension – pending]
- *Brutsche, 06330,* [2 extensions – pending]
- *WPAS, 06339c,* [1 extesnion – pending]

- **Failure to Act**

- As a matter of law, when a local jurisdiction has failed to act, any person who resides or owns property within that jurisdiction has standing to bring a "failure to act" challenge. [*FOTL I, 4303,* 4/22/94 Order, at 19.]
- Challenges to non-GMA actions taken after GMA deadlines have passed, and alleging failure to comply with the requirements of the Act, must be brought before a superior court, unless the legislature subsequently expands the Board's jurisdictional authority. [*KCRP, 4305,* 7/27/94 Order, at 14.]
- Until a jurisdiction complies with the Act's procedural requirements, a failure to act challenge can be brought at any time. Once the Act's procedural requirements are

met, substantive challenges to an enactment must be brought within the sixty-day statute of limitations. [*KCRP, 4305*, 7/27/94 Order, at 19.]

- The Board has jurisdiction over both adopted GMA enactments and failures to adopt specifically mandated GMA enactments. [*CCSV, 5344*, 6/14/95 Order, at 6.]
- [A failure to act challenge may be brought at any time after the deadline has passed. WAC 242-02-220(5).] If a city or county failed to take any action relating to a GMA deadline, a petitioner may challenge the failure of that city or county to act by that deadline. On the other hand, if a city or county has taken some action relating to a GMA deadline, and published notice of that action, a challenge to that action must be filed within sixty days after publication. [*Gain, 9319*, 1/28/00 Order, at 4.]
- The record is clear that the County designated GMA forest lands and adopted development regulations. The County did not "fail to act." Petitioner's disagreement with the County's actions at this late date cannot re-open review of the County's action. [*Gain, 9319*, 1/28/00 Order, at 6.]
- [The City requested, and CTED granted, the six-month extension described in RCW 36.70A.040(3)(d). The City failed to meet this deadline. The City failed to act in compliance with the requirements of the Act.] [*LIHI I, 0317*, FDO, at 5-6.]
- The Board's rules indicate that it will entertain a petition for review that alleges a "failure to act" when a jurisdiction *fails to take action by a deadline specified in the GMA*. WAC 242-02-220(5). This rule also allows such a petition to be filed at any time after the deadline has passed. [*FEARN, 04304*, 5/20/04 Order, at 6.]
- The Board's rules indicate that it will entertain a petition for review that alleges a "failure to act" when a jurisdiction *fails to take action by a deadline specified in the GMA*. WAC 242-02-220(5). This rule also allows such a petition to be filed at any time after the deadline has passed. [*FEARN, 04304*, 5/20/04 Order, at 6.]
- The PFR was filed on the 61st day after publication of notice of adoption of [the challenged ordinance]. Petitioner's challenge is not saved by characterizing one of his legal issues as a 'failure to act' when the County in fact adopted legislation under the GMA concerning reasonable measures, UGAs and CPPs. [*1000 Friends/KCRP, 04331c*, 3/15/05 Order, at 6.]
- The County acknowledges that the challenged Ordinance is not the ten-year [UGA] review contemplated by RCW 36.70A.130 but asserts that the December 1, 2004 deadline for action does not apply [to Kitsap County. The County asserts that its UGA review is not due until 2008. The Board disagreed, granted the motion for reconsideration and reinstated Petitioner for purposes of the failure to act challenge.] [*1000 Friends/KCRP, 04331c*, 3/31/05 Order, at 4.]
- A failure to act challenge is appropriate when a city or county fails to take an action by a deadline specified in the Act. [*Futurewise III, 05320*, 5/23/05 Order, at 5.]
- Petitioner's "failure to act" challenge is misplaced. The crux of Petitioner's challenge to [the ordinance] was that it did not comply with the compliance review requirements of RCW 36.70A.130. However, as the Board discussed and decided, supra, Petitioner's challenge. . . was untimely. Therefore, whether this Ordinance complied with the specific compliance review requirements of the Act, or not, is now beyond the Board's authority to review and decide. [*Futurewise III, 05320*, 5/23/05 Order, at 6.]

- ## Fish and Wildlife Habitat Conservation Areas

- *See also:* **Critical Areas**
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c,* FDO, at 20.]
- The legislature required cities and counties to designate fish and wildlife habitat conservation areas only; the legislature did not mandate that cities and counties designate every parcel of land that constitutes fish and wildlife habitat. [*Pilchuck II, 5347c,* FDO, at 31.]
- RCW 36.70A.170 and .060 require cities and counties to designate fish and wildlife habitat conservation areas and adopt development regulations to protect them for all species of fish and wildlife found within them. [*Pilchuck II, 5347c,* FDO, at 32.]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, at 41-42.]
- The Act's requirement to protect critical areas, <u>particularly</u> <u>wetlands</u> <u>and</u> <u>fish</u> <u>and</u> <u>wildlife</u> <u>habitat</u> <u>conservation</u> <u>areas,</u> means that the ~~structure,~~ values and functions of such ~~natural~~ <u>eco</u>systems ~~are inviolate~~ <u>must</u> <u>be</u> <u>maintained.</u> While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ <u>eco</u>systems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, at 11, amending a holding in *Pilchuck II, 5347c,* FDO *5347,* pursuant to a Superior Court remand]
- Certain critical areas, such as wetlands and fish and wildlife habitat areas, constitute ecosystems that transcend the boundaries of individual properties and jurisdictions, and that it is therefore necessary to address certain critical area issues on a watershed level. [*Tulalip, 6329,* FDO, at 11-12.]
- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 31.]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 32.]
- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]

- [The Tribe] has raised important and provocative questions about the responsibility of a city to protect fish habitat in view of the recent federal listings of Chinook salmon, bull trout, and other species. The GMA contains specific requirements for local governments to designate and protect critical areas, including fish and wildlife habitat. . . . Significantly, the Tribes insist that they are not challenging the City's critical areas regulations adopted pursuant to {the GMA]. They instead assert that the City' [adoption of a Subarea Plan] violates the GMA because the Subarea Plan and critical areas regulations are inextricably intertwined. [*Tulalip II, 9313*, 1/28/00 Order, at 4.]
- From a review of the interplay between the relevant provisions of the two statutes, the Board concludes that, while development will continue to be permitted within the shorelines of the state, the primary and paramount goal, objective and purpose of the GMA/SMA total statutory scheme is to preserve, protect, enhance and restore the resources, ecology and ecosystem functions of the shorelines of the state, with special consideration paid to habitat for anadromous fish. [*Everett Shorelines Coalition, 02309c*, FDO, at 23.]
- The City never contended it amended its critical areas regulations as part of the SMP update. As discussed previously, this is a fatal flaw in the City's action. Consequently, it is undisputed that the City's shorelines implementing development regulations, including critical areas regulations and shorelines regulations in the SMP (reference omitted), were not adopted as critical areas regulations pursuant to RCW 36.70A.060, nor were they supported by best available science pursuant to RCW 36.70A.172. Moreover, the Board concludes that critical area regulations must assure no net loss of the functions and values of shorelines of state-wide significance. [*Everett Shorelines Coalition, 02309c*, FDO, at 45.]
- [Pursuant to RCW 36.70A.480] the Board agrees with Pierce County that marine shorelines are not *per se* fish and wildlife habitat conservation areas [critical areas]. The Board then asks (1) whether Pierce County used best available science to protect critical fish and wildlife habitat conservation areas on its marine shorelines; (2) whether Pierce County's regulations gave priority to anadromous fish; (3) whether Pierce County's regulations protect the functions and values of marine shorelines as salmon habitat, and (4) whether a vegetative buffer is required. [The County's CAO] identifies a number of critical fish and wildlife conservation areas on its marine shorelines. These include eelgrass beds, shellfish beds, surf smelt spawning areas and the like. However, [the CAO] was drafted to designate and protect *all* Pierce County marine shorelines. When the County Council voted to remove the marine shorelines from critical areas, it did so (a) without ascertaining whether the remaining protected salt-water areas included all the areas important for protection and enhancement of anadromous fisheries and (b) without assessing whether the overlay of elements remaining in the CAO [i.e. steep slopes, erosion areas, eelgrass beds, etc.] would protect the "values and functions" necessary for salmon habitat. [A discussion of *WEAN v. WWGMHB*, 122 Wn. App. 173, (2004) follows.] [*Tahoma/Puget Sound, 05304c*, FDO, at 37.]
- [The Board reviewed the detailed scientific evidence in the record regarding salmon habitat along marine shorelines to determine whether the County gave "special consideration to anadromous fish."] Despite the detailed information about the

function and values of salmonids habitat specific to each shoreline reach, Pierce County eliminated "marine shorelines" from the fish and wildlife habitat conservation areas listed in its critical areas ordinance without determining whether the remaining designated critical areas adequately met the needs of salmon. Undoubtedly some of Pierce County's remaining designated and mapped salt-water critical areas, such as eelgrass beds, surf smelt beaches, salt marshes and steep bluffs, overlap with habitats critical to the survival of anadromous fish. But there is nothing in the record to indicate that the high-value shoreline reaches identified by the Pentec Report for salmonids habitat [much less the restorable habitat stretches] are designated and protected in the Pierce County critical areas regulations. [*Tahoma/Puget Sound, 05304c*, FDO, at 38-40.]

- Deferring salmon habitat protection to a site-by-site analysis based on disaggregated factors is inconsistent with Pierce County's best available science. Nothing in the science amassed by the County supports disaggregating the values and functions of marine shorelines. [Various studies are reviewed pertaining to the integrated function and value of salmon habitat [*Tahoma/Puget Sound, 05304c*, FDO, at 40.]
- The Board finds that Pierce County's site-by-site assessment of marine shorelines during the permit application process, as established in (the CAO), does not meet the requirement of using best available science to devise regulations protective of the integrated functions and values of marine shorelines as critical salmon habitat. [*Tahoma/Puget Sound, 05304c*, FDO, at 40-41.]
- A final issue is whether vegetative buffers are required. Pierce County declined to establish a regulatory requirement for vegetative buffers on marine shorelines, except to the extent they might be required in connection with a narrower protective regime (eelgrass beds, for example, or bald eagle nesting sites), and has substituted a 50-foot setback from ordinary high water mark. There is a wealth of scientific opinion in the County's record supporting vegetative buffers to protect multiple functions and values of marine shoreline salmon habitat. [The Board reviewed the record documents provided to the County; and concludes that the County rejected the recommendations of experts and agencies with expertise without any sound reasoned process.] [*Tahoma/Puget Sound, 05304c*, FDO, at 41-44.]
- While the 2003 GMA amendments [ESHB 1933, amending RCW 36.70A.480] prohibit blanket designation of all marine shorelines (or indeed, all freshwater shorelines) as critical fish and wildlife habitat areas, the GMA requires the application of best available science to designate critical areas, explicitly recognizing that some of these will be shorelines. The legislature sought to ensure that this correction did not create loopholes. "Critical areas within shorelines" must be protected, with buffers as appropriate, if they meet the definition of critical areas under RCW 36.70A.030(5). RCW 36.70A.480(5) and (6). [The BAS in the County's record supported the conclusion that near-shore areas meet this definition, and the BAS] may provide the basis for designating less than all of Pierce County's marine shorelines as critical habitat for salmon. ESHB 1933 does not justify Pierce County's blanket deletion of marine shorelines and marine shoreline vegetative buffer requirements from its [CAO]. [*Tahoma/Puget Sound, 05304c*, FDO, at 49.]
- In remanding the noncompliant regulations to [the County], the Board pointed out that . . . the record already contained abundant science concerning the matters at

issue. Nevertheless, [the County] undertook additional public process and re-analysis in developing the proposal for [the remand Ordinance]. Base on the prior well-developed record, as refined in the compliance process, [the County] has now enacted both designation of critical salmon habitat in [the County] marine shorelines and measures to protect the functions and values of that habitat. While there are various ways that the science in the record might have been applied by [the County] to comply . . . the Board is persuaded that Ordinance No. 2005-80s meets the GMA standard. [*Tahoma/Puget Sound, 05304c*, 1/12/06 Order, at 6.]

- ## Forest Lands

- *See also:* **Natural Resource Lands**
- The mere possibility of more intense uses of the lands does not preclude land from being classified as forest land. [*Twin Falls, 3303c*, FDO, at 33.]
- The fact that land is generally used by the timber industry does not necessarily mean that it meets the Act's definition of "forest land" that must be designated. [*Sky Valley, 5368c*, FDO, at 83.]
- As a matter of law pursuant to Section 1 of ESSB 6228 and RCW 36.70A.060(3), all cities and counties that had not adopted comprehensive plans by the effective date of ESSB 6228 were required to re-evaluate whether their prior (interim) forest land designations and development regulations complied with the 1994 definition of the phrase "forest lands" and remained consistent with their newly adopted comprehensive plans. [*Sky Valley, 5368c*, FDO, at 88.]
- A county or city does not per se violate the Act simply because its final forest land designations approved at the time of comprehensive plan adoption include lesser acreage than the preliminary, interim forest land designations. [*Sky Valley, 5368c*, FDO, at 88.]
- RCW 36.70A.170(1)(b) requires counties and cities to designate all lands that meet the definition of forest lands and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all these designated forest lands unless the forest lands would fall within a UGA. [*Sky Valley, 5368c*, FDO, at 89.]
- Cities and counties can adopt development regulations for designated forest lands that regulate these lands differently (in manner or degree) as long as adopted development regulations assure the conservation of forest lands. [*Sky Valley, 5368c*, FDO, at 101.]
- Although the Act requires that all lands that meet the definition of forest lands be designated, unless they are located within a UGA, cities and counties retain discretion as to the degree and manner of conservation afforded designated forest lands by adopted development regulations. As long as the adopted development regulations assure the conservation of designated forest lands, these regulations may control designated forest lands in a different manner or degree. [*Sky Valley, 5368c*, FDO, at 101.]
- The reference in RCW 36.70A.070(1) to "timber production" is not synonymous with "forest lands." The latter is a term of art unique to the GMA, for which specific requirements have been adopted, particularly RCW 36.70A.060 and .170. In contrast, the former, "timber production," is used within the definition of the phrase "forest

lands." "Forest lands" are a subset of broader category of lands, those devoted to timber production. [*Sky Valley, 5368c*, FDO, at 103.]

- Just because land is available for timber production does not mean that it constitutes "forest lands" as defined by the Act for which the designations specified at RCW 36.70A.170 and development regulations specified at RCW 36.70A.060 must be adopted. [*Sky Valley, 5368c*, FDO, at 104.]
- RCW 36.70A.170 is unequivocal: a county has a duty to designate, where appropriate, forest lands of long-term commercial significance. A County is compelled to decide whether it has such lands and if so, to designate them. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 35.]
- Under the sequencing scheme of the GMA, the land does speak first; but, on the rare occasion, as is the case here, where the land may speak late – it will be heard. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 35.]
- The record supports the County's determination that the [property] is forested in character. Petitioners have not shown that the County's portrayal of the property as "forested in character" was clearly erroneous. [*Screen II, 9312*, FDO, at 8.]
- Where land meets the criteria for more than one land use designation, the County has the discretion to determine the designation to be applied to that land. [*Screen I, 9306c*, 10/11/99 Order, at 21.]
- The record is clear that the County designated GMA forest lands and adopted development regulations. The County did not "fail to act." Petitioner's disagreement with the County's actions at this late date cannot re-open review of the County's action. [*Gain, 9319*, 1/28/00 Order, at 6.]
- [One of the criterion used by the County to designate forest lands was that such lands could not be designated as forestry if they fell within one-mile of existing commercial or industrial property.] The one-mile criterion was used for the initial identification and designation of forest lands only. It has no applicability beyond the initial designation of such lands; it is not a de facto exclusion zone [precluding a UGA and urban uses within one-mile of designated forest lands.] [*Kitsap Citizens, 0319c*, FDO, at 22.]
- The term "de-designated," rather than simply "re-designated" was first used by the Board in *Grubb* [0314, FDO]. Under the GMA all lands are either: (1) *urban* lands (i.e. within urban growth areas); (2) *rural* lands; or *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as either urban or rural. In contrast, a "**de**-designation" of lands from resource land to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction. [*Forster Woods, 1308c*, FDO, at 14, footnote 4.]
- The Board rejects the argument that the 1994 designation of the . . .parcel as forest resource lands was a "mistake." The record supporting that prior designation is not before the Board and the time to challenge the GMA sufficiency of that designation has long since passed. [The Board notes that the original property owner did not characterize the prior resource lands designation as a "discrepancy" or "mistake" in

1994, nor in 1995 when it sold the property with that designation intact. Nor did Intervenor characterize the prior designation as a "mistake" until after the property was logged in reliance upon that resource land designation. To advance such argument at this time is ironic, if not disingenuous.] [*Forster Woods, 1308c*, FDO, at 16 and footnote 5.]

- General discussion of the *Grubb* and *Green Valley* cases as they relate to resource lands. [*Forster Woods, 1308c*, FDO, at 16-18.]
- Forestry activities are permissible on lands designated "Rural" in the County's Plan. *See* RCW 36.70A.070(5)(b). However, forestry on these [rural] "wooded lands" is not entitled to the protections from encroachment of incompatible uses that attach to lands designated as forest resource lands of long-term commercial significance. See RCW 36.70A.170, .060, .030(8) and .020(8). [*Bremerton II, 04309c*, FDO, at 23.]

• Framework

- The CPP "framework" of .210(1) is to ensure the consistency (required by .100) of the comprehensive plans of cities and counties that have common borders or related regional issues. [*Snoqualmie, 2304c*, FDO, at 8.]
- Both the CPPs [RCW 36.70A.210(1)] and goals [RCW 36.70A.020] must be used to guide the development of locally adopted plans. Those comprehensive plans must adhere to both the CPPs and the goals of the Act. The locally established CPPs cannot contradict the goals of the statute and still fulfill their statutory obligations. (Footnote omitted.) . . .[I]f CPPs are required to establish a framework for guiding the development and amendment of comprehensive plans so as to ensure GMA compliance and consistency among jurisdictions; then the CPP guiding framework must also adhere to the goals and requirements of the Act. CPPs cannot be blind to the goals of the Act – the GMA's goals provide substantive context in the development and adoption of CPPs. This is in keeping with the interpretation of the Supreme Court which, in construing the Act, has consistently read the goals into substantive provisions. (Footnote omitted.) . . . To give effect to these GMA requirements [RCW 36.70A.020 and .210(1)] the Board holds that county-wide planning policies must be guided by, and be consistent with, the planning goals set forth in RCW 36.70A.020. Although the goals are not listed in order of priority for purposes of comprehensive plans, certain goals will have greater relevance than others at the county-wide scale. (Footnote omitted.) [*CTED, 03317*, FDO, at 15-16.]

• Frequently Flooded Areas

- *See also:* **Critical Areas**
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c*, FDO, at 20.]
- The Act's requirement to protect critical areas means that the structure, value and functions of such natural systems are inviolate. While local governments have the

discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in a net loss of the structure, value and functions of such natural systems within a watershed or other functional catchment area. [*Pilchuck II, 5347c*, FDO, at 21.]

- The requirement that critical areas are to be protected in the urban area is not inconsistent with the Act's predilection for compact urban development. [*Pilchuck II, 5347c*, FDO, at 24.]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c*, FDO, at 41-42.]
- The Act's requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the ~~structure,~~ values and functions of such ~~natural~~ ecosystems ~~are inviolate~~ must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ ecosystems within a watershed or other catchment area. [*Tulalip, 6329*, FDO, at 11, amending a holding in *Pilchuck II*, FDO *5347*, pursuant to a Superior Court remand]
- Certain critical areas, such as wetlands and fish and wildlife habitat areas, constitute ecosystems that transcend the boundaries of individual properties and jurisdictions, and that it is therefore necessary to address certain critical area issues on a watershed level. [*Tulalip, 6329*, FDO, at 11-12.]
- The GMA requires jurisdictions to adopt development regulations that protect critical areas; jurisdictions have the authority to supplement the GMA's mandated regulatory protection of critical areas with non-regulatory programs. [*Tulalip, 6329*, FDO, at 12.]
- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 31.]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 32.]
- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 32.]
- [Petitioner cited to science in the record from the City's Surface Water Management Plan, recommending regulation based upon the 500-year flood plain. Yet the City designated the 100-year flood plain as its frequently flooded area.] Although there may well be a scientific basis to support this designation, Edgewood fails to cite to a

scientific basis for this 100-year flood plain designation. Consequently, the Board concludes that Edgewood's Plan declaration and designation of the 100-year flood plain, as its frequently flooded area – critical area, does not comply with the requirements of RCW 36.70A.172. [*Lewis, 1320*, FDO, at 15.]

- Whether FEMA changes its density fringe designation along the Snohomish River floodway, or whether the FAA approves expansion of Harvey Airfield are interesting wrinkles that the County will have to iron out when those federal decisions are ultimately made. However, the issue before the Board is whether the County's retention of some 50 acres within the City of Snohomish's UGA is clearly erroneous. The Board concludes that it is not. The focus of Petitioners' argument is that the area within the UGA is a critical area and its inclusion in the UGA indicates it is not, will not, or cannot be protected. Pilchuck has not made its case on this point, nor could it in the context of the present ordinance. Further, the Board finds that Petitioners' theory is unsupported by the GMA. The GMA acknowledges that critical areas occur throughout the landscape, within urban, rural and resource land designations. The GMA does not discriminate; it simply requires that their functions and values be protected *wherever they are found*. [*Pilchuck VI, 06315c*, FDO, at 68.]

- **Fully Contained Communities - FCCs**

- The Bear Creek MPDs are within the County's "island" UGA. The Superior Court included the Bear Creek properties in the UGA. Therefore, in this unique situation, to respond to the Board's Order, the County need not have resorted to using the FCC designation process, as set forth in RCW 36.70A.350, to address the Bear Creek MPDs inclusion in the UGA. [*Buckles, 6322c*, FDO, at 30.]
- [A]ll UGAs need not contain a city, but lands to be included in such UGAs must be lands that are: (1) already characterized by urban growth; (2) adjacent to lands already characterized by urban growth; or (3) designated as a new FCC pursuant to the requirements of RCW 36.70A.350. [*Bear Creek, 5803c*, 6/15/00 Order, at 9.]
- [The Act's definitions of "urban growth' and "characterized by urban growth'] used in the context of designating urban growth areas, pursuant to the locational criteria [of RCW 36.70A.110(1)], do not contemplate prospective urban development. [*Bear Creek, 5803c*, 6/15/00 Order, at 10.]
- [The Bear Creek island is not characterized by urban growth nor adjacent to lands characterized by urban growth, it therefore does not meet the locational criteria of RCW 36.70A.110(1)]. [*Bear Creek, 5803c*, 6/15/00 Order, at 11.]
- RCW 36.70A.110 cross references RCW 36.70A.350. Read together, RCW 36.70A.110 and RCW 36.70A.350 provide that lands that do not have urban growth characterized by urban growth may become UGAs if the satisfy the FCC requirements of .350. [*Bear Creek, 5803c*, 6/15/00 Order, at 12.]
- The Bear Creek island is *located outside of the initially designated urban growth area*. Consequently, it is eligible for consideration as an FCC pursuant to .350. [*Bear Creek, 5803c*, 6/15/00 Order, at 15.]
- [T]he County reserved a portion of the twenty-year population projection and offset the UGA accordingly [as required by .350]. [*Bear Creek, 5803c*, 6/15/00 Order, at 16.]

- [The County adopted FCC the review criteria as required by RCW 36.70A.350(1)(a-i).] [*Bear Creek, 5803c*, 6/15/00 Order, at 16-18.]
- [The assertion that rural zoning designations in areas adjacent to an FCC would not contain the FCC – rural zoning does not hold – is unsubstantiated.] [*Bear Creek, 5803c*, 6/15/00 Order, at 20.]
- WACs define an FCC as "a development proposed for location outside of the existing designated urban growth area which is characterized by urban densities, uses and services and meets the criteria of RCW 36.70A.350." WAC 365-195-210. However, this definition provides little guidance on what "fully contained" means, other than compliance with .350. It may well be that *if* the undefined concept of "fully contained" is interpreted to mean "total independence or complete self-sufficiency" it is a misnomer, especially in the interdependent Central Puget Sound region. [*Bear Creek, 5803c*, 6/15/00 Order, at 20.]
- [The County defines what it believes "fully contained" means in its Plan.] To paraphrase, it does not mean that interaction between the FCC site and adjacent lands is prohibited; it means that the impacts of the FCC should be confined to the site and limited off-site. It means that containment should be achieved through permit conditions that do not increase pressure for urban development on adjacent lands. It does not mean that all public facilities and services be borne by and accommodated within the FCC. . . . The Board does not find the County's interpretation and definition of "fully contained" to be unreasonable in the context of this case. [*Bear Creek, 5803c*, 6/15/00 Order, at 20-21.]
- If the county approves an FCC proposal pursuant to RCW 36.70A.350(2), the approved FCC becomes a UGA by operation of law. Therefore, all the "containment" protections associated with UGAs attach. These include, for example, rural zoning, prohibition of urban growth outside the UGA, limitations on extending urban governmental facilities and services, and in King County the four-to-one program. [*Bear Creek, 5803c*, 6/15/00 Order, at 22.]
- RCW 36.70A.110 provides a statutory *exception* for FCCs from the UGA locational criteria contained in .110. . . . [T]he locational criteria contained in .110 of the Act do not apply to the identification and designation of potential FCC areas. . . . [T]he Act does not contain any explicit locational requirements for FCCs, other than those factors enumerated in .350(1), including .350(1)(g) "containment" which could affect location. . . . [A] jurisdiction has discretion to adopt its own locational criteria or constraints for identifying and designating potential FCC areas. [*Bear Creek, 5803c*, 6/15/00 Order, at 24.]
- [The locational criteria adopted by the County apply specifically to UGAs, not FCC designations. The County's Policy on locational criteria include the .110 FCC "exception."] . . . Since the Legislature, not the County, created the FCC "exception" in RCW 36.70A.110, it is not necessary for the County to justify, explain, or provide a rationale for, why the FCC "exception" is included in its Plan Policies. [*Bear Creek, 5803c*, 6/15/00 Order, at 26-27.]
- Designation of UGAs pursuant to RCW36.70A.110 is a legislative act. The County designated UGAs when it adopted its Plan in 1994. Among the UGAs designated by the County was the Comprehensive Urban Growth Area (CUGA). It was a legislative act to designate the UGAs, including the CUGA. Cascadia [FCC] is

located within a UGA; specifically, it is located within the County's CUGA. Any subsequent project specific decision cannot alter the Plan designation of this area as a UGA. [*Gain, 9319*, 1/28/00 Order, at 7-8.]

- Because the proposed Cascadia [FCC] development is located within a designated UGA, the CUGA, the provisions of RCW 36.70A.350 do not apply. [RCW 36.70A.350 applies to FCCs located outside of the initially designated urban growth areas.] [*Gain, 9319*, 1/28/00 Order, at 8.]
- General discussion, summary and history of the Bear Creek island UGA issue. [*FOTL VI, 1310*, FDO, Appendix A.]
- FOTL's assertion that Blakely Ridge and the Panhandle are precluded from <u>ever</u> developing as urban because Redmond Ridge has received an FCC permit is incorrect. However, also incorrect is the County's assertion that nothing more needs to be done to urbanize Blakely Ridge and the Panhandle because they fall within the previously designated FCC. [*FOTL VI, 1310*, FDO, at 6-7.]
- It is undisputed that the County's original **delineation** of the FCC boundaries included [Blakely Ridge and the Panhandle.] However, delineating the boundaries of an FCC is not the same as delineating the boundaries of a UGA and establishing a UGA. Once a UGA is established, the delineated area is "pre-approved" for urban development. Not so with the delineation of an FCC. A delineated FCC is *potentially* urban, but it may not be developed as such until a specific proposal for an FCC development is reviewed, pursuant to the criteria of .350, and approved. [*FOTL VI, 1310*, FDO, at 7.]
- The Board here coins the term "delineation" rather than "designation" to recognize that the process set forth at RCW 36.70A.350 is unique in the GMA. It is a two-step process, which is very different from the "designations" done for "resource lands" pursuant to RCW 36.70A.170 or the "Future land use map designations" done pursuant to RCW 36.70A.070. The initial "designation" (or what we call here "delineation") of an FCC on the Future land use map does not create rights for urban uses. Rather, that initial "delineation" is simply the precedent to a potential second step, which is the subsequent processing and issuance of an "FCC permit." If and when such FCC permit is issued, the subject property becomes urban by operation of law and at that point is appropriately "designated" as urban. [*FOTL VI, 1310*, FDO, at 7, footnote 4.]
- [The two areas are within the County's delineation of the FCC. Neither the Court nor the County altered the FCC delineation. However, there was no application for an FCC permit filed on either the Blakely Ridge or the Panhandle properties.] Thus, these lands have not been subject to the FCC review process, including applicable notice and review for compliance with the requirements of RCW 36.70A.350(1). These areas therefore cannot be designated as UGA and developed as urban, unless and until such time as they obtain approval of an FCC permit, subject to appropriate notice and review pursuant to .350(1). [*FOTL VI, 1310*, FDO, at 8.]
- Potential UPD [urban planned developments] urban developments may occur only within established UGAs; potential FCC urban developments may only occur within delineated FCCs after the approval of, and subject to the conditions of, an FCC permit. [Prior to adoption of the challenged ordinance, the properties were not within established UGAs, they were rural [nonurban] as required by the GMA and Board

Order.] Consequently, to urbanize property within the delineated FCC area, review and approval pursuant to the GMA [.350] criteria (and the County's own Plan Policy) is required. [*FOTL VI, 1310*, FDO, at 8-9.]

- It is undisputed that the area *outside* the FCC delineation must be maintained as nonurban (i.e. designated and shown on the Future land use map and zoning map as either resource lands or rural). However, the real question here is whether the land *inside* a delineated FCC area, but not yet reviewed and approved pursuant to .350, must also be maintained as nonurban. The Board answers in the affirmative. [*FOTL VI, 1310*, FDO, at 9.]
- The Board conclusion is based on the need to protect such areas [areas delineated within an FCC] from urban development until and unless an FCC permit has been reviewed and approved pursuant to the .350 FCC review process. The approval of [the adjacent] Redmond Ridge FCC [permit] carries with it a requirement that "urban growth will not occur in adjacent nonurban lands." RCW 36.70A.350(1)(g). . . .RCW 36.70A.350(1)(g) precludes Blakely Ridge and the Panhandle [adjacent nonurban lands prior to the challenged ordinance] from being a UGA and being developed as urban, notwithstanding their inclusion within an FCC *delineation* or their arguably intertwined infrastructure, until such time as proposals for urban development for these sites are reviewed and an FCC permit is approved pursuant to the County's and GMA's .350 FCC review and approval process. If and when such FCC permit approval occurs, those areas subject to the FCC permit would be included as a UGA as a matter of law and only then could be developed as urban. [*FOTL VI, 1310*, FDO, at 9.]
- The County has chosen to use the FCC procedures of RCW 36.70A.350 to address the potential urbanization of this area. Having taken this road, the County cannot now also designate the Blakely Ridge and Panhandle area as a UGA pursuant to RCW 36.70A.110. To do so would ignore the additional .350 criteria and review process. [*FOTL VI, 1310*, FDO, at 9.]
- [Having concluded that for the area to develop as urban it must proceed through the County and GMA's FCC (.350) review process, the Board did not address whether the area complied with the UGA locational requirements of RCW 36.70A.110, was consistent with King County CPP and Plan policies. [*FOTL VI, 1310*, FDO, at 10-14.]

• General Discussion

- General discussion of Board powers. [*Twin Falls, 3303c*, 6/11/93 Order, at 7.]
- General Discussion of sanctions. [*FOTL I, 4303*, 5/18/94 Order , at 5-6.]
- The GMA requires communities to manage change and to change to manage – general discussion. [*Children's I, 5311*, FDO, at 4.]
- Discussion of UGAs in other states – evaluation. [*Gig Harbor, 5316c*, FDO, at 55.]
- General discussion of GMA and summary of prior Board holdings. [*Bremerton, 5339c*, FDO, at 20-24.]
- Compact Urban Development vs. Sprawl – general discussion of the literature. [*Bremerton, 5339c*, FDO, at 24-32.]

- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, at 28.]
- Determining size and shape of UGAs – general discussion of prior Board decisions. [*Bremerton, 5339c,* FDO, at 32-42.]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, at 44-48.]
- Synopsis of seven CPSGMHB County Cases dealing with the Rural Element. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 21-25.]
- General discussion of the indispensable party rule. [*Alberg, 5341c,* FDO, at. 29-36.]
- General discussion and recap of Board's subject matter jurisdiction. [*South Bellevue, 5355,* 11/30/95, at 3-6.]
- General discussion and recap of the quasi-judicial nature of the Board, jurisdictional issues and the APA. [*Sky Valley, 5368c,* FDO, at 6-20.]
- General discussion of prior holdings and issues with subarea plans. [*WSDF III, 5373,* FDO, at 22-28.]
- General discussion of standing requirements. [*Hapsmith I, 5375c,* FDO, at 12-18.]
- General discussion of transportation coordination with adjacent jurisdictions. [*Hapsmith I, 5375c,* FDO, at 32-34.]
- General discussion of the Board's treatment of plans and local discretion. [*Litowitz, 6305,* FDO, at 3-5.]
- The WSDF quartet is summarized for context. [*WSDF IV, 6333,* FDO, at 8.]
- General discussion and interpretation of RCW 36.70A.177 by the Majority and Dissent. [*Green Valley, 8308c,* FDO, at 17-18 and 24-25.]
- General Discussion of the Board's treatment of challenges to goals and consistency analysis. [*LMI/Chevron, 8312,* FDO, at 21.]
- General Discussion of the relationship between the neighborhood plans adopted by the City; and the unadopted neighborhood plans that represent the wishes of the citizens of the neighborhoods. [*Montlake, 9302c,* FDO, at 6-8.]
- General Discussion of Pre-GMA planning, UGAs under the GMA and FCCs. [*Bear Creek, 5803c,* 6/15/00 Order, at 6-8.]
- General Discussion of LAMIRDs. [*Burrow, 9318,* FDO, at 18-20.]
- General discussion of agricultural lands designation and the agricultural conservation imperative. [*Grubb, 0304, FDO, at* 8-12.]
- General discussion, summary and history of the Bear Creek island UGA issue. [*FOTL VI, 1310,* FDO, Appendix A.]

- General Discussion of the GMA's public participation goals and requirements. [*McVittie V, 0316*, FDO, at 16-21.]
- General discussion of the Grubb and Green Valley cases as they relate to resource lands. [*Forster Woods, 1308c*, FDO, at 16-18.]
- [General discussion of the legislative history and differences between existing master planned resorts (RCW 36.70A.360) and new master planned resorts (RCW 36.70A.362), and the procedures that flow from each statute.] [*Kenyon II, 1301*, FDO, at 5-9.]
- General discussion of the GMA/SMA total statutory scheme – RCW 36.70A.480 integration of SMA and GMA. [*Everett Shorelines Coalition, 02309c*, FDO, at 11-28, and Figures 1-3, at 89-91.]
- General discussion and application of the GMA/SMA total statutory scheme to five shoreline designations in the City of Everett. [*Everett Shorelines Coalition, 02309c*, FDO, at 45-59.]
- General discussion of Subarea Plans and Master Plans. [*Laurelhurst, 03308*, FDO, at 8-10.]
- General Discussion of the relationship between land capacity analyses and the buildable lands review and evaluations required by the Act – RCW 36.70A.110 and .215. [*CTED, 03317*, FDO, at 20-22.]
- General Discussion – Cities as the providers of urban services. [*MBA/Larson, 04301*, FDO, at 10-11.]
- General Discussion of procedures and criteria for designating agricultural lands of long-term commercial significance. Court decisions and the Board's two-prong test. [*Orton Farms, 04307c*, FDO, at 24-25.]
- General Discussion – Review of the legislative history of the GMA regarding UGAs and the ten-year review requirement. [*1000 Friends/KCRP, 05331c*, FDO, at 31-35.]
- General Discussion of Goal 6 – property rights, in the context of King County's CAO. The board asks four questions: Is the challenge within the Board's jurisdiction? Did the local government take landowner rights into consideration in its procedure? Was the challenged action arbitrary? Was the challenged action discriminatory? [*Keesing CAO, 05301*, FDO, at 28-33.]
- General discussion of the factors the Board considers and weigh in determining whether a city' designated urban densities are "appropriate urban densities." [*Kaleas, 05307c*, FDO, at 5-6.]
- General discussion of the factors the Board considers and weigh in determining whether a city' designated urban densities are "appropriate urban densities." [*1000 Friends VII, 05306*, FDO, at 10-11.]
- General Discussion of gross versus net density calculations. [*Fuhriman II, 05325c*, FDO, at 23-33.]
- General Discussion of Critical Areas Statutory Requirement and Controlling Precedent. [*DOE/CTED, 05334*, FDO, at 9-16.]
- General Discussion of Development Agreements and the Board's general lack of jurisdiction to review them. [*Sno-King, 06305*, 5/25/06 Order, at 7-8.]

- ## Geologically Hazardous Areas

- *See also:* **Critical Areas**
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c*, FDO, at 20.]
- The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide adequate justification for residential densities under 4 du/acre within a UGA. [*Benaroya I, 5372c*, 3/13/97 Order, at 13.]
- [The question before the Board was whether Seattle's policy preference for preventing harm to steep slopes by minimizing disturbance and maintaining and enhancing existing ground cover was developed and derived from a process where the evidence of best available science was in the record and was considered substantively – was it discussed, deliberated upon and balanced with other factors? The Board found BAS was included in the record and considered substantively in developing the policy preference.] [*HEAL, 6312*, 10/4/01 Remand Order, at 4-7.]
- The GMA defines geologically hazardous areas as areas that are not suited to siting of . . . development consistent with public health or safety concerns," [RCW 36.70A.030(9)], but there is no affirmative mandate associated with this definition except to "protect the functions and values." Petitioners have not persuaded the Board that the requirement to protect the functions and values of critical areas has any meaning with respect to volcanic hazard areas or that the GMA contains any independent life-safety mandate. [*Tahoma/Puget Sound, 05304c*, FDO, at 25.]
- The Board finds that "best available science' was included in the designation of Lahar Inundation Zones and Lahar Travel Time Zones. To the extent the new regulations were built around that mapping exercise, they reflect best available science as required by RCW 36.70A.172(1). . . . The more troubling question is what land use regulations are required, once a hazard is acknowledged. . . . The County reasons that the only remaining question – reasonable occupancy limits [for a covered assembly in the lahar zone] – is a policy choice based on weighing risks. In the County's calculus, the low frequency of lahar events, the likelihood of early warning, and the opportunity for evacuation must be weighed against the economic opportunity presented by new tourist facilities. . . . The Board agrees with Pierce County that land use policy and responsibility with respect to Mount Rainier Case II lahars – "low probability, high consequence" events – is within the discretion of the elected officials; they bear the burden of deciding "How many people is it okay to sacrifice." [*Tahoma/Puget Sound, 05304c*, FDO, at 23-25.]
- The analogy between floods and lahars is limited. The scientific references linking 100-year floods and Case II Lahars refer only to periodicity, not to depth or viscosity or rate of flow ore even predictability. . . The GMA imposes no duty on the County to treat both hazards alike in its development regulations just because their frequency may be analogous. [*Tahoma/Puget Sound, 05304c*, FDO, at 26.]
- The Board reads the cautionary approach recommended in the CTED guidelines [WAC 365-195-920] to refer to situations where incomplete science may result in

inadequate protection for the "functions and values" of critical areas. In this case, we are not concerned with protecting the "function and values" of volcanic debris flows. Here, the science of lahar inundation hazards on Mount Rainier is sufficiently detailed; the question dealt with in the County occupancy regulations is the feasibility of rapid evacuation from sites very close to the mountain – identified by the URS report as an engineering and life-safety question rather than an issue of vulcanology.. [*Tahoma/Puget Sound, 05304c*, FDO, at 28.]

- The County has prohibited density bonuses in lahar hazard zones, provided maps of flow zones which are available on line, launched significant public and landowner information and outreach, created and installed warning systems where feasible, prohibited critical facilities, and limited special occupancies and covered assemblies. The Board finds that [Plan Policies] that might apply to the occupancies at issue here are equivocal and do not provide a basis for overturning the covered assembly occupancies in Case II, Travel Time Zone A, Lahar Inundation Zones. [*Tahoma/Puget Sound, 05304c*, FDO, at 31.]
- [A seismic ordinance regulating conditions on construction in seismic areas is a development regulation subject to review by the Board.] [*King County IV, 05331*, 8/8/05 Order, at 6.]
- [The City designated a portion of the Norway Hill area with an R-40,000 minimum lot size. Steep slopes, erosive soils, difficulty in providing urban services and connection to an aquifer and salmon stream were the basis for the designation. The Board noted that only a portion of the area designated was within the city limits, the remainder being within the unincorporated county, but within the UGA and planned annexation area of the City.] There is no question that the area designated R-40,000 within the Norway Hill Subarea is not a large scale, complex, high rank order value critical area as analyzed in the Board's *Litowitz* case. The City's *Litowitz* Test Report confirms this conclusion. However, in a recent Board decision [*Kaleas, 05307c*, FDO.], the Board acknowledged that the critical areas discussed in the Litowitz case, and several cases thereafter, were linked to the hydrologic ecosystem, and that the Board could conceive of unique geologic or topographical features that would also require the additional level of protection of lower densities in those limited geologically hazardous landscapes. [To qualify, geologically hazardous critical areas would have to be mapped, and use best available science, to identify their function and values. The Board concluded that the geologically hazardous areas on Norway Hill were mapped, and the area contained aquifers connected to salmon bearing streams. The Board upheld the R-40,000 designation for the affected area.] [*Fuhriman II, 05325c*, FDO, at 37-39.]
- [BAS is required in developing measures to protect the function and value of critical areas. BAS is not a prerequisite for a rezone.] If Petitioners believed that the City's identification, designation and protection of geologically hazardous areas along the western edge of the City was clearly erroneous, Petitioner's could have challenged the City's adoption of its critical areas regulations, the City's identification and designation of geologically hazardous areas, or the Comprehensive Plan's land use designations for the area. Petitioner did none of the above, and it is untimely to challenge any of those actions at this time. To now challenge the zoning designations that implement the unchallenged Plan designations, which are admittedly based upon

BAS, is without merit. Both parties have demonstrated that BAS, as reflected in adopted documents, was part of the record in this rezoning action. [*Abbey Road*, 05348, FDO, at 11.]

- [A jurisdiction's] duty and obligation to protect the public from potential injury or damage that may occur if development is permitted in geologically hazardous areas is not rooted in the challenged GMA critical area provisions. Rather, providing for the life safety of occupants and the control of damage to structures and buildings is within the province of building codes. Chapter 19.27 RCW. [*Sno-King, 06305*, FDO, at 15.]
- There is no disagreement that construction of buildings and structures near a seismic hazard area is governed by the IBC [2003 International Building Code], as adopted by the State Building Code, and applicable to Snohomish County. However, the County has identified a "regulatory gap" which is characterized as follows: The IBC's seismic provisions only apply to faults that have been verified and mapped by the USGS. [The newly discovered faults and inferred faults have not yet been mapped by USGS.] Therefore, the IBC provisions are not directly applicable. Consequently, to protect the public and property, the County has taken the action of adopting the Seismic Ordinance to fill this gap. [Petitioners do not dispute the gap, but rather contend that the regulations do not go far enough. The Board concluded that the County's adoption of the Seismic regulations was a responsible and reasonable action in face of the regulatory gap identified.] [*Sno-King, 06305*, FDO, at 15-16.]
- The Board finds and concludes that there is no discrepancy between the County's definition of "seismic hazard areas" and the GMA's definition of "geologically hazardous areas." While the GMA definition imposes no independent duty upon the County to protect life safety, the Board notes that the County's definition falls within the broader GMA definition and is more protective than that included in the IBC, since it includes protections for "inferred fault" areas. [*Sno-King, 06305*, FDO, at 16.]

- ## GMA Planning

- Comprehensive planning is an interactive and iterative deliberation process that weighs a variety of inputs prior to taking action. This methodology is described in many texts. The Board takes official notice of *Urban Design within the Comprehensive Planning Process*, M. Wolfe and D. Shinn, University of Washington Press, Seattle, 1970. This reference sets forth the sequential stages of the comprehensive planning process as: (1) **Recognition** Stage wherein existing policies, permitting actions, regulations and visual form and character are inventoried; (2) **Specification** Stage wherein Goals and Priorities are set forth; (3) **Proposal** Stage wherein a variety of alternative concepts are generated at the city, sector and project scales; (4) **Evaluation** Stage wherein the alternatives are scored against adopted criteria, including public review; (5) **Decision** Stage wherein a specific choice is made, developed and/or modified; and (6) **Effectuation** Stage wherein the selected alternative(s) are implemented via revisions to the land use, circulation, and facilities plans, regulatory measures and capital programs. M. Wolfe and D. Shinn, at 37. [*Twin Falls, 3303c*, FDO, at 78, fn. 27]

- [T]he decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. *See* RCW 36.70A.120. [*Aagaard, 4311c*, FDO, at 6]
- Under the GMA **all** lands are either: (1) *urban* lands (i.e., within urban growth areas), (2) *rural* lands or (3) *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being either within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as either urban or rural. In contrast, a "**de**-designation" of lands from resource lands to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction. [*Forster Woods, 1308c*, FDO, at 14, fn. 4]
- General discussion and overview of the difference between Plans and regulations and the importance of public participation in the processes. [*McVittie V, 0316*, FDO, at 13-15.]
- The GMA 20-year plan is a guiding light; it is a long-term vision for [a jurisdiction, it is generally] not something that you need to change on an emergency basis. However, development regulations may need to be changed on an emergency, but temporary, basis to respond to unforeseen circumstances. [Once a jurisdiction enacts] temporary controls or a moratorium, the jurisdiction should proceed through the [amendment or] docketing process to make the regulations permanent, if necessary, and to amend the plan if necessary. [This is a very reasonable approach that is consistent with the decision-making regime of the GMA.] [*McVittie V, 0316*, FDO, at 15.]
- [To provide context for the Board's decision, the Board described the nature of plans and the relationship of plans to regulations.] [*LIHI I, 0317*, 2/21/02 Order, at 4-6.]
- The mandatory and optional elements of a comprehensive plan must be consistent; the policies within the various Plan elements must work together, in harmony, and must not thwart each other. Although the Plan identifies and designates future land uses, the Plan itself does not *directly regulate* land use. However, the Plan is required to be implemented. The Plan is implemented through various methods, such as development regulations (*e.g.* zoning maps and code and other land development controls), and other implementing techniques, such as fiscal measures contained in a jurisdiction's capital expenditure program for infrastructure or road improvements or land acquisitions. Within many Plan elements an inventory and assessment of present conditions and needs must be discussed and identified. The ways to meet the identified needs must then be expressed in the form of map designations and policy statements. These policy statements and goals establish the jurisdiction's strategy and specific actions to be taken to meet the identified needs. The Plan describes, graphically and in policy statements, a desired future outcome for a planning city or county. The Plan also establishes, through map designations and policy statements, the basis and direction to achieve that desired future outcome. The Plan's future land

use map designations indicate *where* certain land uses outcomes are desired, the Plan's policy statements, objectives and goals indicate *how* those outcomes are to be achieved. [*LIHI I, 0317*, 2/21/02 Order, at 5-6.]

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- The Board acknowledges concomitant agreements have a long history in this state and have been upheld by our Courts in the pre-GMA *zoning* context (Footnote omitted); however, concomitant agreements do not readily transfer to the GMA context. GMA planning contains numerous requirements not found in pre-GMA planning. These requirements include, for example: ongoing and extensive public participation, designated and documented UGAs, state articulated goals provide guidance to plans and implementing regulations, required (not optional) comprehensive planning, plans must contain certain elements, plan elements must be consistent, and development regulations must be implemented consistently with the plans – through regulations (*i.e.* zoning) and capital investments. UGA expansion and amendment to a plan [future land use map – FLUM] designation involve broader issues of public concern and interest than the use of an individual parcel of property. Concomitant "zoning" agreements for a parcel of property cannot be the controlling factor in issues of UGA expansion or comprehensive plan [FLUM] designation. [*Hensley IV, 1304c*, FDO, at 32.]
- The term "de-designated," rather than simply "re-designated" was first used by the Board in *Grubb* [0314, FDO]. Under the GMA all lands are either: (1) *urban* lands (i.e. within urban growth areas); (2) *rural* lands; or *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as

either urban or rural. In contrast, a "**de**-designation" of lands from resource land to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction. [*Forster Woods, 1308c*, FDO, at 14, footnote 4.]

- The Board rejects the argument that the 1994 designation of the . . .parcel as forest resource lands was a "mistake." The record supporting that prior designation is not before the Board and the time to challenge the GMA sufficiency of that designation has long since passed. [The Board notes that the original property owner did not characterize the prior resource lands designation as a "discrepancy" or "mistake" in 1994, nor in 1995 when it sold the property with that designation intact. Nor did Intervenor characterize the prior designation as a "mistake" until after the property was logged in reliance upon that resource land designation. To advance such argument at this time is ironic, if not disingenuous.] [*Forster Woods, 1308c*, FDO, at 16 and footnote 5.]
- General discussion of the Grubb and Green Valley cases as they relate to resource lands. [*Forster Woods, 1308c*, FDO, at 16-18.]
- The Board holds that, when RCW 36.70A.020(8), .060 and .170 are read together, they create a *forest resource conservation imperative* that imposes an affirmative duty on local government to designate and conserve forest resource lands in order to assure the maintenance and enhancement of the forest resource industry. If a petitioner demonstrates that a de-designation has occurred, the respondent local government, in order to avoid a Board finding of error, must conclusively show how the circumstances have changed and why the designation criteria, including the definition at RCW 36.70A.030(8), no longer apply. [*Forster Woods, 1308c*, FDO, at 18.]
- [After applying the *Grubb* de-designation analysis] the Board concludes that the [164 acre] parcel is no longer viable for long-term commercial forestry primarily because it is severed from the larger pattern of forest land uses to the south. Reasonable minds can differ over how large a stand-alone "island" must be in order to remain commercially viable for long-term forestry. The Board finds it significant that in this case the County has measured the isolated 164-acre . . .parcel against an adopted County policy that calls for large blocks of forest land. Having done so, the County concluded that the . . .parcel was no longer viable as long-term commercial forestry. In this case, with these facts, the Board agrees that such a decision was within the County's sound discretion. [*Forster Woods, 1308c*, FDO, at 19.]
- [The de-designation of the property to rural is consistent with the County's policies regarding rural character] because the property lies between and buffers the Forster Woods [residential] development and the adjacent Rattlesnake Mountain Scenic Recreational Area. [*Forster Woods, 1308c*, FDO, at 23.]
- Based upon the arguments presented, the Board construes the crux of the dispute in this [issue] to be a question of: whether the County had a GMA duty to update its [UGA capacity analysis] (a new showing of work) when it adopted the amendments to the PRD regulations. In reviewing the question, the Board agrees with the County and affirms its prior holding in *Kelly* [*7312*, FDO] that the GMA creates no duty to continuously update UGA land capacity analysis every time development regulations are amended. [*Master Builders Association, 1316*, FDO, at 10.]

- The GMA promotes the spirit of interjurisdictional cooperation and coordination and should guide planning even between existing and newly incorporated cities. In its argument, Edgewood focuses on the alleged lack of coordination and cooperation in reaching the amendment decision. Edgewood acknowledges that the final decision [regarding the amendment] is Sumner's, but is concerned about the lack of a coordination process rather than the consistency of the resulting amendments. [The Board found numerous cooperative and coordinative actions between the cities and found compliance with RCW 36.70A.100.] [*Edgewood, 1318*, FDO, at 9.]
- The language of RCW 36.70A.480 is not prospective – it does not provide direction for future local legislative action to integrate shoreline policies and regulations into local GMA comprehensive plans and regulations, respectively, rather, .480 is prescriptive – the legislature has already taken legislative action to merge the constituent parts of every shoreline master program in this region [CPS] into the GMA mandated local comprehensive plans and development regulations. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 16.]
- In light of the plain language of RCW 36.70A.480, it is no longer possible for a local government to amend its shoreline master program without also amending its GMA comprehensive plan and development regulations. When doing so, a local government's action must comply with the goals and requirements of the GMA as well as the SMA. [However, SMP adoption procedures are pursuant to the SMA.] [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 17.]
- General discussion of the GMA/SMA total statutory scheme – RCW 36.70A.480 integration of SMA and GMA. [*Everett Shorelines Coalition, 02309c*, FDO, at 11-28, and Figures 1-3, at 89-91.]
- The Shoreline Management Act and the Growth Management Act are the related statutes that the Board must "read together to determine legislative purpose to achieve a harmonious total statutory scheme which maintains the integrity of the respective statutes." [*Everett Shorelines Coalition, 02309c*, FDO, at 12.]
- [RCW 36.70A.480 effectuates the legislature's intent to integrate GMA and SMA.] [*Everett Shorelines Coalition, 02309c*, FDO, at 13-14.]
- Simply stated, [RCW 36.70A.480] means: 1) the provisions of RCW 90.58.020 are the 14th Goal in the GMA; 2) the goals and policies contained in a shoreline master program (SMP) itself become an element of a GMA comprehensive plan (footnote and reference omitted); 3) other provisions of an SMP, including the SMP use regulations, are considered as GMA development regulations (reference omitted); and 4) adoption procedures for an SMP are governed by the SMA – *i.e.*, requiring Ecology's approval. [*Everett Shorelines Coalition, 02309c*, FDO, at 15.]
- The legislature intended the GMA and SMA to be integrated into a unified and coordinated land use decision-making regime as it applies to the areas of geographic overlap between the SMA and GMA jurisdictions. [*Everett Shorelines Coalition, 02309c*, FDO, at 15.]
- GMA critical areas and SMA shorelines are found in all three fundamental land use types (urban, rural and resource lands). When this occurs, the inherent natural attributes of the critical areas and shorelines will affect, and may limit, or prohibit, development of certain lands within such areas. . . .These inherent natural attributes place constraints on the development of land that are typically eliminated, minimized

or mitigated as development proceeds. Nonetheless, the inherent natural attributes of the land must be given substantial weight in differentiating the fundamental land use types and the compatibility of various land uses, improvements and activities. [*Everett Shorelines Coalition, 02309c*, FDO, at 16-17.]

- To sum up, it is overstating matters to contend that [the GMA and SMA] advocate either the "stoppage" of growth or unbridled growth. What these laws contemplate, separately and collectively, is the coordinated planning for, and control of the use of land to achieve articulated state-wide goals, objectives and purposes. [T]he "management" contemplated by both the GMA and the SMA is coordinated planning and the differential *control of the use of land* to achieve state-wide goals, objectives and purposes. Management is achieved through local comprehensive plans, including the shoreline master program element, development regulations and public spending priorities. In this management scheme, substantial weight must be given to the *inherent natural attributes of the land* in differentiating the fundamental land use types and the compatibility of various land uses, improvements and activities. [*Everett Shorelines Coalition, 02309c*, FDO, at 17.]
- In contrast to the SMA, the GMA directs a balancing of statutory goals and a larger degree of deference to local decisions. [*Everett Shorelines Coalition, 02309c*, FDO, at 18.]
- In contrast to the GMA, neither the words "balancing" nor "balance" appear in the SMA, nor are local government decisions accorded as much deference as under the GMA. [*Everett Shorelines Coalition, 02309c*, FDO, at 20.]
- [T]he most directive of the original thirteen GMA goals do not undermine or contradict the 14th goal; rather they buttress the SMA direction to 'preserve, protect and restore" shorelines. The primary and paramount policy mandate that the Board gleans from a complete reading of RCW 90.58.020, particularly in the context of the goals and overall growth management structure of Chapter 36.70A RCW, is one of shoreline preservation, protection, enhancement and restoration. [*Everett Shorelines Coalition, 02309c*, FDO, at 22.]
- From a review of the interplay between the relevant provisions of the two statutes, the Board concludes that, while development will continue to be permitted within the shorelines of the state, the primary and paramount goal, objective and purpose of the GMA/SMA total statutory scheme is to preserve, protect, enhance and restore the resources, ecology and ecosystem functions of the shorelines of the state, with special consideration paid to habitat for anadromous fish. [*Everett Shorelines Coalition, 02309c*, FDO, at 23.]
- It is difficult to imagine a shoreline ecology, that is the subject of the SMA planning regime, that does not consist of "ecosystem" values and functions defined by wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas and frequently flooded areas. The two regulatory schemes plainly address the same natural landscape, the same natural attributes, and the same natural processes. It is an inescapable conclusion that SMA "shorelines of statewide significance," are critical areas that are "large in scope, complex in structure and functions, and of a high rank order value." (Citation omitted) The Board concludes that shorelines of state-wide significance are critical areas subject to both the GMA and the SMA.

[*Everett Shorelines Coalition, 02309c*, FDO, at 24; *See also Everett Shorelines Coalition, 02309c*, 2/10/03 Order.]

- The protection and regulation of "shorelines of state-wide significance [a critical area and ecosystem] is to be based on the scientific method derived from the supportive and harmonious provisions of RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26.]
- [A]ll "shorelines of state-wide significance" designated under Chapter 90.58 RCW are "critical areas" pursuant to RCW 36.70A.030(5). Therefore, the shoreline master program element of comprehensive plans, and all designations and development regulations that purport to control the use of land in such areas, are subject to the requirements of RCW 36.70A.060 and .172. Consequently, all shoreline master program element plan provisions and development regulations designed to govern shorelines of state-wide significance must: 1) be guided substantively by the protect, preserve, enhance and restore goals of RCW 36.70A.020(8), (10) and (14); and 2) utilize the scientific method derived from RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26; *See also Everett Shorelines Coalition, 02309c*, 2/10/03 Order.]
- [In adopting or amending SMPs] the SMA public involvement requirements of RCW 90.58.130 would control rather than the GMA public participation provisions of RCW 36.70A.020(11), .035 and .130 or .140. Thus, adoption or amendment to the Shoreline Element of the comprehensive plan and development regulations must be done in conformance with RCW 90.58.130. [*Everett Shorelines Coalition, 02309c*, FDO, at 27.]
- Regarding restoration, the Board concludes that portions of the City's SMP contain goals, objectives and policies that comply with the restoration requirements of the total GMA/SMA statutory scheme. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- The Board also concludes that the inventory, specifically the SEWIP, that supports the SMP restoration goals, objectives and policies meet the standard of best available science. However, the Board concludes that the City's SMP's restoration provisions do not comply with the total GMA/SMA statutory scheme because they do not assure that ecosystem restoration will actually occur. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- In order to do so, the SMP needs to include: (1) specific timetables and benchmarks to measure system improvements; (2) land use policies that assure that shoreline development results in no net loss of ecosystem functions and (3) credible commitments of public resources to restoration purposes on public lands. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- General discussion and application of the GMA/SMA total statutory scheme to five shoreline designations in the City of Everett. [*Everett Shorelines Coalition, 02309c*, FDO, at 45-59.]
- The City's SMA development regulations, whether labeled by the City as such, have been rendered by RCW 36.70A.480 as GMA development regulations. [Everett Shorelines Coalition, 02309c, 2/10/03 Order, at 5.]
- Subarea plans are neither defined nor required by the GMA; Subarea plans are an optional element that a jurisdiction may include in its GMA Plan. RCW

36.70A.080(2). All that can be inferred from the statute, and prior Board cases, is that subarea plans are, as the pre-fix "sub" implies, subsets of the comprehensive plan of a jurisdiction. Additionally, subarea plans typically augment and amplify policies contained in the jurisdiction-side comprehensive plan. [*Laurelhurst, 03308*, FDO, at 8.]

- GMA comprehensive plans and subarea plans guide land use decision-making by providing policy guidance and direction to development regulations that, in turn, must be consistent with and implement the plan. These development regulations, in turn, directly control the use of land and govern over proposal review and approval and the issuance of permits. [*Laurelhurst, 03308*, FDO, at 9.]
- Just as the GMA provides all citizens predictability in the location and type of future growth and development that will be accommodated, those citizens that seek to carry out these GMA Plans – developers and project proponents – seek an additional degree of predictability for pursuing their development proposals. Goal 7 of the GMA addresses this need. [*Olsen, 03303*, FDO, at 7.]
- [The Board has previously held that in the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the Growth Management Act. (*Citation omitted*.)] The Board continues to stand by this holding as the law in this region. Why does it matter, as a matter of public policy, that a development regulation must be adopted, and likewise amended, subject to the public participation goal and requirements of the GMA? Absent a GMA process, the public is not entitled as a matter of law to "notice procedures that are reasonably calculated to provide notice to . . . affected and interested individuals" (RCW 36.70A.035); elected officials are not obliged to be "guided by" (*i.e.*, to consider) the Act's planning goals (RCW 36.70A.020, (preamble)), including the goal to "encourage the involvement of citizens in the planning process" (RCW 36.70A.020(11); nor are they required to provide for "broad dissemination of proposals and alternatives" while engaging the public in "early and continuous participation" in the development (RCW 36.70A.140) and amendment (RCW 36.70A.130) of plans and regulations. In short, as the Board has previously observed: "To inappropriately truncate or eliminate the public's opportunity to participate in the making of local government policy would fly in the face of one of the Act's most cherished planning goals and separate the "bottom up" component of GMA planning from its true roots – the people." (Citation omitted.) [*Laurelhurst II, 03316*, FDO, at 24-25.]
- [T]he City . . .has a range of options in designating areas at risk of low-probability, high-consequence hazards. It may choose to adopt maps or modeling provided by other agencies or academic scientists. [Reference omitted.] It may commit to making designations and corresponding regulatory changes as soon as updated science is available. [Reference omitted.] It may rate hazards as "known or suspected risk," "no risk," or "unknown-risk." WAC 365-190-080(4)(b). It may designate based on criteria such as recurrence interval or other likelihood or damage potential assessment. *Nonetheless, the GMA clearly mandates that cities *designate* environmentally critical areas, including geologically hazardous areas. RCW 36.70A.060(2), .030(5) and (8). In making these designations they "shall consider" the minimum guidelines promulgated by CTED. RCW 36.70A.170(2), .050. Here, it

does not appear that the City of Seattle considered CTED's guidelines which call for designation of areas subject to more remote but potentially-catastrophic geologic hazards. [*Seattle Audubon, 06324*, FDO, at 19.]

- [T]he GMA requires that critical areas regulations be updated periodically, RCW 36.70A.130(3), and that cities "shall include" best available science in designating critical areas, RCW 36.70A.172(1). Here, the City of Seattle is aware of a great deal of new science concerning the existence and location of surficial faults and concerning the past occurrence and future risks of tsunamis and lahars. But the City has not included this new science, even provisionally, in its designations of geological hazard areas. [*Seattle Audubon, 06324*, FDO, at 19.]

- **Goals**

- Cities and counties planning under the Act must consider the planning goals listed at RCW 36.70A.020 before adopting comprehensive plans and development regulations. (The easiest way to show that a jurisdiction has "considered" planning goals is to acknowledge their existence in writing.) [*Gutschmidt, 2306,* FDO, at 14-15.]
- Prior to GMA, plans were voluntary and advisory and there was no requirement that plans be guided by state goals or be consistent with the plans of others. Under GMA, plans are now mandatory (RCW 36.70A.040) and directive. RCW 36.70A.100, .103 and .120. Plans must now be guided by planning goals (RCW 36.70A.020) and be mutually consistent. RCW 36.70A.110 and .210. [*Rural Residents, 3310,* FDO, at 17.]
- A major purpose of UGAs is to serve Planning Goal 1 and Planning Goal 2. [*Rural Residents, 3310,* FDO, at 17.]
- Compact urban development is the antithesis of sprawl. [*Rural Residents, 3310,* FDO, at 19.]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, at 9.]

- The Act requires cities and counties to preserve existing housing while promoting affordable housing and a variety of residential densities and housing types. No jurisdiction is required to reconcile these seemingly inconsistent requirements by totally focusing on one requirement, for instance preserving existing housing, to the exclusion of other requirements, such as encouraging more affordable housing. Instead, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them. [*WSDF I, 4316,* FDO, at 30.]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, at 79.]
- The property rights goal, while an important cornerstone of the GMA, is not supreme among the 13 goals. The Act requires local governments to balance all 13 goals and to consider the process recommendations of the Attorney General's Office. [*Vashon-Maury, 5308c,* FDO, at 89.]
- While the preamble to RCW 36.70A.020 clarifies that the goals are not listed in any order of priority, a close examination of the 13 goals reveals that there are some important distinctions that can be drawn among them. Unlike the other ten, three planning goals [(1) urban growth; (2) reduce sprawl; and (8) natural resource industries] operate as organizing principles at the county-wide level. Thus, they have not only a procedural dimension, but they also direct a tangible and measurable outcome. In contrast, Goal 6, regarding property rights, and Goal 11, regarding public participation, do not specifically or implicitly describe the physical form or configuration of the region that should evolve. Rather, they address how local government is obligated to undertake the comprehensive planning and implementing actions that will shape the region (i.e., without taking private property and with enhanced public participation). [*Bremerton, 5339c,* FDO, at 25.]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, at 28.]
- RCW 36.70A.020(4) does not prohibit the demolition of existing housing structures. Instead, cities and counties must balance the Act's requirements to "encourage preservation of existing housing stock" with the demand to "encourage the availability of affordable housing" and the promotion of a "variety of residential

densities and housing types." . . . It does not mandate that single-family residences be preserved at the expense of every other housing type. [*WSDF II, 5340,* FDO, at 25.]

- RCW 36.70A.320 requires the Board to presume that a comprehensive plan and development regulations are valid. It does not condition this presumption on the record containing an explicit statement by the local government that it considered the Act's planning goals. Instead, substantive compliance with those goals remains a requirement of the Act that all jurisdictions are presumed to have met unless and until a petitioner proves otherwise. [*Alberg, 5341c,* FDO, at 13.]
- The Board rejects the argument that Goal 6 (Property Rights) must be interpreted to mean that the imposition of zoning which limits the uses on a property gives rise to the County's duty to compensate for the uses which are not allowed. [*Alberg, 5341c,* FDO, at 45.]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c,* FDO, at 46.]
- Counties are required to be guided by the goals set forth at RCW 36.70A.020, and that the requirement has both a procedural and a substantive component. RCW 36.70A.280 gives the Board jurisdiction over that requirement; RCW 36.70A.300 directs the Board to determine whether compliance with that requirement has occurred. [*Sky Valley, 5368c,* FDO, at 124.]
- In order for petitioners to prevail in this type of challenge, they must prove that the action taken by a city or county is both arbitrary and discriminatory. Showing either an arbitrary or discriminatory action is insufficient to overcome the presumption of validity that actions of cities and counties are granted by the Act. [*Shulman, 5376,* FDO, at 12.]
- Where a petition alleges noncompliance with both the public participation goal and the specific public participation requirement of the Act, the Board will scrutinize only the latter. [*Litowitz, 6305,* FDO, at 7.]
- Neither goal (1) and (2) nor *Anderson Creek,* establish a GMA duty that precludes a jurisdiction from limiting the scope and magnitude of development in critical areas or environmentally sensitive areas. [*Litowitz, 6305,* FDO, at 9.]
- Nothing in the Act suggests that either the planning goal [housing .020(4)] or the housing element requirements [.070(20(c) and (d), specifically] are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions suggests that the above cited provision provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-side level. Thus,

the Board construes these sections to read, in effect: ". . . identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction...*". [*Litowitz, 6305,* FDO, at 19.]

- The Board has jurisdiction to determine a challenged local government action's compliance with the goals *and* requirements of the Act. [*Cole, 6309c,* FDO, at 11-13.]
- The GMA's planning goals guide the development and adoption of comprehensive plans, and guide the adoption of amendments to comprehensive plans. [*Cole, 6309c,* FDO, at 15.]
- RCW 36.70A.070(2)(a) does not require a jurisdiction to include in its planning goals, policies and objectives for each and every neighborhood within its jurisdiction. No such GMA duty exists. [*Buckles, 6322c,* FDO, at 21.]
- Where a petition alleges noncompliance with both the housing goal and the specific housing element requirement of the Act, the Board will scrutinize only the latter. [*Children's II, 6323,* FDO, at 9.]
- There are no specific GMA requirements that implement goals RCW 36.70A.020(8) and (9) – Natural Resource Industries and Open Space and Recreation. [*Tulalip, 6329,* FDO, at 15.]
- The Board will review the challenged enactments to "determine whether [they] achieve the legislature's intended results: consistency with the planning goals of the Act." In other words, to show substantive noncompliance with a planning goal, a petitioner must identify that portion of the challenged enactment that is not consistent with, or thwarts, the planning goal, and explain why the identified portion does not comply with that goal. Citing *Rural Residents, 3310,* FDO. [*Rabie, 8305c,* FDO, at 6.]
- The GMA does not list the goals in any rank order; it is also true that there is no conflict between Goals 8 and 9 in the abstract, or where they are applied to different parcels of land. The conflict arises when they are both invoked as the goal rationale for a specific land use on a single parcel. In such an instance, it is notable that, by their very choice of words, Goals 8 and 9 do not convey an equal level of guidance. Comparing the active verbs, we find that Goals 9 conveys that local governments are to *encourage* the development of recreational opportunities while Goal 8 conveys that local governments are to *maintain and enhance* resource-based industries. It is plain that less directive and specific language, such as *encourage,* must yield to more specific and directive language, such as *maintain and enhance.* [*Green Valley, 8308c,* FDO, at 16.]
- [RCW 36.70A.020(7) provides guidance for processing applications for permits not plan amendments]. [*LMI/Chevron, 8312,* FDO, at 9.]
- RCW 36.70A.020(7), .470, and 130, read individually or collectively, [do not] establish a duty [for jurisdictions] to consider specific plan amendments on an annual basis. [*LMI/Chevron, 8312,* FDO, at 12.]
- General discussion of the Board's treatment of challenges to goals and consistency analysis. [*LMI/Chevron, 8312,* FDO, at 21.]
- Fundamental to a city's complying with Goals 1 and 2 is that its land use element, including its future land use map, permits appropriate urban densities throughout its jurisdiction**.** [*LMI/Chevron, 8312,* FDO, at 24.]

- [A plan, or subarea plan, policy that seeks to protect and maintain the large lot, low density, residential character of a city without encouraging urban growth at appropriate urban densities or reducing the conversion of undeveloped land to low density development is inconsistent with, thwarts, and does not comply with Goals 1 and 2 (RCW 36.70A.020(1) and (2).] [*LMI/Chevron, 8312,* FDO, at 28.]
- RCW 36.70A.020(3) does not require that each and every land use designation of a jurisdiction permit residential densities that support all modes of transportation. [Reliance on urban density designations alone is not enough to demonstrate noncompliance with Goal 3.] [*LMI/Chevron, 8312,* FDO, at 29.]
- [RCW 36.70A.020(4) does not require that each and every land use designation of a jurisdiction provide for affordable housing. [*LMI/Chevron, 8312,* FDO, at 29.]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, at 30.]
- [For purposes of analyzing challenges to RCW 36.70A.020(6),] a clearly erroneous action is not necessarily an arbitrary action. "Arbitrary" means to be determined by whim or caprice. Washington's courts have further defined "arbitrary or capricious" action to mean willful and unreasoning action taken without regard to or consideration of the facts and circumstances surrounding the action. Citing cases. [*LMI/Chevron, 8312,* FDO, at 31.]
- [The GMA does not compel redevelopment of existing developed parcels, but it does require that the plans that govern new development or redevelopment allow compact urban development at appropriate urban densities in order to be consistent with the goals of the GMA.] [*LMI/Chevron, 8312,* FDO, at 37.]
- The GMA [goal 3] does not explicitly identify the regional transportation priorities. However, these priorities may be identified by reference to other statutes. Chapters 81.104 RCW and 81.112 RCW give substance to RCW 36.70A.020(3). [*Sound Transit, 9303,* FDO, at 9.]
- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c, FDO,* at 13.]
- [To provide the guidance requested by the parties, regarding the interrelationship of Goal 12 (RCW 36.70A.020(12)) with other requirements sections of the GMA, the Board fashioned four questions – which it subsequently answered.] [*McVittie, 9316c, FDO,* at 22.]
- While Board review of a challenge to RCW 36.70A.070(3) or (6) focuses on the specific requirements of the section, the Board's review must be done in light of Goal 12, not in lieu of Goal 12. [*McVittie, 9316c, FDO,* at 22.]
- The answer to question 1 – Does Goal 12 create a duty beyond the capital facility planning that is required by RCW 36.70A.070(3)? – is yes. Goal 12's reach extends to compliance with RCW 36.70A.070(6). Additionally, Goal 12 may go beyond a challenge to compliance with the requirements of RCW 36.70A.070(3) or (6). Goal 12 also requires substantive compliance. Other plan or development regulation

provisions of the local government may not thwart its provisions. [*McVittie, 9316c, FDO*, at 23.]

- [R]eading RCW 36.70A.070(3) in light of Goal 12, the Board concludes that the CFE must include locally established minimum standards, a baseline, for included public facilities, so that an objective measurement test of need and system performance is available. [*McVittie, 9316c, FDO,* at 25.]
- The answer to question 2 – Does Goal 12 require the designation of a single Level of Service (LOS) standard for the facilities and services contained in the CFE? – is yes. Goal 12 gives context to RCW 36.70A.070(3). Goal 12 requires a locally established single minimum (level of service) standard to provide the basis for objective measurement of need and system performance for those facilities locally identified as necessary. The minimum standard must be clearly indicated as the baseline standard, below which the jurisdiction will not allow service to fall. The minimum standard may be the lowest point indicated within a range of service standards for a type of facility. [*McVittie, 9316c, FDO,* at 25.]
- Goal 12 explicitly provides an action-forcing requirement [trigger mechanism] if public facilities cannot support development without decreasing levels of service below the locally established minimums. [*McVittie, 9316c, FDO*, at 23.]
- The answer to question 3 – Does Goal 12 require an enforcement mechanism or "trigger" that forces a reassessment action or implement concurrency by a jurisdiction? – is yes. The GMA is to work as an integrated whole. RCW 36.70A.070(3) and (6) operate to achieve and implement Goal 12. These provisions require a "trigger mechanism" to compel reevaluation. However, local governments have numerous options to consider during reassessment. Also, if reassessment action is "triggered" the responsive action must occur in compliance with the public participation provisions of the GMA. [*McVittie, 9316c, FDO*, at 27.]
- Goal 12 enables local governments to exercise their discretion in making the reasoned determination of which public facilities and services are necessary to support development within the jurisdiction. (Concurring with the Western Washington Growth Management Hearings Board's decision in *Taxpayers for Responsible Growth v. City of Oak Harbor*, WWGMHB Case No. 96-2-0002, Final Decision and Order (Jul. 16, 1996), at 10-11.) [*McVittie, 9316c, FDO,* at 28.]
- Unlike the transportation element, the capital facilities element does not use the phrase "concurrent with development" and does not specify an enforcement procedure. [However, read in light of Goal 12] a local government is obligated to take steps to ensure that those facilities and services it has identified as being necessary to support development are adequate and available to serve development. [*McVittie, 9316c, FDO,* at 29.]
- Goal 12 requires enforcement and, just as it allows discretion in identifying necessary facilities to support development, it allows local discretion in developing the type of enforcement mechanism or programs to ensure public facilities are adequate and available to support development. These enforcement mechanisms and programs . . . may involve the use of existing regulatory techniques that are authorized, or even required, by other statutory authority. (Footnote omitted.) [*McVittie, 9316c, FDO,* at 30.]

- The answer to question 4 – Does Goal 12 require "concurrency" for all public facilities and services, beyond the explicit concurrency requirement of RCW 36.70A.070(6)(b) for transportation" is no. Goal 12 does not require a development-prohibiting concurrency ordinance for non-transportation facilities and services. Goal 12 allows local governments to determine what facilities and services are necessary to support development and develop an enforcement mechanism for ensuring that identified necessary facilities and services for development are adequate and available. [*McVittie, 9316c, FDO,* at 30.]
- [In *Green Valley, 8308c*] the Board examined and rejected the argument that the discretion that the GMA affords to local governments to "balance the goals of the Act" somehow elevates recreational uses to an equal with agricultural uses. [*Grubb, 0304*, FDO, at 9.]
- [Petitioner makes no independent argument regarding compliance with the goals of the Act. The challenges to the goals are argued in the context of non-compliance with various requirements of the Act; therefore, they are addressed in the Board's analysis of the various requirements of the Act.] [*McVittie IV, 0306c*, at 11.]
- [DOC sought a determination of invalidity, which requires the Board to find substantial interference with the goals of the Act. There is no GMA goal that explicitly addresses EPFs. DOC argued, but the Board rejected the argument that] RCW 36.70A.020(12) implicitly encompasses the non-preclusionary requirements of RCW 36.70A.200. [To make this case, the Board would have to see evidence that the jurisdiction had identified work release and juvenile community facilities as necessary to support development and that the jurisdiction had established minimum standards for such facilities.] However, the Board is concerned that the City ensures coordination between communities and jurisdictions, including DOC, to reconcile conflicts [RCW 36.70A.020(11).] [*DOC/DSHS, 0307*, FDO, at 16-17.]
- [The public participation goal RCW 36.70A.020(11)] provides an umbrella under which all the GMA public participation requirements fit. It articulates a premium on involving citizens in the entire GMA planning process; and specifically emphasizes the importance of public participation for comprehensive plans and development regulations. [*McVittie V, 0316*, FDO, at 16.]
- *See also:* **Affordable Housing** [*LIHI I, 0317*]
- [If a challenge cites goals of the Act and the specific requirements section of the Act that relate to those goals], the Board looks first to the requirements sections of the Act to determine compliance. Review is done in light of the goals of the Act, not in lieu of the goals. If the Board finds noncompliance with a requirement section of the Act, it then returns to review the goals to determine whether substantial interference has occurred and whether invalidity should be impose. [*Kitsap Citizens, 0319c*, FDO, at 10.]
- One of [the Board's] fundamental conclusions was the Board review of a challenge to RCW 36.70A.020(3) or (6) must be done "in light of Goal 12, not in lieu of Goal 12. [*McVittie VI, 1302*, FDO, at 11.]
- [In McVittie I, 9316c, FDO, 23-30.] [T]he Board reached four other basic conclusions about the cumulative effect of Goal 12 and the capital facilities requirements of the Act: (1) Goal 12 creates a duty beyond the capital facility planning that is required by RCW 36.70A.070(3) and requires substantive, as well as procedural compliance; (2)

Goal 12 requires the designation of a locally established single Level of Service (LOS) standard for the facilities and services contained in the Capital Facilities Element, below which the jurisdiction will not allow service to fall; (3) Goal 12 operating through RCW 36.70A.070(3) and (6), requires an enforcement mechanism or "trigger" to compel either concurrency implementation or reevaluation of numerous options; and (4) Goal 12 does **not** require a development-prohibiting concurrency ordinance for non-transportation facilities and services, rather, it allows local governments to determine what facilities and services are necessary to support development and the enforcement mechanism for ensuring that identified necessary facilities and services for development are adequate and available. (Footnotes omitted). [*McVittie VI*, *1302*, FDO, at 11-12.]

- The Board notes that while Plan provisions must be guided by and consistent with the Goals of the Act, it is conceivable that an unchallenged plan policy (now time barred from challenge) may not be guided by a goal. Consequently, in that situation, a challenge to an implementing regulation (which must also be consistent with the goals as well as implement the Plan) could be consistent with one and not the other. [*Master Builders Association, 1316*, FDO, at 18, footnote 16.]
- [Petitioner argued that] there appears to be a serious disconnect between transportation plans and improvements done by the County and the State. [Therefore] the spirit of Goals 3 and 12 [must apply because they] would demand a better degree of coordination and consistency between the plans and actions of State and County government. Even the County laments the timing of State improvement, to say nothing of the timing of the adoption of State LOS standards. Nevertheless, the Board must conclude that neither Goals 3 and 12, indeed **none** of the goals listed in RCW 36.70A.020 apply to the State because the preamble to that section unequivocally states the goals "shall be used *exclusively* for the purpose of guiding the development of comprehensive plans and development regulations." This is an unfortunate but inescapable conclusion, because to truly achieve managed growth there must be a better linkage between local efforts and state efforts. [*McVittie VIII, 1317*, FDO, at 10.]
- Petitioners cite to no authority for its ["necessary linkage" assertion that the Board must determine the constitutionality of a action to determine compliance with Goal 6.] [The Board agrees with the City] the Board does not have to 'necessarily' determine the constitutionality of a city's action when reviewing a challenge under Goal 6. Under Goal 6, the requirement to find both arbitrary and discriminatory action is not the same as finding a violation of a constitutional provision. [The Board has jurisdiction to review an action for whether it complies with Goal 6, but not for whether it is constitutional.] [*HBA II, 1319*, 10/18/01 Order, at 2-3.]
- The actual conflict in this instance is between Bellevue's preferred *mechanism* to achieve its redevelopment objective and the Act's concurrency requirements. In crafting development regulations, local governments may choose to give greater weight to one GMA goal than to another GMA goal. [Here Goal 1 and 2 versus Goal 12] However, such a local goal preference does not remove the duty to comply with a specific and unequivocal GMA requirement. Furthermore, conflicts, if any, between a general GMA goal and a specific GMA requirement must be resolved in favor of the latter. [*Bennett, 1322c*, FDO, at 11.]

- The Housing Goal contains three separate, but equal subparts: 1) encouraging the availability of affordable housing to all segments of the population of this state, 2) promoting a variety of residential densities and housing types, and 3) encouraging the preservation of existing neighborhoods. [*LIHI II, 1223*, FDO, at 8.]
- The Housing Incentive Program (HIP) defines low-income as 80% or less of the average median income (AMI). [Petitioner] is correct, the HIP does not distinguish those at or below 50% AMI (very low-income) or those at or below 30% AMI (extremely low-income) persons. As [Petitioner] demonstrates, over three-quarters of the poor people who need affordable housing in Lakewood earn less than 50% of median income. American Lake Gardens, Springbrook and Tillicum contain some of the highest concentrations of poverty in the City. While those with the greatest need fall within the City's low-income definition, the bar is high enough to dilute the potential impact of the HIP program in providing affordable housing to the poorest of Lakewood's poor that are concentrated in its poorest neighborhoods. [*LIHI II, 1223*, FDO, at 10-11.]
- Further, the Board agrees with [Petitioner] that the HIP is ambiguous and unclear as to whether seniors or disabled persons must also be low-income to benefit from the program and whether or not low-income units can qualify for the density bonuses. . . . [The language contained in the HIP] seems to suggest that housing units to serve non low-income seniors or non low-income disabled persons are eligible for the density bonuses of the HIP. If this is the case, it further dilutes the potential effectiveness of the HIP in providing affordable housing to low-income persons. It is also not clear whether the fee reductions are only available to low-income tenants. Base upon these ambiguities of the HIP, the Board concludes that the HIP does not encourage the provision of affordable housing to all economic segments of Lakewood's population. [*LIHI II, 1223*, FDO, at 10-11.]
- Simply stated, [RCW 36.70A.480] means: 1) the provisions of RCW 90.58.020 are the 14th Goal in the GMA; 2) the goals and policies contained in a shoreline master program (SMP) itself become an element of a GMA comprehensive plan (footnote and reference omitted); 3) other provisions of an SMP, including the SMP use regulations, are considered as GMA development regulations (reference omitted); and 4) adoption procedures for an SMP are governed by the SMA – *i.e.*, requiring Ecology's approval. [*Everett Shorelines Coalition, 02309c*, FDO, at 15.]
- In contrast to the SMA, the GMA directs a balancing of statutory goals and a larger degree of deference to local decisions. [*Everett Shorelines Coalition, 02309c*, FDO, at 18.]
- In contrast to the GMA, neither the words "balancing" nor "balance" appear in the SMA, nor are local government decisions accorded as much deference as under the GMA. [*Everett Shorelines Coalition, 02309c*, FDO, at 20.]
- Review of the SMA use preferences indicates to the Board that the preservation of the natural character of the shorelines, protection and restoration of the resources and ecology of the shorelines, recreation and public access to the shoreline are weighted more heavily than, and take priority over, other various and sundry uses that would fit within the seventh level of preferences listed [in RCW 90.58.020]. This is the essence of the 14th GMA Goal. [*Everett Shorelines Coalition, 02309c*, FDO, at 21.]

- [T]he most directive of the original thirteen GMA goals do not undermine or contradict the 14th goal; rather they buttress the SMA direction to 'preserve, protect and restore" shorelines. The primary and paramount policy mandate that the Board gleans from a complete reading of RCW 90.58.020, particularly in the context of the goals and overall growth management structure of Chapter 36.70A RCW, is one of shoreline preservation, protection, enhancement and restoration. [*Everett Shorelines Coalition, 02309c*, FDO, at 22.]
- From a review of the interplay between the relevant provisions of the two statutes, the Board concludes that, while development will continue to be permitted within the shorelines of the state, the primary and paramount goal, objective and purpose of the GMA/SMA total statutory scheme is to preserve, protect, enhance and restore the resources, ecology and ecosystem functions of the shorelines of the state, with special consideration paid to habitat for anadromous fish. [*Everett Shorelines Coalition, 02309c*, FDO, at 23.]
- The GMA clearly encourages the preservation of existing housing stock (*See* RCW 36.70A.020(4)) and provides for ensuring the vitality and character of established residential neighborhoods (*See* RCW 36.70A.070(4)). However, as the Board stated, *supra*, "any opportunity to perpetuate an "historic low-density residential" development pattern, [in the subarea], ended in 1994 when the County included the area within the UGA." It is clear that existing housing stock and neighborhoods may be maintained and preserved, however existing low-density patterns of development cannot be perpetuated. [MBA/Brink, 02310, FDO, at 14-15.]
- Just as the GMA provides all citizens predictability in the location and type of future growth and development that will be accommodated, those citizens that seek to carry out these GMA Plans – developers and project proponents – seek an additional degree of predictability for pursuing their development proposals. Goal 7 of the GMA addresses this need. [*Olsen, 03303*, FDO, at 7.]
- The "ensure[d] predictability" included in Goal 7 is directed towards, and attaches to project *applicants*. Predictability for a permit applicant is ensured through a permit application review process that is timely and fair. The Board notes that the addition of the extension process "diminishes" the predictability originally set forth in KCC 21A.41.100 (A) and (B). Nonetheless, it is clearly within the City of Kenmore's discretion to determine whether it desires a permit extension process or not, and to establish the criteria for granting, denying or otherwise limiting the frequency or duration of such extensions. [*Olson*, 03303, FDO, at 7.]
- Both the CPPs [RCW 36.70A.210(1)] and goals [RCW 36.70A.020] must be used to guide the development of locally adopted plans. Those comprehensive plans must adhere to both the CPPs and the goals of the Act. The locally established CPPs cannot contradict the goals of the statute and still fulfill their statutory obligations. (Footnote omitted.) . . .[I]f CPPs are required to establish a framework for guiding the development and amendment of comprehensive plans so as to ensure GMA compliance and consistency among jurisdictions; then the CPP guiding framework must also adhere to the goals and requirements of the Act. CPPs cannot be blind to the goals of the Act – the GMA's goals provide substantive context in the development and adoption of CPPs. This is in keeping with the interpretation of the Supreme Court which, in construing the Act, has consistently read the goals into

substantive provisions. (Footnote omitted.) . . . To give effect to these GMA requirements [RCW 36.70A.020 and .210(1)] the Board holds that county-wide planning policies must be guided by, and be consistent with, the planning goals set forth in RCW 36.70A.020. Although the goals are not listed in order of priority for purposes of comprehensive plans, certain goals will have greater relevance than others at the county-wide scale. (Footnote omitted.) [*CTED, 03317*, FDO, at 15-16.]

- While the Act recognizes that the County may consider local circumstances in establishing rural densities in the Plan's Rural Element, the Act also *requires* that the County "develop a written record explaining how the rural element [here how the rural wooded land policies] harmonize the planning goals in RCW 36.70A.020 and meets the requirements of this chapter." RCW 36.70A.070(5)(a). The Board construes this "written record explanation" requirement to be a discrete document produced by the County, which may compile record evidence to explain how the goals are harmonized. [The Board found no written record addressing this requirement.] [*Bremerton II, 04309c*, FDO, at 24.]
- [Goals 8 and 10, by themselves] do not impose a requirement upon jurisdictions to conduct a critical areas analysis of potential impacts of the adoption, or amendment of, GMA Plans and development regulations. [*Bremerton II, 04309c*, FDO, at 27.]
- The physical form the GMA is driving towards in its mission to curb sprawl is "a compact urban landscape." . . . Residential development is a major component of the region's compact urban form. Therefore, as growth continues, higher residential urban densities become a corollary to compact urban development. However, urban density is not necessarily an end in itself; it is a means of achieving numerous goals in the GMA – goals which are to guide all the GMA planning jurisdictions. [*Kaleas, 05307c*, FDO, at 13-14.]
- Allowing higher residential densities in areas and neighborhoods where urban services and facilities already exist, or are readily available, increases service efficiencies and can lower the costs of providing urban services. The per capita costs of providing urban services tends to be lower when development is compact and at higher densities [Goals 1 and 12 and RCW 36.70A.110 and .070(3)]. [*Kaleas, 05307c*, FDO, at 14.]
- Increasing densities in urban areas prevents the inappropriate conversion of undeveloped land thereby curbing the perpetuation of sprawl. Compact urban development is the antithesis of sprawl. [Goal 2 and RCW 36.70A.110]. Higher urban densities at locations along major transportation corridors and allowing mixed uses at designated centers support transit and other alternative forms of transportation as well as encourage economic development. [Goals 3 and 5 and RCW 36.70A.070(6) and (7)]. [*Kaleas, 05307c*, FDO, at 14.]
- Higher density single family and multifamily housing (apartments, cottage housing, condominiums and townhouses, etc.) adds variety to housing alternatives within urban areas to help make housing affordable for all segments of the population. [Goal 4 and RCW 36.70A.070(4)]. [*Kaleas, 05307c*, FDO, at 14.]
- Likewise, increasing the intensity and density of development in urban areas is a means of preserving our natural resource industries and historical or archaeological sites, protecting open space and the environment. [Goals 8, 9, 10 and 13 and RCW 36.70A.070(8), .050, .060, .170 and .172]. [*Kaleas, 05307c*, FDO, at 14.]

- In considering Planning Goals 1 and 2, the Board looks to the ruling in *Quadrant*, supra, where the Court indicated that "the primary method for meeting the goals of subsections .020(1) (urban growth) and .020(2) (reduce sprawl) is set forth in RCW 36.70A.110." Citation omitted. [*Camwest II, 05341*, FDO, at 23.]
- [The Board concluded that Petitioners did not carry their burden in demonstrating that the growth phasing lottery was developed in disregard of the affordable housing, economic development and property rights Goals. However, the Board concluded that Goal 7 – Permits, was not followed since a lottery based on the luck of the draw would not lead to predictability. Likewise, the inter-jurisdictional coordination aspect of Goal 11 was also ignored. [*Camwest II, 05341*, FDO, at 29-37.]
- [A thorough discussion as to balancing of the GMA's goals and requirements in light of several decisions of the Courts including *Quadrant (2005), King County (2000),* and *Bellevue (2003).* The Board concluded that these decisions of the Supreme Court and Court of Appeals established the rule that a jurisdiction may not assert the need to balance competing GMA goals as a reason to disregard specific GMA requirements.] [*DOE/CTED, 05334*, FDO, at 11-13.]
- [The Board concludes that GMA goals provide a framework for plans and regulations, and many of the goals are backed and furthered by specific and directive GMA requirements and mandates. Therefore cities and counties may not merely rely upon GMA goals, standing alone, to dilute or override GMA requirements.] [*DOE/CTED, 05334*, FDO, at 52-53.]
- The Growth Management Act, from its inception, was built around the concept of coordinating urban growth with availability of urban infrastructure. Determining that "uncoordinated and unplanned growth" posed a threat to the state and its citizens [RCW 36.70A.010], the legislature created a framework that requires consistency between land use planning and coordinated provision of capital facilities and urban infrastructure. *See e.g.*, RCW 36.70A.070(3), .110(3). The "urban growth" and "public facilities" goals used to guide local comprehensive plans are cross referenced. RCW 36.70A.020(1) and (12). [*Fallgatter V, 06303*, FDO, at 11.]

- **Group Homes**

- "Residential structure occupied by persons with handicaps" means the use to which the structure is put, rather than the building itself. In other words, RCW 36.70A.410 addresses the individuals occupying the residential structure, and under what circumstances they are doing so. . . . The Board will interpret the phrase broadly so that it operates prospectively, covering residential structures that are someday intended to be occupied by handicapped persons, not just residences that may already be occupied by handicapped persons. [*Children's I, 5311*, FDO, at 11.]
- GMA counties and cities may not treat structures that house handicapped people differently than structures that house anyone else. [*Children's II, 6323*, FDO, at 5.]
- A person with "special needs" is not synonymous with a "handicapped" person. A person is handicapped if he or she fits within one of the three criterion of 42 U.S.C. 3602(h). "Special needs" includes handicapped people as well as people who do not meet the statutory definition of handicapped. [*Children's II, 6323*, FDO, at 7.]

- It is undisputed that work release centers or facilities [and juvenile community facilities] are essential public facilities subject to the provisions of RCW 36.70A.200. [*DOC/DSHS, 0307*, FDO, at 6.]
- [The Board's jurisdiction was recently addressed by the Supreme Court, which held that the Boards do not have jurisdiction to hear a petition that does not involve a comprehensive plan or development regulation under the GMA.] The PFR . . . challenges [the jurisdiction's] approval of a project permit application (a conditional use permit authorizing a multi-family mental health housing facility); the PFR does not challenge a comprehensive plan or development regulation, or amendment thereto. Consequently, RCW 36.70A.280(1) does not confer jurisdiction upon this Board to review such land use project permit decisions. [*Petersville Road Residents, 0313*, at 4-5.]

- **Hierarchy**

- CPPs [county-wide planning policies] are part of a hierarchy of substantive and directive policy. Direction flows first from the CPPs to the comprehensive plans of cities and counties, which in turn provide substantive direction to the content of local land use regulations, which govern the exercise of local land use powers, including, zoning, permitting and enforcement. [*Snoqualmie, 2304c*, FDO, at 17.]
- The GMA consists of a hierarchy of policy that provides direction to implementing actions by state and local governments. [*Rural Residents, 3310*, FDO, at 13.]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c*, FDO, at 6.]
- A local jurisdiction's comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities. [*Children's I, 5311*, 5/17/95 Order, at 12.]
- [The argument that the LAMIRD designations authorized in 1997 are simply smaller and more limited rural centers than those included in its pre-1997 rural designations (RACs and RNCs) is a flawed perception.] The County's RACs and RNCs were designated before the legislature created the specific template for how such rural centers were to be designated and limited. RCW 36.70A.070(5)(d)(iv) establishes the exclusive means for designating RACs and RNCs and other rural centers. The range of uses and scale of rural commercial centers allowed in a RAID [LAMIRD] is governed by this section of the GMA, not the County's preexisting RAC and RNC provisions. [*Tacoma II, 9323c*, FDO, at 7.]
- The County's hierarchy of rural centers provides that RACs be located no closer than five miles from a UGA; and that RNCs be located no closer than two miles from a

UGA. Without explanation as to UGA proximity requirements, this RAID [LAMIRD] is located within 360 feet of the UGA, which is the present city limits for the City of Tacoma. Designation of a RAID [LAMIRD in this location fosters the low-density sprawl that RAIDS [LAMIRDs] are required to avoid. Proximity to the UGA alone suggests to the Board that if the area were to be urban, adjustments to the UGA would be a more appropriate means of accomplishing this objective. [*Tacoma II, 9323c*, FDO, at 8.]

- GMA comprehensive plans and subarea plans guide land use decision-making by providing policy guidance and direction to development regulations that, in turn, must be consistent with and implement the plan. These development regulations, in turn, directly control the use of land and govern over proposal review and approval and the issuance of permits. [*Laurelhurst, 03308*, FDO, at 9.]
- The land use decision-making regime in counties and cities fully planning under GMA is a cascading hierarchy of substantive and directive policy. This policy direction flows first from the planning goals and requirements of the Growth Management Act to county-wide planning policies (CPPs – RCW 36.70A.210) and from the goals and requirements of the GMA and SMA to the comprehensive plans and development regulations of counties and cities. Policy direction then flows from CPPs to comprehensive plans, and then from comprehensive plans, including subarea plans, (if any), to development regulations. Finally, direction flows from development regulations to *land use decisions* and other planning activities of cities and counties. *See* RCW 36.70A.120. Land use decisions, governed by RCW 36.70B, include both site plan approvals, (including but not limited to planned unit development, conditional use permits, and site master plans), as well as construction approvals, such as grading and building permits. [*Laurelhurst, 03308*, FDO, at 10.]
- Both the CPPs [RCW 36.70A.210(1)] and goals [RCW 36.70A.020] must be used to guide the development of locally adopted plans. Those comprehensive plans must adhere to both the CPPs and the goals of the Act. The locally established CPPs cannot contradict the goals of the statute and still fulfill their statutory obligations. (Footnote omitted.) . . .[I]f CPPs are required to establish a framework for guiding the development and amendment of comprehensive plans so as to ensure GMA compliance and consistency among jurisdictions; then the CPP guiding framework must also adhere to the goals and requirements of the Act. CPPs cannot be blind to the goals of the Act – the GMA's goals provide substantive context in the development and adoption of CPPs. This is in keeping with the interpretation of the Supreme Court which, in construing the Act, has consistently read the goals into substantive provisions. (Footnote omitted.) . . . To give effect to these GMA requirements [RCW 36.70A.020 and .210(1)] the Board holds that county-wide planning policies must be guided by, and be consistent with, the planning goals set forth in RCW 36.70A.020. Although the goals are not listed in order of priority for purposes of comprehensive plans, certain goals will have greater relevance than others at the county-wide scale. (Footnote omitted.) [*CTED, 03317*, FDO, at 15-16.]

- ## Housing Element

- The Act requires cities and counties to preserve existing housing while promoting affordable housing and a variety of residential densities and housing types. No jurisdiction is required to reconcile these seemingly inconsistent requirements by totally focusing on one requirement, for instance preserving existing housing, to the exclusion of other requirements, such as encouraging more affordable housing. Instead, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them. [*WSDF I, 4316*, FDO, at 30.]
- The Board rejects the argument that because RCW 36.70A.070(2)(c) requires jurisdictions to identify "sufficient land for housing" in their comprehensive plans, that their development regulations must also do so. The sufficiency of land supply required by RCW 36.70A.070(2)(c) is a mandate that the city, as a matter of policy, identify sufficient land for this purpose. Development regulations are to then impose controls to assure that the land identified in the plan for housing is available for that purpose. Because development regulations must be consistent with the comprehensive plan, they cannot decrease the land supply available for housing. RCW 36.70A.040(3). [*Children's I, 5311,* 5/17/95 Order, at 6.]
- In the GMA, there are a number of specific references that address housing and residential land uses, some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population. [*Children's I, 5311,* FDO, at 5.]
- Growth is more than simply a quantitative increase in the numbers of people living in a community and the addition of "more of the same" to the built environment. Rather, it encompasses the related and important dynamic of change. Because the characteristics of our population have changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup, the GMA requires that housing policies and residential land use regulations must follow suit. This transformation in our society must be reflected in the plans and implementing measures adopted to manage growth and change. [*Children's I, 5311,* FDO, at 9.]
- RCW 36.70A.020(4) does not prohibit the demolition of existing housing structures. Instead, cities and counties must balance the Act's requirements to "encourage preservation of existing housing stock" with the demand to "encourage the availability of affordable housing" and the promotion of a "variety of residential densities and housing types." . . . It does not mandate that single-family residences be preserved at the expense of every other housing type. [*WSDF II, 5340,* FDO, at 25.]
- The requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas – while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." [*Benaroya I, 5372c,* FDO, at 21.]

- Nothing in the GMA or the CPPs requires a jurisdiction to show a detailed plan as to how affordable housing policies will be achieved. There is nothing in the Plan or in the record that suggests the housing affordability policies are not capable of being carried out. [*Benaroya I, 5372c*, FDO, at 26.]
- Nothing in the Act suggests that either the planning goal [housing .020(4)] or the housing element requirements [.070(20(c) and (d), specifically] are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions suggests that the above cited provision provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-side level. Thus, the Board construes these sections to read, in effect: ". . . identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction*...". [*Litowitz, 6305,* FDO, at 19.]
- RCW 36.70A.070(2)(a) requires a jurisdiction to evaluate or survey existing and projected housing needs, and to separate the results of the inventory into basic principles to determine the nature of housing within the jurisdiction. The Act does not require a jurisdiction to analyze each house within its jurisdiction. [*Buckles, 6322c,* FDO, at 20.]
- RCW 36.70A.070(2)(a) does not require a jurisdiction to include in its planning goals, policies and objectives for each and every neighborhood within its jurisdiction. No such GMA duty exists. [*Buckles, 6322c,* FDO, at 21.]
- GMA counties and cities may not treat structures that house handicapped people differently than structures that house anyone else. [*Children's II, 6323,* FDO, at 5.]
- A person with "special needs" is not synonymous with a "handicapped" person. A person is handicapped if he or she fits within one of the three criterion of 42 U.S.C. 3602(h). "Special needs" includes handicapped people as well as people who do not meet the statutory definition of handicapped. [*Children's II, 6323,* FDO, at 7.]
- Where a petition alleges noncompliance with both the housing goal and the specific housing element requirement of the Act, the Board will scrutinize only the latter. [*Children's II, 6323,* FDO, at 9.]
- As important as the affordable housing policy is, CPPs can only be as directive as they are clear. [*Renton, 7326,* FDO, at 7.]
- [RCW 36.70A.020(4) does not require that each and every land use designation of a jurisdiction provide for affordable housing. [*LMI/Chevron, 8312,* FDO, at 29.]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, at 30.]
- *See also:* **Affordable Housing** [*LIHI I, 0317*]
- The Housing Goal contains three separate, but equal subparts: 1) encouraging the availability of affordable housing to all segments of the population of this state, 2) promoting a variety of residential densities and housing types, and 3) encouraging the preservation of existing neighborhoods. [*LIHI II, 1223*, FDO, at 8.]
- The Housing Incentive Program (HIP) defines low-income as 80% or less of the average median income (AMI). [Petitioner] is correct, the HIP does not distinguish those at or below 50% AMI (very low-income) or those at or below 30% AMI

(extremely low-income) persons. As [Petitioner] demonstrates, over three-quarters of the poor people who need affordable housing in Lakewood earn less than 50% of median income. American Lake Gardens, Springbrook and Tillicum contain some of the highest concentrations of poverty in the City. While those with the greatest need fall within the City's low-income definition, the bar is high enough to dilute the potential impact of the HIP program in providing affordable housing to the poorest of Lakewood's poor that are concentrated in its poorest neighborhoods. [*LIHI II, 1223*, FDO, at 10-11.]

- Further, the Board agrees with [Petitioner] that the HIP is ambiguous and unclear as to whether seniors or disabled persons must also be low-income to benefit from the program and whether or not low-income units can qualify for the density bonuses. . . . [The language contained in the HIP] seems to suggest that housing units to serve non low-income seniors or non low-income disabled persons are eligible for the density bonuses of the HIP. If this is the case, it further dilutes the potential effectiveness of the HIP in providing affordable housing to low-income persons. It is also not clear whether the fee reductions are only available to low-income tenants. Base upon these ambiguities of the HIP, the Board concludes that the HIP does not encourage the provision of affordable housing to all economic segments of Lakewood's population. [*LIHI II, 1223*, FDO, at 10-11.]
- The GMA clearly encourages the preservation of existing housing stock (*See* RCW 36.70A.020(4)) and provides for ensuring the vitality and character of established residential neighborhoods (*See* RCW 36.70A.070(4)). However, as the Board stated, *supra*, "any opportunity to perpetuate an "historic low-density residential" development pattern, [in the subarea], ended in 1994 when the County included the area within the UGA." It is clear that existing housing stock and neighborhoods may be maintained and preserved, however existing low-density patterns of development cannot be perpetuated. [*MBA/Brink, 02310*, FDO, at 14-15.]
- There is no GMA requirement that subarea plans contain *all* the mandatory elements required by RCW 36.70A.070. Thus, the [subarea plan] is not required to contain a housing element since the goals, objectives, and policies of the Housing Element in the County's Comprehensive Plan apply and govern in the [subarea plan] area. [*MBA/Brink, 02310*, FDO, at 29.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land for an affordable housing crisis did not comply with the Act – RCW 36.70A.215. (Note: A CPP, allowing an individual UGA to be potentially expanded for additional residential land is permissible if a need for additional residential land is demonstrated in a land capacity and reasonable measures have been taken. The challenged CPP bypassed .215's reasonable measures requirement.) The Board also commented that a land capacity analysis for residential *land* is off point in relation to a potential expansion of a UGA pursuant to an "affordable housing crisis," which is the basis for this potential UGA expansion.] Whether the existing and projected housing stock is affordable falls within the parameters of RCW 36.70A.070(2) – the Housing Element. A GMA Plan's Housing Element is required to *identify sufficient land for housing, including government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities*. RCW 36.70A.070(2)(c). Also the Housing Element requires jurisdictions

have adequate provision for existing and projected housing needs for *all economic segments of the community*. RCW 36.70A.070(2)(d). Therefore, reliance upon just a land capacity analysis without supporting documentation in the County's Housing Element would be inadequate to implement [a UGA expansion pursuant to this CPP. The Board found this CPP noncompliant.] [*CTED, 03317*, FDO, at 35-36.]

- **Impact Fees**

- Although respondent city did not specifically raise a subject matter jurisdiction defense in this case, the Board is bound by its own precedent. The Board cannot determine in one case (i.e., *Bainbridge Island*) that it does not have jurisdiction over challenges to Chapter 82.02 RCW, and then ignore that decision in another case where the jurisdictional defense was not specifically raised. [*Slatten, 4328,* 2/24/95 Order, at 2.]
- When a jurisdiction that owns and/or operates a specified capital facility cooperates with the county and discloses information pertaining to location or financing (RCW 36.70A.070(3)(c-d), the county may include such information in its CFE. Indeed, aside from being sound growth management and public policy, it may be a necessary prerequisite to access a new funding source – e.g., impact fees. [*Bremerton/Port Gamble, 5339/7324c*, 9/8/97 Order, at 39.]
- The Board does not have jurisdiction over Chapter 82.02 RCW. [*Anderson Creek, 5353c*, 10/18/95, at 10.]
- The Board does not have jurisdiction to review petitions for review that allege that a state agency, county or city action fails to comply with Chapter 82.02, or other chapters in the RCW besides Chapters 36.70A or 43.21C RCW. [*South Bellevue, 5355*, 11/30/95 Order, at 8.]
- [A]ny actual UGA extensions for [institutional facilities] should be **limited** and **rare**, for the following reasons. First, RCW 36.70A.150 requires cities and counties to identify lands useful for public purposes, specifically enumerating schools; so the need and location for potential school sites should come as no surprise to any jurisdiction. Secondly, and potentially complementing .150, the submittal of a school district capital facility plan is a condition precedent to the imposition and collection of school impact fees; therefore, ongoing coordination and communication between school districts and jurisdictions about the number and location of needed facilities should be known. Third, as both the Sultan and Snohomish School Districts Capital Facilities Plans indicate, typical school site requirements for schools ranging from elementary to high schools require approximately 10 to 40 acres per school, respectively. (*Citation* omitted.) Accommodating such limited site needs within existing UGAs should be a priority and a reasonable measure to take in lieu of expanding a UGA. Finally, notwithstanding the Board's decision in this case, any actual UGA expansion involving a church or a school must comply with the goals and requirements of the Act and could be the subject of challenge before the Board. (Footnote omitted.) [*CTED, 03317*, FDO, at 28-29.]
- [Petitioner asserted that *James v. Kitsap County*, 154 Wn.2d 574, 115 P.3d 286 (2005) stands for the proposition that impact fees are land use regulations subject to Board review. The Board disagreed, reasoning as follows:] In *James*, the Supreme

Court determined that Kitsap County's imposition of impact fees was a "land use decision" which must be appealed under the Land Use Petition Act [LUPA], Chapter 36.70C RCW. While James discusses the linkage between Chapter 82.02 RCW and the public facilities element of GMA comprehensive plans, the Court's characterization of impact fees as "land use decisions" does not bring them within the purview of Board review. The *James* holding was that because impact fees are land use decisions concerning development permits, the procedural requirements of LUPA apply. Land use decisions in the development permit arena, subject to LUPA review in Superior Court, are beyond the Board's jurisdiction. *See* Wenatchee Sportsmen Association v. Chelan County, 141 Wn2d 169, 179, 4 P.3d 123 (2000). [*MBA/Bonney Lake, 05345*, 1/12/06 Order, at 6-7.]

- Petitioner asks the Board to determine whether [the impact fee increase] is a "capital budget decision in conformity with the City's comprehensive plan." The Ordinance on its face merely increases the amount of the parks impact fee. Nothing in the text of the Ordinance compels the conclusion that the increased fee or the money raised will be used inconsistently with the City's comprehensive plan. Petitioner's allegations of inconsistency with the plan all require the Board to look beyond the face of the Ordinance and, in fact, to analyze the fee increase under the impact fee criteria spelled out in RCW 82.02.050(4). . . . This the Board declines to do. [*MBA/Bonney Lake, 05345*, 1/12/06 Order, at 8-9.]

• Implementing Actions

- [If more than one zoning designation implements a plan designation, a change from one implementing zoning designation to another does not create an inconsistency with the plan.] [*MacAngus, 9317,* FDO, at 10.]
- In order to maintain consistency between its plan and implementing development regulations, as required by RCW 36.70A.040, the County correctly considered the [Plan and implementing regulation] amendments concurrently. [In a footnote, the Board noted that some development regulation amendments implement existing Plan policies and do not necessitate a reciprocal amendment to the Comprehensive Plan. Here, however, the proposal required both a Plan and development regulation amendment, thereby calling for concurrent consideration of both proposed amendments to maintain consistency, as required by RCW 36.70A.040.] [*McVittie V, 0316*, FDO, at 7.]
- *See also*: **GMA Planning** [*LIHI I, 0317*, 2/21/02 Order]
- [Challenging whether a jurisdiction has adopted development regulations that implement its Plan or whether the jurisdiction is performing its planning activities and making capital budget decisions in conformity with its Plan are appropriately brought by challenging compliance with RCW 36.70A.040(3) or .120, not through a challenge to the consistency provisions of RCW 36.70A.210(1) or .070(preamble).] [*Hensley IV, 1304c*, FDO, at 20.]
- [The County amended its definition of "shall" to modify its imperative and nondiscretionary meaning that compels the County to make decisions based upon what a policy says to do. The phrase "subject to funding and budgetary constraints which may not allow for implementation of the policy, and subject to the provisions

of the annual budget."] The Board recognizes that budgetary constraints reflect a reality in the State and the Puget Sound region. However, the amendatory language could be interpreted to relieve the County from GMA responsibilities and duties it has to address during a period of limited budgets. In some situations, the GMA forces action, not inaction, when budgetary constraints come into play. For example, the GMA *requires* the County to *take action* when funding falls short of meeting existing needs for capital facilities or transportation facilities. RCW 36.70A.070(3)(e) and (6)(iv)(C). Both these sections of the act are guided by the direction of RCW 36.70A.120. The County cannot place potential caveats or limitations on these GMA requirements. [*FOTL VI, 1310*, FDO, at 17.]

- The adoption of a permanent development regulation, or amendment thereto, would be a "planning activity" as that term is used in RCW 36.70A.120. However, the adoption of a temporary/interim regulation to be in place for a limited six-month period to maintain the *status quo* while perceived concerns with the existing Plan and development review occurs does not rise to the status of a "planning activity." Indeed, the very nature of moratoria is that they are an attempt to "buy time" to enable the jurisdiction to undertake that very "planning activity" (*i.e.*, developing and implementing long-term, permanent policies and regulations). . . .Nevertheless, at some point the rote, rather than the reasoned, extension of six-month moratoria with no reasonable end point in sight very well could constitute a "planning activity" that falls within the ambit of .120. [*SHAG, 1314*, 8/3/01 Order, at 10.]
- [The Board's conclusion that only periodic reviews, not continuous update, are required by the GMA] does not insulate the County from a UGA challenge based upon whether development regulations implement the Plan and are consistent with the Plan and Goals of the Act. [*Master Builders Association, 1316*, FDO, at 13.]
- [Edgewood challenged whether the Plan amendments adopted by Sumner met Sumner's own criteria for amending its Plan. Edgewood claimed there were no inconsistencies to be resolved and no changed circumstances. The Board was persuaded by the record and argument that Sumner's conclusions on these questions were not in error and found compliance with .040(3), .070, .120, and .130] [*Edgewood, 1318*, FDO, at 11-18.]
- The changing land use pattern and transportation picture in the valley are an ample basis to demonstrate changed circumstances since the 1994 residential designation occurred. It is not inappropriate for the City to reevaluate, amend and modify its Plan as planned uses are ultimately realized and developed. [*Edgewood, 1318*, FDO, at 18.]
- The Board's role is not to judge the wisdom or advisability of every detail of a program such as the HIP – rather it is the Board's role to review the policy choices, as set forth in the HIP, for compliance with RCW 36.70A.040(3). [*LIHI II, 1223*, FDO, at 13.]
- [Since the County had a concurrency program requiring denial of permits if LOS declined, and funding in its transportation improvement program (TIP) for some of the area, the Board concluded that the County had maintained consistency between the land use and transportation elements of its Plan and the transportation element continues to implement the land use plan.] The Board notes that if ongoing traffic concurrency problems (*i.e.,* segments of arterials in arrears with no funding for

improvements programmed) stifle development opportunities [*i.e.*, denying permits] in the Clearview [LAMIRDs], then Petitioners' preferred solution (*i.e.*, not designating the two Clearview intersections as LAMIRDs) could be considered a more straightforward approach. However, since the County has a concurrency management system and it has funding for improvements for into its TIP (i.e., no funding shortfall), the County's approach is not prohibited by the GMA. [*Hensley IV* and *V*, *1304c/2304*, 6/17/02 Order, at 21-22.]

- [The Kent Station planned action ordinance] implements [Kent's] existing land use policies and development regulations. This PAO is intended to expedite and simplify the land use permit process by relying on Kent's land use plan policies and its development regulations. [Kent CARES, 02315, 11/27/02 Order, at 6.]
- [The language of RCW 43.21C.031(2)(a)] suggests that planned action ordinances are more akin to project actions that to the broader legislative actions involved in adopting or amending Comprehensive Plans, subarea plans or development regulations. It is well settled that the Boards do not have jurisdiction to review land use project permit decisions. [Kent CARES, 02315, 11/27/02 Order, at 7.]
- If the Plan complies with the Goals of the Act, but the development regulations do not comply with the Goals of the Act, it logically follows that the noncompliant development regulations do not, and cannot, implement a compliant Plan. [A new PFR challenged whether the development regulations implemented the Plan. In two prior cases (Hensley IV and *Hensley V*) the Board had concluded that the Plan provisions complied with the Act, while the development regulations did not.] Therefore, the Board concludes that [the development regulations do not implement the Plan and do not comply with the Act.] The Board reaches this determination in the context of an Order on Motions, without the need for further briefing or a hearing on the merits. [*Hensley VII*, *03310*, 8/11/03 Order, at 8.]
- The Board recognizes that only the Plan was amended by [the Plan Update]; not the City's zoning and development regulations. However, the Board notes that [certain exhibits] identify 11 areas where the Plan and FLUM designations permit higher densities or more intense uses than the existing zoning designations allow. The staff recommendation for these 11 areas does not resolve the inconsistency. In these instances, the staff recommendation is to "Entertain a rezone if and when ripe for development." Taking this avenue would be noncompliant with the Act since the unchanged zoning designations *would not implement the Plan and FLUM designations*, as required by RCW 36.70A.040 and .130. The City has the duty to maintain consistency between its Plan and regulations that implement its Plan; it may not ignore or delay this requirement and shift the duty to project proponents by "entertain[ing] rezones if and when ripe for development." If the City did not amend its Plan to remove all the inconsistencies identified and documented [in certain exhibits], it must now amend its development regulations to allow the densities and uses authorized in the Plan and FLUM in order to be consistent with and implement the Plan and FLUM designations. [This action must be completed by December 1, 2004, per .130.] [*Jensen*, *04310*, FDO, at 17-18.]

- ## Incentives

- The Board surmises that the Urban Village strategy is intended to be realized through various implementation approaches, including not only the traditional regulatory-zoning reclassifications, but also including targeted or focused City capital investment as an incentive to private investment, and various administrative incentives. [*WSDF IV, 6333,* FDO, at. 20-21.]

- ## Incorporation

- The eventual and logical culmination of 'cities as the primary providers of urban services requires that annexation and incorporation occur rather than service agreements sufficing as more than a transitional device. [*Poulsbo, 2309c,* FDO, at 26.]
- A city incorporated subsequent to adoption of a county's CPPs must comply with those CPPs. [*Renton, 7326,* FDO, at 6.]
- [Cities that incorporate in Central Puget Sound are subject to the GMA and must comply with its goals and requirements. Such cities are within the Board's jurisdiction.] [*WHIP, 0312*, 11/6/00 Order, at 4-7.]
- Covington [a newly incorporated city] is a jurisdiction within a county (King) that is required to plan under the GMA. The Board understands the City's argument that, because it incorporated in 1997, its deadline to adopt a GMA plan is not until August of 2001. An unspoken, but not implausible implication of Covington's argument is that, until that deadline, it is free to adopt plans and regulations, adopt capital budgets and issue permits that are completely contrary to the guidance and requirements of the Growth Management Act. The Board disagrees that the legislature contemplated such an outcome. The Board concludes that Covington has erroneously interpreted its duty under the Act to adopt plans and development regulations. The August 2001 date upon which the City relies is simply the date by which the City <u>must</u> have such an outcome. The Board concludes that Covington has erroneously interpreted its duty under the Act to adopt plans and development regulations. The August 2001 date upon which the City relies is simply the date by which the City <u>must</u> have adopted a GMA Plan and development regulations. It is not license to adopt plans and regulations totally detached from the goals and requirements of the Act. [*WHIP, 0312*, 11/6/00 Order, at 6.]
- The City of Covington is a GMA planning jurisdiction. It was under no obligation to adopt any amendments the GMA plan and regulations that it adopted in 1997 as its own – having chosen to do so, the City must comply with the goals and requirements of the GMA. Because it has chosen to do so by adopting the challenged ordinances, it has taken actions that are subject to the goals and requirements of the GMA. Therefore, the Board concludes, that pursuant to RCW 36.70A.280, it has jurisdiction to hear and decide the PFR. [*WHIP, 0312*, 11/6/00 Order, at 7.]

- ## Incorporation by Reference

- Cities and counties are not required to incorporate by reference in their adopted comprehensive plans documents prepared pursuant to SEPA nor must documentation supporting adopted county-wide planning policies be so incorporated into comprehensive plans. [*Vashon-Maury, 5308c,* FDO, at 16.]
- The land use capacity analysis for designated UGAs is not required to be in the comprehensive plan; however, showing of work must be done somewhere in the record. Technical Appendix D is not required to be incorporated into the Plan. [*Vashon-Maury, 5308c,* FDO, at 16.]
- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 41.]
- Pre-GMA sub-area plans need not be adopted as GMA enactments in order to continue to have useful application in local land use decision-making. However, such pre-GMA sub-area plans may not be used to satisfy a GMA requirement unless they are specifically incorporated by reference and adopted for that purpose pursuant to the requirements of the Act; nor may they supersede any specific policy or regulatory directive contained in a GMA enactment. [*Sky Valley, 5368c,* FDO, at 55.]
- Any provision or policy of a neighborhood plan that purports to guide land use decision-making (including subarea or neighborhood plans including land use, capital facilities and transportation planning) must be incorporated into the jurisdiction's comprehensive plan to be implemented pursuant to Chapter 36.70A RCW. Conversely, provisions or policies of a neighborhood plan or program that will not be used to guide land use decision-making, and therefore will not be implemented pursuant to Chapter 36.70A RCW, need not be incorporated into a jurisdiction's comprehensive plan. [*WSDF IV, 6333,* FDO, at 11.]
- The results or conclusions of a jurisdiction's capital facilities needs analysis (i.e., determinations of adequacy, or identification, location, capacity and six-year financing or new or expanded facilities) must be contained directly in the plan or incorporated CIP. Additionally, the Plan must also cite, reference or otherwise identify and indicate the source document(s) containing the required capital facilities needs analysis. [*WSDF IV, 6333,* FDO, at 28.]
- Any acreage designated by a county as a non-traditional UGA must be justified and accounted for in its plan. [*Johnson II, 7302,* FDO, at 12.]
- The Board has ruled that "functional plans" such as sewer or water system plans or TIPs [transportation improvement programs] (developed and adopted pursuant to other Titles of the RCWs) *that are relied upon and intended to fulfill, in whole or in part, GMA requirements*, such as the Capital Facilities Element requirements, must be included directly, or incorporated by reference, into the jurisdiction's GMA plan. [Citation omitted.] At the very least, such functional plans must be *consistent with* a city's comprehensive plan. While state agencies have reviewing authority, in some instances, and provide grant funding in others, state agencies are also required to

comply with local comprehensive plans. RCW 36.70A.103. [*Fallgatter V, 06303*, FDO, at 11-12.]

- ## Indispensable Party

- General discussion of the indispensable party rule. [*Alberg, 5341c*, FDO, at 29-36.]
- The indispensable party doctrine does not apply to cases before the Board. [*Alberg, 5341c*, FDO, at 32.]

- ## Industrial Land Banks/Industrial Development

- No entries

- ## Infrastructure

- Although urban growth should be located where there is adequate infrastructure to support it, the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. [*Robison, 4325c*, FDO, at. 20-21.]
- The Act does not require a city to designate a specific property for the highest intensity uses simply because infrastructure already may exist that is capable of supporting urban growth. [*Benaroya I, 5372c*, FDO, at 37.]
- The GMA does not require cities to designate for the highest intensity uses every parcel of property with infrastructure adequate to support urban development. Just because infrastructure may be available to support intense development does not mean the land must be designated for intense development. [*Litowitz, 6305*, FDO, at 20.]
- The GMA does not require a jurisdiction to designate property with urban infrastructure for a particular intensity of use. [*Litowitz, 6305*, FDO, at 20.]
- Although an Interlocal Agreement may address the timing of, and allocation of responsibility for, infrastructure planning in a UGA, the requirements of the GMA govern infrastructure planning within a UGA. [*Johnson II, 7302*, FDO, at 19-20.]
- [Although] the GMA does not designate a specific six-year period for CFE planning, it is illogical, and contrary to one of the bedrock purposes of the GMA – *planning* to manage *future* growth – to suggest that the CFE's six-year financing *plan* can be, in whole or in part, an historical report of capital facility financing for prior years. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 77.]
- The "at least six-year plan" period [of RCW 36.70A.070(3)(d)] begins with the date of the adopted Plan. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 77.]

- RCW 36.70A.070(5)(d)(iv) requires existing areas (LAMIRDs) to be minimized and contained. [Physical constraints can minimize and constrain a LAMIRD, but nothing in the act mandates the exclusive use of such physical features; nor must a LAMIRD contain only homes of a certain historic vintage. The extent of existing infrastructure and service area can be used to set the logical outer boundary that minimizes and contains the LAMIRD.] [*Burrow, 9318*, FDO, at 23.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, at 6.]
- The Lake Stevens UGA Plan includes a Capital Facilities Element. Within this element, the County states, "The following are key findings of the capital facilities plan *for the Lake Stevens UGA*: *There is a gap between the capital facility needs and the public funding available for surface water and transportation*." When a "gap" or "revenue shortfall" between needed facilities and ability to finance them occurs, the GMA requires the jurisdiction to "reassess the land use element" to respond to such revenue shortfalls. *See* RCW 36.70A.070(3)(e). Reduction of the size of the UGA is one obvious response to address a revenue shortfall. However, in lieu of reducing the size of the UGA, there are several other accepted options available as part of the reassessment process. These options are recognized and set forth in the LSUGA Plan. The LSUGA Plan's key findings continue: [This Plan] describes a number of options as a *response to the revenue shortfall*, including:
    - Reducing the LOS [level of service standards].
    - Increasing the revenues available to pay for the necessary facilities.
    - Reducing the average cost of facilities.
    - *Reducing demand by timing development* or redistributing growth to other areas.
    - Reducing demand for services through conservation programs

    Thus, one means of addressing a revenue shortfall is to time or phase development to reduce demand. This is the approach Snohomish County undertook in relation to the Lake Stevens UGA in relation to its revenue shortfall for transportation and surface water. [The County used a Development Phasing Overlay (DPO) in the unincorporated Lake Stevens UGA to phase development. "Green" areas had adequate transportation and surface water facilities and could develop; "Red" areas did not have adequate facilities and development was deferred until financing of the needed facilities was assured.] [*Citizens, 03313*, FDO, at 7-8.]
- It is important to note that this case does not involve the size of the Lake Stevens UGA, nor *whether* the area within the Lake Stevens UGA will be urban, nor *whether* it will be provided with adequate urban facilities and services within the planning period (2012), nor *whether* it will be developed at urban intensities and densities.

Since the land is within the Lake Stevens UGA, the GMA requires these outcomes to occur within the planning period - by 2012. [*Citizens, 03313*, FDO, at 8.]

- The Act [RCW 36.70A.110(4)] is clear, extension of sewer into the rural area is inappropriate *except* when a sewer extension *is necessary to protect the public health, safety or environment* and the sewer extension is financially supportable at rural densities and will not permit urban growth. (*Citation* omitted.) . . . [The language in the first part of the challenged CPP] captures the only statutorily recognized exception (footnote omitted) of extending sewers into the rural area - when they are necessary to protect the public health, safety and environment. It also recognizes that such extensions must be financially supportable and not allow urban development. [*CTED, 03317*, FDO, at 18-19.]
- [T]he remaining language of this CPP goes beyond the single statutory exception. It allows the extension of sewers to churches in a rural area that abut a UGA. Under this CPP, to extend a sewer line to a church outside the boundaries of the UGA, there need not be a showing that the extension is necessary to protect the public health, safety or environment, which is the only exception .110(4) recognizes. . . .The amendment to [the challenged CPP] creates an entirely new exception for churches that goes beyond the limited exception stated in RCW 36.70A.110(4). [The CPP does not comply with the Act.] [*CTED, 03317*, FDO, at 19.]
- The GMA anticipates development phasing that is linked to the availability of public infrastructure. That linkage may be *spatial*, with development allowed first in the locations already served by public services and then following the extension of those services, [RCW 36.70A.110(3)], or the linkage may be *temporal*, with development timed to match an infrastructure investment plan [RCW 36.70A.070(6) and .020(12)]. The phasing provisions of the GMA allow a jurisdiction to "manage" and guide growth both locationally and temporally. However, such phasing is inextricably linked to the availability and adequacy of the necessary infrastructure to support that growth. The GMA never contemplates development phasing that is purely random, with one's rights to develop under the adopted Plan designations and zoning dependent on the luck of the draw. [The City's growth phasing lottery is a random system, not based on geographic or spatial linkage or timed with infrastructure availability.] [*Camwest II, 05341*, FDO, at 15 -18.]
- [T]he GMA allows growth phasing to be linked to a Capital Facilities Plan and service availability through the mechanisms of concurrency, level of service standards and impact fees [citations omitted]. This principle was incorporated into the Samammish Comprehensive Plan but then essentially disregarded in enacting the random lottery. [The City provided no evidence of concurrency documentation, capital facility plans or an infrastructure financing plan. Alleged deficiencies in infrastructure are discussed and rejected.] [*Camwest II, 05341*, FDO, at 16-19.]
- The Board finds that, rather than using the growth phasing tools provided by the GMA, the Samammish Growth Phasing Lottery allocates development opportunities on a purely random basis, without reference to infrastructure availability, location, or funding strategy to address specific identified deficits in the interim. The Growth Phasing Lottery simply denies near-term property development which is otherwise allowed by the Comprehensive Plan and zoning code in order to defer build-out in the 20-year planning horizon. [*Camwest II, 05341*, FDO, at 20.]

- ## Innovative Techniques

- Optional features of a comprehensive plan do not have to be complete at the time of plan adoption, provided that the adopted portions otherwise comply with the Act's requirements. [*WSDF I, 4316,* FDO, at 14.]
- A comprehensive plan, including both mandatory elements and optional elements or features, must be internally consistent. [*WSDF I, 4316,* FDO, at 14.]
- The Act does not mandate that jurisdictions include concepts like Seattle's urban villages strategy in a comprehensive plan. Instead, that strategy appears to most fairly fall into the classification of an "innovative land use technique" as discussed in RCW 36.70A.090. [*WSDF I, 4316,* FDO, at 19.]
- The Four-to-One program is the type of innovative land use management technique that the Act encourages. [*Vashon-Maury, 5308c,* FDO, at 46.]
- So long as the failure to complete an optional element or innovative land use technique does not create an internal inconsistency in the Plan, or constitute a failure to comply with the mandatory requirements of the Act, such failure is not a violation of the Act. [*Sky Valley, 5368c,* FDO, at 119.]
- Just as a failure to complete an optional element of a comprehensive plan does not constitute a violation of the Act, a failure to adopt implementing development regulations for such an optional element is not a violation. However, at such time as the Plan is amended to incorporate such an optional element, the requirement to adopt implementing development regulations must be met. [*Sky Valley, 5368c,* FDO, at 120.]
- Jurisdictions are free to designate areas that are subject to additional or more detailed planning such as "special planning areas" (innovative techniques); such specialized planning does not automatically constitute discriminatory action. [*Hapsmith I, 5375c,* FDO, at 46.]
- The Board surmises that the Urban Village strategy is intended to be realized through various implementation approaches, including not only the traditional regulatory-zoning reclassifications, but also including targeted or focused City capital investment as an incentive to private investment, and various administrative incentives. [*WSDF IV, 6333,* FDO, at. 20-21.]
- RCW 36.70A.090 does not create a GMA duty; it simply encourages local jurisdictions to include "innovative land use techniques" in their comprehensive plans. [*Tulalip II, 9313*, 1/28/00 Order, at 6.]
- While the Board concludes that the Plan's R-9,600 minimum lot size is intended to yield an appropriate urban density of 4 du/acre; the Board is also mindful that *de minimus* variations may occur. However, such variations should be minimized through techniques such as lot-size averaging, density bonuses or credits, cluster development, perhaps maximum lot sizes and other innovative techniques. [*Fuhriman II, 05325c*, FDO, at 32.]
- [Petitioner complained that the City had not adopted innovative techniques, such as density transfers or density credits in updating its Plan.] [RCW 36.70A.090] does not create a GMA duty requiring jurisdictions to include innovative techniques in their Plans. . . . [I]f a Plan does not explicitly mention "innovative techniques" a

jurisdiction is not precluded from including such measures in its implementing development regulations. [*Fuhriman II, 05325c*, FDO, at 44.]

- **Institutional Uses**

- Accepting the general premise that public and institutional uses do have a propensity to generate growth within the local environs of such uses, it is therefore appropriate that such facilities be encouraged in *urban areas within the UGA* where adequate public facilities and services must be provided to support them. Such uses in the rural areas do have the potential to proliferate sprawl and leapfrog development. However this is not the case here. The County has developed a process for including public and institutional uses within the UGA that is consistent with the goals and requirements of the Act. [*Hensley VI, 1304c*, 7/24/03 Order, at 8.]
- The County has an obligation to work with school districts in the siting of schools; it also has an obligation to facilitate the siting of schools within urban areas while discouraging them outside of UGAs – which the County has done. The Board concludes that the FLUM and zoning designations the County has in place does facilitate the location of schools within the UGA and appropriately discourage middle and high schools outside the UGA. The County need not prohibit schools throughout the rural area. The County already discourages schools in the rural area by limiting the number of zoning districts that permit schools. Further, the conditional use permit process provides a mechanism to ensure that any proposed school on the site is designed and configured to be compatible with the rural character of the rural area. [*Hensley VI, 03309c*, FDO, at 22.]
- The Act [RCW 36.70A.110(4)] is clear, extension of sewer into the rural area is inappropriate *except* when a sewer extension *is necessary to protect the public health, safety or environment* and the sewer extension is financially supportable at rural densities and will not permit urban growth. (*Citation* omitted.) . . . [The language in the first part of the challenged CPP] captures the only statutorily recognized exception (footnote omitted) of extending sewers into the rural area - when they are necessary to protect the public health, safety and environment. It also recognizes that such extensions must be financially supportable and not allow urban development. [*CTED, 03317*, FDO, at 18-19.]
- [T]he remaining language of this CPP goes beyond the single statutory exception. It allows the extension of sewers to churches in a rural area that abut a UGA. Under this CPP, to extend a sewer line to a church outside the boundaries of the UGA, there need not be a showing that the extension is necessary to protect the public health, safety or environment, which is the only exception .110(4) recognizes. . . .The amendment to [the challenged CPP] creates an entirely new exception for churches that goes beyond the limited exception stated in RCW 36.70A.110(4). [The CPP does not comply with the Act.] [*CTED, 03317*, FDO, at 19.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land to include a church or a school property, with restrictions, is permissible without conducting a land capacity analysis as required by RCW 36.70A.110 or evaluation per .215.] [*CTED, 03317*, FDO, at 26-28.]

- Schools, as well as churches, are unique in that they are institutional facilities that *serve* the population. Although they do consume land, they are needed to support and serve existing and projected population and development. They are also unique in that both uses are needed to serve both the urban and rural population. Therefore these uses are allowed and may be located in many urban or rural areas. [*CTED, 03317*, FDO, at 28.]
- [A]ny actual UGA extensions for [institutional facilities] should be **limited** and **rare**, for the following reasons. First, RCW 36.70A.150 requires cities and counties to identify lands useful for public purposes, specifically enumerating schools; so the need and location for potential school sites should come as no surprise to any jurisdiction. Secondly, and potentially complementing .150, the submittal of a school district capital facility plan is a condition precedent to the imposition and collection of school impact fees; therefore, ongoing coordination and communication between school districts and jurisdictions about the number and location of needed facilities should be known. Third, as both the Sultan and Snohomish School Districts Capital Facilities Plans indicate, typical school site requirements for schools ranging from elementary to high schools require approximately 10 to 40 acres per school, respectively. (*Citation* omitted.) Accommodating such limited site needs within existing UGAs should be a priority and a reasonable measure to take in lieu of expanding a UGA. Finally, notwithstanding the Board's decision in this case, any actual UGA expansion involving a church or a school must comply with the goals and requirements of the Act and could be the subject of challenge before the Board. (Footnote omitted.) [*CTED, 03317*, FDO, at 28-29.]
- RCW 36.70A.110(4), especially as construed and applied by the Supreme Court in *Cooper Point*, is very clear. The extension of urban governmental services into the rural area is **prohibited** except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment. Unless there is a public health, safety or environmental problem to be addressed, the extension of sewers into the rural area is **not permitted**. There is one exception, and only one – necessary to protect the public health, safety and environment – recognized in .110(4). The Board previously acknowledged and recognized this sole exception to .110(4) in its FDO in *CTED I*. [*CTED II, 03320*, FDO, at 9.]
- The amendatory language of the ordinance is unambiguous; it either allows, or requires, schools or churches in the rural area to connect to sewers, based solely upon proximity to sewers. This action is contrary to the explicit provisions or .110(4) and its limited exception – necessary for protection of public health, safety and environment. [*CTED II, 03320*, FDO, at 10.]
- [I]t logically follows that where churches or schools in the rural area are not presently connected to a sewer system, the sewer system would have to be extended, or expanded, to accomplish the connection or hook-up (Footnote omitted.) [*CTED II, 03320*, FDO, at 10-11.]

- **Interim**

- Just as a comprehensive plan must be internally consistent (see first paragraph of RCW 36.70A.070), so too does this Board hold that interim development regulations must be internally consistent. [*Tracy, 2301,* FDO, at 27.]
- Planning jurisdictions may adopt contingent implementing development regulations that do not take effect until some future amendment to a comprehensive plan has been formally adopted. [*WSDF II, 5340,* FDO, at 17.]
- Interim designations and implementing regulations may be altered at the time of comprehensive plan adoption if and to the extent that such alteration is necessary to insure consistency with the comprehensive plan and its implementing development regulations. [*Sky Valley, 5368c,* FDO, at 115.]
- [Interim Rural Forestry – IRF] is not an invalid land use designation and Petitioners have not shown that it is not an appropriate designation for their property. However the continued application of the term "interim" can lead to confusion in the GMA context. As used here by the County, "interim" is meant to notify the public that the County intends to revisit this rural designation now that it has designated its GMA forest lands. The County may revisit any of its land use designations during its annual plan amendment cycle, regardless of whether the term "interim" is attached to any given designation. [*Screen II, 9312,* FDO, at 9.]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c,* 11/3/00 Order, at 8-9.]
- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c,* 11/3/00 Order, at 9-10.]
- [An interim ordinance may not continue in force and effect in perpetuity.] By the explicit terms of RCW 36.70A.390, "a legislative enactment 'adopted under this section' may be effective for not longer than six months. . ." [*Bear Creek, 3508c,* 11/3/00 Order, at 11.]
- [RCW 36.70A.390] does not apply to plan amendments. It does not apply to permanent changes in development regulations or controls. It applies only to the adoption or amendment of temporary controls or development regulations, those measures that are adopted for an interim period – generally six-months. This section

of the Act is unique in that it permits a deviation from the norm of providing the opportunity for public participation prior to action; here a jurisdiction can act or adopt first, then provide the opportunity for public participation after adoption. However, this post-adoption opportunity for public participation must occur within 60-days of adoption. [*McVittie V, 0316*, FDO, at 20.]

- *See also:* **Public Participation** [*McVittie V, 0316*]
- RCW 36.70A.390 falls squarely within this Board's subject matter jurisdiction; the Board has clear authority to determine whether its provisions have been met. This section [of the GMA] is unique in the GMA context; it is a blunt instrument within a statute containing very detailed and refined requirements. It allows for temporary, interim or stopgap measures to manage development activity while appropriate analysis and planning can occur. This section also explicitly authorizes local jurisdictions to undertake the rather draconian measure of placing a freeze on development, i.e. to maintain the status quo while it undertakes the necessary planning to analyze and address the perceived issue(s). However, to successfully impose such a moratorium, the jurisdiction must adhere to the section's procedural provisions. [*SHAG, 1314*, 8/3/01 Order, at 5.]
- If a jurisdiction chooses to impose a moratorium pursuant to .390, it must adopt findings of fact justifying its action and hold a public hearing on the moratorium. The public hearing may occur either at the adoption hearing or no later than sixty-days thereafter. If the jurisdiction did not adopt findings of fact supporting its action at adoption, or prior to the public hearing, it must do so immediately after the [within 60-day] public hearing. [*SHAG, 1314*, 8/3/01 Order, at 6.]
- [Failure to adopt additional findings of fact at a subsequent public hearing (within 60-days) after adopting findings of fact at the initial adoption of the moratorium is not a failure to comply with the requirements of RCW 36.70A.390. [*SHAG, 1314*, 8/3/01 Order, at 8.]
- The adoption of a permanent development regulation, or amendment thereto, would be a "planning activity" as that term is used in RCW 36.70A.120. However, the adoption of a temporary/interim regulation to be in place for a limited six-month period to maintain the *status quo* while perceived concerns with the existing Plan and development review occurs does not rise to the status of a "planning activity." Indeed, the very nature of moratoria is that they are an attempt to "buy time" to enable the jurisdiction to undertake that very "planning activity" (*i.e.*, developing and implementing long-term, permanent policies and regulations). . . .Nevertheless, at some point the rote, rather than the reasoned, extension of six-month moratoria with no reasonable end point in sight very well could constitute a "planning activity" that falls within the ambit of .120. [*SHAG, 1314*, 8/3/01 Order, at 10.]
- [The original ordinance adopting the interim future land use map (FLUM) expired prior to the Board's hearing on the merits. However, the City adopted a new emergency ordinance that was substantively the same as the interim FLUM ordinance originally challenged.] The City's FLUM is an issue of continuing and substantial public interest and importance. Therefore, the Board will not dismiss it as moot. [*Clark, 02305*, FDO, at 4.]

- The interim FLUM, as its name implies is an interim measure, not a permanent FLUM. Consequently, the Office of Community Development notification requirements of RCW 36.70A.106 are not applicable. [*Clark, 02305*, FDO, at 18.]
- [The Board will not review an interim future land use map for compliance with the consistency requirements of the Act. This review would be appropriate once the final or permanent map is adopted.] [*Clark, 02305*, FDO, at 19.]

• Interim Urban Growth Areas - IUGAs

- IUGAs must be guided by the planning goals of RCW 36.70A.020. [*Rural Residents, 3310*, 2/16/94 Order, at 2-3.]
- IUGAs and FUGAs are policy documents. [*Rural Residents, 3310*, FDO, at 16.]
- Counties will be held to a lesser standard of compliance with the Act's planning goals when adopting IUGAs than when adopting comprehensive plans and implementing development regulations, since IUGAs are only temporary. However, on the spectrum of compliance, with strict compliance required for comprehensive plans and implementing development regulations, and lowest compliance required for interim critical areas and natural resource lands development regulations, IUGAs fall closer to the high end of the range. [*Rural Residents, 3310*, FDO, at 28.]
- The regulatory effect of IUGAs ceases upon adoption of the FUGA boundary with regard to annexations, and upon adoption of implementing regulations with regard to prohibiting urban development beyond the boundary. [*Rural Residents, 3310*, FDO, at 15.]
- If a county elects to utilize tiering within its UGAs, it is best served at the FUGA stage, when the capital facilities plan element of the comprehensive plan has been prepared. It is premature to require tiering at the IUGA level. [*Tacoma, 4301*, FDO, at 35.]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c*, FDO, at 6.]

• Interjurisdictional

- A city is not authorized by the GMA to designate lands outside its corporate boundaries, whether as agricultural resource lands or for other uses, and it therefore has no duty to do so; any actions it has taken on such lands do not constitute land use designations. [*AFT, 5356*, FDO, at 8.]
- A county does not have the authority to regulate lands within a city's corporate limits by designating natural resource lands there. Conversely, the City does not have the authority to regulate lands outside its corporate limits by designating natural resource lands in the unincorporated portion of its UGA. [*AFT, 5356*, FDO, at 8.]

- Where a city has planned for an area not included in its UGA, such planning activities, including land use designations have no effect. [*AFT, 5356,* FDO, at 20.]
- General discussion of transportation coordination with adjacent jurisdictions. [*Hapsmith I, 5375c,* FDO, at 32-34.]
- A city or county cannot rely on an unfinished process of another jurisdiction to meet the Act's requirements. However, a city or county can, if it elects or is required to by county-wide planning policy to do so, utilize the completed process of another jurisdiction to meet the requirements of RCW 36.70A.200(1). [*Hapsmith I, 5375c,* FDO, at 38.]
- The Act requires the comprehensive plans of counties and cities to include a process for siting EPFs, and prohibits provisions in local plans or development regulations that would render impossible or impractical the siting of EPFs. [*Hapsmith I, 5375c,* 2/13/97 Order, at 7.]
- The Act requires interjurisdictional planning for public facilities that are of a county or statewide nature, through the development of CPPs. [*Hapsmith I, 5375c,* 2/13/97 Order, at 8.]
- [A County's CPPs typically establish the scope and extent of interjurisdictional coordination and joint planning required between or among potentially affected jurisdictions.] [*Kitsap Citizens, 0319c*, FDO, at 24.]
- The Board notes that there is no legal authority under the GMA's cooperative provisions that mandates that the County must abide by the City's stated policy preferences. [*Forster Woods, 1308c*, FDO, at 23.]
- [Shoreline (a city in King County) previously designated the Point Wells area (an area lying within unincorporated Snohomish County) as a potential annexation area (**PAA**) in its Plan. The Town of Woodway (a city in Snohomish County) amended its Plan to also express its intent to annex the area.] Contrary to Shoreline's inference, this Board lacks authority to resolve a "dispute between Shoreline and Woodway regarding which of the two municipalities should ultimately annex and provide urban services to Point Wells." (Citations omitted.) Contrary to the County's fears, a Board finding for Shoreline would not "transfer jurisdiction [of Point Wells] to either city," nor would it "import King County CPPs into Snohomish County." (Citations omitted.) [*Shoreline II, 1313*, FDO, at 9-10.]
- The question before the Board is simply this: Did Woodway's plan amendment designating Point Wells as a "Woodway PAA" create an inconsistency because Shoreline's plan previously designated Point Wells as a "Shoreline PAA," and did Woodway thereby violate the requirements of RCW 36.70A.100? The Board concludes the answer is "yes." [*Shoreline II, 1313*, FDO, at10.]
- [Woodway's Plan policy stating "Point Wells is a potential annexation area (PAA) for the Town of Woodway."] created the inconsistency with Shoreline's prior PAA designation. What Woodway and the County characterize as a benign "overlap" is in fact an explicit conflict. It is difficult to imagine a more direct inconsistency between the plans of two adjacent cities. [Woodway's prior expression of interest in annexing the Point Wells area did not use] the phrase "Potential Annexation Area" with respect to Point Wells. [*Shoreline II, 1313*, FDO, at 10-11.]
- While the "first in time, first in right" doctrine set forth in *Ruston*, and cited by Shoreline (Citations omitted.) is illuminating, it is not the controlling factor in this

case. Nor is the [Board's] *Renton* [*7326*, FDO] decision on point, because the King County CPPs are not in play. All that the Board has before it is the clear statutory language of RCW 36.70A.100 that directs that the "plans" of cities that share "common borders" . . . **shall be consistent**." The most logical and equitable reading of this provision is that the burden of *removing* such an inter-jurisdictional inconsistency must rest on the jurisdiction that *created* that inconsistency. In the present case, the facts support the conclusion that the Town of Woodway created the inconsistency and therefore must bear the burden of curing it. [*Shoreline II, 1313*, FDO, at 11.]

- The Board is aware that the "first in time, first in right" result may not always achieve the best public policy outcome. However, "first in time, first in right" must be the result here, under the present facts and absent the sort of multi-lateral dialogue advocated by Chevron or direct regional oversight of the MUGA process by the County. If such a dialogue is to take place, it must be initiated by the parties, for the Board cannot require it. [*Shoreline II, 1313*, FDO, at 11.]
- [Petitioner argued that] there appears to be a serious disconnect between transportation plans and improvements done by the County and the State. [Therefore] the spirit of Goals 3 and 12 [must apply because they] would demand a better degree of coordination and consistency between the plans and actions of State and County government. Even the County laments the timing of State improvement, to say nothing of the timing of the adoption of State LOS standards. Nevertheless, the Board must conclude that neither Goals 3 and 12, indeed **none** of the goals listed in RCW 36.70A.020 apply to the State because the preamble to that section unequivocally states the goals "shall be used *exclusively* for the purpose of guiding the development of comprehensive plans and development regulations." This is an unfortunate but inescapable conclusion, because to truly achieve managed growth there must be a better linkage between local efforts and state efforts. [*McVittie VIII, 1317*, FDO, at 10.]
- [This is a case of first impression for the Board.] The City of Edgewood, a newly incorporated city, is challenging a Plan amendment and zoning change to a geographic area that lies *entirely within the city limits of the City of Sumner*, but adjacent to Edgewood's city limits. [*Edgewood, 1318*, FDO, at 4.]
- Given that Edgewood's interim plan was a Pre-GMA document, its basis for evoking a coordination and consistency challenge against Sumner per .100 is without merit. [*Edgewood, 1318*, FDO, at 9.]
- The GMA promotes the spirit of interjurisdictional cooperation and coordination and should guide planning even between existing and newly incorporated cities. In its argument, Edgewood focuses on the alleged lack of coordination and cooperation in reaching the amendment decision. Edgewood acknowledges that the final decision [regarding the amendment] is Sumner's, but is concerned about the lack of a coordination process rather than the consistency of the resulting amendments. [The Board found numerous cooperative and coordinative actions between the cities and found compliance with RCW 36.70A.100.] [*Edgewood, 1318*, FDO, at 9.]
- [Pierce County CPP requires joint planning between cities and the County in unincorporated UGAs. Joint planning between cities in other circumstances is permissive, if the jurisdictions agree it would be beneficial. Joint planning was not

required here since the area in question was within Sumner's city limits, not the unincorporated UGA, and both cities had not agreed that such planning would be beneficial.] [*Edgewood, 1318*, FDO, at 10-11.]

- [T]he Board acknowledges the difficulties inherent in multi-jurisdictional planning and commends the County for putting a reconciliation process in place in anticipation of potential discrepancies. Although the reconciliation was apparently not completed in October of 2005 prior to the County's adoption of its Plan Update, the delay is not a fatal flaw or a clear error. However, the County should proceed expeditiously to reconcile any discrepancies that have become apparent now that Plans have been adopted by the cities. [*Pilchuck VI, 06315c*, FDO, at 24.]
- Everett's Plan Update has been remanded for noncompliance with RCW 36.70A.110(2) and .130(3). The County's good faith reliance on the City's population numbers did not breach any GMA duty. The remand to the City of Everett may likely involve the "reconciliation process" established in the CPPs. The County should be aware of this remand and be prepared to facilitate and expedite the reconciliation process as it relates to the City of Everett. Nonetheless, the Board finds and concludes that in the context of the present challenge to Snohomish County's Plan Update, Petitioner has **failed to carry the burden of proof** on Legal Issue C as it relates to Everett. [*Pilchuck VI, 06315c*, FDO, at 32.]

• Interlocal Agreements - ILAs

- Interlocal agreements are a satisfactory mechanism for "establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy." RCW 36.70A.210(2)(a). [*Snoqualmie, 2304c*, FDO, at 23.]
- The amount of growth a city plans for in its comprehensive plan must be consistent with the CPPs, including a population allocation, if any, and any interlocal agreement the city may have reached with the county or counties, and must meet the external consistency requirements of RCW 36.70A.100 and internal consistency requirements of RCW 36.70A.070. [*Aagaard, 4311c*, FDO, at 14-15.]
- Although an Interlocal Agreement may address the timing of, and allocation of responsibility for, infrastructure planning in a UGA, the requirements of the GMA govern infrastructure planning within a UGA. [*Johnson II, 7302*, FDO, at 19-20.]
- A county may take precautions (i.e., requiring interlocal agreements) regarding the allocation of responsibility for services, and the process of transfer of jurisdiction, especially where the potential annexing city lies outside that county. [*Kelly, 7312c*, FDO, at 12 -13.]
- Although the purchase of [certain parcels or property] was linked to subsequent Plan and development regulation amendments, the purchase itself is not a GMA action and thus not subject to RCW 36.70A.140. (*See also* Footnote 4, [T]he Board recognizes that local government must undertake many steps, internal communications and activities prior to the development of a proposed amendment to a GMA plan or regulation, at least some of which actions are not GMA actions. The Board has not previously articulated, and does not here articulate, a standard for when such local government steps, communications and activities arise to the status of a "proposed

GMA amendment" that would be subject to the requirements of RCW 36.70A.140 or other provisions of the Act.) [*Green Valley, 8308c,* FDO, at 10.]

- The negotiation and execution of an Interlocal Agreement, that is a non-GMA action, is not subject to the public participation requirements of the GMA over which the Board has jurisdiction. [*Burien, 8310,* FDO, at 9.]
- Provisions of an ILA, if any, that are included as Plan or zoning code amendments are subject to the provisions of RCW 36.70A.140 during the plan or zoning code amendment process. [*Burien, 8310,* FDO, at 9.]
- [The Board quoted extensively from the Superior Court Order regarding the inappropriate use of concomitant agreements to expand the UGA.] [Maltby UGA Remand, 12/19/02 Order, at 7-8.]
- On its face, the Memorandum of Agreement (MOA) establishes a *planning process* for the area; it does not, in and of itself, amend the Kitsap County Plan or implementing regulations. It is reasonable to expect that the product of this planning process will be a recommendation or proposal to amend the Kitsap County Plan and development regulations, which if challenged, would be subject to Board review. But the MOA does not accomplish this result and does not fall within the Board's jurisdiction. [*Harless, 02318c*, 1/23/03 Order, at 7.]
- [T]he 1998 Agreement [between City and UW] falls within the GMA's definition of development regulations [RCW 36.70A.030(7)] as being the functional equivalent to a planned unit development ordinance or binding site plan ordinance, which governs the permit application process. [*Laurelhurst II, 03316*, FDO, at 14.]
- [T]he 1998 Agreement [between the City and UW] is *specifically* incorporated by reference into [the City Code as] development regulations for major institutions. [Also, it is included under a heading entitled "application of regulations."] These actions support the Board's conclusion that the City clearly has made the 1998 Agreement a development regulation since the City has adopted it in its *entirety* into its code. [*Laurelhurst II, 03316*, FDO, at 14.]
- [T]he word *governs*, (footnote omitted) used in the 1998 Agreement, has a meaning that is synonymous with the meaning of the word *controls* (footnote omitted) in the GMA definition of regulation. (footnote omitted). Because the 1998 Amendment, by its explicit terms is intended to "govern . . . uses on campus, uses outside the campus boundaries, off-campus land acquisition and leasing . . ." the Board further concludes that it "*controls* . . . land use activities," per RCW 36.70A.030(7). Thus, the 1998 Agreement . . .clearly has the effect of being a local land use regulation, subject to the goals and requirements of the GMA. The fact that the City has codified all aspects of the 1998 Agreement in SMC 23.69.006(B) means that it intends for the Agreement to control land use activities involving the University. [*Laurelhurst II, 03316*, FDO, at 14-15.]
- The choice [of the City] to include off-campus "land acquisition and leasing" provisions within the agreement, and then codify them as development regulations in the City code, is well within the City's discretion. Thus, the 1998 Agreement . . .control[s]. ."land use activity" namely, the University's acquisition and leasing of off-campus floor area. [*Laurelhurst II, 03316*, FDO, at 15.]
- The Board agrees that certain provisions of the 1998 Agreement do not appear to concern land use or development, however the fact remains that the City codified the

entire 1998 Agreement into SMC 23.69.006(B) under the heading "Application of Development Regulations." If certain aspects of the controls imposed by SMC 23.69.006(B) give rise to a University claim against the City (*e.g.*., the "restraint on alienation" issue), the City may decide, as a matter of policy, to remove the offending provision from its Municipal Code. However, legal exposure on the City's part does not change the fact that the City made the entirety of the 1998 Agreement a development regulation by dint of codifying it into the SMC. If the City wishes to "un-make" all or portions of this development regulation, it must do so by the same means that made it a regulation in the first place – by a GMA compliant development regulation amendment. [*Laurelhurst II, 03316*, FDO, at 16.]

- [T]he 1998 Agreement is a development regulation within the meaning of RCW 36.70A.030(7), and that the First Amendment wrought by Ordinance No. 121193 is therefore an amendment to a development regulation. Consequently, the Board has subject matter jurisdiction over the challenged Ordinance, and will dismiss the portion of the City/UW Motion to Dismiss that goes to subject matter jurisdiction. [*Laurelhurst II, 03316*, FDO, at 16-17.]
- [Jurisdictions have a duty not to adopt regulations that preclude EPFs.] The Board has previously held that "local governments lack authority to deny a development permit for EPFs that are sponsored by state or regional entities." (Citation omitted.) [Here, the County] acknowledges it has a duty to approve a "regional, state or federal EPF." (Citations omitted.) However, to allow a local government to define "regional entities" as [the Ordinance] does, (i.e., acceding to the regional authority of only those entities that the local government voluntarily recognizes through an interlocal agreement) would vitiate the GMA's imperative to accommodate these needed facilities. Signing an interlocal agreement under Chapter 39.34 RCW is a voluntary local government exercise. Accommodating a regional EPF under Chapter 36.70A RCW is not. [*King County I, 03311*, 5/26/04 Order, at 13.]

- **Intervention**

- The Board's Rules of Practice and Procedure require that, as part of a petition for review, a petitioner must show standing. WAC 242-02-210(d). However, no such requirement exists for an intervenor. [*Benaroya I, 5372c*, 1/9/96 Order, at 6.]
- In determining whether a person qualifies as an intervenor, the presiding officer shall apply the applicable superior court rules (CR) of this state. [*Benaroya I, 5372c*, 1/9/96 Order, at 6.]
- [When intervention is granted after the deadline for filing motions, and a motion is filed by an intervenor, the Board's Rules require approval of the Presiding Officer for consideration of the motion; if granted, consideration may be deferred until the hearing on the merits – WAC 242-02-532(2) and (3).]
- [The Board had established a deadline for filing as a participant in a compliance hearing.] In subsequent Board Orders, the Board will indicate that the deadline established for commenting on the SATC [statement of actions taken to comply] will also be the deadline for requesting participant status in a compliance hearing. Failure to make such request by the established comment deadline will result in participation status being denied. [*MBA/Brink, 02310*, 1/21/04 Order, at 6.]

- [Intervener] has no independent legal issues before this Board; intervention was granted to allow briefing and argument on those legal issues as posed by [petitioner], and reflected in the PHO. If the City and Petitioner reach agreement on those issues and stipulate to dismissal, there are no pending legal issues for the Board to resolve. More importantly, [intervener] waived its right to directly challenge [the City's] action by not filing a timely PFR. To allow [intervener] to prolong this proceeding, if the [respondent and petitioner] stipulate to dismissal, would be the equivalent of allowing [intervener] to "bootstrap" an untimely PFR to place a challenge before this Board. This the Board will not do. [*1000 Friends V, 04322*, 4/25/05 Order, at 3.]

- **Invalidity**

- *Vashon-Maury, 5308,* FDO. [Rescinded]
- *Bremerton, 5339c,* FDO; and *Bremerton/Port Gamble, 5339c/7324c, 9/8/97* Order. [Rescinded]
- *Kelly, 7312,* FDO. [Rescinded]
- *Port of Seattle, 7314,* FDO. [Rescinded]
- *Green Valley, 8308c,* FDO. [Rescinded]
- *Grubb, 0304,* FDO. [Rescinded]
- *WHIP, 0312,* 11/6/00 Order. [Rescinded]
- *Homebuilders, 0314,* FDO. [Rescinded]
- *McVittie V, 0316,* FDO. [Rescinded]
- *Hensley IV, 1304c,* FDO. [Maltby portion]. [*Stayed – Pending*]
- *Forster Woods, 1308c,* FDO. [Rescinded]
- *FOTL VI, 1310,* FDO. [Partial Bear Creek portion]. [*Stayed – Pending*]
- *Bennett, 1322c,* FDO. [Rescinded]
- *MBA/Brink, 02310,* FDO. [Rescinded]
- *WHIP II / Moyer, 03306c,* FDO. [Rescinded]
- *Hensley VI, 03309c,* FDO. [Rescinded]
- *King County, 03322,* FDO. [Rescinded]
- *Citizens, 03313,* FDO. [Rescinded]
- *1000 Friends/Island Crossing, 03319c,* FDO. [Rescinded]
- *CTED II, 03320,* FDO. [Rescinded]
- *1000 Friends II, 03326,* FDO. [Stayed]
- *Orton Farms, 04307c,* FDO. [Rescinded]
- *Jensen, 04310,* FDO. [Rescinded]
- *Fallgatter, 04321,* FDO. [Rescinded]
- *Kaleas, 05307c,* FDO. [Stayed]
- *MBA/Camwest, 05327,* FDO. [Compliance pending]
- *DOC III/IV, 05343c,* FDO. [Compliance pending]
- For the Board to invalidate an enactment, it must find that substantial interference will occur with the fulfillment of the goals of the GMA, set forth at RCW 36.70A.020. [*Children's I, 5311,* 2/2/96 Order, at 5.]

- Any development regulations that attempt to implement such a fully noncomplying comprehensive plan cannot stand as a matter of law during the period that the plan fails to comply with the Act. Regulations that attempt to implement and be consistent with a fatally flawed comprehensive plan are in turn poisoned by the plan's defects. [*Bremerton, 5339c,* FDO, at 82.]
- [The Board's first analysis and determination of invalidity.] [*Bremerton, 5339c,* FDO, at. 83-89.]
- As to invalidation, the jurisdiction has the burden of demonstrating that the [legislative action] taken in response to the Board's finding of invalidity no longer substantially interferes with the fulfillment of the [specified] goals of the GMA. [*Port of Seattle, 7314,* 5/26/98 Order, at 2.]
- [Although the Board's Determination of Invalidity has been rescinded, the Board must inquire as to whether these remanded provisions comply with the goals and requirements of the Act.] [*Bremerton/Alpine, 5339c/8332c,* FDO, 21-22.]
- [As stated in the July 30, 1997 FDO] what the Board found noncompliant with the public participation requirements of the GMA was the erroneous notice regarding the [property]. The Board never addressed the substance of the redesignation of the property. However, since the notice was in error, the public participation process consequently failed to comply with the GMA, and that amendment adopted pursuant to the defective notice was found invalid. [*Kelly, 7312c,* 3/31/99 Order, at 5.]
- The County's decision to attempt to comply with the FDO and address the land use of the [property] in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy. The time and effort expended on the present process illustrate the difficulty and complexity of developing an optional Lake Stevens UGA subarea plan. The Board does not want to dissuade the County from subarea planning and notes that neither the substance or the Lake Stevens subarea plan nor the appropriateness of that public process is presently before the Board. Unfortunately, the action needed for the County to address the Board's finding that the notice was defective for the County's amendment to 33.7 acres in Ordinance No. 96-074 had been needlessly enmeshed in the subarea planning process. The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan. Further, the County's Lake Stevens UGA subarea plan process had interjected broader GMA and subarea planning issues into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance No. 96-074. [The Board directed the County to repeal those portions of Ordinance 96-074 that were invalidated due to defective notice.] [*Kelly, 7312c,* 3/31/99 Order, at 6-7.]
- Nowhere in RCW 36.70A.280 is the Board explicitly or implicitly delegated the authority to determine compliance with Chapter 81.112 RCW or with the law of agency. Tukwila has not identified any authority establishing Board jurisdiction over these matters. [*Sound Transit, 9303,* 6/18/99 Order, at 2]
- [DOC sought a determination of invalidity, which requires the Board to find substantial interference with the goals of the Act. There is no GMA goal that

explicitly addresses EPFs. DOC argued, but the Board rejected the argument that] RCW 36.70A.020(12) implicitly encompasses the non-preclusionary requirements of RCW 36.70A.200. [To make this case, the Board would have to see evidence that the jurisdiction had identified work release and juvenile community facilities as necessary to support development and that the jurisdiction had established minimum standards for such facilities.] However, the Board is concerned that the City ensures coordination between communities and jurisdictions, including DOC, to reconcile conflicts [RCW 36.70A.020(11).] [*DOC/DSHS, 0307*, FDO, at 16-17.]

- The Board found the *County's* action . . .noncompliant and invalid. Consequently, the Board directed the *County to take legislative action*, not merely rely upon the Board's determination of invalidity, to bring the Plan and development regulations (zoning) into compliance. . . .How the County chooses to comply with the Board's FDO [and the Act] is left to the County's discretion; however, providing effective notice and the opportunity for public participation for the citizens of Snohomish County on the County's chosen legislative action to comply with the Board's FDO is not a meaningless act. [*McVittie V, 0316*, 5/4/01 Order, at 2-3.]
- The severability/savings clauses in [the Ordinances], by operation of law, effectively repeal the ordinances found to be invalid by the Board, and revive the prior plan and zoning designations for the area. The Board has previously found that [prior plan and zoning designations] complied with the provisions of the GMA. (Citations omitted.) Therefore, pursuant to RCW 36.70A.302(4), the Board concludes that the prior plan designation and zoning designation were valid during the remand period – commencing on [the date of the FDO invalidating the Ordinances]. [*McVittie V, 0316*, 8/16/01 Order, at 4.]
- [If a challenge cites goals of the Act and the specific requirements section of the Act that relate to those goals], the Board looks first to the requirements sections of the Act to determine compliance. Review is done in light of the goals of the Act, not in lieu of the goals. If the Board finds noncompliance with a requirement section of the Act, it then returns to review the goals to determine whether substantial interference has occurred and whether invalidity should be impose. [*Kitsap Citizens, 0319c*, FDO, at 10.]
- [Petitioners moved to amend their PFR to include a determination of invalidity within the relief section of their PFR.] The Board's Rules of Practice and Procedure allow a PFR to be amended after 30-days of original filing with the approval of the presiding officer. WAC 242-02-260. The Board views its authority to enter a determination of invalidity as a remedy which it is empowered to impose if the Board finds noncompliance, remands and determines that the continuing validity of the noncompliant action substantially interferes with the fulfillment of the goals of the Act. Granting the amendment to the PFR will not impose any unreasonable or unavoidable hardship on the parties nor impede the orderly resolution of this matter. [*Citizens, 03313*, FDO, at 5.]
- Invalidity is a remedy rather than a legal issue. There is nothing in the GMA that obligates a Petitioner to frame the question of invalidity as a legal issue. Moreover, the Board has authority to consider invalidity *sua sponte* regardless of whether or not a party raises it during the proceeding. [*King County I, 03311*, FDO, at 18.]

- [A] motion for "clarification" authorized in RCW 36.70A.302(6) is limited to non-prevailing Respondents that are subject to a determination of invalidity – not a Petitioner whose PFR was dismissed. [*FEARN, 04306c*, 6/7/04 Order, at 1-2.]
- It is Snohomish County, not King County or the City of Renton that "is subject to a determination of invalidity" in this matter. As Snohomish County correctly points out under RCW 36.70A.302(6), "King County is not entitled to a compliance hearing in this matter." The Board agrees with Snohomish County; RCW 36.70A.302(6) does not provide a basis for Petitioners to request a compliance hearing. [*King County IV, 05331*, 6/20/05 Order, at 5.]
- The Board notes that Snohomish County is not seeking to have the Board's determination of invalidity modified or rescinded through the adopted ordinances. The determination of invalidity attached to certain provisions of the County's noncompliant EPF process. [These area not interim controls. RCW 36.70A.302(7) does not apply.] [*King County IV, 05331*, 6/20/05 Order, at 6.]
- [The Petitioners asked for clarification as to when the determination of invalidity took effect, upon receipt of the Order, or when the City repealed the invalid ordinance. RCW 36.70A.302(2) is explicit that the determination of invalidity is effective upon receipt of the Board's Order.] [*MBA/Camwest, 05327*, 8/9/05 Order, at 2.]

- **Jurisdiction – *See:* Subject Matter Jurisdiction – SMJ**

- **Land Capacity Analysis – *See:* UGAs – Size**

- **Land Use Element**

- Land use designations within a UGA must allow for urban development regardless of the rural character a parcel of land may have today. [*Aagaard, 4311c*, FDO, at 17.]
- If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed must be included in the Plan. [*WSDF I, 4316*, FDO, at 65.]
- All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. (Citations omitted) A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning. [*Bremerton, 5339c*, FDO, at 77.]
- The lack of a fully completed capital facilities plan is more than a conceptual shortcoming – it is a fatal legal defect in a comprehensive plan. It alone is sufficient cause for the Board to find that the land use element and every other component of a plan violates the requirements of the Act. [*Bremerton, 5339c*, FDO, at 77.]
- The future land use map must depict UGAs and reference the location of maps of appropriate scale to discern the actual location of the UGA boundaries. [*Bremerton/Port Gamble, 5339/7324c*, 9/8/97 Order, at 17.]

- When environmentally sensitive systems are large in scope (e.g., a watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may also choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre. Such designation must be supported by adequate justification. [*Litowitz, 6305,* FDO, at 12.]
- A jurisdiction must provide in its land use element an indication that it has reviewed drainage, flooding and stormwater run-off in the area and nearby jurisdictions. [*Hensley III, 6331,* FDO, at 7.]
- The Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. [*Hensley III, 6331,* FDO, at 9.]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban portion of the twenty years of county-wide population growth. The county, as to the unincorporated portion of the UGA, and the cities, as to their respective portions of the UGA, have a duty to adopt comprehensive plans that accommodate that allocated growth over the twenty-year life of their plans, including provision of public facilities and services. [*Hensley III, 6331,* FDO, at 8.]
- In the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the GMA. [*WSDF IV, 6333,* FDO, at 11.]
- Some very fundamental issues have been resolved by virtue of the UGA designation: (1) the land use will be urban; (2) the land use designations reflect population and employment allocations made by the County; and (3) urban services provided within the UGA should be primarily provided by cities. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 48.]
- Application of the GMA's scientific and analytic critical areas process may, in certain limited instances, provide information to justify supplementary use of land use designations on the Plan's future land use map as an additional layer of critical areas protection. [*LMI/Chevron, 8312,* FDO, at 17.]
- Fundamental to a city's complying with Goals 1 and 2 is that its land use element, including its future land use map, permits appropriate urban densities throughout its jurisdiction**.** [*LMI/Chevron, 8312,* FDO, at 24.]
- [A future land use map designation for residential development that permits 4 du/ac within city limits (UGA) is an appropriate urban density.] [*LMI/Chevron, 8312,* FDO, at 24.]
- [A future land use map designation for residential development that permits only 1 du/2 ac within city limits (UGA) is not an appropriate urban density and constitutes sprawling low-density development.] [*LMI/Chevron, 8312,* FDO, at 24.]
- When critical areas are large in scope, with a high rank order value and are complex in structure and function, a city may use its future land use map designations to afford a higher level of critical areas protection than is available through its regulations to

protect critical areas. In these limited circumstances, the resulting residential density will be deemed an appropriate urban density. [*LMI/Chevron, 8312,* FDO, at 25.]

- [A]bsent the requisite environmental attributes of a critical area that is large in scope, of high rank order value and is complex in structure and function, [a city's] future land use map density designations must permit appropriate urban densities. [*LMI/Chevron, 8312,* FDO, at 26.]
- RCW 36.70A.020(3) does not require that each and every land use designation of a jurisdiction permit residential densities that support all modes of transportation. [Reliance on urban density designations alone is not enough to demonstrate noncompliance with Goal 3.] [*LMI/Chevron, 8312,* FDO, at 29.]
- [RCW 36.70A.020(4) does not require that each and every land use designation of a jurisdiction provide for affordable housing. [*LMI/Chevron, 8312,* FDO, at 29.]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, at 30.]
- [I]f certain land is bordered by commercial property on which more intense uses are permitted, then that certain land must be designated for similar commercial uses. Such reasoning is clearly contrary to the GMA. . . . Such proximity to more intense uses cannot alone dictate the designation of land. [*Sky Valley,* 5368c, 4/22/99 Order, at 11.]
- It is absurd to argue that the presence of roads, even an interstate highway, automatically prohibits designation of land as agriculture. [*Sky Valley,* 5368c, 4/22/99 Order, at 11]
- [As stated in the July 30, 1997 FDO] what the Board found noncompliant with the public participation requirements of the GMA was the erroneous notice regarding the [property]. The Board never addressed the substance of the redesignation of the property. However, since the notice was in error, the public participation process consequently failed to comply with the GMA, and that amendment adopted pursuant to the defective notice was found invalid. [*Kelly, 7312c,* 3/31/99 Order, at 5.]
- The County's decision to attempt to comply with the FDO and address the land use of the [property] in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy. The time and effort expended on the present process illustrate the difficulty and complexity of developing an optional Lake Stevens UGA subarea plan. The Board does not want to dissuade the County from subarea planning and notes that neither the substance or the Lake Stevens subarea plan nor the appropriateness of that public process is presently before the Board. Unfortunately, the action needed for the County to address the Board's finding that the notice was defective for the County's amendment to 33.7 acres in Ordinance No. 96-074 had been needlessly enmeshed in the subarea planning process. The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan. Further, the County's Lake Stevens UGA subarea plan process had interjected broader GMA and subarea planning issues into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of

Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance No. 96-074. [The Board directed the County to repeal those portions of Ordinance 96-074 that were invalidated due to defective notice.] [*Kelly, 7312c*, 3/31/99 Order, at. 6-7.]

- Where land meets the criteria for more than one land use designation, the County has the discretion to determine the designation to be applied to that land. [*Screen I, 9306c*, 10/11/99 Order, at 21.]
- It is important to recognize that local government may use various regulatory techniques to avoid the situation where funding shortfalls occur. However, once local action is forced by a probable funding shortfall, a local government has numerous options to consider in reassessing and reevaluating its plan. In reassessing or reevaluating its plan, a local government is not automatically required to revise its land use element. There are other options that may be considered to meet identified capital facility needs and maintain plan consistency. [Options include: reducing standard of service (LOS); increase revenue; reduce average cost of the capital facility; reduce demand – reallocate or redirect population within the jurisdiction; reduce consumption; combinations of these options.] [*McVittie, 9316c, FDO*, at 26-27.]
- [A] challenge to a 1999 adoption of a subarea plan is an action that, if timely filed, is subject to the GMA appeal procedures. [However, adoption of a subarea plan, that does not alter a land use designation originally adopted in a prior GMA plan, does not open the original designation to challenge. The challenge to the original designation is untimely.] [*MacAngus, 9317*, FDO, at 7.]
- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317*, FDO, at 7-8.]
- The adoption of [a subarea plan] is a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to [an unchanged plan designation.] [A jurisdiction's decision to maintain an existing designation does not reopen the appeal period of that unchanged designation.] [*MacAngus, 9317*, FDO, at 8.]
- In adopting the Tulalip Subarea Plan, the County did not change, re-adopt, or re-affirm the [agricultural] designation; it merely maintained the existing designation. Additionally, the County's action was not taken in response to a statutory requirement, such as RCW 36.70A.215, which may require the County to change, re-adopt, or re-affirm its comprehensive plan or development regulations. [*MacAngus, 9317*, FDO, at 8-9.]
- [Petitioner wants the County to explain why it disagreed with them. While the Act requires a jurisdiction to respond to public testimony, it] does not require the kind of response demanded by Petitioner. The County action of maintaining the

[agricultural] designation as it relates to Petitioner's property is ample "response" that speaks for itself. [*MacAngus, 9317,* FDO, at 12.]

- Accepting the general premise that public and institutional uses do have a propensity to generate growth within the local environs of such uses, it is therefore appropriate that such facilities be encouraged in *urban areas within the UGA* where adequate public facilities and services must be provided to support them. Such uses in the rural areas do have the potential to proliferate sprawl and leapfrog development. However, this is not the case here. The County has developed a process for including public and institutional uses within the UGA that is consistent with the goals and requirements of the Act. [*Hensley VI, 03309c*, FDO, at 10.]
- The review and evaluation mandate [of RCW 36.70A.215] focuses on the following components: 1) whether there is sufficient suitable land to accommodate the county-wide population projection; 2) the actual density of *housing* that has been constructed and the actual amount of land developed for *commercial and industrial uses* within the urban growth area; and 3) evaluation of the *commercial, industrial and housing* needs by type and density range to determine the amount of land needed for *commercial, industrial and housing* for the remaining portion of the twenty-year planning period. [*Hensley VI, 03309c*, FDO, at 15.]
- The review and evaluation program [of RCW 36.70A.215] is designed to require the assessment of at least the three most significant consumers of urban land – residential, commercial and industrial uses. These three use types provide the core of urban development and the basis for the possible expansion of UGAs. [*Hensley VI, 03309c*, FDO, at 16.]

- **Land Use Pattern**

- For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider "such lands" to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity. [*Vashon-Maury, 5308c*, FDO, at 68.]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c*, FDO, at 79.]
- The Board declines the invitation to establish a minimum lot size for agricultural parcel sizes. [*Gig Harbor, 5316c*, FDO, at 31.]
- A pattern of 1- and 2.5-acre lots meets the Act's definition of urban growth. . . . However, a pattern of 1- or 2.5-acre lots is not an appropriate urban density either. . . . An urban land use pattern of 1- or 2.5-acre parcels would constitute sprawl; such a development pattern within the rural area would also constitute sprawl. [*Bremerton, 5339c*, FDO, at 49.]

- Generally, any residential pattern of four net dwelling units per acre, or higher, is compact urban development and satisfies the low end of the range required by the Act. Any larger urban lots will be subject to increased scrutiny. [*Bremerton, 5339c*, FDO, at 50.]
- The advent of the GMA changed land use law in this state in a profound way, changing the land use patterns that counties may permit in rural areas. [*Bremerton/Port Gamble, 5339/7324c*, 9/8/97 Order, at 25.]
- Pre-existing parcelization cannot be undone; however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change. [*Bremerton/Port Gamble, 5339/7324c*, 9/8/97 Order, at 25.]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c*, FDO, at 46.]
- The designation of 7,822 acres (approximately twelve square miles) – which permits 2.3-acre lots, creates an impermissible pattern (number, location and configuration of lots) of urban growth in the rural area. (3,400 lots of 2.3 acres, astride the North Fork of the Stillaguamish River, east, west and south of the Darrington UGA.) This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern. [*Sky Valley, 5368c*, 10/2/97 Order, at 13-14.]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in visual character. The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New England towns that Pope and Talbot used as templates for their company town. The Board finds that Port Gamble's mix of uses and physical forms clearly qualify as a "village," a "hamlet" or a "rural activity" center within the meaning of RCW 36.70A.070(5)(d)(i). [*Burrow, 9318*, FDO, at 18.]
- A pattern of more intensive rural development, as allowed within a valid LAMIRD, does not constitute "urban" development. [*Burrow, 9318*, FDO, at 24.]
- The changing land use pattern and transportation picture in the valley are an ample basis to demonstrate changed circumstances since the 1994 residential designation occurred. It is not inappropriate for the City to reevaluate, amend and modify its Plan as planned uses are ultimately realized and developed. [*Edgewood, 1318*, FDO, at 18.]

- RCW 36.70A.030(17) clarifies that "A pattern of more intensive rural development as provided in RCW 36.70A.070(5)(d) *is not urban growth*." This provision acknowledges and specifically authorizes the continuance of, and even the expansion of, the *types* of uses that existed in 1990. (Footnote omitted.) It is over-reaching, however, to suggest that this provision authorizes the inclusion in a LAMIRD of types of commercial uses that did not exist in 1990. Thus, by definition, the existing pattern of commercial development (*i.e.*, those uses that existed in Clearview in 1990) is not urban growth. However, a *future* pattern that includes urban commercial uses of a type that did not exist in 1990 would constitute urban growth. The Board concludes that such "urban growth" is not permitted in a LAMIRD because of the substantive effect of Goal 1 "to encourage [urban] development in urban areas." [*Hensley V, 03004*, 8/12/02 Order, at 3-4.]
- The existing urban pattern in the Clearview LAMIRD is not considered urban growth by definition. However, the introduction into Clearview of new types (i.e., those that did not exist in 1990) of commercial uses would constitute urban, not rural, development. Such development would be inconsistent with the preservation of rural character of rural lands required for LAMIRDs. (Footnote omitted.) LAMIRDs are *Limited* Areas of More Intensive *Rural Development*. [*Hensley V, 03004*, 8/12/02 Order, at 5.]
- Land within an UGA, [including subarea planning areas], reflects the jurisdiction's commitment and assurance that it will develop with urban uses, at urban densities and intensities, and it will ultimately be provided with urban facilities and services. [*MBA/Brink, 02310*, FDO, at 11.]
- The duty of a County as a local government to accommodate growth within its UGA is the same as the duty of a City to accommodate growth within its city limits (Footnotes omitted). Therefore, any opportunity to *perpetuate* an "historic low-density residential" development pattern, [in the subarea], ended in 1994 when the County included the area within the UGA. Consequently, [the subarea plan and implementing regulations] must provide for appropriate urban densities. [*MBA/Brink, 02310*, FDO, at 11-12.]
- The GMA clearly encourages the preservation of existing housing stock (*See* RCW 36.70A.020(4)) and provides for ensuring the vitality and character of established residential neighborhoods (*See* RCW 36.70A.070(4)). However, as the Board stated, *supra*, "any opportunity to perpetuate an "historic low-density residential" development pattern, [in the subarea], ended in 1994 when the County included the area within the UGA." It is clear that existing housing stock and neighborhoods may be maintained and preserved, however existing low-density patterns of development cannot be perpetuated. [*MBA/Brink, 02310*, FDO, at 14-15.]

- **Land Use Powers**

- [U]nequivocal and directive language that, on its face, imposes conditions precedent to city annexations in urban growth areas . . . fail to comply with RCW 36.70A.110. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 48.]

- Once a UGA has been designated, the provisions of a county plan may not condition or limit the exercise of a city's annexation land use power. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 48.]

• Lands Useful for Public Purposes - LUPP

- Counties and cities must complete the identification process specified in RCW 36.70A.150 [lands useful for public purposes] by the time of adoption of the comprehensive plans. [*Sky Valley, 5368c*, FDO, at 62.]
- After a county has identified lands that may be useful for public purposes and after it has worked with the state and cities to identify those areas of shared need, a county must prioritize the lands necessary to accommodate those public uses it will provide. [*Sky Valley, 5368c*, FDO, at 62.]
- [A]ny actual UGA extensions for [institutional facilities] should be **limited** and **rare**, for the following reasons. First, RCW 36.70A.150 requires cities and counties to identify lands useful for public purposes, specifically enumerating schools; so the need and location for potential school sites should come as no surprise to any jurisdiction. Secondly, and potentially complementing .150, the submittal of a school district capital facility plan is a condition precedent to the imposition and collection of school impact fees; therefore, ongoing coordination and communication between school districts and jurisdictions about the number and location of needed facilities should be known. Third, as both the Sultan and Snohomish School Districts Capital Facilities Plans indicate, typical school site requirements for schools ranging from elementary to high schools require approximately 10 to 40 acres per school, respectively. (*Citation* omitted.) Accommodating such limited site needs within existing UGAs should be a priority and a reasonable measure to take in lieu of expanding a UGA. Finally, notwithstanding the Board's decision in this case, any actual UGA expansion involving a church or a school must comply with the goals and requirements of the Act and could be the subject of challenge before the Board. (Footnote omitted.) [*CTED, 03317*, FDO, at 28-29.]

• Legislative Intent

- The State Court of Appeals for Division One recently clarified the Legislature's intended meaning of the word "matter" in [RCW 36.70A.280(2)(b)]. The Court stated: "We conclude that [the Legislature] intended the word 'matter' to refer to a subject or topic of concern or controversy." (Citation omitted.) [Also, to determine whether a petitioner has participation standing, the Court affirmed the CPSGMHB reasonable relationship test adopted in *Alpine, 8332c*, 10/7/98 Order, at 8.]

• Levels of Service - LOS

- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the

discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, at 60.]

- Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place "at the time development is available for occupancy and use" and second, adequacy is measured by "locally established minimum standards." [*Gig Harbor, 5316c,* FDO, at 13.]
- [The City's "screenline" LOS methodology and Concurrency Regulations were adopted in 1994. The Ordinance challenged here, which adopted the Plan amendments, did not amend the LOS provisions of the Transportation Element or Concurrency Regulations as adopted in 1994. Petitioner cannot now challenge these provisions.] [*Montlake, 9302c,* FDO, at 10-12.]
- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c, FDO, at* 13.]
- The GMA requires local governments to establish a single LOS standard for transportation facilities. [In a footnote, the Board acknowledges that screenline methodologies comply.] [*McVittie, 9316c, FDO,* at 23.]
- [R]eading RCW 36.70A.070(3) in light of Goal 12, the Board concludes that the CFE must include locally established minimum standards, a baseline, for included public facilities, so that an objective measurement test of need and system performance is available. [*McVittie, 9316c, FDO,* at 25.]
- The answer to question 2 – Does Goal 12 require the designation of a single Level of Service (LOS) standard for the facilities and services contained in the CFE? – is yes. Goal 12 gives context to RCW 36.70A.070(3). Goal 12 requires a locally established single minimum (level of service) standard to provide the basis for objective measurement of need and system performance for those facilities locally identified as necessary. The minimum standard must be clearly indicated as the baseline standard, below which the jurisdiction will not allow service to fall. The minimum standard may be the lowest point indicated within a range of service standards for a type of facility. [*McVittie, 9316c, FDO,* at 25.]
- The transportation element requires a local government to adopt a "concurrency" ordinance that will prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan. (Footnote omitted.) [*McVittie, 9316c, FDO,* at 29.]
- If a local jurisdiction develops a "range" of service standards, the locally established minimum standard that provides the basis for objective measurement of need and facility performance must be clearly indicated. If the "minimum" standard is not clearly identified, it must be assumed that the "minimum" standard is the lowest point indicated within the range of service standards. Given Snohomish County's use of guideline ranges, the Board finds that the low end of each of the County's established

service guideline ranges is the County's minimum standard for that facility or service. [*McVittie, 9316c*, 2/9/00 Order, at 4.]

- [Sidewalks are a critical component of successful compact urban development. However,] the Board cannot, with the facts and argument presented in this case, discern a GMA duty that would oblige the City to adopt "levels of service" for sidewalks in urban villages nor subject projects in urban villages to a "concurrency" requirement for the installation of such facilities. [*Radabaugh, 0302*, FDO, at 14.]
- To clarify, the Board did not intend that the degree of detail of the notice mimic the actual ordinance. The "reasonable notice" standard or .035 presumes that the County will exercise some judgment about what the essential features of the Ordinance are that require summarization in the notice. The example provided by the County would meet the reasonably calculated standard because it alerts the citizens to the nature of the change (a lowering of the standard) and the likely consequence (approval of more development that would otherwise be allowed). This would be more meaningful to the lay public than a technically precise phrase such as "the change in LOS will be from .076 V/C to .074 V/C." However, to the extent that the changes contemplated in LOS can be expressed with commonly used terminology (e.g. a change from LOS "C" to LOS "D" it would be appropriate to include such information in the notice. [*McVittie VI, 1302*, 10/11/01 Order, at 4.]
- The Board holds that effective notice of an amendment to a Capital Facilities Element involving the addition or subtraction of facilities deemed to be "necessary for development" or a change in a level of service (LOS) for a listed facility must clearly and concisely describe the nature or magnitude of modifications being considered. Likewise, if a jurisdiction wishes to consider amending a previously adopted standard, by increasing or decreasing a level of service, by revising the methods used to measure performance, or by deletion of the standard altogether, it must explicitly say so in its notice. It is not sufficient for a notice to simply say that the jurisdiction is considering updating or changing previously adopted facilities, standards or methods. It must give a clear indication of WHAT, HOW and, if applicable, HOW MUCH the facility, standard or method might be changed. [*McVittie VI, 1302*, FDO, at 9-10.]
- [In McVittie I, 9316c, FDO, 23-30.] [T]he Board reached four other basic conclusions about the cumulative effect of Goal 12 and the capital facilities requirements of the Act: (1) Goal 12 creates a duty beyond the capital facility planning that is required by RCW 36.70A.070(3) and requires substantive, as well as procedural compliance; (2) Goal 12 requires the designation of a locally established single Level of Service (LOS) standard for the facilities and services contained in the Capital Facilities Element, below which the jurisdiction will not allow service to fall; (3) Goal 12 operating through RCW 36.70A.070(3) and (6), requires an enforcement mechanism or "trigger" to compel either concurrency implementation or reevaluation of numerous options; and (4) Goal 12 does **not** require a development-prohibiting concurrency ordinance for non-transportation facilities and services, rather, it allows local governments to determine what facilities and services are necessary to support development and the enforcement mechanism for ensuring that identified necessary facilities and services for development are adequate and available. (Footnotes omitted). [*McVittie VI, 1302*, FDO, at 11-12.]

- [The County adopted level of service (LOS) "objectives" for state highways.] The fact that the State has not yet adopted "standards" placed the County in a difficult situation, in view of the GMA mandate that the County adopt something by December of 2000. Relying upon the guidance of the [Puget Sound Regional Council] to adopt the [Washington State Department of Transportation] "objectives" in the County Plan was not unreasonable. In fact, for the County to have described as a standard that which the State described as an "objective" would have been more than misleading, it would have been flatly incorrect. [*McVittie VIII, 1317*, FDO, at 9.]
- [Petitioner argued that] there appears to be a serious disconnect between transportation plans and improvements done by the County and the State. [Therefore] the spirit of Goals 3 and 12 [must apply because they] would demand a better degree of coordination and consistency between the plans and actions of State and County government. Even the County laments the timing of State improvement, to say nothing of the timing of the adoption of State LOS standards. Nevertheless, the Board must conclude that neither Goals 3 and 12, indeed **none** of the goals listed in RCW 36.70A.020 apply to the State because the preamble to that section unequivocally states the goals "shall be used *exclusively* for the purpose of guiding the development of comprehensive plans and development regulations." This is an unfortunate but inescapable conclusion, because to truly achieve managed growth there must be a better linkage between local efforts and state efforts. [*McVittie VIII, 1317*, FDO, at 10.]
- As provided in the statute [RCW 36.70A.070(6)(a)(iii)(C)], the purpose for including state LOS standards at the local level is for monitoring, evaluating and facilitating coordination between the state and local plans. Providing information to the state for its further analysis and assessment is the driver behind this section of the GMA. As discussed in [elsewhere], there is no financing or implementation "hook" for binding the state to undertake any given state road project, critical or otherwise. [*McVittie VIII, 1317*, FDO, at 14.]
- The County's Notice was reasonably calculated to reach the affected and interested individuals. Not only was the Notice extensive and widely distributed [but] it was also accurate. The County Notice accurately conveyed that the LOS objectives provided by WSDOT and recommended by PSRC were not standards. [*McVittie VIII, 1317*, FDO, at 19.]
- The Board notes that it is WSDOT [Washington State Department of Transportation], not cities or counties, that designates LOS standards on state highways, and Meridian *is* a state highway. [*Lewis, 1320*, FDO, at 19.]
- The Board finds it significant that Bellevue was aware of its option, as described in *West Seattle* [*4316*], to amend its Plan to adjust the level of service standards for East Bellevue [to allow greater levels of congestion], but chose not to do so. Instead, without revision to previously adopted LOS for East Bellevue set forth in the Plan and again in the [traffic standard code], the City simply exempted from its locally-adopted concurrency requirements what can only be described as potentially a very considerable amount of commercial development. [*Bennett, 1322c*, FDO, at 11.]
- The importance of the GMA's concurrency provisions were underscored by a recent Court of Appeals decision which commented on RCW 36.70A.070(6)(b), "The

[GMA] requires that the City prohibit development that causes a decline in level of service standards. An action-forcing ordinance of this type is known as a concurrency ordinance because its purpose is to assure that development permits are denied unless there is concurrent provision for transportation impacts . . ." *Montlake Community Club v. CPSGMHB*, 110 Wash App. 731, 43 P.2d 57, (2002). [*Bennett, 1322c,* FDO, at 12.]

- For the Board to agree that a city can exempt from concurrency requirements commercial (re)development of the nature and order of magnitude described in this record would eviscerate the concurrency requirement of the Act. This the Board will not do. [*Bennett, 1322c,* FDO, at 12-13.]

• Limited Areas of More Intensive Rural Development - LAMIRDs

- The two fundamental components of LAMIRDs are: (1) the land use intensity permitted within a LAMIRD and (2) the logical outer boundary of a LAMIRD. [*Burrow, 9318,* FDO, at 13.]
- General Discussion of LAMIRDs. [*Burrow, 9318,* FDO, at 18-20.]
- Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl. The Act's lengthy definitions and requirements regarding urban growth areas and natural resource lands also date to 1990. However, the Act's initial description of future rural uses and development patterns was spare. While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. [*Burrow, 9318,* FDO, at 18.]
- LAMIRDs are neither urban growth, nor are they to be the predominant pattern of future rural development. [LAMIRDs are not quite urban, but not quite rural.] LAMIRDs are settlements that existed on July 1, 1990 in some land use pattern or form more intensive than what might typically bed found in a rural area. LAMIRDs are "characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." In essence, they are *compact forms of rural development*. [*Burrow, 9318,* FDO, at 18.]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in visual character. The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New England towns that Pope and Talbot used as templates for their company town. The Board finds that Port Gamble's mix of uses and physical form clearly qualifies as a "village," a "hamlet" or a "rural activity" center within the meaning of RCW 36.70A.070(5)(d)(i). [*Burrow, 9318,* FDO, at 18.]

- The Act's definitions (RCW 36.70A.030(17)) expressly state that development within LAMIRDs is not urban. The Act does not put an explicit limit on the absolute residential density permitted in LAMIRDs. The limit is unique to each LAMIRD and is established by the conditions that existed on July 1, 1990. [*Burrow, 9318*, FDO, at 19.]
- As to the question of range of permitted uses. . . the GMA's focus is on the *types* of uses in existence on July 1, 1990, rather than on specific businesses. Therefore, the limitations imposed are upon the types of uses (i.e., office, or residential, or commercial) that existed on July 1, 1990, not on the specific businesses that can be documented. . . . In future cases, with a smaller scale development and a narrower range of historical uses, the Board may be compelled to more closely examine the actual businesses or uses to determine what the appropriate range of uses might be. [*Burrow, 9318*, FDO, at 19-20.]
- RCW 36.70A.070(5)(d)(iv) requires existing areas (LAMIRDs) to be minimized and contained. [Physical constraints can minimize and constrain a LAMIRD, but nothing in the act mandates the exclusive use of such physical features; nor must a LAMIRD contain only homes of a certain historic vintage. The extent of existing infrastructure and service area can be used to set the logical outer boundary that minimizes and contains the LAMIRD.] [*Burrow, 9318*, FDO, at 23.]
- A pattern of more intensive rural development, as allowed within a valid LAMIRD, does not constitute "urban" development. [*Burrow, 9318*, FDO, at 24.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, FDO, at 6.]
- The County's argument about the propriety of its RAID designation evidence several fundamental misapprehensions. What the Act contemplates is flexibility for counties, in certain circumstances and subject to careful restrictions, to "round off" with logical outer boundaries "limited areas of more intensive rural development" [LAMIRDs]. However, simply because an unincorporated parcel was urbanized as of July 1, 1990, does not mean that it is appropriate to designated it as a LAMIRD. The County's spacing criteria for rural activity centers (RACs) and rural neighborhood centers (RNCs) indicates that it grasps the concept of a "central place," the idea that a commercial center serves a surrounding hinterland. The placement of its RAID less than 400 feet from the UGA flies in the face of this "central place" theory. The location of the [property] immediately adjacent to the UGA makes it a candidate not for LAMIRD designation, but potentially for UGA expansion. [*Tacoma II, 9323c*, FDO, at 7.]
- [The argument that the LAMIRD designations authorized in 1997 are simply smaller and more limited rural centers than those included in its pre-1997 rural designations (RACs and RNCs) is a flawed perception.] The County's RACs and RNCs were designated before the legislature created the specific template for how such rural

centers were to be designated and limited. RCW 36.70A.070(5)(d)(iv) establishes the exclusive means for designating RACs and RNCs and other rural centers. The range of uses and scale of rural commercial centers allowed in a RAID [LAMIRD] is governed by this section of the GMA, not the County's preexisting RAC and RNC provisions. [*Tacoma II, 9323c,* FDO, at 7.]

- The types of uses in a RAID [LAMIRD] must have been among the types of uses in existence within the RAID [LAMIRD] on July 1, 1990. . . .Uses permitted in RACs [or RNCs] are irrelevant to uses permitted in RAIDs [LAMIRDs]. [*Tacoma II, 9323c,* FDO, at 7-8.]
- The County's hierarchy of rural centers provides that RACs be located no closer than five miles from a UGA; and that RNCs be located no closer than two miles from a UGA. Without explanation as to UGA proximity requirements, this RAID [LAMIRD] is located within 360 feet of the UGA, which is the present city limits for the City of Tacoma. Designation of a RAID [LAMIRD in this location fosters the low-density sprawl that RAIDS [LAMIRDs] are required to avoid. Proximity to the UGA alone suggests to the Board that if the area were to be urban, adjustments to the UGA would be a more appropriate means of accomplishing this objective. [*Tacoma II, 9323c,* FDO, at 8.]
- [Designation of LAMIRDs in subarea plans must comply with the requirements of RCW 36.70A.070(5)(d); requirements for their designation are not discretionary.] [*Tacoma II, 9323c,* FDO, at 9.]
- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c,* FDO, at 10.]
- Existing sewer service in the "rural area" is a reality in some areas that must be acknowledged. However, the mere presence of existing sewer service does not guarantee that the area will be included within a RAID [LAMIRD] designation. [*Tacoma II, 9323c,* FDO, at 10.]
- Providing sewer service to RAIDs [LAMIRDs] is explicitly permitted by the GMA. [*Tacoma II, 9323c,* FDO, at 11.]
- An initial step in creating a LAMIRD is the clear identification of the area's logical outer boundary (LOB). The LOB requirements of [RCW 36.70A.070(5)(d)(iv)] apply only to LAMIRDs designated pursuant to [RCW 36.70A.070(5)(d)(i)] (Citation omitted), for "development consisting of the *infill, development, or redevelopment of existing* commercial, industrial, residential or mixed-use *areas*." The area(s) to be contained by the LOB are the "existing areas" as defined in [RCW 36.70A.070(5)(d)(v)]. These existing areas are those areas containing manmade structures in place (built) by July 1, 1990 (Citation omitted). [*Hensley IV, 1304c,* FDO, at 11-12.]
- The Act requires the LOB to minimize and contain the existing areas of commercial development. The record . . .supports Petitioners' contention that the LOB goes beyond the existing area creating a commercial strip – the "infill" goes beyond the existing development, it is not limited. The County's own findings and conclusions regarding the LAMIRD designation do not support the delineation of the Clearview LAMIRD as commercial strip. [The findings and conclusions describe two

commercial nodes.] The County concludes that including 27 acres of infill between the two existing commercial nodes is not as bad as the original proposal to include 103 acres of infill between them. A smaller version of a noncompliant designation creating a commercial strip does not change the nature of the noncompliant action. The LAMIRD designation is not limited to the existing area. [*Hensley IV, 1304c*, FDO, at 13-16.]

- [If the LAMIRD designation does not comply with the requirements of the Act, it follows that the Plan policies that support the LAMIRD designation do not comply with the requirements of the Act.] [*Hensley IV, 1304c*, FDO, at 16.]
- The UGA designation requirements of RCW 36.70A.110 are not applicable to the [designation of a LAMIRD]. [*Hensley IV, 1304c*, FDO, at 18.]
- [Petitioner asserted that five amendments to the zoning code were introduced and adopted, after the opportunity for review and comment had closed and the amendments did not fit within the exceptions or RCW 36.70A.035(2)(b) that eliminates the need for additional notice and comment. The Board concluded that three of the amendments fit within the exceptions, but two others did not.] The site-obscuring buffer and maximum lot coverage for the Northern node [of the LAMIRD] amendments . . . fell beyond the scope of the exceptions of RCW 36.70A.035(2)(b). [*Hensley IV* and *V, 1304c/2304*, 6/17/02 Order, at 7-13.]
- [On remand] the County appropriately removed the 27-acres of land connecting the two crossroad commercial nodes. Also the Board's review of the delineation of the two Clearview LAMIRDs as depicted [in the ordinances] and the map indicating the "Built Environment Clearview Commercial Study Area" correlate very closely. [In finding compliance, the Board concluded that the uses in existence in July 1990, or since vested, were within the two nodes; the logical outer boundaries for the two nodes used property lines and were not irregular; and undeveloped land for infill was included within the two LAMIRDs.] [*Hensley IV* and *V, 1304c/2304*, 6/17/02 Order, at 13-16.]
- [Since the County had a concurrency program requiring denial of permits if LOS declined, and funding in its transportation improvement program (TIP) for some of the area, the Board concluded that the County had maintained consistency between the land use and transportation elements of its Plan and the transportation element continues to implement the land use plan.] The Board notes that if ongoing traffic concurrency problems (*i.e.,* segments of arterials in arrears with no funding for improvements programmed) stifle development opportunities [*i.e.,* denying permits] in the Clearview [LAMIRDs], then Petitioners' preferred solution (*i.e.,* not designating the two Clearview intersections as LAMIRDs) could be considered a more straightforward approach. However, since the County has a concurrency management system and it has funding for improvements for into its TIP (i.e., no funding shortfall), the County's approach is not prohibited by the GMA. [*Hensley IV* and *V, 1304c/2304*, 6/17/02 Order, at 21-22.]
- To discern the consistency of the uses permitted by the [Clearview LAMIRD commercial zone] with [specified] County [Plan] policy statements and the statute itself, the Board must answer a simple question: Are the commercial uses permitted in the [Clearview commercial] zone either (1) based on existing uses or [per statute] (2) limited to those small-scale uses that will serve the needs of the surrounding rural

area [per Plan policy]? The Board answers in the negative. [The uses permitted were extensive and numerous urban uses, drawn from prior urban zoning for the area.] [*Hensley IV* and *V, 1304c/2304*, 6/17/02 Order, at 29-32.]

- RCW 36.70A.030(17) clarifies that "A pattern of more intensive rural development as provided in RCW 36.70A.070(5)(d) *is not urban growth*." This provision acknowledges and specifically authorizes the continuance of, and even the expansion of, the *types* of uses that existed in 1990. (Footnote omitted.) It is over-reaching, however, to suggest that this provision authorizes the inclusion in a LAMIRD of types of commercial uses that did not exist in 1990. Thus, by definition, the existing pattern of commercial development (*i.e.*, those uses that existed in Clearview in 1990) is not urban growth. However, a *future* pattern that includes urban commercial uses of a type that did not exist in 1990 would constitute urban growth. The Board concludes that such "urban growth" is not permitted in a LAMIRD because of the substantive effect of Goal 1 "to encourage [urban] development in urban areas." [*Hensley V, 03004*, 8/12/02 Order, at 3-4.]
- The existing urban pattern in the Clearview LAMIRD is not considered urban growth by definition. However, the introduction into Clearview of new types (i.e., those that did not exist in 1990) of commercial uses would constitute urban, not rural, development. Such development would be inconsistent with the preservation of rural character of rural lands required for LAMIRDs. (Footnote omitted.) LAMIRDs are *Limited* Areas of More Intensive *Rural Development*. [*Hensley V, 03004*, 8/12/02 Order, at 5.]
- The crux of the matter before the Board here is whether all retail uses are of the same type regardless of their scale or size. If the answer is yes, then the [uses permitted] comply with RCW 36.70A.070(5). If the answer is no, then a retail use of an unlimited scale or size would constitute a use type that did not exist in Clearview in 1990 and therefore not be permitted in this LAMIRD. [*Hensley V, 02304c*, 3/28/03 Order, at 7.]
- "Big Box" uses are a fundamentally different use type than small-scale retail uses typically found in rural areas such as those found in 1990 in Clearview. . . . Because no "big box" retail uses existed in Clearview in 1990, a LAMIRD regulation that would permit this use type does not comply with RCW 36.70A.070(5) or .020(1) and (2). This reading of "big box" retail as a distinct use type is necessary to give effect to the letter and intent of RCW 36.70A.070(5) and RCW 36.70A.020(1) and (2). To do otherwise suggests that very modest, small-scale, rural oriented retail uses that existed in the 1990's could be used to bootstrap inappropriate urban scale development in LAMIRDs. [*Hensley V, 02304c*, 3/28/03 Order, at 7.]
- The County's [LAMIRD use designations allow] retail uses of any scale or size, and thereby allow retail uses of a type that did not exist in 1990. [*Hensley V, 02304c*, 3/28/03 Order, at 8.]
- Notwithstanding whether new development is allowed or whether existing development is a prerequisite to development, a Type 3 LAMIRD contains an additional constraint. If a Type 3 LAMIRD allows "a *new* cottage industry or *new* small-scale business" these new uses must be "*isolated*." RCW 36.70A.070(5)(d)(5)(iii). . . .The American Heritage Dictionary of the English Language, New College Edition, at 694, defines "isolate" as "1. To separate from a

group or whole and set apart. 2. To place in quarantine. . .4. To render free from external influence; insulate." Can it be said that the County's creation of this 9-acre LAMIRD would yield isolated uses – uses set apart, or free from external influence. This particular LAMIRD is located along an interstate highway running through the most urbanized, congested and densely populated area of the state. The location [I-5 and *300th St.* NW] is far from being an isolated location where new small-scale business could be created without creating pressure for urbanization. It is hard for the Board to conceive of an isolated location along the I-5 corridor in the CPS region where a Type 3 LAMIRD would be an appropriate designation. Nonetheless, *this* 9-acre Type 3 LAMIRD is not isolated. [*Hensley VI, 03309c*, FDO, at 46-47.]

- By definition, permissible development within an appropriately designated LAMIRD is not urban growth. *See* RCW 36.70.030(17). [*Hensley VI, 03309c*, FDO, at 47.]
- [The Board clarified its statement regarding Type 3 LAMIRDs.] First, the Board notes that the *Panesko* case and the *Hensley IV* case dealt with LAMIRDs created pursuant to RCW 36.70A.070(5)(d)(i) – Type 1 LAMIRDs, and therefore are not directly on point. Similarly, the *Sky Valley* case did not establish the Board's parameters for evaluating RCW 36.70A.070(5)(d)(iii) – Type 3 LAMIRDs – and is therefore also not directly on point. Additionally, the "GMA noncompliance" found by the Western Board in the *Dawes* case was based on the absolute lack of mapping to show where any of the LAMIRDs (Type 1 0r 3) were to be located. Existing uses were not at issue in that case; therefore the *Dawes* decision is not on point. [*Hensley VI, 03309c*, 10/21/03 Order, at 9-10, footnote 4.]
- The Board holds that RCW 36.70A.070(5)(d) does not prohibit the potential expansion of Type I LAMIRDs. However, just as an initial LAMIRD designation must meet the LAMIRD criteria of the Act, so too must any LAMIRD expansion. [*1000 Friends II, 03326*, FDO, at 7.]
- [The Board defined "more intense rural development" in the context of LA*MIRD*s.] The Board notes with interest that while the GMA defines "rural development" and "rural character," it does not define "more intense." Neither the definitions of "rural development" nor "rural character" shed much light on the meaning of "more intense." However, .030(14) suggests *the County* as the entity that identifies rural character, and refers to the GMA's rural element provisions. RCW 36.70A.070(5)(a) provides, in relevant part, "Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances. . . ." Thus, the determination of what "more intense rural development" is falls to the counties. Consequently, absent other relevant authority, resort to the County's current zoning code is the appropriate document for making this decision. [*1000 Friends II, 03326*, FDO, at 11-12.]
- [T]he existing uses on the parcels within the [LAMIRD expansion area] are simply permitted rural uses, not more intensive rural uses, and do not comply with the requirements of RCW 36.70A.070(5)(d)(i), (iv) or (v). [*1000 Friends II, 03326*, FDO, at 13.]
- [Regarding the logical outer boundaries (LOB) for the proposed LAMIRD expansion area, the Board found] there is no evidence to suggesting destruction [of the existing neighborhood] is being caused by the existing boundary. Nor is there any evidence to suggest that property lines, which also correspond to prior zoning district boundaries,

are inappropriate boundaries. . . .The new LOB does not correct an irregularity; instead it would allow existing LAMIRDs to inch closer together, creating the same strip commercial development that the Board found noncompliant in *Hensley VI*. . . .[The LOB for the LAMIRD expansion area] is not a LOB that minimizes and contains exiting more intensive rural uses. [This LOB and LAMIRD expansion encourages sprawl in the form of strip commercial development.] [*1000 Friends II, 03326*, FDO, at 15-16.]

- While the Board appreciates Petitioners' objection to the size of the LAMIRD and to the scale of the post-GMA Albertson's development, particularly within just 1.5 miles of the Kingston UGA, the Board cannot say that the LAMIRD boundary adopted by the County is clearly erroneous. The inclusion of vacant parcels and allowance for infill development and redevelopment is expressly permitted in the statute [RCW 36.70A.070(5)(d)(iv) and (i)(C)] [*1000 Friends/KCRP, 05331c*, FDO, at 15.]
- [The County's unincorporated marine shorelines involve the Key and Gig Harbor peninsulas, Fox, Ketron and Anderson Islands. The County's FLUM and zoning maps indicate that the vast majority of these shoreline areas are designated as 1 du/10 acres. There is no delineation on the FLUM or zoning maps to suggest that this designation does not apply within 200' of the shoreline.] . . . [There are no findings to support a conclusion that 200 feet from ordinary high water county-wide, delineates a logical outer boundary for existing development or that such development can be minimized and contained.] . . . [T]he County's record does not support the notion that the County actively considered these shoreline areas to be a LAMIRD. Rather the County seems to have merely continued to allow its shoreline management regulations to govern within 200 feet of the shoreline without regard to its rural land use or zoning designations. [The shoreline regulations allow densities above what is an appropriate rural density. i.e. lots smaller than five acres, which constitute urban sprawl in the rural area and is noncompliant with the Act.] The Board cannot accept the County's position that virtually the entire area within 200 feet of the shorelines of unincorporated Pierce County constitutes a LAMIRD. [*Bonney Lake, 05316c*, FDO, at 50-52.]
- The challenged Ordinances did not create the RNC, but rather expanded it. The "existing RNC" apparently has been depicted in the County's Plan, and zoning, since the mid-1990's. . . .[I]t is undisputed that the area was included as an RNC when the County adopted Ordinance No. 2004-87s, updating the County Plan. Therefore, the time for the City of Tacoma to challenge the "existing RNC" designation was following adoption of the Plan Update in 2004, not now in 2006. The Ordinances which the City challenges simply include the 4-acre expansion of the RNC in question. Consequently, **a challenge to the existing RNC is untimely and the Board will only address the expansion of the RNC accomplished by the challenged Ordinances**. [*Tacoma IV, 06311c*, FDO, at 10.]
- [The Board discusses and analyzes the GMA's LAMIRD requirements in the context of the unique local circumstances documented in its Findings of Fact 40, and undisputed by the Petitioner.] [*Tacoma IV, 06311c*, FDO, at 12-13.]
- [The Board discusses and analyzes the County's CPPs and Plan Policies pertaining to LAMIRD expansion and location criteria in the context of the unique local

circumstances documented in its Findings of Fact 40, and undisputed by the Petitioner.] [*Tacoma IV, 06311c*, FDO, at 18.]

- ## Localized Analysis

- Where a large percentage of population and employment growth is concentrated by a city's comprehensive planning process, specific capital facilities analysis is necessary. [*WSDF I, 4316,* FDO, at 44-45.]
- [Where a large percentage of population and employment growth is concentrated by a city's comprehensive planning process, a city's comprehensive plan must at least discuss what impact its concentrated population growth strategy will have on future traffic forecasts.] [*WSDF I, 4316,* FDO, at 63.]

- ## Mandatory Elements

- Local jurisdictions are required to meet both the preamble and subsequently specified elements of RCW 36.70A.070. [*Aagaard, 4311c,* FDO, at 13.]
- Upon initial adoption of a comprehensive plan, jurisdictions planning under the Act must have fully completed all the mandatory requirements of RCW 36.70A.070. [*WSDF I, 4316,* FDO, at 12.]
- A comprehensive plan, including both mandatory elements and optional elements or features, must be internally consistent. [*WSDF I, 4316,* FDO, at 14.]
- The Act does not mandate that jurisdictions include concepts like Seattle's urban villages strategy in a comprehensive plan. Instead, that strategy appears to most fairly fall into the classification of an "innovative land use technique" as discussed in RCW 36.70A.090. [*WSDF I, 4316,* FDO, at 19.]
- The Act requires cities and counties to preserve existing housing while promoting affordable housing and a variety of residential densities and housing types. No jurisdiction is required to reconcile these seemingly inconsistent requirements by totally focusing on one requirement, for instance preserving existing housing, to the exclusion of other requirements, such as encouraging more affordable housing. Instead, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them. [*WSDF I, 4316,* FDO, at 30.]
- The Board rejects the argument that because RCW 36.70A.070(2)(c) requires jurisdictions to identify "sufficient land for housing" in their comprehensive plans, that their development regulations must also do so. The sufficiency of land supply required by RCW 36.70A.070(2)(c) is a mandate that the city, as a matter of policy, identify sufficient land for this purpose. Development regulations are to then impose controls to assure that the land identified in the plan for housing is available for that purpose. Because development regulations must be consistent with the comprehensive plan, they cannot decrease the land supply available for housing. RCW 36.70A.040(3). [*Children's I, 5311,* 5/17/95, at 6.]
- All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. (Citations omitted) A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the

GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning. [*Bremerton, 5339c*, FDO, at 77.]

- The lack of a fully completed capital facilities plan is more than a conceptual shortcoming – it is a fatal legal defect in a comprehensive plan. It alone is sufficient cause for the Board to find that the land use element and every other component of a plan violates the requirements of the Act. [*Bremerton, 5339c*, FDO, at 77.]
- So long as the failure to complete an optional element or innovative land use technique does not create an internal inconsistency in the Plan, or constitute a failure to comply with the mandatory requirements of the Act, such failure is not a violation of the Act. [*Sky Valley, 5368c*, FDO, at 119.]
- "Show your work" has been applied to the documentation of factors and data used in the accounting exercise of counties in sizing UGAs as required by RCW 36.70A.110; it does not apply to the mandatory plan elements of RCW 36.70A.070. [*Litowitz, 6305*, FDO, at 17.]
- The alleged violations of GMA requirements (RCW 36.70A.070) do not apply to development regulations. The challenged ordinance amends development regulations; the issues framed in the prehearing order challenge the Plan. The Board's authority to issue opinions is limited to the statement of the issues. [*Keesling II, 7327*, FDO, at 4.]
- When a plan revision amends one of the mandatory elements set forth in RCW 36.70A.070, the element, as amended, must comply with the requirements of RCW 36.70A.070. [*LMI/Chevron, 8312*, FDO, at 50-51.]
- When a subarea plan refines one of the mandatory elements of the jurisdiction's comprehensive plan the requirements set forth in RCW 36.70A.070 apply to that subarea plan. [*LMI/Chevron, 8312*, FDO, at 51.]
- The explicit language of RCW 36.70A.070 sets forth the mandatory elements to be included in a jurisdictions comprehensive plan, not its implementing development regulations. RCW 36.70A.070 applies to comprehensive plans and amendments thereto, not development regulations. [*Hanson, 8315c*, FDO, at 7-8 and 9.]
- Neither RCW 36.70A.130(1) nor *WSDF III* stand for the proposition that subarea plans must contain, in every case, each of the mandatory comprehensive plan elements set out in RCW 36.70A.070 (footnote pertaining to *LMI* omitted). [*Tulalip II, 9313*, 1/28/00 Order, at 11.]
- RCW 36.70A.070 does not apply to development regulations. [*MacAngus, 9317*, FDO, at 9.]
- [Show your work applies to sizing UGAs, it has not been required to demonstrate compliance with the mandatory elements requirements of the Act.] [*MacAngus, 9317*, FDO, at 11.]
- *See also*: **GMA Planning** [*LIHI I, 0317*, 2/21/02 Order]
- The language of RCW 36.70A.480 is not prospective – it does not provide direction for future local legislative action to integrate shoreline policies and regulations into local GMA comprehensive plans and regulations, respectively, rather, .480 is prescriptive – the legislature has already taken legislative action to merge the constituent parts of every shoreline master program in this region [CPS] into the GMA mandated local comprehensive plans and development regulations. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 16.]

- Simply stated, [RCW 36.70A.480] means: 1) the provisions of RCW 90.58.020 are the 14th Goal in the GMA; 2) the goals and policies contained in a shoreline master program (SMP) itself become an element of a GMA comprehensive plan (footnote and reference omitted); 3) other provisions of an SMP, including the SMP use regulations, are considered as GMA development regulations (reference omitted); and 4) adoption procedures for an SMP are governed by the SMA – *i.e.*, requiring Ecology's approval. [*Everett Shorelines Coalition, 02309c*, FDO, at 15.]
- There is no GMA requirement that subarea plans contain *all* the mandatory elements required by RCW 36.70A.070. Thus, the [subarea plan] is not required to contain a housing element since the goals, objectives, and policies of the Housing Element in the County's Comprehensive Plan apply and govern in the [subarea plan] area. [*MBA/Brink, 02310*, FDO, at 29.]

• Major Industrial Developments – MIDs

- No entries

• Maps

- *See also*: **GMA Planning** [*LIHI I, 0317*, 2/21/02 Order]
- There is no language in [the CPP or Plan policy] that indicates that "commercial land" means anything other than what is designated on the FLUM or Zoning maps. The concomitant agreement does not alter this fact. Therefore, the inescapable conclusion is that expanding the [UGA to include the area as] "urban commercial" is commercial land falling within the purview of [the controlling CPP and Plan policy.] [*Hensley IV, 1304c*, FDO, at 33.]

• Market Factor

- Counties must specify the market factor they utilize either directly in an adopted comprehensive plan or in the supporting documentation incorporated by reference in the plan. Post-adoption rationalization in a response brief to the Board is insufficient, however accurate it may be. [*Gig Harbor, 5316c*, FDO, at 46.]
- Where counties adopt a land supply market factor between 1 and 1.25 (i.e., of 25 percent), the Board will presume that the factor is reasonable. In evaluating allegations that a county has used an unreasonable land supply market factor, the Board will give increased scrutiny to those cases where the factor exceeds the 25 percent bright line. In determining whether the county's choice was reasonable, the Board shall consider three general questions: (1) What is the magnitude of the "land supply market factor" beyond the 25 percent bright line? (2) Is there other evidence to suggest that the land supply market factor is not reasonable? (3) Has the county also availed itself of other approaches, such as continuously monitoring land supply and making necessary adjustments over the life of the plans for the county and its cities? [*Bremerton, 5339c*, FDO, at 42-44.]

- Although the Board does not reject a 75 percent market factor out of hand, it cannot conclude that it is reasonable without adequate justification. [*Bremerton, 5339c,* FDO, at 65.]

- **Master Planned Resort - MPRs**

- The legislature recognized that MPRs are urban growth outside of UGAs. The GMA permits the urban growth of an MPR if the County's regulations do not permit other urban or suburban growth in the vicinity of the MPR. [Urban growth in MPRs is recognized by, not prohibited by the Act.] [*Gain, 9319*, FDO, at 8.]
- [The challenged Plan and zoning amendments altered designations for 4,374 acres within Pierce County – Map amendment M-8. The parties sought to have the Board review the Master Planned Resort designation as it applied to two tracts of land – Gold Hill and Eagles Lair.] The Board is authorized and required to examine [the MPR designations] as a whole. The Board's review is not limited by the desires or preferences of the parties to only address portions of the MPR designation. [*Kenyon II, 1301*, FDO, at 5.]
- When there is confusion and a lack of analysis [on whether the MPR was designated pursuant to RCW 36.70A.360, RCW 36.70A.362 or both statutes], it is within the Board's jurisdiction and purview to determine whether the County applied and imposed the correct legal framework for the MPR designation and not limit its analysis only to whether [two tracts] were correctly designated MPR pursuant to the GMA. [*Kenyon II, 1301*, FDO, at 5.]
- [General discussion of the legislative history and differences between existing master planned resorts (RCW 36.70A.360) and new master planned resorts (RCW 36.70A.362), and the procedures that flow from each statute.] [*Kenyon II, 1301*, FDO, at 5-9.]
- Under either RCW 36.70A.360 or .362, the proponent of a new MPR, or a proponent for expansion, modification or renovation of an existing MPR, must bring to the table a proposed "resort plan" for the jurisdiction to review. Absent such a plan, a county cannot begin the process of designating an MPR. Without the review and approval of such a resort plan, a county cannot make the necessary findings or provide for the mitigation of impacts as is required by .362. Preparation of a "resort plan" of some scope or scale is a condition precedent to begin the MPR designation process. Likewise, designation cannot occur until the final resort plan is reviewed, and based upon that review, the county can take the necessary action to comply with the requirements of RCW 36.70A.360 or .362. [*Kenyon II, 1301*, FDO, at 9.]
- RCW 36.70A.362, which is used to designate an <u>existing</u> resort as MPR, does not require a PUD [planned unit development review or approval process]. However, it does require that the findings for consistency with the county's development regulations established for critical areas and that full consideration and mitigation of both on-site and off-site infrastructure impacts have been completed prior to making the designation [as MPR]. These <u>completed</u> findings and mitigations must be based on a master development plan that sets forth the details regarding future development of an existing resort. Because the findings and mitigation must be completed prior to the designation, the Master Development Plan <u>cannot be a fluid and/or an incomplete</u>

document. It must be reviewed and approved by the legislative body in its final form – the same form used to complete the critical area findings in on-site and off-site infrastructure impacts. This Master Plan acceptance becomes the equivalent of the PUD process used in RCW 36.70A.360. It ensures all future development is in accord with the county development regulations, county-wide planning policies and the county's comprehensive plan. In addition, it guarantees that all future development of the existing resort will be in accord with the document received by the county. Only through formal adoption of a Master Plan can the County Council be assured that their original intent is followed and that the county will remain in control over the development of the area. After the Master Development Plan is completed, reviewed, and formally adopted by the County legislative body, the criteria in Subsections 1 through 5 of RCW 36.70A.362 can be met and the county legislative body can designate an existing resort as MPR. [*Kenyon II, 1301*, FDO, at 15.]

- **Mediation – *See:* Extensions**

- **Mineral Lands**

- *See also:* **Natural Resource Lands**
- The Board acknowledges the problem inherent in not designating all sites with mineral resources, and, as a result, zoning each site as Mineral use in the implementing regulations. Those properties not zoned as Mineral are not afforded the protection available to sites with Mineral zoning. (A county may exercise discretion in including some but not all mineral resource lands in a Mineral zoning designation.) [*Alberg, 5341c,* FDO, at 41.]
- A map symbol of notation on an informational map in the comprehensive plan does not affect any individual owner's property rights. Likewise, the removal of such notation does not affect any individual owner's property rights. [*Green Valley, 8308c*, 4/17/98 Order, at 2-4.]
- [Where a jurisdiction has an administrative process for determining an individual's status regarding legal nonconforming (**LNC**) uses,] [t]he presence or absence of a parcel's LNC status on a mineral resource map does not affect the individual property interests of the owner of that parcel. [*Green Valley, 8308c,* FDO, at 7.]

- **Minimum Guidelines**

- [The CTED] Minimum Guidelines are advisory only, to be considered by counties when classifying and designating natural resource lands. [*Twin Falls, 3303c,* FDO, at 21.]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, at 41-42.]

- When both the statutory definition [RCW 36.70A.030(10)] and the factors set forth in the Department's regulations [the Department of Community, Trade and Economic Developments – WAC 365-190-050(1)] are considered, it is apparent that [generally,] the Northern Sammamish Valley no longer has long-term commercial significance for agricultural production. [*Grubb, 0304,* FDO, at 7.]
- The Board has repeatedly determined that the requirements of .110 do not apply to development regulations, but rather to comprehensive plans and UGA sizing and designations. [Citations omitted.] The Board has also stated that the procedural criteria of Chapter 365-195 WAC are advisory only; the GMA does not require that local governments comply with the recommendations set forth in the CTED Minimum Guidelines. [Citations omitted.] [*MBA/Larson, 04301,* FDO, at 13.]
- [The Board and the Courts have acknowledged and recognized that CTED's minimum guidelines [*i.e.,* WAC 365-190-050(a thorough j)] are valid and valuable indicators of long-term commercial significance.] [*Orton Farms, 04307c*, FDO, at 26.]
- In designating critical areas, cities and counties "shall consider" the minimum guidelines promulgated by CTED in consultation with DOE pursuant to RCW 36.70A.050(1) and (3); .170(2). In particular, wetlands "shall be delineated" pursuant to the DOE manual. RCW 36.70A.175. [*DOE/CTED*, 05334, FDO, at 10.]
- The Legislature listed mandatory categories of critical areas to be protected [RCW 36.70A.030(5)], directed CTED to adopt guidance to assist local governments [RCW 36.70A.050, .190; see WAC Chapter 365-190], and required local governments to adopt regulations to protect functions and values of critical areas [RCW 36.70A.060(2), .172(1)]. [*DOE/CTED*, 05334, FDO, at 11.]

- **Mootness**

- [Anticipated, but not yet achieved, compliance with a remand order in a previous case cannot moot issues in a subsequent case in which the Board's statutory deadline for filing its final order precedes the compliance deadline of the prior case.] [*PNA II, 5371,* FDO, at 6-8.]
- The question of emergency ordinances, since repealed and replaced by interim ordinances, are moot; the Board will not hear and decide moot issue. [*Hayes, 5381,* 4/17/98 Order, at 4.]
- In prior cases, the Board has discussed the question of mootness and applied this doctrine of judicial economy. [Here] the Board can no longer provide the relief sought by Petitioner. [The City] has changed the original Plan provisions Petitioner seeks to have implemented; therefore, [the] PFR is moot. [*Parsons, 9308,* 8/30/99 Order, at 2.]
- Respondent argued that the Board [nor a court] could not grant the "ultimate relief" [free from the impacts of development] sought by Petitioners therefore the case was moot. The Board stated, whatever the "ultimate relief" sought by [Petitioners], the relief sought before this Board is a finding of non-compliance and a determination of invalidity. [*Bear Creek, 5308c*, 4/4/00 Order, at 3.]
- [In *Orwick v. Seattle*, 103 Wn 2d 249 (1984), the court stated, "A case is moot if a court can no longer provide effective relief." The *Orwick* court also recognized an

exception to moot cases involving "matters of continuing and substantial public interest." The Board adheres to the reasoning in *Orwick*.] [*McVittie, 9316c, FDO,* at 13-14.]

- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c, FDO,* at 13.]
- [Where a jurisdiction's challenged six-year financing program has been repealed and superceded by a more current six-year financing program, the Board cannot provide effective relief; therefore, issues relating to compliance with the capital facilities element, inconsistency and whether capital budget decisions in compliance with the comprehensive plan are moot.] [*McVittie, 9316c, FDO,* at 14.]
- The record before the Board does not make clear whether the "Sidewalk Inventory" map was produced, or available, during the pendency of the adoption of the Greenwood/Phinney Ridge Urban Village. Even if the Board were to agree with Petitioner that the necessary inventory was not available during that process, the fact that it presently exists arguably renders legal issue 4 [alleging no inventory of sidewalks] moot. [*Radabaugh, 0302,* FDO, at 11.]
- The repeal of the ordinance renders Petitioner's appeal moot because there is no currently effective legislative action to challenge. [*Gawenka, 0311*, 10/10/00 Order, at 3.]
- [There is] interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. The Growth Boards have jurisdiction to determine compliance with the GMA, including UGA designations. UGA designation enables city annexations, since cities are prohibited from annexing areas beyond designated UGAs. Boundary Review Board decisions must be consistent with provisions of the GMA, including the UGA provisions. This system is consistent and coordinated and yields certainty in situations where UGAs have been found by the Board to comply with the Act, or where UGA designations have not been challenged. However, this system yields uncertainty where the UGA designation has been challenged, but not resolved as the annexation process proceeds. It is a situation that the Legislature has not, to date, addressed. [This uncertainty is prevalent in this case. In this case, the Board cannot, and will not, address the effect of the annexation, nor will it speculate on the outcome of pending litigation. However, the Board must carry out its mandated responsibilities.] Determining compliance with the goals and requirements of the GMA is the primary responsibility of the Board; it cannot shirk this duty. The Board must determine whether the challenged UGA designation complies with the goals and requirements of the Act. [*Kitsap Citizens, 0319c*, 2/16/01 Order, at 9-11.]
- The Board finds that the public participation questions(s) posed in this case [related to emergency ordinances] are a matter of continuing and substantial interest, that if left unresolved, are likely to recur in the future. [Finding an appropriate exception to the mootness doctrine.] [*McVittie V, 0316*, FDO, at 9-10.]
- [The original ordinance adopting the interim future land use map (FLUM) expired prior to the Board's hearing on the merits. However, the City adopted a new

emergency ordinance that was substantively the same as the interim FLUM ordinance originally challenged.] The City's FLUM is an issue of continuing and substantial public interest and importance. Therefore, the Board will not dismiss it as moot. [*Clark, 02305*, FDO, at 4.]

- [A challenge of a repealed ordinance cannot be brought before the Board since the repealed ordinance is moot.] [*Kent CARES II, 02319*, 3/14/03 Order, at 8.]
- [T]he challenged section of Ordinance No. 225 – Section 2 – has been repealed by the City when it adopted Ordinance No. 448. [The Board dismissed the challenge as moot.] [*Giba, 06308*, 4/17/06 Order, at 3.]

• Moratorium

- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]
- [An interim ordinance may not continue in force and effect in perpetuity.] By the explicit terms of RCW 36.70A.390, "a legislative enactment 'adopted under this section' may be effective for not longer than six months. . ." [*Bear Creek, 3508c*, 11/3/00 Order, at 11.]
- [RCW 36.70A.390] does not apply to plan amendments. It does not apply to permanent changes in development regulations or controls. It applies only to the adoption or amendment of temporary controls or development regulations, those measures that are adopted for an interim period – generally six-months. This section of the Act is unique in that it permits a deviation from the norm of providing the opportunity for public participation prior to action; here a jurisdiction can act or adopt first, then provide the opportunity for public participation after adoption. However, this post-adoption opportunity for public participation must occur within 60-days of adoption. [*McVittie V, 0316*, FDO, at 20.]
- *See also:* **Public Participation** [*McVittie V, 0316*]
- RCW 36.70A.390 falls squarely within this Board's subject matter jurisdiction; the Board has clear authority to determine whether its provisions have been met. This section [of the GMA] is unique in the GMA context; it is a blunt instrument within a statute containing very detailed and refined requirements. It allows for temporary, interim or stopgap measures to manage development activity while appropriate analysis and planning can occur. This section also explicitly authorizes local jurisdictions to undertake the rather draconian measure of placing a freeze on development, i.e. to maintain the status quo while it undertakes the necessary planning to analyze and address the perceived issue(s). However, to successfully impose such a moratorium, the jurisdiction must adhere to the section's procedural provisions. [*SHAG, 1314*, 8/3/01 Order, at 5.]

- If a jurisdiction chooses to impose a moratorium pursuant to .390, it must adopt findings of fact justifying its action and hold a public hearing on the moratorium. The public hearing may occur either at the adoption hearing or no later than sixty-days thereafter. If the jurisdiction did not adopt findings of fact supporting its action at adoption, or prior to the public hearing, it must do so immediately after the [within 60-day] public hearing. [*SHAG, 1314*, 8/3/01 Order, at 6.]
- [Failure to adopt additional findings of fact at a subsequent public hearing (within 60-days) after adopting findings of fact at the initial adoption of the moratorium is not a failure to comply with the requirements of RCW 36.70A.390. [*SHAG, 1314*, 8/3/01 Order, at 8.]
- The adoption of a permanent development regulation, or amendment thereto, would be a "planning activity" as that term is used in RCW 36.70A.120. However, the adoption of a temporary/interim regulation to be in place for a limited six-month period to maintain the *status quo* while perceived concerns with the existing Plan and development review occurs does not rise to the status of a "planning activity." Indeed, the very nature of moratoria is that they are an attempt to "buy time" to enable the jurisdiction to undertake that very "planning activity" (*i.e.*, developing and implementing long-term, permanent policies and regulations). . . .Nevertheless, at some point the rote, rather than the reasoned, extension of six-month moratoria with no reasonable end point in sight very well could constitute a "planning activity" that falls within the ambit of .120. [*SHAG, 1314*, 8/3/01 Order, at 10.]
- [The City argued a moratorium is not a development regulation. The Board found that the moratorium], for six consecutive years has "placed controls on development" that prohibit application for residential subdivisions, short plats, and multi-family housing among other land use activities. These controls fall squarely within the statutory definition of development regulations. Even if the "development regulation" definition [in the GMA] did not expressly include subdivision regulations, the Board would read the phrase "including but not limited to," as interpreted by the Court in *Yes for Seattle*, as requiring a broad application. [*MBA/Camwest, 05327*, 8/4/05 Order, at 11.]
- [The City argued a moratorium is an interim regulation, that has been extended (12 times in six years) and the original enactment was not challenged and to challenge it now is untimely.] The Board finds the Court's reasoning in *Byers* persuasive. There the Court looked beyond the title of the challenged regulation and found that although it was titled an "interim" zoning ordinance, because it was scheduled to be *effective for four years*, the title was a misnomer. The Court held that the zoning should have been adopted pursuant to the procedural requirements of [RCW 36.70 and SEPA]. The Court said that "interim zoning" is "meant only to be a temporary protective measure" and is not intended to be used "for a relatively extended period of time." . . . The [GMA] does not indicate how many extensions it takes before a moratorium becomes, in effect, a permanent regulation. However, the Board views [the City's] most recent renewal of its moratorium in the light of its actions over the past six years since incorporation. The Board concurs with Petitioners: "What emerges is that [the City] has been under a comprehensive moratorium on subdivisions and short subdivisions (i.e. virtually all residential land development) since incorporation. The

moratorium has in fact become a permanent fixture in [the City]. [*MBA/Camwest, 05327*, 8/4/05 Order, at 12-13.]

- The Board finds that the continuing moratorium on project applications is counter to the GMA requirement "each city . . . shall adopt . . . development regulations that are consistent with and implement the comprehensive plan" by no later than six months after the adoption of the Plan. A city may not continually refuse to implement its plan through the device of a moratorium. [*MBA/Camwest, 05327*, 8/4/05 Order, at 13.]
- [Following a discussion of the Byers decision, the Board concluded.] A development regulation "for a relatively extended period of time" is subject to SEPA, despite the fact that it is titled a six-month moratorium. [*MBA/Camwest, 05327*, 8/4/05 Order, at 18.]
- [The City moved to dismiss the challenge arguing that it had adopted the moratorium prohibiting the acceptance of permit applications for correctional facilities in its Public Institutional districts in compliance with RCW 36.70A.390. DOC did not challenge the process of adopting the moratorium, nor was compliance with RCW 36.70A.390 an issue in the case. The Board denied the City's motion to dismiss.] [*DOC III/IV, 05343c*, FDO, at 5.]
- By its explicit terms, the Ordinance imposes a moratorium, or freeze, on the filing of an application for the siting of a correctional facility in the Public Institutional zone. As such, it is clearly a "control placed on development." Therefore, [the moratorium Ordinance] is a development regulation as defined in RCW 36.70A.030(7) [and subject to Board review.] [*DOC III/IV, 05343c*, FDO, at 13.]
- [T]he City's existing comprehensive plan policies, land use plan designations and implementing development regulations and zoning designations governing the location and siting of a state EPF enable the City to address the concerns the City has raised in the findings of fact. The City has clearly identified areas where EPFs should be located, including the WSH campus. It has plan policies and criteria enumerated in its development regulations, specifically the conditional use permit process, that allow reasonable conditions to be imposed to mitigate likely impacts of such an EPF. The moratorium precludes access to the City's existing EPF procedures. Consequently, the moratorium causes an unpredictable delay in the siting of the state EPF which is the equivalent to precluding the EPF. [*DOC III/IV, 05343c*, FDO, at 15.]
- [The growth phasing lottery is not a de facto moratorium.] While the Growth Phasing Lottery at issue here has the effect of continuing to preclude development except for the lucky winners in the October 2005 drawing, the lottery does not preclude all development or freeze development to preserve the status quo. Because some new applications are accepted, and development may proceed if such applications are approved, the Board cannot characterize the Growth Phasing Lottery as a moratorium as provided for in RCW 36.70A.390. [*Camwest II, 05341*, FDO, at 28.]

- **Motions – *See:* Dispositive Motions**

- ## Multi-County Planning Policies - MPPs

- [In the Puget Sound Region, the Puget Sound Regional Council's (PSRC) "Vision 2020" is the growth management, economic and transportation strategy for the Central Puget Sound region. Vision 2020 includes Multi-county Planning Policies (MPPs) for the region, as provided for in RCW 36.70A.210(7). The PSRC has the authority and responsibility to develop the regional transportation plan (RTP) for the Central Puget Sound area. The RTP includes some of the Vision 2020 MPPs; the amendment to the RTP authorizing the planning for the third runway is not an MPP.] [*Burien, 8310,* FDO, at 14.]
- The GMA requires that comprehensive plans, as a whole, be consistent with CPPs and MPPs. Amendments to a comprehensive plan may not cause the comprehensive plan to be inconsistent with CPPs and MPPs. [*LMI/Chevron, 8312,* FDO, at 44.]
- To determine consistency of a Plan, as amended, with the CPPs and MPPs, the Board will examine the challenged amendments to determine, if on their face, the amendments are consistent with the CPPs and MPPs identified. If the challenged amendments are consistent with the identified CPPs and MPPs, the challenge fails. If a challenged amendment is facially inconsistent, the Board will examine the challenged amendment in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the CPPs and MPPs identified. [*LMI/Chevron, 8312,* FDO, at 44.]

- ## Natural Resource Lands - NRLs

- *See also:* **Agricultural Lands**, **Forest Lands** and **Mineral Lands**
- [The CTED] Minimum Guidelines are advisory only; to be considered by counties when classifying and designating natural resource lands. [*Twin Falls, 3303c,* FDO, at 21.]
- The Act's definition of "long-term commercial significance" at RCW 36.70A.030(10) has two components: the physical characteristics of the land and the human element (i.e., the land's proximity to population areas, and the possibility of more intense uses of the land). [*Twin Falls, 3303c,* FDO, at 32.]
- "Nonurban lands" includes all natural resource lands, whether designated as such pursuant to RCW 36.70A.170 or not, and rural lands. [*Rural Residents, 3310,* FDO, at 41.]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's

requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.

4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, at 9.]

- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, at 79.]
- The Board declines the invitation to establish a minimum lot size for agricultural parcel sizes. [*Gig Harbor, 5316c,* FDO, at 31.]
- Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." [*Bremerton, 5339c,* FDO, at 31.]
- "Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource base activities." *Vision 2020 – 1995 Update, at 27.* This description of rural land accurately describes the intensity and character of new residential activity and development that the Act permits in rural areas. [*Bremerton, 5339c,* FDO, at 51.]
- Pursuant to RCW 36.70A.070(5), rural lands must exclude designated agricultural, forest and mineral resource lands. A county cannot designate these natural resource lands within its rural element. [*Bremerton, 5339c,* FDO, at 73.]
- The Board acknowledges the problem inherent in not designating all sites with mineral resources, and, as a result, zoning each site as Mineral use in the implementing regulations. Those properties not zoned as Mineral are not afforded the protection available to sites with Mineral zoning. (A county may exercise discretion in including some but not all mineral resource lands in a Mineral zoning designation.) [*Alberg, 5341c,* FDO, at 41.]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots

does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c*, FDO, at 46.]

- The fact that land is generally used by the timber industry does not necessarily mean that it meets the Act's definition of "forest land" that must be designated. [*Sky Valley, 5368c*, FDO, at 83.]
- As a matter of law pursuant to Section 1 of ESSB 6228 and RCW 36.70A.060(3), all cities and counties that had not adopted comprehensive plans by the effective date of ESSB 6228 were required to re-evaluate whether their prior (interim) forest land designations and development regulations complied with the 1994 definition of the phrase "forest lands" and remained consistent with their newly adopted comprehensive plans. [*Sky Valley, 5368c*, FDO, at 88.]
- A county or city does not per se violate the Act simply because its final forest land designations approved at the time of comprehensive plan adoption include lesser acreage than the preliminary, interim forest land designations. [*Sky Valley, 5368c*, FDO, at 88.]
- RCW 36.70A.170(1)(b) requires counties and cities to designate all lands that meet the definition of forest lands and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all these designated forest lands unless the forest lands would fall within a UGA. [*Sky Valley, 5368c*, FDO, at 89.]
- Cities and counties can adopt development regulations for designated forest lands that regulate these lands differently (in manner or degree) as long as adopted development regulations assure the conservation of forest lands. [*Sky Valley, 5368c*, FDO, at 101.]
- Although the Act requires that all lands that meet the definition of forest lands be designated, unless they are located within a UGA, cities and counties retain discretion as to the degree and manner of conservation afforded designated forest lands by adopted development regulations. As long as the adopted development regulations assure the conservation of designated forest lands, these regulations may control designated forest lands in a different manner or degree. [*Sky Valley, 5368c*, FDO, at 101.]
- The reference in RCW 36.70A.070(1) to "timber production" is not synonymous with "forest lands." The latter is a term of art unique to the GMA, for which specific requirements have been adopted, particularly RCW 36.70A.060 and .170. In contrast, the former, "timber production," is used within the definition of the phrase "forest lands." "Forest lands" are a subset of broader category of lands, those devoted to timber production. [*Sky Valley, 5368c*, FDO, at 103.]
- Just because land is available for timber production does not mean that it constitutes "forest lands" as defined by the Act for which the designations specified at RCW

36.70A.170 and development regulations specified at RCW 36.70A.060 must be adopted. [*Sky Valley, 5368c,* FDO, at 104.]

- RCW 36.70A.170(1)(a) requires counties and cities to designate all lands that meet the definition of agricultural lands, unless the lands fall within a UGA lacking a program for purchase or transfer of development rights, and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all designated agricultural lands. [*Sky Valley, 5368c,* FDO, at 113.]
- Lands not receiving interim designation as agricultural lands may receive such a designation during the review required by RCW 36.70A.060(3). However, such a designation is predicated on the parcels in question meeting the definition of "agricultural lands." [*Sky Valley, 5368c,* FDO, at 114.]
- A county or city does not per se violate the Act simply because its final agricultural land designations approved at the time of comprehensive plan adoption include lesser acreage than the preliminary, interim agricultural land designations. [*Sky Valley, 5368c,* FDO, at 114.]
- A city is without authority to make any agricultural designations within a UGA prior to the enactment of a program authorizing a transfer or purchase of development rights pursuant to RCW 36.70A.060(4). Unless and until it adopts such a program, it is obliged to designate such properties for non-agricultural urban uses. [*Benaroya I, 5372c,* FDO, at 11-12.]
- Open space is an inevitable byproduct of land being put to an agricultural use. However, this fact alone is insufficient grounds for a claim that agricultural designation by a local government requires development rights acquisition pursuant to RCW 36.70A.160. Only if a government restricts the use of designated agricultural lands solely to maintain or enhance the value of such lands as open space, must the City or County acquire a sufficient interest in the property. [*Benaroya I, 5372c,* FDO, at 13.]
- The Board reaffirmed its holding in the FDO that the City could not designate lands agriculture unless and until it adopted a program authorizing the transfer or development of development rights. [*Benaroya I, 5372c,* 12/31/98 Order-Court Remand, at 3.]
- The Board reversed its holding in the FDO to the extent that it was based upon the determination that the Benaroya and Cosmos properties were not agricultural land within the meaning of that term in RCW 36.70A.030(2). [*Benaroya I, 5372c,* 12/31/98 Order-Court Remand, at 4.]
- There are no specific GMA requirements that implement goals RCW 36.70A.020(8) and (9) – Natural Resource Industries and Open Space and Recreation. [*Tulalip, 6329,* FDO, at 15.]
- RCW 36.70A.020(8), .060, and .170, when read together, create an agricultural conservation imperative that imposes and affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry. [*Green Valley, 8308c,* FDO, at 16.]
- The location-specific and directive duty of RCW 36.70A.020(8), .060 and .170 to designate and conserve agricultural lands clearly trumps the non-directive, non-site specific guidance and inventory requirements for open space and recreation of .020(9), .150 and .160. [*Green Valley, 8308c,* FDO, at 17.]

- RCW 36.70A.177 does create an opportunity for land use and development techniques that are new and innovative, [but] the Board cannot read these provisions to be interpreted to allow the effective evisceration of agricultural lands conservation on a piecemeal basis. [*Green Valley, 8308c,* FDO, at 18.]
- Both experience and common sense indicate that conversion of agricultural resource lands to nonagricultural uses is a one-way ratchet. To suggest that designated agricultural resource lands, once given over to intensive uses demanded by an ever-increasing urban population, could ever be "retrieved" is simply not credible. [*Green Valley, 8308c,* FDO, at 18.]
- [RCW 36.70A.177] allows flexibility on a site or parcel basis to enable a portion of a parcel not suitable for agricultural purposes to have a non-agricultural use is within the scope of permissible; however, the County's amendments allow entire parcels to be given over to nonfarm and nonagricultural uses [thereby violating .177]. [*Green Valley, 8308c,* FDO, at 18-19.]
- The Act requires conservation not just of the soil attributes that make agricultural lands productive and potentially subject to designation, but also of the agricultural use of that land, to the end that the resource-based industry is maintained and enhanced. [*Green Valley, 8308c,* FDO, at 19.]
- Land use plans and development regulations which allow parcels designated agricultural resource lands to be used for active recreation uses and supporting facilities does not assure the conservation of those lands for the maintenance and enhancement of the agricultural industry. [*Green Valley, 8308c,* FDO, at 19.]
- RCW 36.70A.170 is unequivocal: a county has a duty to designate, where appropriate, forest lands of long-term commercial significance. A County is compelled to decide whether it has such lands and if so, to designate them. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 35.]
- Under the sequencing scheme of the GMA, the land does speak first; but, on the rare occasion, as is the case here, where the land may speak late – it will be heard. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 35.]
- The Washington Supreme Court has determined that land is devoted to agricultural use under the GMA "if it is an area where the land is actually used or capable of being used for agricultural production. *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.* 136 Wn.2d 38, 56 (1998). It is irrelevant that a parcel has not been farmed for 25 years. The question is whether the land is actually used or capable of being used for agriculture. [*Sky Valley,* 5368c, 4/22/99 Order, at 8-9.]
- The record supports the County's determination that the [property] is forested in character. Petitioners have not shown that the County's portrayal of the property as "forested in character" was clearly erroneous. [*Screen II, 9312,* FDO, at 8.]
- There are two requirements in the designation, or de-designation, of agricultural lands. As the Board noted in *Grubb*, at 11, "The first is the requirement that the land be "devoted to" agricultural usage. The second is that the land must have "long-term commercial significance" for agriculture.". . .Here, Petitioner . . . has made a *prima facia* case supporting the assertion that there have been no changes to the soil condition, nor any changed circumstances that could support the County's revision of

the 216 acres from agricultural lands to allow other non-agricultural related uses. [*Hensley VI*, *03309c*, FDO, at 36.]

- [T]he County did not alter its criteria for designating agricultural land to include *only those soils*, according to SCS soils capability criteria, *without constraints*, such as drainage limitations. Had the County done so, the necessity to "de-designate existing agricultural lands," which no longer met its designation criteria, would have likely affected far more designated agricultural land than the single 216-acre area affected by the amendment. Instead, without amending its own agricultural land soils designation criteria, the County apparently decided that a new soil constraint criterion, (Footnote omitted) regarding drainage, should be applied only to this area. [*Hensley VI*, *03309c*, FDO, at 37.]
- [B]ased upon the. . . history of the property and its soil characteristics (as defined by the USDA, SCS and the County), whether drained or not, the soils found upon the property are prime agricultural soils that are "capable of being used for agricultural production." The County does not dispute that the property is currently used for agriculture. (Citation omitted.) In short, and in light of the Supreme Court's holding in *Redmond*, nothing has changed regarding the soil composition that persuades the Board that the property is not, or could not be, devoted to agriculture. However, even lands that are "devoted to agriculture" may not have long-term commercial significance and thereby not be appropriate for designation under the GMA. [*Hensley VI*, *03309c*, FDO, at 37.]
- The County's decision, as reflected in its Finding F, seems to be based upon development occurring to the south, but not adjacent to the property; present tax status; and speculation on the area being acquired by the Tulalip Tribe. The discrepancies between the evidence in the record regarding mandatory designation criteria and the decision of the County to de-designate this area, as contained in Finding F, is plainly more than a disagreement over policy choices. Were that the case, the Board would defer to the sound discretion of the County. However, the County's Ordinance Finding draws scant, if any, support from the record. In contrast, the arguments advanced by 1000 Friends, are supported by evidence in the record. The record suggests that the land continues to meet *all* criteria for the designation of agricultural land. This is true regarding the question of prime farmland soil characteristics and whether the 216-acres are of long-term commercial significance. Contrary to the County's Ordinance Finding, the record weighs heavily toward the denial of the de-designation. The Board's review of the record and arguments presented, leads to the conclusion that this area that is devoted to agriculture and continues to be of long-term commercial significance and should not have been de-designated from the Upland Commercial Farmland designation and A-10 zoning. [*Hensley VI*, *03309c*, FDO, at 41.]
- [The last challenged County CPP] is premised on the notion that some type of designated resource land (agricultural, forest or mineral lands) no longer meets the criteria for designation as that resource land, and may be redesignated to a rural or urban designation. As the parties are well aware, any such reclassification of resource lands to either a rural or urban designation is an event that is appealable to the Board. Depending on the facts and circumstances surrounding the specific revised designation of natural resource lands, the Board may, or may not, find that the

change complies with the goals and requirements of the Act. This CPP merely acknowledges the possibility of redesignation from resource land to a designation that would allow different economic development uses. Therefore, the Board need not consider this aspect of [the challenge.] [*CTED, 03317*, FDO, at 39.]

- [The County's CPP, allowing an individual UGA to be potentially expanded for economic development purposes to adjacent land that had previously been designated as resource lands, is permissible if a need for additional commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken.] [*CTED, 03317*, FDO, at 39.]
- Forestry activities are permissible on lands designated "Rural" in the County's Plan. *See* RCW 36.70A.070(5)(b). However, forestry on these [rural] "wooded lands" is not entitled to the protections from encroachment of incompatible uses that attach to lands designated as forest resource lands of long-term commercial significance. See RCW 36.70A.170, .060, .030(8) and .020(8). [*Bremerton II, 04309c*, FDO, at 23.]

• Neighborhood: *See:* Affordable Housing and Sub Area Plans

• Noncompliance

- The GMA authorizes the Board to determine whether an enactment by a local jurisdiction is in compliance with the requirements of the act. In so doing, the Board will necessarily consider whether a local jurisdiction planning under the GMA has exceeded the requirements of that act. The Board will do this by examining whatever action was taken by the local jurisdiction and comparing it to the purposes, requirements and goals of the GMA as a whole. If the local action is consistent with the requirements of the GMA, this Board will find that the local government was in compliance with the GMA. Conversely, inconsistent actions will be remanded. [*Tracy, 2301*, FDO, at 21.]
- [While the Board may acknowledge a petitioner's skepticism], the Board presumes that the [jurisdiction] will act in good faith to comply with the requirements of the Board's Orders. [*Bear Creek, 3508c*, 11/3/00 Order, at 11.]

• Nonconforming Uses

- The phrase "uses legally existing on any parcel" means activities or improvements that actually exist on the land, as opposed to legal use rights. [*Twin Falls, 3303c*, FDO, at 41.]
- The establishment of nonconforming use regulations is a historic part of land use planning in the State of Washington. However, with the passage of the GMA, the discretion of local jurisdictions to craft nonconforming use provisions has been limited, at least in areas outside of designated UGAs. [*PNA II, 5371*, FDO, at 27.]
- [Where a jurisdiction has an administrative process for determining an individuals status regarding legal nonconforming **(LNC**) uses,] [t]he presence or absence of a

parcel's LNC status on a mineral resource map does not affect the individual property interests of the owner of that parcel. [*Green Valley, 8308c,* FDO, at 7.]

- **Notice**

- Notice must be sufficiently descriptive to alert a reader to the major issues at hand and the ways in which to further participate in the process. [*Tracy, 2301,* FDO, at 19.]
- The [advisory body] may exercise authority delegated to it to perform certain tasks such as establishing specific population and employment goals, but its work remains only recommendations unless and until the [legislative body] adopts them by amending the [jurisdiction's] CPPs [or other GMA documents]. The [advisory body's] actions alone have no binding effect. . . . The actions of the [legislative body] are controlling – the Board will review only the [legislative body's] actions for compliance with the GMA and not those of [an advisory body]. [*Snoqualmie, 2304,* FDO, at 26.]
- A development regulation, whether interim or implementing, must be a binding legislative enactment. The Board is not ruling that a resolution or motion can never be used to comply with GMA critical areas and natural resource lands requirements. The test is whether the public has advance notice providing the opportunity to comment before the matter is adopted; whether a public hearing is held; whether the legislative action has the force and effect of law; and whether notice of adoption is published – regardless whether the enactment took place by way of ordinance, motion or resolution. [*FOTL I, 4303,* 4/22/94 Order, at 20-21.]
- The Act does not require a planning jurisdiction to submit any draft copies of proposed plans or regulations to CTED, much less a copy of each and every revision that a comprehensive plan or development regulation undergoes during the legislative process. All that the Act requires of a city proposing to adopt development regulations is that it provide notice of its intent to CTED. [*Children's I, 5311,* FDO, at 21.]
- RCW 36.70A.106 requires a jurisdiction to provide CTED notice of intent to adopt amendments. [*Children's II, 6323,* FDO, at 14.]
- Publication of notice of planning commission and council meetings and hearings referencing specific proposed changes to a classification satisfies the GMA's notice requirements. [*McGowan, 6327,* 9/5/96 Order, at 9.]
- When a plan or development regulation amendment involves the pending, or future, redesignation of specific geographic locations, the legal notice explaining the general purpose of the hearing must identify the location and proposed or future reclassification. [*Kelly, 7312c,* FDO, at 9.]
- [As stated in the July 30, 1997 FDO] what the Board found noncompliant with the public participation requirements of the GMA was the erroneous notice regarding the [property]. The Board never addressed the substance of the redesignation of the property. However, since the notice was in error, the public participation process consequently failed to comply with the GMA, and that amendment adopted pursuant to the defective notice was found invalid. . [*Kelly, 7312c,* 3/31/99 Order, at 5.]

- The GMA "[e]ncourage[s] the involvement of citizens in the planning process," RCW 36.70A.020(11). To achieve this goal, the Act requires cities and counties to have a public participation program that provides for "early and continuous public participation in the development and amendment of comprehensive land use plans" and for 'broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice." RCW 36.70A.140; *see also*, RCW 36.70A.070 (preamble) and RCW 36.70A.130(2)(a). It is axiomatic that without effective notice, the public does not have a reasonable opportunity to participate; therefore, the Act requires local jurisdictions' notice procedures to be "reasonably calculated to provide notice to property owners and other affected and interested individuals, ..." RCW 36.70A.035(1). [*Andrus, 8330*, FDO, at 6-7.]
- When a change is proposed to an amendment to a comprehensive plan, the public must have an opportunity to review and comment on the proposed change before the legislative body votes on the proposed change. RCW 36.70A.035(2)(a), *but see* RCW 36.70A.035(2)(b)(i-iii) for exceptions. [*Andrus, 8330*, FDO, at 7.]
- [Given the facts of this case,] [a]t best the public was notified of the City's consideration of revisions to the [plan] . . . as early as six days and as late as one day prior to the April 16 public meeting. A citizen receiving all forms of notice published by the City would reasonably conclude that no comments would be accepted after the April 17 [published written comment] deadline. Although the April 16 meeting was continued, no explicit revision of the April 17 deadline for written comments was issued by the City, and the record does not show that the City indicated by any means that it would accept written comments during the time between the announced April 17 deadline and the May 21, 1998 adoption [date]. [*Andrus, 8330*, FDO, at 9.]
- Public notice is at the core of public participation. Effective notice is a necessary and essential ingredient in the public participation process. [*WRECO, 8335*, FDO, at 6.]
- Notice is reasonably related to public participation. Raising concerns about a local government's public participation process is sufficient to challenge the jurisdiction's notice procedures before this Board. [*WRECO, 8335*, FDO, at 6.]
- The City's notice provisions [mailed to adjacent property owners] fall woefully short of the required "broad dissemination" and "notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses and organizations [of RCW 36.70A.140 and .035(1)]." [*WRECO, 8335*, FDO, at 13.]
- [Where] the subject matter of a [planning commission's] public hearing includes the possible redesignation of property; "consideration" of a revision to a land use designation includes the possibility of not revising the designation. [*Screen II, 9312*, FDO, at 11.]
- These provisions [RCW 36.70A.035] require the opportunity for the public to review and comment on proposed amendments and changes to those proposed amendments. However, an additional opportunity for public review and comment is not required if the proposed change is within the scope of the alternatives available for public comment. RCW 36.70A.035(2)(b)(ii). In other words, if the public had the opportunity to review and comment on the changes to the proposed amendments, then the County is not required to provide an additional opportunity for public participation. There is no GMA requirement that the County must have prepared a

document for public inspection specifically proposing all elements of the amendments ultimately adopted by the County; it is enough that the changes to the County-proposed amendments were within the scope of alternatives available for public comment. [*Burrow, 9318,* FDO, at 10.]

- The Board understands that the City wishes to provide non-urban village citizens with some assurances that capital facility investments can be made outside of designated urban village boundaries. However, such a policy choice would have implications for existing (city-wide) comprehensive plan policies. For this and other reasons, not the least of which is the public notice requirements of RCW 36.70A.035, the avenue to pursue that end would be in a proposed amendment to the adopted city-wide policy rather than incremental, ad-hoc amendment to thirty-seven individual neighborhood plans. [*Radabaugh, 0302,* FDO, at 10.]
- The Act mandates that the public must have an opportunity to be heard and comment before an "11th hour" change [that is not within the exceptions of RCW 36.70A.035(2)(b)] is adopted as part of comprehensive plan. [*Radabaugh, 0302,* FDO, at 16.]
- [Publication of the City Council Agenda, with the notation "Revision to Critical Areas Ordinance," without describing the nature of the proposed changes is insufficient notice.] It would be difficult for a potentially interested member of the public at large to ascertain what the pending ordinance was proposing. [*Homebuilders, 0314,* FDO, at 10-11.]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316,* 11/6/00 Order, at 4-5]
- Simply because posting [notice on a site] is a common practice for quasi-judicial actions does not mean that it will never be appropriate for a legislative action. [*Buckles, 6322c,* 4/19/01 Order, at 9.]
- The map and narrative of the mailed notice were sufficient to provide reasonable notice to anyone who received it. The question then becomes one of the sufficiency of the mailing itself. Either the County meant to mail this notice to <u>all</u> property owners within 500 feet of the site **or** the County meant to mail this notice only to interested parties within 500 feet of the site. Significantly, in either event, the County's notice was insufficient. [*Buckles, 6322c,* 4/19/01 Order, at 9.]
- It is contrary to the spirit and substance of .140 for local government to provide effective notice of a proposed GMA action to only those property owners whom it deems are "interested" by dint of having made some prior comment or their membership in a neighborhood association. Significantly, the ineffectiveness of the County's mailed notice would not have been fatal to the County's .140 compliance if the County had also employed another form effective form of notice (e.g. publishing in a newspaper or posting the site with an accurate notice, including sufficient locational and topical information). [*Buckles, 6322c,* 4/19/01 Order, at 10.]

- At the heart of this issue is the question of whether the notices the County published told the general public what it needed to know about the pending County action to amend the standards in its CFP. The Board agrees with the County that a capital facility planning is a complex subject and that the notices it published did mention the general topics under discussion. The Board also presumes that the County has made a good faith attempt to engage the public in the capital facilities dialogue. However, a notice that is *reasonably calculated* to reach the intended public must be measured against something more than the good faith intent of the local government publishing it. Rather, it must also be measured against whether it is *effective* in alerting the public to the key questions in play. It is this latter bar that the County's notices fail to clear. [*McVittie VI, 1302*, FDO, at 9.]
- The Board holds that effective notice of an amendment to a Capital Facilities Element involving the addition or subtraction of facilities deemed to be "necessary for development" or a change in a level of service (LOS) for a listed facility must clearly and concisely describe the nature or magnitude of modifications being considered. Likewise, if a jurisdiction wishes to consider amending a previously adopted standard, by increasing or decreasing a level of service, by revising the methods used to measure performance, or by deletion of the standard altogether, it must explicitly say so in its notice. It is not sufficient for a notice to simply say that the jurisdiction is considering updating or changing previously adopted facilities, standards or methods. It must give a clear indication of WHAT, HOW and, if applicable, HOW MUCH the facility, standard or method might be changed. [*McVittie VI, 1302*, FDO, at 9-10.]
- [RCW 36.70A.035] clarifies and emphasizes that effective notice is an essential and necessary part of the public participation requirements of the Act. It also applies to the entire GMA planning process [Note: This section did not apply to actions taken prior to July 27, 1997.] Effective notice precedes adoption. [*McVittie V, 0316*, FDO, at 17.]
- *See also:* **Public Participation** [*McVittie V, 0316*]
- A jurisdiction must provide notice and the opportunity for the public to participate prior to adopting any GMA plan or amendment to that plan. [*McVittie V, 0316*, FDO, at 25.]
- [RCW 36.70A.035] is unambiguous; it is not limited. It applies to *all* development regulation amendments, permanent, temporary or interim. [*McVittie V, 0316*, FDO, at 25.]
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- The County's notice, while lengthy and exhaustively detailed in some ways, misses the mark by not clearly conveying to the average citizen that the County proposed to distinguish in its CFP between certain public facilities as "necessary to support development" and others that are not, and to characterize "parks" as one of the latter. Such changes are too fundamental and persuasive in their effect to be excused by the "errors in exact compliance" language of .140. [*McVittie VI, 1302*, FDO, at 10.]
- To clarify, the Board did not intend that the degree of detail of the notice mimic the actual ordinance. The "reasonable notice" standard or .035 presumes that the County will exercise some judgment about what the essential features of the Ordinance are that require summarization in the notice. The example provided by the County would meet the reasonably calculated standard because it alerts the citizens to the nature of the change (a lowering of the standard) and the likely consequence (approval of more development that would otherwise be allowed). This would be more meaningful to the lay public than a technically precise phrase such as "the change in LOS will be from .076 V/C to .074 V/C." However, to the extent that the changes contemplated in LOS can be expressed with commonly used terminology (e.g. a change from LOS "C" to LOS "D" it would be appropriate to include such information in the notice. [*McVittie VI, 1302*, 10/11/01 Order, at 4.]
- [During the amendment review and discussion process several proposed amendments were withdrawn and several of these were subsequently revived.] The amendments at issue arose during the County's lengthy public process of developing Comprehensive Plan amendments and were debated for six-months by proponents and opponents. The Board concurs [with the County] that notice for the public hearing . . .was adequate ant the County complied with the requirements of RCW 36.70A.035. The County provided reasonable opportunity for public participation and the County complied with the requirements of RCW 36.70A.140. [*Forster Woods, 1308c*, FDO, at 12.]
- The County's Notice was reasonably calculated to reach the affected and interested individuals. Not only was the Notice extensive and widely distributed [but] it was also accurate. The County Notice accurately conveyed that the LOS objectives provided by WSDOT and recommended by PSRC were not standards. [*McVittie VIII, 1317*, FDO, at 19.]
- [Amendments to the Plan considered at the adoption hearing were substantially different from prior designations in the draft Plan.] The question, then, is whether the

means by which they were introduced afforded the public "a reasonable opportunity to comment." [The Board reviewed the issue in light of its prior FDO in Andrus, 8330 and concluded that Edgewood did not provide the public with a reasonable opportunity to comment.] [*Lewis, 1320*, FDO, at 7-9.]

- The Board holds that a public participation program under RCW 36.70A.140 must provide sufficient time to enable meaningful public review and comment. The amount of time provided must be commensurate with the complexity and magnitude of the material to be considered. [*Lewis, 1320*, FDO, at 10.]
- Petitioner seems to misunderstand that [action] refers to the final adoption of the legislation, not the scheduling of public hearings. Notice and public hearings, as well as environmental review, are part of the process that leads to the final action – the decision, here, the adoption of the legislation. [*Miller, 02303*, FDO, at 9.]
- The Planning Commission is an advisory body that makes recommendations and proposals to the County Council that the Council may or may not agree with and adopt. The County Council has discretion, and is not bound only to the Planning Commission's recommendations. However, RCW 36.70A.035 does place bounds on the County Council's discretion. RCW 36.70A.035 generally requires the Council to provide the opportunity for public review and comment if the Council chooses to change or amend a proposal *after* the opportunity for public review and comment is closed. This additional review and comment period is required *unless* the proposed change is within the range of alternatives considered in an EIS or the proposed change is within the scope of alternatives previously available for public comment. RCW 36.70A.035(2)(b)(i) and (ii). [*Hensley IV* and *V*, *1304c/2304*, 6/17/02 Order, at 10.]
- [Petitioner asserted that five amendments to the zoning code were introduced and adopted, after the opportunity for review and comment had closed and the amendments did not fit within the exceptions or RCW 36.70A.035(2)(b) that eliminates the need for additional notice and comment. The Board concluded that three of the amendments fit within the exceptions, but two others did not.] The site-obscuring buffer and maximum lot coverage for the Northern node [of the LAMIRD] amendments . . . fell beyond the scope of the exceptions of RCW 36.70A.035(2)(b). [*Hensley IV* and *V*, *1304c/2304*, 6/17/02 Order, at 7-13.]
- [Six-days notice and the opportunity to comment, prior to enactment of the first emergency ordinance, and ten-days notice and the opportunity to comment, prior to enactment of the second emergency ordinance, in this case] met the "after appropriate public participation" requirements of RCW 36.70A.130(2)(b) in enacting its emergency ordinances, adopting the [interim FLUM]. [*Clark, 02305*, FDO, at 16.]
- If a legislative body chooses to consider a change to a plan or development regulation after the opportunity for public review and comment has passed, "an opportunity for public review and comment *shall* be provided before the legislative body votes on the proposed change." RCW 36.70A.035(2)(a). However, RCW 36.70A.035(2)(b)(i through v) lists exceptions, where additional opportunity for review and comment is *not required*. [*MBA/Brink, 02310*, FDO, at 7.]
- [The Board was not persuaded that the exceptions of RCW 36.70A.035(2)(b) applied where,] the only public notice that was provided was the title of the ordinance, which is extremely broad and general and never even suggested that amendments could or would be considered at [the final adoption hearing.] [*MBA/Brink, 02310*, FDO, at 9.]

- The effect of the City's actions resembles the classic advertising "bait and switch." The City advertised that it intended to do one thing, then, at the eleventh hour, it did something else entirely. The City gave notice and held public hearings to accept testimony on Amendment 02-027, with attached maps. The Amendment indicated the *status quo* would be maintained but anticipated a two-tiered scheme for commercial designations[31] that would be applied in the future. Then, during December of 2002, the City considered and adopted, on December 17, 2002, *only the text* of Amendment 02-027, and a FLUM and Zoning Map, which applied the new designations on the FLUM and Zoning Map. This is not what was "advertised" or available for public comment. The [Petitioner's] property was clearly redesignated and rezoned without Petitioner having any notice or the opportunity to participate on the Council's ultimate decision. The City's actions related to these Ordinances were clearly erroneous and utterly failed to comply with the notice and public participation requirements of the GMA. [*WHIP/Moyer, 03306c*, FDO, at 28-29.]
- The Board's decisions have attempted to describe the minimum components of effective notice. At a minimum, the general nature and magnitude of the proposed amendments must be described. If amendments are to add, delete or strengthen/weaken existing policies that will affect existing designations, those factors should be noted. If proposals involve changes to criteria or standards that will increase or decrease the amount of land designated, amount or type of development permitted, or the number of facilities affected, those aspects of the proposal should be so noted. If existing land use designations are potentially being changed, this should be so noted. These are the basic indicators for the Board in determining whether notice is reasonably calculated to inform the public of potential changes in a Plan or regulation. [*Orton Farms, 04307c*, FDO, at 13.]
- The Board finds that none of the County notices reflected the proposed change to designation criteria or the new [agricultural land] designation. Although the County argued these proposals were "on the table" as early as the May 7, 2003 [planning commission] hearing, there was no notice indicating that the original menu of what would be "served at the table" had changed. [*Orton Farms, 04307c*, FDO, at 16.]
- [T]he [Shoreline Management Act's provisions], not the GMA's notice and public participation procedures have governed the procedures for adoption of SMPs [shoreline master programs] for almost a decade. The [recent amendments to the GMA/SMA provisions] did not revise, alter or modify this longstanding requirement. [*Samson, 04313*, &/6/04 Order, at 5.]
- [The City's] notice and public participation process surpasses the minimum notice and public participation requirements of the GMA, which *does not require individual notice* to property owners as suggested by Petitioner. [*Fuhriman II, 05325c*, FDO, at 13.]
- Review of this record leads the Board to conclude that notwithstanding the name given to the parkland in question, there is no question that the location of the land, or site, involved was adequately described in the notice. . . .The published notice was adequate to reasonably provide notice to interested persons that the Town Council

[31] The Board notes that other commercial designations apply within the downtown subarea boundary. However, the only commercial designations beyond this area are Community Commercial and Neighborhood Commercial.

would be considering an amendment to delete Van Eaton Park from the Plan Update. [*Cossalman/McTee, 05346c*, FDO, at 11.]

- RCW 36.70A.035 offers a nonexclusive list of methods to provide reasonable notice including mailed notice to interested or potentially affected individuals. Publication is not the only acceptable means of providing reasonable notice. [Petitioners had received mailed notice. Additionally, failure to have written findings from the planning commission is not fatal in the context of GMA notice and public participation requirements.] [*Abbey Road*, 05348, FDO, at 8-9.]
- [Having adopted several ordinances related to the wastewater facility, the County questioned Petitioners' ability to challenge the various ordinances asserting that they had not participated at the right time for each ordinance.] The news release [notice] suggests that there will be several steps and perhaps several legislative actions involved in resolving the wastewater facility issue; but it is not clear what comment is being solicited for the [specified meeting and hearing]. The news release summarizes and highlights many of the features of the settlement agreement, including the odor and seismic standards included. It is not unreasonable to expect that the public would view this news release as an invitation to comment on various aspects of the agreement – either in writing or orally. This is what these Petitioners did. [*Sno-King, 06305*, 5/25/06 Order, at 9.]

• Official Notice

- No entries

• OFM Population

- The County may allocate population and employment to cities. [*Edmonds, 3305c,* FDO, at 27.]
- Counties must use <u>only</u> OFM's twenty-year population projection in adopting UGAs. [*Rural Residents, 3310,* FDO, at 33.]
- Counties must base their UGAs on only these projections. Counties cannot add their own calculations to nor deduct from OFM's projections. These projections are both a ceiling and a floor. [*Rural Residents, 3310,* FDO, at 34.]
- A county must base its UGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and specify the methods and assumptions used to support the IUGA designation. In essence, a county must "show its work" so that anyone reviewing a UGAs ordinance, can ascertain precisely how the county developed the regulations it adopted. [*Tacoma, 4301,* FDO, at 19.]
- Although a county has discretion in determining the physical size of a UGA, it does not have discretion in how much population it should plan for. OFM's twenty-year population projection is the exclusive number to use when designating UGAs. [*Tacoma, 4301,* FDO, at 25.]

- It is not the purpose of planning population projections either to stimulate or depress the rate of growth. Rather, it is their purpose to foretell the likely twenty-year population that will result in each county from external factors such as economic, political and demographic trends, which tend to operate largely at the national, state, or regional level. [*Kitsap/OFM, 4314,* FDO, at 7.]
- The Act does not require, and the Board does not expect, that the plans of a county and its cities, based on the most objective data, credible assumptions and analytical methods will guarantee a specific population result twenty years hence. [*Kitsap/OFM, 4314,* FDO, at 9.]
- The preponderance of the evidence standard listed in the last sentence of RCW 36.70A.320 does apply to OFM's population projections. [*Kitsap/OFM, 4314,* FDO, at 12.]
- The statutory presumption of validity discussed in the first sentence of RCW 36.70A.320 does not apply to OFM's population projections. [*Kitsap/OFM, 4314,* FDO, at 12.]
- No statute of limitations exists for petitioning for adjustments of OFM's population projections. [*Kitsap/OFM, 4314,* FDO, at 12.]
- A twenty-year population planning projection, whether adjusted or not, is best described as an externally derived and imposed requirement rather than a locally derived policy choice. It is a foretelling of the likely future, expressed in terms of population, rather than a statement of a preferred future. [*Kitsap/OFM, 4314,* FDO, at 13.]
- The Board adopts a two-part test to be used to decide whether to approve a petition to adjust a planning population projection pursuant to RCW 36.70A.280(1)(b). Only if the Board can answer the first question in the affirmative, and the second question in the negative, will the adjustment be approved: (1) when compared to the OFM projection, can the county show by a preponderance of the evidence that its proposed adjusted population projection is supported by more objective data, credible assumptions and analytical methods? and (2) will the proposed adjustment thwart the goals or other requirements of the Act? [*Kitsap/OFM, 4314,* FDO, at 13.]
- A county may, as an optional and supplementary feature of its comprehensive plan, include a population projection for any year subsequent to 2012, provided that such supplementary projection is unrelated to the process of designating UGAs. It may be wise to look beyond the GMA-mandated twenty-year time horizon, in view of the fact that major capital investments, i.e., sewage treatment plants and transportation facilities such as roads, airports and rail lines, have well beyond a twenty-year life and the results of certain public policy decisions will likewise endure beyond twenty years. However, the land supply and density decisions that must be made in designating UGAs must accommodate only the demands of twenty years of growth. [*Kitsap/OFM, 4314,* FDO, at 23.]
- Although OFM's population projections and those used in county-wide planning policies tend to have a 20-year time frame, the Act at a minimum requires only a six year capital facilities plan. [*WSDF I, 4316,* FDO, at 49.]
- Unless a specific policy in the CPPs prohibits a city from planning for a greater population capacity than the allocation granted it by the county, the city may plan for more than the allocation. [*WSDF I, 4316,* FDO, at 55.]

- The 1995 legislative amendments that require OFM to prepare a range rather than a single population projection did not change the Board's holding in *Rural Residents* that the OFM projections are both a floor and a ceiling; the amendments simply removed the ceiling. [*Vashon-Maury, 5308c,* FDO, at 12.]
- The fact that a UGA can accommodate more residents than OFM projects for the next 20 years does not automatically mean that the UGA is invalid. [*Gig Harbor, 5316c,* FDO, at 41.]
- A city must comply with its county's population allocation and cannot unilaterally modify the persons-per-household assumptions upon which it was based. [*Benaroya I, 5372c,* FDO, at 17.]
- The Act requires that the County's 2012 population target fall within the range forecast by OFM. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 38.]
- Notwithstanding the CPPs, the County's selection of the 2012 population target is a discretionary choice of the County's, so long as it is within the OFM population range and encourages development in urban areas. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 38.]
- Some very fundamental issues have been resolved by virtue of the UGA designation: (1) the land use will be urban; (2) the land use designations reflect population and employment allocations made by the County; and (3) urban services provided within the UGA should be primarily provided by cities. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 48.]
- "Front-end loading" of population [in the CFP] is not a GMA violation. . . . Neither the GMA nor the Procedural Criteria requires or suggests that the OFM population be evenly distributed over the planning period. The County clearly has discretion to distribute the population over the planning horizon as it sees fit, so long as the urban growth is accommodated. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 75.]
- [Although] the GMA does not designate a specific six-year period for CFE planning, it is illogical, and contrary to one of the bedrock purposes of the GMA – *planning* to manage *future* growth – to suggest that the CFE's six-year financing *plan* can be, in whole or in part, an historical report of capital facility financing for prior years. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 77.]
- The "at least six-year plan" period [of RCW 36.70A.070(3)(d)] begins with the date of the adopted Plan. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 77.]
- [T]he County reserved a portion of the twenty-year population projection and offset the UGA accordingly [as required by .350]. [*Bear Creek, 5803c,* 6/15/00 Order, at 16.]
- A petition alleging that the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted can be filed at any time. WAC 242-02-220(3). This provision addresses challenges to OFM's adoption of population projections; it does not address a county's allocation of its OFM population within the county. [*Gain, 9319,* 1/28/00 Order, at 9.]
- [T]he state, through OFM, sets the upper and lower limits of the population growth to be accommodated. Given these parameters, then counties must: 1) select a population target that falls within the bounds of the OFM ranges; and 2) "based upon" the selected target population, designate UGAs to accommodate that growth. This

approach appropriately balances state interests and local discretion. [*Bremerton II, 04309c*, FDO, at 30-31.]

- [T]he Board is not persuaded by the implied argument of [Petitioners] that the County has assigned the unallocated portion of the target population used for the subarea planning process [for several UGA subarea plans] to the rural areas. [Petitioners] pint to nothing in the GMA that requires the entire population projection of OFM to be directed only to the urban areas. [*Bremerton II, 04309c*, FDO, at 31.]
- [Jurisdictions have an ongoing duty to accommodate forecast and allocated population growth.] The GMA is designed to manage growth, not stop it. The GMA is dynamic, not static. The Act requires OFM to produce periodic population projections and it requires cities and counties to accommodate these new forecasts by reviewing and updating their plans and development regulations accordingly. . . RCW 36.70A.110 imposes a consistent and ongoing duty for all GMA jurisdictions. . . to accommodate the ensuing growth periodically projected by OFM and allocated [by the counties]. Simply put, so long as the state and region continue to grow, counties and cities must continue to plan for, manage, and accommodate the projected and allocated growth. [*Kaleas, 05307c*, FDO, at 11-12.]
- Cities are free to project whatever growth they choose and extrapolate whatever trends they choose, as their time and resources permit. However, for purposes of growth management planning in this state, it is the population growth forecasts prepared by OFM and allocated by the County that drive and govern GMA planning – not the projections of individual cities. [The County allocated population within city limits and to unincorporated UGAs, adjacent to cities, including satellite cities. Jurisdictions may participate in OFM's process and also appeal OFM's projections or the County allocations – which did not occur here.] Thus while the County is encouraging increased densities, it is also acknowledging additional growth to be served by the Cities beyond their municipal limits. The County has not usurped [local authority in these adopting these allocations.] [*Bonney Lake, 05316c*, FDO, at 18.]
- [D]ecreases in population allocations to cities that may or may not affect transportation planning becomes a responsibility of the individual city, and need not be addressed in the County's [transportation element] for unincorporated Pierce County. [*Bonney Lake, 05316c*, FDO, at 47.]
- [A]ccommodating the growth allocated to meet a one-time projected 20-year target does not extinguish a city's GMA obligations [per .110]. [*Camwest II, 05341*, FDO, at14.]
- The City adopted the Water Plan based upon population figures contrary to its allocated population and with a service area that apparently does not correspond to the UGA adopted by the County for the City. The Board notes that RCW 43.20.260 provides that water system service under a plan submitted for Department of Health review must be "consistent with the requirements of any comprehensive plan or development regulation adopted under chapter 36.70A RCW." The Board does not have jurisdiction to determine whether the Sultan Water Plan complies with chapter 43.20 RCW, or with the Department of Health regulations, as the Board's review is limited to determining consistency with GMA plans and regulations; however, the Board notes that the importance of the GMA's coordinated planning mandate is

acknowledged in the related statute, which requires conformity with the Comp Plan. [The City acknowledged at the HOM that its population projections and service area were inconsistent with those adopted by the County for the City.] [*Fallgatter V, 06303*, FDO, at 14-15.]

- Like the Water Plan, Sultan's Sewer Plan is based upon a target twenty-year population significantly less than the population allocated and adopted in the Comp Plan. . . . The City concedes to these inconsistencies and ambiguities. As with water systems, the GMA contemplates that sewer systems will be available "concurrently" with land development at urban densities within the urban area. Under the GMA, the City must match land use planning and infrastructure development by means of "comprehensive" planning that provides capacity to serve the total assigned area and allocated population within the 20-year planning horizon. [*Fallgatter V, 06303*, FDO, at 15.]
- RCW 36.70A.110(2) and .130(3) contain two compatible and major directives. The first is that the State Office of Financial Management (OFM) must project population ranges for each GMA county. These are the *population drivers*, the urban growth, which the county, in conjunction with its cities must accommodate. Second, this section of the Act directs the county and its cities to include areas and densities *sufficient to permit the urban growth* that is projected to occur. In order to comply with these directives, jurisdictions must undertake some form of land capacity analysis to determine whether their *areas and permitted densities* for the lands within their jurisdiction can accommodate the projected and allocated growth. Both of these GMA requirements speak in terms of providing *densities* to accommodate growth – compact urban development. [*Strahm, 05342*, FDO, at 12.]

- **Open Space/Greenbelts**

- RCW 36.70A.110(2) applies only to counties; it does not impose that requirement [to *include* greenbelt and open space areas when it designates UGAs] on cities. [*AFT, 5356*, FDO, at 17.]
- The requirement to *identify* open space corridors imposed by RCW 36.70A.160 applies to both counties and cities. [*AFT, 5356*, FDO, at 17.]
- Open space is an inevitable byproduct of land being put to an agricultural use. However, this fact alone is insufficient grounds for a claim that agricultural designation by a local government requires development rights acquisition pursuant to RCW 36.70A.160. Only if a government restricts the use of designated agricultural lands solely to maintain or enhance the value of such lands as open space, must the City or County acquire a sufficient interest in the property. [*Benaroya I, 5372c*, FDO, at 13.]
- There are no specific GMA requirements that implement goals RCW 36.70A.020(8) and (9) – Natural Resource Industries and Open Space and Recreation. [*Tulalip, 6329*, FDO, at 15.]
- For recreation there is no statutory duty to adopt and apply regulations to provide and conserve active recreation sites and facilities. [RCW 36.70A.020(9), 150 and .160 does not create a similar recreation imperative.] [*Green Valley, 8308c*, FDO, at 17.]

- The location-specific and directive duty of RCW 36.70A.020(8), .060 and .170 to designate and conserve agricultural lands clearly trumps the non-directive, non-site specific guidance and inventory requirements for open space and recreation of .020(9), .150 and .160. [*Green Valley, 8308c*, FDO, at 17.]
- RCW 36.70A.160 requires Woodway to identify open space corridors within and between urban growth areas. The open space corridors identified must include lands useful for recreation, wildlife habitat, trails and connections of designated critical areas. [*LMI/Chevron, 8312*, FDO, at 54.]
- RCW 36.70A.160 does not require regulating to protect open space corridors, it does not provide that mere identification is protection of an open space corridor, nor does it provide an independent source of authority for regulating land use activities within an open space corridor. Any authorized land uses, or limitation, restriction, or prohibition of land uses that a jurisdiction might choose to employ within an identified open space corridor must be grounded in separate legal authority, not RCW 36.70A.160. [*LMI/Chevron, 8312*, FDO, at 54.]
- [In *Green Valley, 8308c*] the Board examined and rejected the argument that the discretion that the GMA affords to local governments to "balance the goals of the Act" somehow elevates recreational uses to an equal with agricultural uses. [*Grubb, 0304*, FDO, at 9.]
- [The County's Plan language says active recreation *should not* be located within APDs. Petitioners contend this language carries an unspoken but implied modifier - "unless" and ask the Board to direct the County to change it to *shall not* for fear that the County may revisit the notion of placing active recreation on agricultural lands. The Board declined.] The Board reads the Supreme Court's decision as clear an unequivocal – the County's development regulations [which regulate the use of land] shall not permit active recreation on designated resource lands with prime soils for agriculture. Attempts to carve out loopholes, under the aegis of RCW 36.70A.177, are flatly prohibited by the Supreme Court's decision, notwithstanding any reading that the County chooses to give to [the Plan policy]. [*Green Valley, 8308c*, 11/21/01 Order, at 10.]
- [The de-designation of the property to rural is consistent with the County's policies regarding rural character] because the property lies between and buffers the Forster Woods [residential] development and the adjacent Rattlesnake Mountain Scenic Recreational Area. [*Forster Woods, 1308c*, FDO, at 23.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to reach adjacent land containing significant cultural or natural features for the purpose of protecting it as open space is permissible if a need for additional residential, commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken. (Note: The Board remanded this CPP to the County to clarify that the open space to be preserved would be outside the UGA, as the County intended.) A potential UGA expansion pursuant to this CPP] would seem to restrain the County's discretion by directing the County to pursue such a needed and documented UGA expansion in a location so as to maximize its ability to preserve the significant natural and cultural features as open space. This is more of a UGA *locational constraint*, rather than a UGA *sizing constraint*. Nonetheless, if the

County chooses to constrain its discretion in this manner, it is free to do so. [*CTED, 03317*, FDO, at 31-32.]

- ## Overlap

- A necessary implication of the Act is that UGAs must be distinguishable among cities. This implied requirement arises from RCW 36.70A.110(2) which provides that "each city shall propose the location of an UGA," and the necessity for a county to know, for each portion of the lands covered by the county's comprehensive plan, which city's comprehensive plan must be addressed to meet the consistency requirements of RCW 36.70A.100 and the joint planning requirements of RCW 36.70A.210(3)(f). [*Tacoma, 4301,* FDO, at 12-13.]
- Having CPPs that encourage cities to identify PAAs is a reasonable method to promote "contiguous and orderly development" and to prepare cities to provide services to this development. [*Renton, 7326,* FDO, at 10.]
- A jurisdiction which creates overlap or conflict with a CPP should not benefit from its disregard of the law. [*Renton, 7326,* FDO, at 10.]
- [The Board has jurisdiction to review actions of the legislative bodies of cities and counties within the central Puget Sound region. The Snohomish County Council has not acted. The challenged action] has been taken by Snohomish County Tomorrow, (SCT) an informal planning body with no governmental authority. [SCT's adoption of a Metropolitan urban growth area (MUGA) review process is not within the Board's jurisdiction to review.] [*Shoreline, 0310*, 9/5/00 Order, at 3-4.]
- *See also*: **Interjurisdictional** [*Shoreline II, 1313*]

- ## Parties

- The Board has determined that the potential for prejudice and confusion is too high to allow any exception to the rule that only the attorney speaks for the parties he or she represents. The Board's cases frequently involve groups of loosely-affiliated individuals or organizations. Cities and counties are entitled to know who is the designated spokesperson and to what arguments they must respond. When a brief has been filed, clients are not entitled to second-guess their attorney and file their own arguments. Allowing additional filings from represented parties would be unfair to the attorney, to opposing parties, and to the Board. [*Seattle Audubon, 06324*, FDO, at 7.]

- ## Permit Process

- The successful delegation of such decisions to administrators will depend largely upon the diligence, competence and judgment of the individuals that local governments place in such roles, yet it is not the place of this Board to make personnel decisions, nor to evaluate their performance. What is within our realm are the development regulations that provide administrators with clear and detailed criteria so that, in wielding professional judgment, the Director has regulatory "sideboards" and policy direction. Failure to provide such parameters does not just

place an administrator in an uncomfortable position — it would undermine, perhaps fatally, the duty of the legislative body to articulate in its adopted development regulations its expectations and requirements with regard to critical areas protection. [*Pilchuck, 5347*, FDO, at 36.]

- Just as the GMA provides all citizens predictability in the location and type of future growth and development that will be accommodated, those citizens that seek to carry out these GMA Plans – developers and project proponents – seek an additional degree of predictability for pursuing their development proposals. Goal 7 of the GMA addresses this need. [*Olsen, 03303*, FDO, at 7.]
- The "ensure[d] predictability" included in Goal 7 is directed towards, and attaches to project *applicants*. Predictability for a permit applicant is ensured through a permit application review process that is timely and fair. The Board notes that the addition of the extension process "diminishes" the predictability originally set forth in KCC 21A.41.100 (A) and (B). Nonetheless, it is clearly within the City of Kenmore's discretion to determine whether it desires a permit extension process or not, and to establish the criteria for granting, denying or otherwise limiting the frequency or duration of such extensions. [*Olson*, 03303, FDO, at 7.]
- In establishing an extension process, the City has provided criteria to guide the discretion of the Director in making such extension decisions. Petitioners want these criteria to be more measurable. "Measurable" or objective extension criteria are not compelled by either the City's Plan or the GMA even though desirable for Petitioners (and perhaps the Director). The Board notes that the City's extension criteria, or findings that the Director must make, while somewhat subjective, are neither unreasonable nor ambiguous. In short, the extension process chosen by the City appears to be straightforward. [*Olsen, 03303*, FDO, at 12.]
- EPFs that are sited by a regional or state agency are distinct from those that are "sited by" a local jurisdiction or a private organization or individual. When a local jurisdiction is contemplating its own EPF, public or private, it is free to establish a non-preclusive siting process with any criteria it deems relevant. However, when the siting decision is made by a state or regional agency, the role of the host jurisdiction is much more limited. It may attempt to influence the siting decision "by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan." *Sound Transit*, at 6. But once a site has been chosen regionally, local plans and regulations cannot preclude it, even if those plans predate the EPF's conception. "If a decision regarding an EPF follows the adoption of a plan, and if the plan violates the .200 duty 'not to preclude,' the jurisdiction has a duty to amend its plan." *Port of Seattle*, at 8. [*King County, 03311*, FDO, at 15.]
- The Board holds that no local government plan or regulation, including permit processes and conditions, may preclude the siting, expansion or operation of an essential public facility. Local plans and regulations may not render EPFs impossible or impracticable to site, expand or operate, either by the outright exclusion of such uses, or by the imposition of process requirements or substantive conditions that

render the EPF impracticable. While there is no absolute time limit for how long an EPF permit review may take, an EPF permit process lacking provisions that assure reaching an ultimate decision may be found to be so unfair, untimely and unpredictable as to substantively violate RCW 36.70A.020(7). In addition, local governments lack authority to deny a development permit for EPF's that are sponsored by state or regional entities. [*King County, 03311*, FDO, at 16.]

- It is within a local government's discretion to determine whether or not it desires a development permit modification process and whether that process will be administrative as opposed to quasi-judicial; however, in doing so, it must establish the process and criteria for granting, denying or otherwise limiting the frequency, scope or duration of such modifications. Development regulations that fail to do so may be in substantive noncompliance with RCW 36.70A.020(6) (7). [*Kent CARES III, 03312*, FDO, at 15.]
- While "consistency" is a laudable goal, in this context [consistent with permit conditions] it does not clear and unambiguous direction about the scope and nature of discretion reserved to an administrator evaluating whether a modification request to permit conditions is "minor" as opposed to "major." There is a sharp contrast between vague direction to "be consistent" with an approved permit and clear delineation of the criteria to be used to guide administrative discretion. [*Kent CARES III, 03312*, FDO, at 15-16.]
- [The Board concluded that the County's use of a conditional use permit, and the criteria used in determining whether a permit should be issued, as applied to "local EPFs" complied with the GMA. However, the Board found that applying the same conditional use permit process and criteria to "regional EPFs" could lead to denial of the permit and therefore be contrary to the GMA.] [*King County I, 03311*, 5/26/04 Order, at 16-17.]
- [The Court directed the Board to address an issue not answered in the FDO. The Board concluded that while the conditional use permit process, with appeals from the examiner to the Council with possible remands to the examiner, could result in an iterative loop], a repetitive cycle of remands and appeals could occur only if the process is used to deliberately delay a decision on an application. The Board cannot assume this kind of bad faith. [*King County I, 03311*, 7/29/05 Order, at 12.]

• Petition for Review - PFR

- When a petition for review alleges that a local jurisdiction failed to comply with a statute other than one named in RCW 36.70A.280(1), the Board does not have jurisdiction to make a decision on the issue of compliance. [*Gutschmidt, 2306*, FDO, at 8.]
- Petitioners must describe their standing in the PFR. Petitioners can make the necessary showing by: (1) including a narrative in the PFR itself; (2) attaching a declaration or affidavit to the PFR; or (3) incorporating by reference exhibits from the record below. [*Pilchuck II, 5347c*, 8/17/95 Order, at 3.]
- The Board has never held, nor does the Act state, that the triggering event or action that conveys standing to a person must also describe the total scope of issues on which a person may subsequently request review. According to the Board's holdings

and the Act, the scope of the Board's review is defined by the "detailed statement of issues" that a petitioner is required to include in its request for review. [*Sky Valley, 5368c*, FDO, at 23.]

- Petitioners must specify within their petitions for review which method of standing allows them to proceed with a case before the Board. For instance, petitions for review relying upon APA standing must either allege that the petitioners are within the zone of interest of the GMA and that they have been injured by the local government's GMA action, or they must cite to the specific GMA standing provision under which they qualify (i.e., RCW 36.70A.280(2)'s language "qualified pursuant to RCW 34.05.530"). However, although the petition should also contain information that supports these allegations, it need not contain such evidence. Instead, if the petitioner's alleged standing is challenged, the petitioner will be given the opportunity to provide additional evidence in response. [*Hapsmith I, 5375c*, FDO, at 16.]
- [The Board may refer to the Civil Rules for guidance, but it is not bound by them.] The Board is not a court; its jurisdiction and authority is prescribed by the Legislature. The explicit statutory filing period for a petition is sixty days yet [petitioner] asks that the Board in effect, extend it. . . . To allow the addition of [or substitution of] a new petitioner at this time and allow this change to relate back to [the original filing date of the PFR], would substantially expand the jurisdictional limits the Legislature established for the Boards. This the Board cannot do. [*Montlake, 9302c*, 4/23/99 Order, at 6.]
- Petitioner can allege standing [in their PFR] by either citing to RCW 36.70A.280(2)(a),(b),(c) or (d); or by alleging facts clearly indicating the basis for their standing. [*WRECO, 8335*, FDO, at 4.]
- The GMA does not mandate, nor has the Board ever required this degree of specificity [indicating whether the alleged participation was oral or written] in the standing allegations in a PFR. [*WRECO, 8335*, FDO, at 5.]
- While the Board clearly has authority to hear and determine *compliance* with the GMA, here we lack the circumstances to do so. Absent a properly framed legal issue, couched in a timely PFR, the Board has no means to reach Shoreline's questions. Lacking such a PFR, the Board cannot evaluate whether Shoreline's Plan (or Woodway's 1994 Plan, Snohomish County's Plan or the County's County-wide Planning Policies) comply with the goals and requirements of the Act; nor address the Plan's validity or binding effect, if any, beyond its corporate limits. For these reasons, the lack of an appropriate PFR and an inappropriate question for a PDR, the Board declines to issue a declaratory ruling in this matter. [*Shoreline pdr, 0301pdr*, at 3.]
- [Filing a PFR prior to publication is not a premature and invalid filing. PFRs may be filed from the date of legislative action until sixty-days after publication.] [McVittie IV, 0306c, 4/25/00 Order, at 4-5.]
- [The petition for review as reflected in the prehearing order challenged Woodway's compliance with the GMA "when it designated (an area) as a UGA." The adoption of UGAs is solely a county duty and requirement under the Act, not a duty or requirement for cities. Notwithstanding Woodway's choice of GMA jargon [PAAs or UGAs], it has no duty or authority to adopt UGAs. [*Shoreline II, 1313*, 8/9/01 Order, at 5-6.]

- [A] new PFR at the compliance phase *may* be appropriate if new issues arise or new petitioners appear opposing the legislative action taken on remand. In these situations, a new index, record, clarification of the issues and briefing schedule allow the parties to fully articulate their positions, and the Board has adequate time to thoroughly deliberate and resolve the issues. In short, in collaboration with the parties, the Board will exercise its judgment and discretion to use the method that will resolve the issues as expeditiously as possible. [*Hensley VII*, *03310*, 8/11/03 Order, at 7.]
- [Petitioners moved to amend their PFR to include a determination of invalidity within the relief section of their PFR.] The Board's Rules of Practice and Procedure allow a PFR to be amended after 30-days of original filing with the approval of the presiding officer. WAC 242-02-260. The Board views its authority to enter a determination of invalidity as a remedy which it is empowered to impose if the Board finds noncompliance, remands and determines that the continuing validity of the noncompliant action substantially interferes with the fulfillment of the goals of the Act. Granting the amendment to the PFR will not impose any unreasonable or unavoidable hardship on the parties nor impede the orderly resolution of this matter. [*Citizens*, *03313*, FDO, at 5.]
- The Board holds that the term "detailed" as used in RCW 36.70A.290(1) and WAC 242-02-210(2)(c) means: concise, to the point and containing the essential components that appear in the Board's guidelines for framing legal issues. (Reference to Appendix omitted.) "Detailed" does not mean "lengthy" or including argument and evidence within the body of the issue statement. A legal issue is an allegation, not an argument. (Footnotes omitted.) The appropriate place for argument is in the briefs, not the issue statement. [*Nicholson*, *04301*, 4/19/04 Order, at 5.]
- Allegation: The assertion, claim, declaration or statement of a party to an action, made in a pleading, setting out what he expects to prove. Black's Law Dictionary, Fifth Edition, 1979, at 68. [*Nicholson*, *04301*, 4/19/04 Order, footnote 2, at 5.]
- Argument: An effort to establish belief by a course of reasoning. (Black's Law Dictionary, Fifth Edition, 1979, at 98. [*Nicholson*, *04301*, 4/19/04 Order, footnote 3, at 5.]
- Future Petitioners should take to heart the Board's dismissal of this case, and be certain to articulate in their petitions for review "a detailed statement of the issues presented for resolution by the Board that specifies the provision of the [GMA] allegedly being violated, and if applicable, the provision of the document that is being appealed." WAC 242-02-210. Failure of a party to comply with the Board's rules of practice and procedure or a Board order, may lead to dismissal of an action on the Board's won motion. WAC 242-02-720. [*Nicholson*, *04301*, 4/19/04 Order, at 6.]
- More is not always better, in terms of numbers of issues or numbers of sentences in each [Legal] issue. In some cases, such as this one, the sheer volume and convolution of the [Legal] issue statements make it impossible for the Board to discern the essential elements of a justiciable issue. [The PFR was dismissed.] [*Nicholson*, *04301*, 4/19/04 Order, at 6.]
- The Board concludes that PFR 04-3-0011 is frivolous [because it lacks a legal basis for Board review.] [*Shaffer*, *04311*, 4/19/04 Order, at 2-3.]

- The Board does not allow new issues, not stated in the original PFR [or amended PFR], to be introduced in any restatement of issues. [*Samson, 04313*, &/6/04 Order, at 5.]
- [The Board declined to dismiss the PFRs because each issue was not set forth in the prehearing briefs. The reply briefs gave page numbers relating to where each issue was argued.] At the HOM the Board stated again the importance of identifying *in a petitioner's opening brief* each legal issue being addressed. While legal issues may be regrouped or re-ordered by a petitioner for purposes of argument, failure to indicate the issue being addressed creates an undue burden on the respondent, in setting forth its response, as well as for the Board, in entering its decision. [*Tahoma/Puget Sound, 05304c*, FDO, at 5.]
- When a jurisdiction's regulatory action is opaque or excessively complex, the Board is not compelled to dismiss a petition summarily if issues are mis-worded simply because the effect of the regulations is misunderstood, so long as the Board's ruling is within the issues presented. [*Tahoma/Puget Sound, 05304c*, FDO, at 6.]
- [The Board consolidated two PFRs filed by the same Petitioners challenging two different ordinances adopted a month apart. Because the two PFRs were readily severable and to avoid undue delay in resolving the first matter, following the hearing on the merits, the Board segregated the two PFRs.] [*MBA/Camwest, 05327*, 8/4/05 Order, at 3.]
- Pursuant to WAC 242-02-210(2)(d), the Board has consistently required Petitioners to allege the basis for Petitioner's standing in the PFR. [The City] did not do so. [The City was dismissed as Petitioner, but granted status as an intervener.] [*King County IV, 05331*, 8/8/05 Order, at 4.]
- Petitioner's 2nd Amended PFR was filed more than 30 days after the initial PFR and as such the PFR may no longer be amended as a matter of right. *See* WAC 242-02-260(1) and (2). Further the Board denies the motion to amend the PFR since it adds issues not included in the original PFR, discussed at the PHC or contained in the PHO. [*Giba, 06308*, 4/17/06 Order, at 3.]
- [The Board declined to hear a new issue raised in briefing.] RCW 36.70A.290(1) forbids the Board to issue opinions "on issues not presented to the board in the statement of the issues, as modified by any prehearing order." [*Hood Canal, 06312c*, FDO, at 25.]

- ## Plan – *See:* Comprehensive Plan

- ## Platted Lands

- No entries

- ## Precedent

- The CPSGMHB's jurisdiction is limited to the four-county Central Puget Sound region by RCW 36.70A.250. Thus, the precedential impact of this Board's decisions is limited to King, Pierce, Snohomish and Kitsap counties. This is consistent with the

regional diversity that is one of the hallmarks of the Growth Management Act. [*Kitsap/OFM, 4314,* FDO, at 5.]

- Although respondent city did not specifically raise a subject matter jurisdiction defense in this case, the Board is bound by its own precedent. The Board cannot determine in one case (i.e., *Bainbridge Island*) that it does not have jurisdiction over challenges to Chapter 82.02 RCW, and then ignore that decision in another case where the jurisdictional defense was not specifically raised. [*Slatten, 4328,* 2/24/95 Order, at 2.]
- A Board holding in a prior case does not impose in a subsequent case a duty separate from a GMA duty. [*Litowitz, 6305,* FDO, at 9.]

- **Pre-GMA**

- A pre-existing neighborhood or community plan does not automatically become a part of the GMA required comprehensive plan. If desired, the jurisdiction must explicitly make it so by subsequent legislative action. [*Northgate, 3309,* 11/8/93 Order, at 17.]
- Prior to GMA, plans were voluntary and advisory and there was no requirement that plans be guided by state goals or be consistent with the plans of others. Under GMA, plans are now mandatory (RCW 36.70A.040) and directive. RCW 36.70A.100, .103 and .120. Plans must now be guided by planning goals (RCW 36.70A.020) and be mutually consistent. RCW 36.70A.110 and .210. [*Rural Residents, 3310,* FDO, at 17.]
- The GMA acknowledged that the "old way of doing things" (i.e., non-GMA planning and decision-making) threatened the quality of life enjoyed by Washington's residents, and that in order to meet this threat, new and important steps needed to be taken. RCW 36.70A.010 (FN1) describes a legislatively preferred future for our state, just as the subsequent sections of the Act mandate that communities manage the problems of growth and change in a new way. [*Children's I, 5311,* FDO, at 4.]
- In the GMA, there are a number of specific references that address housing and residential land uses, some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population. [*Children's I, 5311,* FDO, at 5.]
- Growth is more than simply a quantitative increase in the numbers of people living in a community and the addition of "more of the same" to the built environment. Rather, it encompasses the related and important dynamic of change. Because the characteristics of our population have changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup, the GMA requires that housing policies and residential land use regulations must follow suit. This transformation in our society must be reflected in the plans and implementing measures adopted to manage growth and change. [*Children's I, 5311,* FDO, at 9.]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of

resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, at 28.]

- The Act intends local governments to plan meaningfully for the future – to change the way land use planning has traditionally been done. . . . The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. [*Bremerton, 5339c,* FDO, at 28-29.]
- In specifically rejecting the sprawl model for Washington State, the GMA asserts the importance of taking a balanced, long-term view and promoting and serving the broad public interest. When the GMA's substantive requirements for county plans and FUGAs are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community, that, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, at 51-52.]
- A county cannot base its future planning for new growth on its past development practices if those past practices, as here, do not comply with the GMA. What was once permissible is no longer so. The GMA was passed to stop repeating past mistakes in the future. [*Bremerton, 5339c,* FDO, at 71.]
- All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. (citations omitted) A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning. [*Bremerton, 5339c,* FDO, at 77.]
- The lack of a fully completed capital facilities plan is more than a conceptual shortcoming – it is a fatal legal defect in a comprehensive plan. It alone is sufficient cause for the Board to find that the land use element and every other component of a plan violates the requirements of the Act. [*Bremerton, 5339c,* FDO, at 77.]
- For sizing UGAs, the density assumption used cannot be based upon historic patterns that perpetuated low density sprawl, and must reflect the planned for urban densities. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 16.]
- The advent of the GMA changed land use law in this state in a profound way, changing the land use patterns that counties may permit in rural areas. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 25.]

- Pre-existing parcelization cannot be undone; however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 25.]
- All jurisdictions in the Central Puget Sound region, regardless of size or local circumstances, are obliged to meet the procedural and substantive requirements of the GMA. [*CCSV, 5344,* 6/14/95 Order, at 5.]
- The Board has jurisdiction over both adopted GMA enactments <u>and</u> failures to adopt specifically mandated GMA enactments. [*CCSV, 5344,* 6/14/95 Order, at 6.]
- Pre-GMA sub-area plans need not be adopted as GMA enactments in order to continue to have useful application in local land use decision-making. However, such pre-GMA sub-area plans may not be used to satisfy a GMA requirement unless they are specifically incorporated by reference and adopted for that purpose pursuant to the requirements of the Act; nor may they supersede any specific policy or regulatory directive contained in a GMA enactment. [*Sky Valley, 5368c,* FDO, at 55.]
- Although counties cannot be expected to undo past land use practices, they cannot adopt regulations that fail to place appropriate conditions on growth outside UGAs to limit it to achieve conformance with requirements of RCW 36.70A.110. [*PNA II, 5371,* FDO, at 13.]
- The requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas – while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." [*Benaroya I, 5372c,* FDO, at 21.]
- There is no GMA prohibition from a jurisdiction using its pre-GMA zoning designations a starting point or a benchmark in the development of its GMA-required comprehensive plan. [*Litowitz, 6305,* FDO, at 13.]
- RCW 36.70A.010 is not a substantive or even a procedural requirement of the Act, and it creates no specific local government duty for compliance apart from the subsequent goals and requirements of the Act. Neither RCW 36.70A.010 nor Board decisions in prior cases impose a duty on a jurisdiction to avoid the use of previous plans and regulations in preparing its GMA plan. [*Litowitz, 6305,* FDO, at 14.]
- The legislative action of the Council was a vote on two ordinances that amended the county-wide comprehensive plan and amended the county-wide development regulations. Adoption of these ordinances affected property owners throughout the County. Quasi-judicial actions do not include the legislative actions of adopting, amending or revising comprehensive plans. [*Buckles, 6322c,* FDO, at 25.]
- Before the GMA was enacted, a jurisdiction considering [numerous] changes to its comprehensive plan or zoning code might take separate and discrete actions. Because of the narrow focus of such separate and discrete actions, characterization of the jurisdiction's action as quasi-judicial or legislative may have been difficult. However, it is an easier task to characterize a jurisdiction's action under the GMA. The Act generally limits a jurisdiction's ability to amend its comprehensive plan to more than once a year. In these annual amendment cycles, a jurisdiction must consider all proposals concurrently so that the cumulative effect of the various proposals can be ascertained. Consequently, the proposals that, prior to GMA, may

have been considered on a case-by-case basis, through separate actions by the jurisdiction must now be considered as a single bundle of proposals. Such consideration precludes a jurisdiction from functioning in a quasi-judicial manner, it amounts to broad policy making action by the jurisdiction. The pros and cons of individual proposals are weighed and considered in light of the cumulative effects of all proposals, and action on all proposals is combined into one vote. [*Buckles, 6322c*, FDO, at 25-26.]

- In the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the GMA. [*WSDF IV, 6333*, FDO, at 11.]
- Covington [a newly incorporated city] is a jurisdiction within a county (King) that is required to plan under the GMA. The Board understands the City's argument that, because it incorporated in 1997, its deadline to adopt a GMA plan is not until August of 2001. An unspoken, but not implausible implication of Covington's argument is that, until that deadline, it is free to adopt plans and regulations, adopt capital budgets and issue permits that are completely contrary to the guidance and requirements of the Growth Management Act. The Board disagrees that the legislature contemplated such an outcome. The Board concludes that Covington has erroneously interpreted its duty under the Act to adopt plans and development regulations. The August 2001 date upon which the City relies is simply the date by which the City <u>must</u> have adopted a GMA Plan and development regulations. It is not license to adopt plans and regulations totally detached from the goals and requirements of the Act. [*WHIP, 0312*, 11/6/00 Order, at 6.]
- [Covington's reliance upon *Happy Valley, 3308c* and *Northgate, 3309*, is misplaced. The plans in these cases, were adopted, pursuant to pre-existing, non-GMA related planning.] When Covington was incorporated in 1997, the "pre-existing" planning authority could only have been GMA. Not only did Covington have King County's GMA documents [which it adopted upon incorporation] at its disposal, it also had several nearby, or comparative, municipalities to assist them in the "existing" world of GMA compliance. There is but one way to adopt land use plans in the Central Puget Sound region [pursuant to the GMA]. [*WHIP, 0312*, 11/6/00 Order, at 7.]
- Given that Edgewood's interim plan was a Pre-GMA document, its basis for evoking a coordination and consistency challenge against Sumner per .100 is without merit. [*Edgewood, 1318*, FDO, at 9.]

• Prehearing Order - PHO

- The Board's PHO was dated March 25, 2003. Petitioner's letter objecting to the PHO and requesting a revision was received on April 24, 2003 – 30 days after issuance of the PHO. [WAC 242-02-558 requires objections to a PHO must be made within seven days of issuance.] The time to object or request revisions to the PHO lapsed on April 1, 2003. Petitioner's request is untimely. The request to amend Legal Issue 11 in the PHO is denied. [*Moyer, 03306c*, 4/25/03 Order, at 2-3.]

- **Presumption of Validity**

- Formal actions taken by the legislative bodies of cities and counties to amend their comprehensive plans and/or development regulations in response to a Board remand order are entitled to the presumption of validity contained in RCW 36.70A.320(1). [*Vashon-Maury, 5308c,* 5/24/96 FOC, at 8.]
- The Board acknowledges that at a compliance hearing, the burden of proof has shifted to the respondent city or county to show that it has procedurally complied with the Board's order. Accordingly, this Board routinely requires a city or county whose GMA enactment was not in compliance with the Act to first indicate what actions it took to bring the enactment into compliance. Petitioners and intervenors are then given the opportunity to comment on the city or county's statement of compliance. Finally, the city or county is given the opportunity to reply to any responses that were filed. This shifting in the burden of proof does not, however, alter the presumption of validity to which the action of local government is entitled. [*Vashon-Maury, 5308c,* 5/24/96 FOC, at 8.]
- RCW 36.70A.320 requires the Board to presume that a comprehensive plan and development regulations are valid. It does not condition this presumption on the record containing an explicit statement by the local government that it considered the Act's planning goals. Instead, substantive compliance with those goals remains a requirement of the Act that all jurisdictions are presumed to have met unless and until a petitioner proves otherwise. [*Alberg, 5341c,* FDO, at 13.]
- A jurisdiction's action to achieve compliance with a remand is presumed valid upon adoption. [*Hapsmith I, 5375c,* 2/13/97 Order, at 4.]
- Pursuant to RCW 36.70A.320(1), a local government's actions [in adopting or amending comprehensive plans or development regulations] are presumed valid upon adoption. [*Burien, 8310,* FDO, at 4.]
- [The Board denied the motion because, absent the FDO, the County's action is presumed valid and Posten would be in the same position as after the FDO was issued. The Order did not address the timeliness issue nor the fact that numerous other parties besides Posten were affected by the FDO.] [*Alpine, 8332c,* 3/24/99 Order, at 2.]
- [I]n order to overcome the presumption of validity, a petitioner must persuade the Board that the local government has acted erroneously, and to do so it must present clear, well reasoned legal argument supported by appropriate reference to the relevant facts, statutory and case law provisions. Written or oral pleadings that lack these attributes will not suffice. [*FACT, 02314*, FDO, at 6.]
- The [parties acknowledge and agree] that the GMA, specifically RCW 36.70A.320(1), accords a presumption of validity to the adoption of comprehensive plans and implementing development regulations, but does not accord a presumption of validity to the County in adopting CPPs. [The parties then offered varying interpretations of whether a presumption of validity existed for the challenged ordinances.] . . . The question of the effect of the challenged Ordinance's validity during the Board's review is not one presented to the Board. In this case, the parties may be disputing a distinction without a difference, since notwithstanding the presumption of validity, RCW 36.70A.320(2) clearly places the burden of proof on

Petitioner to demonstrate that the actions taken by the County are not in compliance with the requirements of the GMA. [*CTED, 03317*, FDO, at 3-4.]

- ## Procedural Criteria

- Procedural criteria are recommendations; they are advisory only and do not impose a GMA duty or requirement on any local jurisdiction. [*Children's I, 5311,* 5/17/95 Order, at 12.]
- There is no GMA imposed duty that a local government comply with the standards set forth in Chapter 365-195 WAC. [*Cole, 6309c*, FDO, at 22.]
- While the Board is required to consider the criteria and standards adopted by [the Office of Community Development, formerly CTED], in prior cases, this Board has determined that the Procedural Criteria of Chapter 365-195 WAC are advisory only and that the GMA imposes no duty that local governments comply with the *recommendations* set forth in those guidelines. [*Master Builders Association, 1316*, FDO, at 7.]
- The County contends that the Board's decision varies from the CTED Guidelines for essential public facilities - WAC 365-195-340(2)(b)(vi). The County is correct in noting the distinction, but should be aware that the Board determined that the "procedural criteria are recommendations; they are advisory only, and do not impose a GMA duty or requirement on any local jurisdiction. (*Citations omitted*.) Further, this Board has been consistently rendering decisions interpreting the provisions of RCW 36.70A.200; since 1995, these decisions have distinguished local, regional and state siting decisions. (*Citations omitted*.) [*King County, 03311*, 12/15/03 Order, at 4.]

- ## Property Rights

- The property rights goal, while an important cornerstone of the GMA, is not supreme among the 13 goals. The Act requires local governments to balance all 13 goals and to consider the process recommendations of the Attorney General's Office. [*Vashon-Maury, 5308c*, FDO, at 89.]
- While the preamble to RCW 36.70A.020 clarifies that the goals are not listed in any order of priority, a close examination of the 13 goals reveals that there are some important distinctions that can be drawn among them. Unlike the other ten, three planning goals [(1) urban growth; (2) reduce sprawl; and (8) natural resource industries] operate as organizing principles at the county-wide level. Thus, they have not only a procedural dimension, but they also direct a tangible and measurable outcome. In contrast, Goal 6, regarding property rights, and Goal 11, regarding public participation, do not specifically or implicitly describe the physical form or configuration of the region that should evolve. Rather, they address how local government is obligated to undertake the comprehensive planning and implementing actions that will shape the region (i.e., without taking private property and with enhanced public participation). [*Bremerton, 5339c*, FDO, at 25.]
- The Board rejects the argument that Goal 6 (Property Rights) must be interpreted to mean that the imposition of zoning which limits the uses on a property gives rise to

the County's duty to compensate for the uses which are not allowed. [*Alberg, 5341c*, FDO, at 45.]

- A county or city need not affirmatively demonstrate that it has utilized the Attorney General's Process to meet the requirement of RCW 36.70A.370. [*Alberg, 5341c*, FDO, at 47.]
- Open space is an inevitable byproduct of land being put to an agricultural use. However, this fact alone is insufficient grounds for a claim that agricultural designation by a local government requires development rights acquisition pursuant to RCW 36. 70A.160. Only if a government restricts the use of designated agricultural lands solely to maintain or enhance the value of such lands as open space, must the City or County acquire a sufficient interest in the property. [*Benaroya I, 5372c*, FDO, at 13.]
- In order for petitioners to prevail in this type of challenge, they must prove that the action taken by a city or county is both arbitrary and discriminatory. Showing either an arbitrary or discriminatory action is insufficient to overcome the presumption of validity that actions of cities and counties are granted by the Act. [*Shulman, 5376*, FDO, at 12.]
- A private party is not granted the right to seek judicial relief for alleged noncompliance with RCW 36.70A.370 (Protection of private property). The Board does not have jurisdiction to determine whether there has been a violation of RCW 36.70A.370. [*Shulman, 5376*, FDO, at 14.]
- It is well-settled law that cities and counties have constitutional police powers that include the authority to regulate land use. [*Rabie, 8305c*, FDO, at 11.]
- A map symbol of notation on an informational map in the comprehensive plan does not affect any individual owner's property rights. Likewise, the removal of such notation does not affect any individual owner's property rights. [*Green Valley, 8308c*, 4/17/98 Order, at 2-4.]
- Petitioners cite to no authority for its ["necessary linkage" assertion that the Board must determine the constitutionality of an action to determine compliance with Goal 6.] [The Board agrees with the City] the Board does not have to 'necessarily' determine the constitutionality of a city's action when reviewing a challenge under Goal 6. Under Goal 6, the requirement to find both arbitrary and discriminatory action is not the same as finding a violation of a constitutional provision. [The Board has jurisdiction to review an action for whether it complies with Goal 6, but not for whether it is constitutional.] [*HBA II, 1319*, 10/18/01 Order, at 2-3.]
- Petitioners allege that Goal 6 would require a City, which legally acquired title to property some 20 years ago, to offer this property, as 12 individual parcels, to the original owners. Prior property owners have no current property rights in the property and therefore, they could experience no infringement of rights. [*SOS, 04319*, FDO, at 24.]
- Petitioners state they have a "right to have the [Olson Creek] watershed protected from the high adverse impact which will result from the high density development allowed" thereby maintaining the wetland's value and function. [Citation omitted] Though the right to a healthful environment is provided for in SEPA, the Board does not see the same right attached to Goal 6's property rights, and it is not encompassed

within the traditional fundamental rights of private property ownership – exclude, possess, alienate. [*SOS, 04319*, FDO, at 24.]

- [General Discussion of Goal 6 – property rights, in the context of King County's CAO.] The board asks four questions: Is the challenge within the Board's jurisdiction? Did the local government take landowner rights into consideration in its procedure? Was the challenged action arbitrary? Was the challenged action discriminatory? [*Keesing CAO, 05301*, FDO, at 28-33.]
- [Procedural compliance with Goal 6 was shown where] the record demonstrates that County officials took note of citizen concerns about limitations on ordinary use of [rural] land and then proposed and passed responsive amendments. [*Keesling CAO, 05301*, FDO, at 30.]
- Petitioner challenged the County's rural lot clearance rules as contrary to common sense and everyday experience [therefore violating private property rights]. Under the property rights goal, the challenger must prove the County's regulations were "baseless" and "in disregard of the facts and circumstances," not merely, in Petitioner's opinion, misguided or an error in judgment. [The Board finds County's basis for rural land clearing restrictions was contained in its BAS report.] [*Keesling CAO, 05301*, FDO, at 32.]
- *See* Pageler Concurring Opinion in *Camwest III, 05345*, FDO, at 41-43.

• Publication

- It is notice of publication of the Plan, not the date a SEPA document is prepared nor the date a hearing examiner issues a decision on an administrative appeal of that SEPA document(s), that triggers the sixty-day statute of limitations for bringing appeals to the Board. [*PNA, 5359*, FDO, at 8.]
- If the appeal period has lapsed, the organization cannot substitute an individual as petitioner in a petition for review. [*Banigan, 6316c*, 7/29/96 Order, at 11.]
- The Board does not have the authority to review petitions for review filed more than sixty days after publication of the jurisdiction's challenged action. The Board cannot create exceptions that expand this authority. [*Torrance, 6338*, 3/31/97 Order, at 4.]
- [The Board may refer to the Civil Rules for guidance, but it is not bound by them.] The Board is not a court; its jurisdiction and authority is prescribed by the Legislature. The explicit statutory filing period for a petition is sixty days yet [petitioner] asks that the Board in effect, extend it. . . . To allow the addition of [or substitution of] a new petitioner at this time and allow this change to relate back to [the original filing date of the PFR], would substantially expand the jurisdictional limits the Legislature established for the Boards. This the Board cannot do. [*Montlake, 9302c*, 4/23/99 Order, at 6.]
- [RCW 36.70A.290(2)] is unambiguous; if a petition is not filed within sixty days after publication, the Board is without authority to review the petition. [*Gain, 9319*, 1/28/00 Order, at 3.]
- [A failure to act challenge may be brought at any time after the deadline has passed. WAC 242-02-220(5).] If a city or county failed to take any action relating to a GMA deadline, a petitioner may challenge the failure of that city or county to act by that deadline. On the other hand, if a city or county has taken some action relating to a

GMA deadline, and published notice of that action, a challenge to that action must be filed within sixty days after publication. [*Gain, 9319*, 1/28/00 Order, at 4.]

- [Filing a PFR prior to publication is not a premature and invalid filing. PFRs may be filed from the date of legislative action until sixty-days after publication.] [*McVittie IV, 0306c*, 4/25/00 Order, at 4-5.]
- RCW 36.70A.290(2) limits the time within which a jurisdiction is exposed to a potential GMA challenge. However, it is the jurisdiction's legislative action of adopting or amending its Plan, development regulations or taking other GMA actions to implement its plan that "triggers" the possibility of challenge or opens the window for petitioning the Board. To close the window, RCW 36.70A.290(2) requires a jurisdiction to publish notice of its GMA action. Publication puts the public on notice that the opportunity to appeal will close in sixty-days. RCW 36.70A.290(2) enables a jurisdiction to establish a date certain, after which its GMA actions will not be subject to challenge. [*McVittie IV, 0306c*, 4/25/00 Order, at 4.]
- If notice of the GMA action is not published, there is no closure of the appeal period and no protection provided by RCW 36.70A.290(2). However, once published, the protection provided by RCW 36.70A.290(2) is available. That protection is a limitation on the appeal period. [*McVittie IV, 0306c*, 4/25/00 Order, at 4-5.]
- [The jurisdiction's] legislative action starts the clock for filing appeals to the Board. Publication by the [jurisdiction] of notice of its legislative action establishes the date the clock stops. [*McVittie IV, 0306c*, 4/25/00 Order, at 5.]
- [Withdrawal of publication, when there is no change in the legislative action, does not close the appeal period or remove it; the appeal period remains open until re-publication establishes the end of the sixty-day period.] [*McVittie IV, 0306c*, 4/25/00 Order, at 5.]

• Public Facilities and Services – *See also:* CFE

- For purposes of conducting the inventory required by RCW 36.70A.070(3)(a), "public facilities" as defined at RCW 36.70A.030(13) are synonymous with "capital facilities owned by public entities." [*WSDF I, 4316*, FDO, at 45.]
- The phrase "existing needs" from RCW 36.70A.070(3)(e) refers not only to the construction of new or expanded capital facilities that can be currently identified as needed, but also the maintenance of existing capital facilities. . . . Determining the appropriate level of maintenance for capital facilities falls within the local government's discretion. [*WSDF I, 4316*, FDO, at 47.]
- Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place "at the time development is available for occupancy and use" and second, adequacy is measured by "locally established minimum standards." [*Gig Harbor, 5316c*, FDO, at 13.]
- Regarding RCW 36.70A.070(3)(a-b), counties and cities must include an inventory and needs analysis of existing publicly-owned capital facilities, regardless of ownership, in their CFE. [*Bremerton/Port Gamble, 5339c/7324c*, 9/8/97 Order, at 39.]

- Regarding RCW 36.70A(3)(c-d), if a county does not own or operate a facility, it should not be required to include the locational or financing information in its CFE since these decisions are beyond its authority. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 39.]
- When a jurisdiction that owns and/or operates a specified capital facility cooperates with the county and discloses information pertaining to location or financing (RCW 36.70A.070(3)(c-d), the county may include such information in its CFE. Indeed, aside from being sound growth management and public policy, it may be a necessary prerequisite to access a new funding source – *e.g.,* impact fees. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 39.]
- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 41.]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at42.]
- The Board interprets RCW 36.70A.070(3)(c) as if the phrase "owned or operated by the city or county" existed at the end [i.e., the capital facilities element shall contain the proposed locations and capacities of expanded or new capital facilities "owned or operated by the city or county"]. [*Sky Valley, 5368c,* FDO, at 66.]
- The Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. [*Hensley III, 6331,* FDO, at 9.]
- The public facilities required to be inventoried in a capital facilities element includes: parks and recreation facilities, domestic water supply systems, storm and sanitary sewer systems, and schools. [*WSDF IV, 6333,* FDO, at 22.]
- To determine whether existing capital facilities are adequate to meet the future needs of the projected population and employment growth, the Board looks to the language of the plan itself, its appendices, departmental letters, departmental functional plans and the capital improvement program. [*WSDF IV, 6333,* FDO, at 24.]
- The Act does not impose a duty or requirement upon local governments to eliminate or substantially reduce capital facilities maintenance backlogs, nor to guarantee the funding or financing of capital facilities maintenance projects. [*WSDF IV, 6333,* FDO, at 31.]
- The Act requires local jurisdictions to plan for and accommodate new growth – that projected by OFM and allocated by the County. There is no provision in the GMA to

suggest that the Act allows a jurisdiction not to accommodate new growth because it has a capital facilities maintenance backlog or has not guaranteed funding to remove any maintenance backlog, or it is postponing indefinitely its duty to accommodate new growth until its maintenance backlog is removed or reduced. To do so would fly in the face of one of the cornerstones of the GMA. [*WSDF IV, 6333,* FDO, at 32.]

- The Act [RCW 36.70A.110(4)] is clear, extension of sewer into the rural area is inappropriate *except* when a sewer extension *is necessary to protect the public health, safety or environment* and the sewer extension is financially supportable at rural densities and will not permit urban growth. (*Citation* omitted.) . . . [The language in the first part of the challenged CPP] captures the only statutorily recognized exception (footnote omitted) of extending sewers into the rural area - when they are necessary to protect the public health, safety and environment. It also recognizes that such extensions must be financially supportable and not allow urban development. [*CTED, 03317*, FDO, at 18-19.]
- [T]he remaining language of this CPP goes beyond the single statutory exception. It allows the extension of sewers to churches in a rural area that abut a UGA. Under this CPP, to extend a sewer line to a church outside the boundaries of the UGA, there need not be a showing that the extension is necessary to protect the public health, safety or environment, which is the only exception .110(4) recognizes. . . .The amendment to [the challenged CPP] creates an entirely new exception for churches that goes beyond the limited exception stated in RCW 36.70A.110(4). [The CPP does not comply with the Act.] [*CTED, 03317*, FDO, at 19.]
- Schools, as well as churches, are unique in that they are institutional facilities that *serve* the population. Although they do consume land, they are needed to support and serve existing and projected population and development. They are also unique in that both uses are needed to serve both the urban and rural population. Therefore these uses are allowed and may be located in many urban or rural areas. [*CTED, 03317*, FDO, at 28.]
- [A]ny actual UGA extensions for [institutional facilities] should be **limited** and **rare**, for the following reasons. First, RCW 36.70A.150 requires cities and counties to identify lands useful for public purposes, specifically enumerating schools; so the need and location for potential school sites should come as no surprise to any jurisdiction. Secondly, and potentially complementing .150, the submittal of a school district capital facility plan is a condition precedent to the imposition and collection of school impact fees; therefore, ongoing coordination and communication between school districts and jurisdictions about the number and location of needed facilities should be known. Third, as both the Sultan and Snohomish School Districts Capital Facilities Plans indicate, typical school site requirements for schools ranging from elementary to high schools require approximately 10 to 40 acres per school, respectively. (*Citation* omitted.) Accommodating such limited site needs within existing UGAs should be a priority and a reasonable measure to take in lieu of expanding a UGA. Finally, notwithstanding the Board's decision in this case, any actual UGA expansion involving a church or a school must comply with the goals and requirements of the Act and could be the subject of challenge before the Board. (Footnote omitted.) [*CTED, 03317*, FDO, at 28-29.]

- **Public Participation**

- The GMA establishes public participation requirements separate from the SEPA. [*Tracy, 2301,* FDO, at 11.]
- The GMA's enhanced public participation requirements, as specified in RCW 36.70A.140, do not apply to the process for adopting development regulations pursuant to RCW 36.70A.060. [*Tracy, 2301,* FDO, at 13.]
- The [advisory body] may exercise authority delegated to it to perform certain tasks such as establishing specific population and employment goals, but its work remains only recommendations unless and until the [legislative body] adopts them by amending the [jurisdiction's] CPPs [or other GMA documents]. The [advisory body's] actions alone have no binding effect. . . . The actions of the [legislative body] are controlling – the Board will review only the [legislative body's] actions for compliance with the GMA and not those of [an advisory body]. [*Snoqualmie, 2304,* FDO, at 26.]
- The "public participation" that is one of the hallmarks of the GMA, does not equate to "citizens decide." The ultimate decision-makers in land use matters under the GMA are the elected officials of cities and counties, not neighborhood activists or neighborhood organizations. [*Poulsbo, 2309c,* FDO, at 36.]
- "Take into account public input" means "consider public input." "Consider public input" means "to think seriously about" or "to bear in mind" public input; "consider public input" does not mean "agree with" or "obey" public input. [*Twin Falls, 3303c,* FDO, at 77.]
- Unlike GMA, the SEPA statute does not require "enhanced public participation"; absent legislative direction, the Board will not create an enhanced citizen participation requirement for SEPA. [*Rural Residents, 3310,* 2/16/94 Order, at 12.]
- Talking to local government staff or, in the case of elected officials, talking to them off the record (i.e., not at a public hearing or meeting), as opposed to communicating in writing to either or talking to elected officials on the record at a public hearing or meeting, does not constitute appearance. [*FOTL I, 4303,* 4/22/94 Order, at 9.]
- For purposes of enabling a representative organization or association such as FOTL to obtain standing, a member of the organization must appear and indicate that he or she represents that organization. Simply being a member of an organization and being in attendance at a public hearing without indicating that one represents the organization will not suffice to confer standing upon the organization. [*FOTL I, 4303,* 4/22/94 Order, at 9.]
- Cities and counties are required to undertake "early and continuous" public participation in the development and amendment of comprehensive plans and development regulations, and that while the requirement to consider public comment does not require elected officials to agree with or obey such comment, local government does have a duty to be clear and consistent in informing the public about the authority, scope and purpose of proposed planning enactments. [*WSDF I, 4316,* FDO, at 71.]
- For purposes of satisfying the requirements of RCW 36.70A.140, written comments carry just as much weight as oral comments. [*WSDF I, 4316,* FDO, at 75-76.]

- If a local legislative body wishes to make changes to the draft of a proposed comprehensive plan that, to that point, has ostensibly satisfied the public participation requirements of RCW 36.70A.020(11) and .140, it has the discretion to do so. However, if the changes the legislative body wishes to make are substantially different from the recommendations received, its discretion is contingent on two conditions: (1) that there is sufficient information and/or analysis in the record to support the Council's new choice (e.g., SEPA disclosure was given, or the requisite financial analysis was done to meet the Act's concurrency requirements); and (2) that the public has had a reasonable opportunity to review and comment upon the contemplated change. If the first condition does not exist, additional work is first required to support the Council's subsequent exercise of discretion. If the second condition does not exist, effective public notice and reasonable time to review and comment upon the substantial changes must be afforded to the public in order to meet the Act's requirements for "early and continuous" public participation pursuant to RCW 36.70A.140. [*WSDF I, 4316,* FDO, at 76-77.]
- In RCW 36.70A.140, the Act envisions a "response" to public comments and "open discussion" to occur within a variety of forums including vision workshops, open houses, focus groups, opinion surveys, charettes, committee meetings and public hearings. It does not entitle citizens to a face-to-face confrontation and verbal exchange with elected officials about the Plan. [*Robison, 4325c,* FDO, at 30.]
- When a change [amendment] is substantially different from the prior designation, the public needs a reasonable opportunity to comment. [*Vashon-Maury, 5308c,* FDO, at 58.]
- While the preamble to RCW 36.70A.020 clarifies that the goals are not listed in any order of priority, a close examination of the 13 goals reveals that there are some important distinctions that can be drawn among them. Unlike the other ten, three planning goals [(1) urban growth; (2) reduce sprawl; and (8) natural resource industries] operate as organizing principles at the county-wide level. Thus, they have not only a procedural dimension, but they also direct a tangible and measurable outcome. In contrast, Goal 6, regarding property rights, and Goal 11, regarding public participation, do not specifically or implicitly describe the physical form or configuration of the region that should evolve. Rather, they address how local government is obligated to undertake the comprehensive planning and implementing actions that will shape the region (i.e., without taking private property and with enhanced public participation). [*Bremerton, 5339c,* FDO, at 25.]
- In order to raise issues before the Board, it is not necessary for participants and petitioners to have addressed those specific issues when they appeared before the county or city during the public participation process regarding the adoption of the comprehensive plan. [*Bremerton/Port Gamble, 5339/7324c,* 4/22/97 Order, at 6.]
- To have meaningful public participation and avoid "blind-siding" local governments, members of the public must explain their land use planning concerns to local government in sufficient detail to give the government the opportunity to consider these concerns as it weighs and balances its priorities and options under the GMA. [*Bremerton/Alpine 5339c/8332c,* 10/7/98 Order, at 8.]
- If the amendments to a draft that were included in the final Plan were within the range of options discussed in the EIS, considered by the Planning Commission, and/or

raised at the Council's public hearings, and were presented with sufficient detail and analysis at a adequately publicized hearing, then the public has had an opportunity to review and comment. [*Sky Valley, 5368c,* FDO, at 31.]

- Citizen disappointment with a local government's choice does not equate to a violation of the process by the government if citizens have had a reasonable opportunity to comment. [*Sky Valley, 5368c,* FDO, at 36.]
- The Act does not permit a "neighborhood veto", whether *de jure* or *de facto*, and the policies challenged cannot achieve such an outcome. The ultimate decision-makers in land use matters under the GMA are the elected officials of cities and counties, not neighborhood activists or neighborhood organizations. [*Benaroya I, 5372c,* FDO, at 22.]
- In cases where a GMA enactment is remanded but not declared invalid, the following test will be applied to determine how much public participation was appropriate under the circumstances. The Board will apply the following factors to the facts:
    1) the general public's expectation of the public participation process that would apply on remand, based on: a) the locally established public participation program and ; b) actual past practice in conformance with that program;
    2) the amount of time given to a jurisdiction to comply;
    3) the scope of the remand;
    4) the nature of the corrective action that must be taken to bring an enactment into compliance; and
    5) the level of discretion afforded a jurisdiction in taking actions to bring an enactment into compliance. [*WSDF III, 5373,* FDO, at 15.]
- Where a petition alleges noncompliance with both the public participation goal and the specific public participation requirement of the Act, the Board will scrutinize only the latter. [*Litowitz, 6305,* FDO, at 7.]
- Consider public input does not mean agree with or obey public input. [*Buckles, 6322c,* FDO, at 22.]
- RCW 36.70A.130(2) requires local governments to establish a public participation process and procedure for plan amendments. The Board's jurisdiction extends only to determining compliance with that requirement, not to reviewing the circumstances, situations or events that may precipitate a proposed amendment. [*Wallock I, 6325,* FDO, at 10.]
- The public participation requirements of RCW 36.70A.140 do not apply to plan amendments adopted in response to emergencies. [*Wallock I, 6325,* FDO, at 12.]
- Although the purchase of [certain parcels or property] was linked to subsequent Plan and development regulation amendments, the purchase itself is not a GMA action and thus not subject to RCW 36.70A.140. (*See also* Footnote 4, [T]he Board recognizes that local government must undertake many steps, internal communications and activities prior to the development of a proposed amendment to a GMA plan or regulation, at least some of which actions are not GMA actions. The Board has not previously articulated, and does not here articulate, a standard for when such local government steps, communications and activities arise to the status of a "proposed GMA amendment" that would be subject to the requirements of RCW 36.70A.140 or other provisions of the Act. [*Green Valley, 8308c,* FDO, at 10.]

- The Act requires early and continuous public participation on proposed amendments of GMA plans and development regulations; the Act does not require public participation prior to the development and consideration of a proposal to amend the plan or development regulations. [*Green Valley, 8308c,* FDO, at 10.]
- The negotiation and execution of an Interlocal Agreement, that is a non-GMA action, is not subject to the public participation requirements of the GMA over which the Board has jurisdiction. [*Burien, 8310,* FDO, at 9.]
- The ultimate decision-makers in land use matters are the local elected legislative officials. As part of the decision-making process, an opportunity for public comment must be provided; however, the decision-makers are not required to agree with or obey public comments. Nonetheless, they have a responsibility to educate and inform the public [including surrounding jurisdictions] about their pending actions, [including] ILAs and their implication for amendments to plans and development regulations. [*Burien, 8310,* FDO, at 10.]
- Citizen or surrounding community disappointment in local government decisions is not a violation of the public participation requirements of the GMA, so long as a reasonable opportunity to comment has been provided. [*Burien, 8310,* FDO, at 11.]
- [For purposes of analyzing challenges to RCW 36.70A.020(6),] a clearly erroneous action is not necessarily an arbitrary action. "Arbitrary" means to be determined by whim or caprice. Washington's courts have further defined "arbitrary or capricious" action to mean willful and unreasoning action taken without regard to or consideration of the facts and circumstances surrounding the action. Citing cases. [*LMI/Chevron, 8312,* FDO, at 31.]
- [T]he most appropriate definition of "respond" within the context of RCW 36.70A.140 is "to react in response." Applying this definition does not mean that jurisdictions must react in response to all citizens questions or comments; applying this definition means only that citizens comments and questions must be considered and, where appropriate, jurisdictions must take action in response to those comments and questions. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 24.]
- "Response" may, but need not, take the form of an action, either a modification to the proposal under consideration, or an oral or written response to the [citizen] comment or question. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 24.]
- [Limiting the length of oral testimony and limiting the subject of oral testimony allowed at public hearings is fair and reasonable, so long as written testimony is accepted throughout the jurisdiction's process.] [*Bremerton/Alpine, 5339c/8332c,* FDO, at 26.]
- Public participation requirements regarding changes made by the legislative body are contained in RCW 36.70A.035. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 27.]
- As long as the amendments adopted by the legislative body are within the scope of alternatives available for public comment, additional opportunity for public notice and comment is not required. RCW 36.70A.035(2)(b)(ii). [*Bremerton/Alpine, 5339c/8332c,* FDO, at 27.]
- [As stated in the July 30, 1997 FDO] what the Board found noncompliant with the public participation requirements of the GMA was the erroneous notice regarding the [property]. The Board never addressed the substance of the redesignation of the property. However, since the notice was in error, the public participation process

consequently failed to comply with the GMA, and that amendment adopted pursuant to the defective notice was found invalid. . [*Kelly, 7312c,* 3/31/99 Order, at 5.]

- The GMA "[e]ncourage[s] the involvement of citizens in the planning process," RCW 36.70A.020(11). To achieve this goal, the Act requires cities and counties to have a public participation program that provides for "early and continuous public participation in the development and amendment of comprehensive land use plans" and for 'broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice." RCW 36.70A.140; *see also,* RCW 36.70A.070(preamble) and RCW 36.70A.130(2)(a). It is axiomatic that without effective notice, the public does not have a reasonable opportunity to participate; therefore, the Act requires local jurisdictions' notice procedures to be "reasonably calculated to provide notice to property owners and other affected and interested individuals, ..." RCW 36.70A.035(1). [*Andrus, 8330,* FDO, at 6-7.]
- When a change is proposed to an amendment to a comprehensive plan, the public must have an opportunity to review and comment on the proposed change before the legislative body votes on the proposed change. RCW 36.70A.035(2)(a), *but see* RCW 36.70A.035(2)(b)(i-iii) for exceptions. [*Andrus, 8330,* FDO, at 7.]
- [Given the facts of this case,] [a]t best the public was notified of the City's consideration of revisions to the [plan] . . . as early as six days and as late as one day prior to the April 16 public meeting. A citizen receiving all forms of notice published by the City would reasonably conclude that no comments would be accepted after the April 17 [published written comment] deadline. Although the April 16 meeting was continued, no explicit revision of the April 17 deadline for written comments was issued by the City, and the record does not show that the City indicated by any means that it would accept written comments during the time between the announced April 17 deadline and the May 21, 1998 adoption [date]. [*Andrus, 8330,* FDO, at 9.]
- Review of the reasonableness of the opportunity provided for review and comment is measured against all the proposed revisions to the [plan]; it is not measured against only the proposed revisions to [one area or provision]. [*Andrus, 8330,* FDO, at 10, *footnote 5.*]
- Under the facts of this case, the Board concludes that the opportunity provided for public review and comment on the proposed revisions to the [plan] was not reasonable. [*Andrus, 8330,* FDO, at 10.]
- [RCW 36.70A.470] recognizes a distinction between specific project review [subject to RCW 36.70B] and comprehensive land use planning. The action challenged. . . was a legislative action involving comprehensive land use planning; the action was not a project review pursuant to Chapter 36.70B RCW. [*Andrus, 8330,* FDO, at10.]
- Petitioners make no attempt to explain how .470 precludes any citizen, including one with a pending development proposal, from commenting on proposed land use planning legislation; neither do petitioners explain how .470 prohibits the City from considering comments from all citizens when it considers a proposed legislative action. [*Andrus, 8330,* FDO, at 11.]
- The Legislature's scheme for broad and continuous public participation during the development and adoption of plans and regulations is distinct from the Legislature's scheme for appellate review of GMA actions. Any person may participate in the local government's GMA plan development and adoption process. Persons who

participated may file a PFR, but only under the Legislature's statutorily prescribed conditions set out at RCW 36.70A.280(2) and .290(2). [*Montlake, 9302c*, 4/23/99 Order, at 4.]

- Public notice is at the core of public participation. Effective notice is a necessary and essential ingredient in the public participation process. [*WRECO, 8335,* FDO, at 6.]
- Notice is reasonably related to public participation. Raising concerns about a local government's public participation process is sufficient to challenge the jurisdiction's notice procedures before this Board. [*WRECO, 8335,* FDO, at 6.]
- Local governments have discretion in designing and establishing their required RCW 36.70A.130 plan amendment procedures, including setting different submittal and review timeframes. However, the Act does require [the governing body] to consider all Plan amendments concurrently. It is during this final deliberative phase that the decision-makers must have all proposals before them, at the same time, in order to ascertain the cumulative effects of the various proposals and make their decisions. [*WRECO, 8335,* FDO, at 8-9.]
- The City's notice provisions [mailed to adjacent property owners] fall woefully short of the required "broad dissemination" and "notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses and organizations [of RCW 36.70A.140 and .035(1)]." [*WRECO, 8335,* FDO, at 13.]
- The City's decision to enable the Planning Agency to hold its public hearings on plan amendments without requiring a public hearing before the City Council is not clearly erroneous. [*WRECO, 8335,* FDO, at 14.]
- [S]ome cities have delegated to a Planning Commission (or planning agency) the responsibility for conducting public hearings on amendments to plans and regulatory codes. Others have chosen to have the legislative bodies themselves conduct such hearings, either in addition to or in place of those held by the planning commission. While neither might constitute a clear error of law under the GMA, taking either approach to extremes could have serious negative consequences. For example, consistently refusing to <u>ever</u> have a public hearing on plan amendments could undermine the public's faith in the accessibility and accountability of its elected officials. Conversely, <u>always</u> conducting duplicative hearings by the legislative body on actions already heard by the planning commission could erode the credibility and effectiveness of an important advisory body. [*WRECO, 8335,* FDO, footnote 7, at 13.]
- Petitioner's arguments regarding public participation amount to a disagreement with the City over the policy choices made by the City Council. Petitioner's dissatisfaction and disappointment with the decision made by the City does not mean that the public participation process used by the City for amending its Plan failed to comply with the requirements of RCW 36.70A.140. [*Montlake, 9302c,* FDO, at 9.]
- [Where] the subject matter of a [planning commission's] public hearing includes the possible redesignation of property; "consideration" of a revision to a land use designation includes the possibility of not revising the designation. [*Screen II, 9312,* FDO, at 11.]
- [Confusion on behalf of the public regarding the distinction between project specific approvals and plan redesignations does not necessarily result in a GMA public participation failure.] [*Screen II, 9312,* FDO, at 12.]

- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]
- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]
- If reassessment action [per .070(3) or (6)] is triggered, the local government's response must culminate in public action in the public forum. [pursuant to RCW 36.70A.020(11), .035, .130 and .140] This includes, but is not limited to, disclosure of the need for a reassessment, disclosure of options under consideration, and public participation prior to local legislative action. (Footnote omitted.) [*McVittie, 9316c, FDO, at* 27.]
- [Show your work applies to sizing UGAs, it has not been required to demonstrate compliance with the mandatory elements requirements of the Act.] [*MacAngus, 9317,* FDO, at 11.]
- The UGA-sizing requirements of RCW 36.70A.110 rely to a great extent on mathematical calculations (allocation of population growth, assumptions regarding numbers of persons per dwelling, land needs based on planned densities and market factors, etc.) Without a clear showing in the record of the mathematical calculations and assumptions, interested persons have no criteria against which to judge a county's UGA delineation. Such is not the case here. [Petitioner] disagrees with the land use designation of its property and wants the County to show or explain why it did not change the [agricultural] designation. This is not required since the record clearly shows the basis for the County's [designation. The county relied upon Soil Conservation Service Prime Farmland List for the County.] [*MacAngus, 9317,* FDO, at 11.]
- [Petitioner wants the County to explain why it disagreed with them. While the Act requires a jurisdiction to respond to public testimony, it] does not require the kind of response demanded by Petitioner. The County action of maintaining the [agricultural] designation as it relates to Petitioner's property is ample "response" that speaks for itself. [*MacAngus, 9317,* FDO, at 12.]
- These provisions [RCW 36.70A.035] require the opportunity for the public to review and comment on proposed amendments and changes to those proposed amendments. However, an additional opportunity for public review and comment is not required if

the proposed change is within the scope of the alternatives available for public comment. RCW 36.70A.035(2)(b)(ii). In other words, if the public had the opportunity to review and comment on the changes to the proposed amendments, then the County is not required to provide an additional opportunity for public participation. There is no GMA requirement that the County must have prepared a document for public inspection specifically proposing all elements of the amendments ultimately adopted by the County; it is enough that the changes to the County-proposed amendments were within the scope of alternatives available for public comment. [*Burrow, 9318*, FDO, at 10.]

- The State Court of Appeals for Division One recently clarified the Legislature's intended meaning of the word "matter" in [RCW 36.70A.280(2)(b)]. The Court stated: "We conclude that [the Legislature] intended the word 'matter' to refer to a subject or topic of concern or controversy." (Citation omitted.) [Also, to determine whether a petitioner has participation standing, the Court affirmed the CPSGMHB reasonable relationship test adopted in *Alpine, 8332c*, 10/7/98 Order, at 8.] [*Ramey Remand, 9302*, 12/15/00 Order, at 3.]
- Off-the-record and informal conversations [and telephone conversations] with advisory board members and staff do not constitute 'meaningful' public participation with the local government decision-makers since these concerns [raised in conversations] are not part of the decision record. [*Ramey Remand, 9302*, 12/15/00 Order, at 9-10.]
- The Act mandates that the public must have an opportunity to be heard and comment before an "11th hour" change [that is not within the exceptions of RCW 36.70A.035(2)(b)] is adopted as part of comprehensive plan. [*Radabaugh, 0302*, FDO, at 16.]
- [O]nce a shortfall is established and a reassessment precipitated, the GMA's public participation requirements come into play. [Conversely, if a shortfall is not established, and reassessment is unnecessary, public participation is not required.] [*McVittie IV, 0306c*, at 23.]
- [Petitioner challenged the lack of GMA public participation in adoption of the challenged ordinances. The City's response was that it was under no statutory duty to do so, because adoption of these ordinances were not GMA actions; the ordinances were intended to pre-date the City's GMA Plan [2001 deadline]. Yet the City ignored the fact that in 1997 it adopted portions of King County's GMA Plan and regulations as they related to the newly incorporated city. The City never claimed to have complied with the public participation requirements of the GMA. The Board found noncompliance and entered a determination of invalidity.] [*WHIP, 0312*, 11/6/00 Order, at 8.]
- [Publication of the City Council Agenda, with the notation "Revision to Critical Areas Ordinance," without describing the nature of the proposed changes is insufficient notice.] It would be difficult for a potentially interested member of the public at large to ascertain what the pending ordinance was proposing. [*Homebuilders, 0314*, FDO, at 10-11.]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA

participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5]

- It is contrary to the spirit and substance of .140 for local government to provide effective notice of a proposed GMA action to only those property owners whom it deems are "interested" by dint of having made some prior comment or their membership in a neighborhood association. Significantly, the ineffectiveness of the County's mailed notice would not have been fatal to the County's .140 compliance if the County had also employed another form effective form of notice (e.g. publishing in a newspaper or posting the site with an accurate notice, including sufficient locational and topical information). [*Buckles, 6322c*, 4/19/01 Order, at 10.]
- General Discussion of the GMA's public participation goals and requirements. [*McVittie V, 0316*, FDO, at 16-21.]
- [The County asserted that its Charter did not require public participation for emergency ordinances, and that its Charter supercedes special and general laws of the state.] A PFR has been filed with the Board challenging the County's compliance with the public participation requirements of the Act. This Board is obliged to reach a determination on this question. If that determination yields a conflict with the County's Charter, it is not for this Board to determine whether a general law of the state, such as the GMA, or the County Charter prevails. The Courts are the appropriate forums for addressing that question. [*McVittie V, 0316*, FDO, at 12-13.]
- [The public participation goal RCW 36.70A.020(11)] provides an umbrella under which all the GMA public participation requirements fit. It articulates a premium on involving citizens in the entire GMA planning process; and specifically emphasizes the importance of public participation for comprehensive plans and development regulations. [*McVittie V, 0316*, FDO, at 16.]
- RCW 36.70A.140 is the primary public participation requirement section of the Act. It directs local jurisdictions to provide early and continuous public participation in the development and amendment of comprehensive land use plans and implementing development regulations. Public participation is part of the development process preceding adoption, continues after adoption through the development of amendments, and again precedes adoption of amendments. This early and continuous [*enhanced*] public participation process applies to comprehensive plans and development regulations, as well as, *both* the initial development *and* adoption and amendment of such plans and development regulations. [*McVittie V, 0316*, FDO, at 17.]
- [RCW 36.70A.035] clarifies and emphasizes that effective notice is an essential and necessary part of the public participation requirements of the Act. It also applies to the entire GMA planning process [Note: This section did not apply to actions taken prior to July 27, 1997.] Effective notice precedes adoption. [*McVittie V, 0316*, FDO, at 17.]
- [RCW 36.70A.070(preamble)] emphasizes the importance of public participation in adopting and amending comprehensive plans. A plan cannot be adopted or amended without providing the opportunity for public participation. This section specifically emphasizes the application of .140 for adopting and amending comprehensive plans.

This section of the Act does not apply to development regulations. [*McVittie V, 0316*, FDO, at 18.]

- [RCW 36.70A.130] outlines the procedures for consideration and adoption of proposed plan amendments. This process *amplifies* and *refines* the broader .140 public participation process that applies to the adoption and amendment of plans and development regulations. Providing the opportunity for public participation is a condition precedent to adoption or amendment of a plan. Here, a special process for plan amendments is required. The limitation on considering proposed plan amendments "no more frequently than once every year," or annual concurrent review provision, necessitates the establishment of deadlines and schedules for filing and review of such amendments so they can be considered concurrently. Although this section provides exceptions to the annual concurrent plan review limitation, none of these exceptions are excused from public participation requirements. [*McVittie V, 0316*, FDO, at 19.]
- [RCW 36.70A.390] does not apply to plan amendments. It does not apply to permanent changes in development regulations or controls. It applies only to the adoption or amendment of temporary controls or development regulations, those measures that are adopted for an interim period – generally six-months. This section of the Act is unique in that it permits a deviation from the norm of providing the opportunity for public participation prior to action; here a jurisdiction can act or adopt first, then provide the opportunity for public participation after adoption. However, this post-adoption opportunity for public participation must occur within 60-days of adoption. [*McVittie V, 0316*, FDO, at 20.]
- [Plan] Amendments precipitated by emergencies are clearly governed by .130(2)(b), not .140 or even .130(2)(a). Within the confines of the goals and requirements of the Act, local governments have discretion to determine what "appropriate public participation" to provide before they take action on emergency plan amendments. The word "after" [in .130(2)(b)'s phrase "after appropriate public participation] evidences the clear and explicit Legislative intent to prohibit adoption of a plan amendment until "after" (behind in place or order, subsequent in time, late in time than, following) (citation omitted) appropriate public participation takes place. [*McVittie V, 0316*, FDO, at 23-24.]
- [A jurisdiction] has discretion to define "appropriate," but deciding to provide "zero" opportunity for public participation is not "appropriate" and an abuse of that discretion and contrary to the Act. [Providing no notice or opportunity for public participation before the adoption of the emergency plan amendment emasculates the GMA. [It is irreconcilable with the public participation requirements and renders the GMA's public participation provisions absolutely meaningless. [*McVittie V, 0316*, FDO, at 24.]
- A jurisdiction must provide notice and the opportunity for the public to participate prior to adopting any GMA plan or amendment to that plan. [*McVittie V, 0316*, FDO, at 25.]
- [RCW 36.70A.035] is unambiguous; it is not limited. It applies to *all* development regulation amendments, permanent, temporary or interim. [*McVittie V, 0316*, FDO, at 25.]

- Ignoring public participation may be permissible for [a jurisdiction] when it is *not* [adopting or] amending its GMA Plan, development regulations or other GMA required document; but it is impermissible and contrary to the spirit of the Act when GMA Plans regulations or other GMA documents are affected. [*McVittie V, 0316*, FDO, at 26.]
- A jurisdiction must provide notice and the opportunity for the public to participate prior to adopting any GMA development regulation or any amendment to that development regulation, unless an action is being taken pursuant to RCW 36.70A.390, in which case, notice and the opportunity for public participation may be provided after the GMA action is taken. [*McVittie V, 0316*, FDO, at 27.]
- The GMA requires a jurisdiction to provide notice and the opportunity for public participation, either prior to, or after, any GMA action – the adoption or amendment (permanent, temporary or interim) of comprehensive plans or implementing regulations. The GMA is clear; a jurisdiction must **always** provide the *opportunity* for public participation, including notice. [*McVittie V, 0316*, FDO, at 28.]
- A jurisdiction may not bar GMA public participation standing by not providing notice or the opportunity to participate at any time, either prior to, or after, adoption of an amendment to a GMA Plan, development regulation or other related GMA document. If no notice or opportunity for public participation is provided for a GMA action, a petitioner may assert GMA participation standing pursuant to RCW 36.70A.280(2)(b). [*McVittie V, 0316*, FDO, at 29.]

• GMA REQUIREMENTS FOR PUBLIC PARTICIPATION ON AMENDMENTS

RCW 36.70A.	.020(11)	.140	.035	.070	.130(2)	.390
Amendment to Plans						
Permanent/non-emergency	**X**[32]	X[33]	**X**	**X**	**X**	
Permanent/emergency	**X**	X	**X**		**X**b[34]	
Interim/non-emergency	**X**	X	**X**	**X**	**X**	
Interim/emergency	**X**	X	**X**		**X**b	
Amendment to Regulations						
Permanent/non-emergency	**X**	**X**	**X**			
Permanent/emergency	**X**	**X**	**X**			
Interim/non-emergency	**X**		**X**			**X**
Interim/emergency	**X**		**X**			**X**

The Table above is based on the following conclusions drawn by the Board in its analysis of the public participation requirements of the Act:

[32] "**X**" means, the captioned public participation requirement applies.
[33] "X" means, generally .140 applies, but as amplified and refined by the jurisdiction's .130 annual review process.
[34] "**X**b" means, the provisions of .130(2)(**b**), "after appropriate public participation" applies.

- The public participation **goal** provisions (RCW 36.70A.020(11) apply to the adoption of **all** plan and development regulation amendments regardless of duration or urgency.
- The public **notice** requirements (RCW 36.70A.035) apply to the adoption of **all** plan and development regulation amendments regardless of duration or urgency.
- Some degree of **public participation** (RCW 26.70A.130(2)(a) or (b)) is required **prior to** adoption of **any** plan amendment regardless of duration or urgency.
- Public participation (RCW 36.70A.140) is required **prior to** the adoption or amendment of **any** permanent development regulation.
- The **only** instance where **post adoption** public participation is allowed is when temporary or interim development regulations (RCW 36.70A.390) are adopted or amended.

[*McVittie V, 0316*, FDO, at 37 – Appendix B]

- If a jurisdiction chooses to impose a moratorium pursuant to .390, it must adopt findings of fact justifying its action and hold a public hearing on the moratorium. The public hearing may occur either at the adoption hearing or no later than sixty-days thereafter. If the jurisdiction did not adopt findings of fact supporting its action at adoption, or prior to the public hearing, it must do so immediately after the [within 60-day] public hearing. [*SHAG, 1314*, 8/3/01 Order, at 6.]
- [Failure to adopt additional findings of fact at a subsequent public hearing (within 60-days) after adopting findings of fact at the initial adoption of the moratorium is not a failure to comply with the requirements of RCW 36.70A.390. [*SHAG, 1314*, 8/3/01 Order, at 8.]
- [Amendments to the Plan considered at the adoption hearing were substantially different from prior designations in the draft Plan.] The question, then, is whether the means by which they were introduced afforded the public "a reasonable opportunity to comment." [The Board reviewed the issue in light of its prior FDO in Andrus, 8330 and concluded that Edgewood did not provide the public with a reasonable opportunity to comment.] [*Lewis, 1320*, FDO, at 7-9.]
- The Board holds that a public participation program under RCW 36.70A.140 must provide sufficient time to enable meaningful public review and comment. The amount of time provided must be commensurate with the complexity and magnitude of the material to be considered. [*Lewis, 1320*, FDO, at 10.]
- Petitioner seems to misunderstand that [action] refers to the final adoption of the legislation, not the scheduling of public hearings. Notice and public hearings, as well as environmental review, are part of the process that leads to the final action – the decision, here, the adoption of the legislation. [*Miller, 02303*, FDO, at 9.]
- The Planning Commission is an advisory body that makes recommendations and proposals to the County Council that the Council may or may not agree with and adopt. The County Council has discretion, and is not bound only to the Planning Commission's recommendations. However, RCW 36.70A.035 does place bounds on the County Council's discretion. RCW 36.70A.035 generally requires the Council to provide the opportunity for public review and comment if the Council chooses to change or amend a proposal *after* the opportunity for public review and comment is closed. This additional review and comment period is required *unless* the proposed change is within the range of alternatives considered in an EIS or the proposed change

is within the scope of alternatives previously available for public comment. RCW 36.70A.035(2)(b)(i) and (ii). [*Hensley IV* and *V*, *1304c/2304*, 6/17/02 Order, at 10.]

- [Petitioner asserted that five amendments to the zoning code were introduced and adopted, after the opportunity for review and comment had closed and the amendments did not fit within the exceptions or RCW 36.70A.035(2)(b) that eliminates the need for additional notice and comment. The Board concluded that three of the amendments fit within the exceptions, but two others did not.] The site-obscuring buffer and maximum lot coverage for the Northern node [of the LAMIRD] amendments . . . fell beyond the scope of the exceptions of RCW 36.70A.035(2)(b). [*Hensley IV* and *V*, *1304c/2304*, 6/17/02 Order, at 7-13.]
- [Six-days notice and the opportunity to comment, prior to enactment of the first emergency ordinance, and ten-days notice and the opportunity to comment, prior to enactment of the second emergency ordinance, in this case] met the "after appropriate public participation" requirements of RCW 36.70A.130(2)(b) in enacting its emergency ordinances, adopting the [interim FLUM]. [*Clark, 02305*, FDO, at 16.]
- [In adopting or amending SMPs] the SMA public involvement requirements of RCW 90.58.130 would control rather than the GMA public participation provisions of RCW 36.70A.020(11), .035 and .130 or .140. Thus, adoption or amendment to the Shoreline Element of the comprehensive plan and development regulations must be done in conformance with RCW 90.58.130. [*Everett Shorelines Coalition, 02309c*, FDO, at 27.]
- If a legislative body chooses to consider a change to a plan or development regulation after the opportunity for public review and comment has passed, "an opportunity for public review and comment *shall* be provided before the legislative body votes on the proposed change." RCW 36.70A.035(2)(a). However, RCW 36.70A.035(2)(b)(i through v) lists exceptions, where additional opportunity for review and comment is *not required*. [*MBA/Brink, 02310*, FDO, at 7.]
- [The Board was not persuaded that the exceptions of RCW 36.70A.035(2)(b) applied where,] the only public notice that was provided was the title of the ordinance, which is extremely broad and general and never even suggested that amendments could or would be considered at [the final adoption hearing.] [*MBA/Brink, 02310*, FDO, at 9.]
- The effect of the City's actions resembles the classic advertising "bait and switch." The City advertised that it intended to do one thing, then, at the eleventh hour, it did something else entirely. The City gave notice and held public hearings to accept testimony on Amendment 02-027, with attached maps. The Amendment indicated the *status quo* would be maintained but anticipated a two-tiered scheme for commercial designations that would be applied in the future. Then, during December of 2002, the City considered and adopted, on December 17, 2002, *only the text* of Amendment 02-027, and a FLUM and Zoning Map, which applied the new designations on the FLUM and Zoning Map. This is not what was "advertised" or available for public comment. The [Petitioner's] property was clearly redesignated and rezoned without Petitioner having any notice or the opportunity to participate on the Council's ultimate decision. The City's actions related to these Ordinances were clearly erroneous and utterly failed to comply with the notice and public participation requirements of the GMA. [*WHIP/Moyer, 03306c*, FDO, at 28-29.]

- The Board has previously held that a local government has no GMA duty to provide a specific response, either written or oral, to each comment or criticism offered by members of the public. Likewise the GMA imposes no duty upon a local government to "meet with petitioners" for the purposes of discussing their comment, nor with in the context of a potential settlement conference. While the Board commonly inquires whether the parties might wish to avail themselves of other Boards' resources in order to pursue settlement, nothing in the Act, the Board's rules or orders mandates that a local government engage in settlement conference proceedings. Likewise a local government decision to decline to participate in such proceedings does not constitute a violation of RCW 36.70A.140. [*Kent CARES III, 03312*, FDO, at 11.]
- Petitioners' arguments seem to suggest that the GMA mandates that such "ongoing interaction" continue into the permit processing, issuance and enforcement phases, including the consideration of possible amendments. This is a mistaken impression. Once the highly discretionary and public participation-intensive legislative process culminates in the adoption of plans and regulations, the opportunity for "public participation" is greatly reduced, and rightly so. The "timeliness" and "predictability" that must be assured by the development permit process (RCW 36.70A.020(7)) would be thwarted if a city were obliged to engage in the kind of "ongoing interaction" during the permit phase that Petitioners describe. [*Kent CARES III, 03312*, FDO, at 11.]
- [Petitioners testified and communicated in writing with the City during its consideration of the challenged Ordinance.] [T]he question of participation standing presumes that the public has been put on notice regarding a proposed GMA action (pursuant to RCW 36.70A.035), was encouraged to participate (pursuant to RCW 36.70A.020(11) and was afforded an opportunity for early and continuous public participation (pursuant to RCW 36.70A.130 and .140). . . . [T]he City itself, during the process leading up to the adoption of [the challenged Ordinance] never made mention of the GMA. In this light, the City's complaint that the Petitioners never mentioned the GMA during their comments rings particularly hollow. How would it have been possible for Petitioners to perfect their participation standing under GMA when the City assiduously avoided describing or conducting it as a GMA proceeding? . . . To reward the City for this failing by denying participation standing to Petitioners would be manifestly unjust and fly in the face of RCW 36.70A.020(11). [The Board found Petitioners had standing to pursue their challenge.] [*Laurelhurst II, 03316*, FDO, at 19.]
- [The Board has previously held that in the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the Growth Management Act. (*Citation omitted*.)] The Board continues to stand by this holding as the law in this region. Why does it matter, as a matter of public policy, that a development regulation must be adopted, and likewise amended, subject to the public participation goal and requirements of the GMA? Absent a GMA process, the public is not entitled as a matter of law to "notice procedures that are reasonably calculated to provide notice to . . . affected and interested individuals" (RCW 36.70A.035); elected officials are not obliged to be "guided by" (*i.e.*, to consider) the Act's planning goals (RCW 36.70A.020, (preamble)), including the goal to "encourage the involvement of citizens in the planning process" (RCW 36.70A.020(11); nor are they required to

provide for "broad dissemination of proposals and alternatives" while engaging the public in "early and continuous participation" in the development (RCW 36.70A.140) and amendment (RCW 36.70A.130) of plans and regulations. In short, as the Board has previously observed: "To inappropriately truncate or eliminate the public's opportunity to participate in the making of local government policy would fly in the face of one of the Act's most cherished planning goals and separate the "bottom up" component of GMA planning from its true roots – the people." (Citation omitted.) [*Laurelhurst II, 03316*, FDO, at 24-25.]

- The heart of Petitioners' complaint is the assertion that local elected officials have a duty to hear from their constituents before taking legislative action. The Board would agree that this principle is a hallmark of good government, good planning and has constitutional antecedents as well. Nevertheless, as the Board has consistently held, allegations regarding constitutional matters are beyond the Board's jurisdiction. Likewise it is not the Board's role to determine whether local government action constitutes wise policy, or the choice the Board might have made; rather, the Board's charge is to discern whether the GMA duty articulated at RCW 36.70A.020(11) and RCW 36.70A.140 has been violated. [*BridgeportWay, 04303*, FDO, at 12.]
- Deciding where the "cut-off" point for public testimony [during the legislative body's consideration of an action, or even prior to it] is one logically left to the local government. This decision is one in which the Board will typically defer to the local government's choice. Here, the City Council opted for no public testimony prior to making its decision on Plan amendments. However, as Petitioners' argued, the City has an explicit provision in its code, which is consistent with RCW 36.70A.140, directing that the City Council provide its citizens *a reasonable opportunity to be heard at any meeting in regard to any matter being considered there at*. [Citation omitted.] This the City did not do. Significantly, the City did not respond to this argument. [Citations omitted.] Therefore, the Board concludes the City clearly erred in precluding public comment on the proposed Plan amendments in this instance, due to failure to follow its own GMA compliant public process procedures. [*BridgeportWay, 04303*, FDO, at 13.]
- [T]he [Shoreline Management Act's provisions], not the GMA's notice and public participation procedures have governed the procedures for adoption of SMPs [shoreline master programs] for almost a decade. The [recent amendments to the GMA/SMA provisions] did not revise, alter or modify this longstanding requirement. [*Samson, 04313*, &/6/04 Order, at 5.]
- While citizens should be involved in influencing the land use decisions to be made, it is not up to petitioner or other citizen organizations to prioritize and decide land use issues; this is the job of local elected officials. [*Shaffer II, 04323*, FDO, at 12-13.]
- The Buildable Lands program is a review and evaluation program directed at certain GMA planning jurisdictions requiring an inventory of growth and development during a set timeframe. This information is to be used as a basis for assessing their plans and regulations – particularly as they relate to Urban Growth Areas (UGAs). The BLR process, parameters and methodology are to be jointly developed by the County in coordination with its cities and ultimately to be reflected in the County's County-wide Planning Policies. The BLR effort is largely an internal governmental data-gathering exercise, but the Act does direct jurisdictions, in undertaking the program, to

"consider information from other *appropriate jurisdictions and sources*." *See* RCW 36.70A.215(1)(emphasis supplied). The Board notes that while RCW 36.70A.215 does not directly reference the BLR program to the GMA public participation requirements, the BLR provides important information for updates, amendments and revisions to GMA Plans and regulations which are clearly within the gambit of the GMA's notice and public participation requirements. [*S/K Realtors, 04328*, FDO, at 9.]

- [G]iven Petitioners continuing, active and visible participation in the County's GMA planning process, it is reasonable to conclude that Petitioners' input, including the White Paper, was taken into account by the County decision-makers. It appears to the Board that S/K Realtors simply did not persuade the County that their perspective was the "right" view of the usefulness of the BLR. . . . No one questions whether Petitioners have special expertise in relation to the housing market. As a business association, S/K Realtors clearly are representatives from the private sector. However, in the GMA public process at issue here, Petitioners have no different status than neighborhood groups or citizen organizations or any other member of the general public. Consequently, not having a decision "go your way" does not equate to a failure of the GMA's public participation process. [*S/K Realtors, 04328*, FDO, at 10-11.]
- Not following specific recommendations from the public or special interest groups in making decisions does not equate to a GMA violation. [*S/K Realtors, 04328*, FDO, at 21.]
- [Notice that wetland buffer widths were being considered for reduction was adequate. However the scope of the last minute buffer reductions that occurred without the opportunity for public review and comment did not comply with the public participation requirements of the Act.] [*Pilchuck V, 05329*, FDO, at 16-19.]
- It is apparent from Kitsap County's record that KAPO's comments were considered and analyzed by County staff, although they were not given the weight to which KAPO believes they were entitled. . . .Under the GMA, the County has a duty to provide reasonable opportunity for public input but no duty to accept citizen comments or adopt them. "Citizen disappointment in the final choices made by local government does not mean that the citizens have not had a chance to express their view." [Citation omitted.] [The Board concluded that the County had complied with the public participation requirements of the GMA.] [*Hood Canal, 06312c*, FDO, at 14.]
- The bedrock of GMA planning is public participation. The GMA's public participation provisions require cities and counties to adopt specific procedures to ensure "early and continuous" public involvement. Thus, a jurisdiction's failure to follow the public participation procedures it has adopted pursuant to RCW 36.70A.040 constitutes noncompliance with the statute. [*McNaughton, 06327*, FDO, at 22.]

- **Quasi-Judicial**

- The phrase "judicial review" in RCW 43.21C.075(4) refers to both review by courts and by this quasi-judicial growth planning hearings board. Thus, the doctrine of

exhaustion of administrative remedies applies to petitions before the Board. [*Rural Residents, 3310,* Motions, at 6.]

- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, at 60.]
- General discussion and recap of the quasi-judicial nature of the Board, jurisdictional issues and the APA. [*Sky Valley, 5368c,* FDO, at 6-20.]
- The Board is authorized to review a jurisdiction's legislative action that is alleged not to comply with the Act. The Board will not review quasi-judicial actions of local jurisdictions. Simply because a person has requested that a designation be changed does not mean that the resulting action taken by the legislative body was quasi-judicial. [*Buckles, 6322c,* FDO, at 24.]
- The legislative action of the Council was a vote on two ordinances that amended the county-wide comprehensive plan and amended the county-wide development regulations. Adoption of these ordinances affected property owners throughout the County. Quasi-judicial actions do not include the legislative actions of adopting, amending or revising comprehensive plans. [*Buckles, 6322c,* FDO, at 25.]
- Before the GMA was enacted, a jurisdiction considering [numerous] changes to its comprehensive plan or zoning code might take separate and discrete actions. Because of the narrow focus of such separate and discrete actions, characterization of the jurisdiction's action as quasi-judicial or legislative may have been difficult. However, it is an easier task to characterize a jurisdiction's action under the GMA. The Act generally limits a jurisdiction's ability to amend its comprehensive plan to more than once a year. In these annual amendment cycles, a jurisdiction must consider all proposals concurrently so that the cumulative effect of the various proposals can be ascertained. Consequently, the proposals that, prior to GMA, may have been considered on a case-by-case basis, through separate actions by the jurisdiction must now be considered as a single bundle of proposals. Such consideration precludes a jurisdiction from functioning in a quasi-judicial manner, it amounts to broad policy making action by the jurisdiction. The pros and cons of individual proposals are weighed and considered in light of the cumulative effects of all proposals, and action on all proposals is combined into one vote. [*Buckles, 6322c,* FDO, at 25-26.]
- The Board holds that any action to amend either the text or map of a comprehensive plan or the text of a development regulation is a legislative action subject to the goals and requirements of RCW 36.70A, including the subject matter jurisdiction provisions of RCW 36.70A.280. Any amendment to the official zoning map that is proposed and processed concurrently with enabling plan map or text amendments or development regulation text amendments is necessarily a legislative action subject to the goals and requirements of the GMA. [*BridgeportWay, 04303,* FDO, at 8.]

- **Re-affirm or Re-evaluate – *See*: Buildable Lands**

- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317,* FDO, at 7-8.]
- The adoption of [a subarea plan] is a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to [an unchanged plan designation.] [A jurisdiction's decision to maintain an existing designation does not reopen the appeal period of that unchanged designation.] [*MacAngus, 9317,* FDO, at 8.]
- In adopting the Tulalip Subarea Plan, the County did not change, re-adopt, or re-affirm the [agricultural] designation; it merely maintained the existing designation. Additionally, the County's action was not taken in response to a statutory requirement, such as RCW 36.70A.215, which may require the County to change, re-adopt, or re-affirm its comprehensive plan or development regulations. [*MacAngus, 9317,* FDO, at 8-9.]
- Although both RCW 36.70A.130 and .215 require counties and cities to systematically review their comprehensive plans, and to take action to amend them when appropriate, neither provision requires that amendment actually occur. Significantly, neither .130 nor .215 make explicit mention of reviewing or amending agricultural resource lands designations. More significantly, neither .170 nor .060 describe a process or criteria to amend or "de-designate" agricultural lands. Does the lack of an explicit GMA mention, much less mandate, to review and amend prior agricultural lands designations mean that ag lands may never be "de-designated"? [The Board answers this question in the negative.] [*Grubb, 0304,* FDO, at 10-11.]
- [Petitioner tried to distinguish this case from *AFT, 9304*, and *Cole, 6309c*, arguing that it is more like *Port of Seattle II, 7314*. In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Port wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]
- [The buildable lands review requirement of RCW 36.70A.215 requires certain counties "to adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program." The first review and evaluation must be

completed no later than September 1, 2002. A challenge to compliance with the requirements of .215 is only timely after a jurisdiction adopts its .215 CPP or after September 1, 2002.] [*Kitsap Citizens, 0319c*, FDO, at 11-12.]

- Its review of challenges to initial UGA designations caused this Board to articulate a "show your work" requirement that compelled Counties to demonstrate the analytical rigor and accounting that supported the sizing and designations of UGAs. The "show your work" provision for sizing and designating UGAs has been applied to the four Puget Sound counties within this Board's geographic jurisdiction. Thus far, this Board has limited the application of the "show your work" requirement to the sizing of UGAs. (Citations omitted.) [*Master Builders Association, 1316*, FDO, at 8.]
- Based upon the arguments presented, the Board construes the crux of the dispute in this [issue] to be a question of: whether the County had a GMA duty to update its [UGA capacity analysis] (a new showing of work) when it adopted the amendments to the PRD regulations. In reviewing the question, the Board agrees with the County and affirms its prior holding in *Kelly* [*7312*, FDO] that the GMA creates no duty to continuously update UGA land capacity analysis every time development regulations are amended. [*Master Builders Association, 1316*, FDO, at 10.]
- The Board notes that RCW 36.70A.130(3) was amended in 1997 to provide: "The review required by this subsection *may be combined* with the review and evaluation required by RCW 36.70A.215." (Emphasis supplied.) RCW 36.70A.215 further supports the principle that *periodic* review and evaluation for UGA sizing and designation, *not continuous updates*. [*Master Builders Association, 1316*, FDO, at 10.]
- The GMA provides protections against the scenario painted by Petitioners [Once UGAs are set, densities can be increased or decreased without demonstrating consistency with the GMA until the five-year review are due. Thus yielding a five-year period where no rules are in effect.] If UGAs are altered and challenged, which is not the case here, this Board requires an accounting to support the alteration. (Citation omitted.) Additionally, the Act itself provides specific requirements that development regulations, and amendments thereto, be consistent and implement the Plan, including the UGAs. (Citations omitted.) Thus, any changes, *at any time*, to development regulations that increase or decrease densities within a UGA are required to be "consistent with and implement the Plan." Interested persons or groups would be free to challenge such amendments to development regulations as they occurred, within the GMA appeal period. . . .Absent an alteration to a UGA boundary, the GMA specifically requires periodic review and evaluation for UGAs (Citations omitted.) [*Master Builders Association, 1316*, FDO, at 12.]
- [The Board's conclusion that only periodic reviews, not continuous update, are required by the GMA] does not insulate the County from a UGA challenge based upon whether development regulations implement the Plan and are consistent with the Plan and Goals of the Act. [*Master Builders Association, 1316*, FDO, at 13.]
- [T]he provisions of RCW 36.70A.110(3) are applicable *within* UGAs, and do not apply to the present UGA expansion. . . .[T]he GMA does not preclude a jurisdiction from reviewing and revising, if necessary, its UGA boundaries outside the 10-year review provisions of RCW 36.70A.130. RCW 36.70A.130(3) says, "Each county that designates urban growth areas under RCW 36.70A.110 shall review, *at least*

every ten years, its designated urban growth area or areas. . ." [*Hensley VI*, *03309c*, FDO, at 26.]

- **Reasonable Measures**

- The purpose of the reasonable measures [requirement in RCW 36.70A.215] is to identify mechanisms to accommodate growth without expanding UGAs. Consequently, any reasonable person would expect consideration of these measures to include, at a minimum, an indication of which reasonable measures were already adopted by the City or County and what steps, if any, were being taken to adopt additional reasonable measures to avoid expanding UGAs. This type of review and consideration is lacking. The only reference to review of reasonable measures pertains to the [City's] (Footnote omitted) existing use of one, of a possible 25, reasonable measure - planned unit development techniques - to encourage infill. (Footnote omitted) Also, there is no expression of the need for additional residential land due to residential land capacity shortages. The lack of reasonable measures in the CPPs, the after-the-fact adoption of reasonable measures in the BLR [Buildable Lands Report] and even the lack of the County's application of these measures lead the Board to conclude that the County acted prematurely. [*Hensley VI*, *03309c*, FDO, at 27.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to reach adjacent land containing significant cultural or natural features for the purpose of protecting it as open space is permissible if a need for additional residential, commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken. (Note: The Board remanded this CPP to the County to clarify that the open space to be preserved would be outside the UGA, as the County intended.) A potential UGA expansion pursuant to this CPP] would seem to restrain the County's discretion by directing the County to pursue such a needed and documented UGA expansion in a location so as to maximize its ability to preserve the significant natural and cultural features as open space. This is more of a UGA *locational constraint*, rather than a UGA *sizing constraint*. Nonetheless, if the County chooses to constrain its discretion in this manner, it is free to do so. [*CTED*, *03317*, FDO, at 31-32.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land for an affordable housing crisis did not comply with the Act – RCW 36.70A.215. (Note: A CPP, allowing an individual UGA to be potentially expanded for additional residential land is permissible if a need for additional residential land is demonstrated in a land capacity and reasonable measures have been taken. The challenged CPP bypassed .215's reasonable measures requirement.) The Board also commented that a land capacity analysis for residential *land* is off point in relation to a potential expansion of a UGA pursuant to an "affordable housing crisis," which is the basis for this potential UGA expansion.] Whether the existing and projected housing stock is affordable falls within the parameters of RCW 36.70A.070(2) – the Housing Element. A GMA Plan's Housing Element is required to *identify sufficient land for housing, including government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care*

facilities. RCW 36.70A.070(2)(c). Also the Housing Element requires jurisdictions have adequate provision for existing and projected housing needs for *all economic segments of the community*. RCW 36.70A.070(2)(d). Therefore, reliance upon just a land capacity analysis without supporting documentation in the County's Housing Element would be inadequate to implement [a UGA expansion pursuant to this CPP. The Board found this CPP noncompliant.] [*CTED, 03317*, FDO, at 35-36.]

- [The County's CPP, allowing an individual UGA to be potentially expanded for economic development purposes to adjacent land that had previously been designated as resource lands, is permissible if a need for additional commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken.] [*CTED, 03317*, FDO, at 39.]
- [I]f the buildable lands review and evaluation that is completed by September 1, 2002 demonstrates inconsistencies as noted in RCW 36.70A.215(3), *then* jurisdictions must adopt and implement the identified measures [reasonable measures] to increase consistency. A duty to act is stated, but RCW 36.70A.130(3), which provides, "The review required by this subsection [December 1, 2004 (for CPS jurisdictions)] may be combined with the review and evaluation required by RCW 36.70A.215." Therefore, the Board concludes that the outside limit for a local government to adopt reasonable measures to avoid the need to adjust the UGA is December 1, 2004 deadline established in .130(4). [*FEARN, 04304*, 5/20/04 Order, at 7-8.]
- [Petitioner] argues the BLR [County's buildable land report] reveals the following inconsistencies: 1) failure to accommodate 5/6 (83%) of the new growth within UGAs as directed by the CPPs and Comprehensive Plan; 2) failure to achieve appropriate (non-sprawl) urban densities within UGAs; and 3) inappropriate (urban sprawl) development in rural areas. (Citations omitted.) . . . The BLR certainly supports [Petitioners'] contention that the BLR reveals inconsistencies between what is occurring and what the County's Plan is designed to achieve. The BLR identifies development patterns inconsistent with the GMA, the County's CPPs and its Plan. For the County to contend that there are no inconsistencies revealed by the BLR and that reasonable measures are not necessary is in error. The BLR reveals inconsistencies, therefore the County must not only identify reasonable measures, but take action to implement them as required by RCW 36.70A.215(4) [by December 1, 2004.] [*Bremerton II, 04309c*, FDO, at 54-55.]
- If the legal sufficiency of a BLR is challenged, the Board's scrutiny will focus on whether the resulting BLR fulfills the *purposes* of the program and whether the BLR contains the key evaluation components – *i.e.* compliance with RCW 36.70A.215(1) and (3). Simply put, based upon the review and evaluation contained in a BLR, have the jurisdictions been able to determine whether they are achieving urban densities within the UGAs and are reasonable measures needed to avoid adjusting the UGA? Thus, if a county and its cities agree upon an evaluation methodology that satisfy the minimum evaluation components of RCW 36.70A.215(3) [BLR], and the results of that review and evaluation meet the purposes [achieving urban densities within UGAs and are reasonable measures needed to avoid adjusting UGAs] of RCW 36.70A.215(1), the Board will find compliance. [*S/K Realtors, 04328*, FDO, at 15.]
- [In a prior case, the County's BLR identified inconsistencies with the CPPs, Plan and development regulations. Therefore, reasonable measures were required to be

identified and adopted.] If Kitsap County's adopted [reasonable] measures are insufficient, as these challengers allege, the annual monitoring will demonstrate the failure and the County will be obligated to take corrective action. [*1000 Friends/KCRP, 05331c*, FDO, at 24.]

- The GMA gives counties ample discretion to adopt and implement a more varied array of measures than the urban development regulations listed [in the challenged document], including measures to refocus development away from rural to urban lands. Measures to reduce rural density, such as TDRs and lot aggregation, should be on the table. [Adoption of these reasonable measures] is an appropriate beginning, especially in light of the County's acknowledgement of its intent to do more, subject to the time needed for public process. [*1000 Friends/KCRP, 05331c*, FDO, at 25-26.]
- The Board recognizes that difficult questions may arise in establishing the evidentiary record in a "best available science" challenge which must be decided primarily on the basis of the record before the challenged city or county. The Board notes that the County's record here [and in other "best available science" challenges] is replete with studies that contain bibliographical references to other works by the same authors or related topics, which County staff may or may not have reviewed. The Board also notes that much science in the County's record consists of print-outs from web sites of other governmental agencies, and that these websites are updated from time to time. Pierce County states that it also received CDs from citizens and participants in its public process which purport to present relevant science. The Board is likely to be presented some difficult questions of proof as to whether city or county officials are aware of, or are required by RCW 36.70A.172(1) to be aware of, updated scientific findings. In the present challenges, however, the Board determined it was able to make its decision without considering the proffered extra-record studies. [*Tahoma/Puget Sound, 05304c*, FDO, at 7-8.]
- The Board specifically acknowledges Kitsap County's summary of the "accountability" provisions [of the Act] that require the County to ensure that the [reasonable] measures it adopts to cure inconsistencies between its plan and on-the-ground development are actually effective [*e.g* 2007 CTED report to legislature, .215 BLR annual monitoring and the pending 10 year UGA review.] [*1000 Friends/KCRP, 04331c*, 7/25/05 Order, at 3-4.]
- [In arguing that the City had failed to adopt reasonable measures to increase urban densities; Petitioner neglected to identify any inconsistencies noted in the buildable lands reports of either King or Snohomish County that would compel the adoption or implementation of reasonable measures.] [*Fuhriman II, 05325c*, FDO, at 43-44.]
- The Board concurs with Petitioners that the County must identify and adopt reasonable measures as required in RCW 36.70A.215 "other than adjusting urban growth areas." [*KCRP VI, 06307*, FDO, at 17.]
- The Thurston County Superior Court affirmed this Board's ruling in *Bremerton II* that discrepancies between on-the-ground development patterns and the County's plans required the County to identify and implement "reasonable measures" to reduce the inconsistencies. [*Citation* omitted.] The Court then reversed this Board's ruling in *1000 Friends* with respect to the 18 "reasonable measures" listed by Kitsap County in Resolution 158-2004, which had been challenged by Petitioner in that case. The Court found that Resolution 158-2004 was a summary of actions previously taken by the

County, was not in response to the evaluation process required by RCW 36.70A.215 and, therefore, was not reasonably likely to remedy the inconsistent development patterns. As stated by Thurston County Superior Court in *1000 Friends*: "The statute anticipates an evaluation based upon data collected and, where consistency is needed, remedial measures to be taken to improve consistency. Presenting a litany of prior measures taken [in Resolution 158-2004] when those measures have obviously not achieved the desired result is contrary to the intent of the statute, which is to adopt measures over time which will achieve certain goals. [Petitioner] presented to the Board evidence that these measures were ineffective and the County was unable to rebut that evidence." [*KCRP VI, 06307*, FDO, at 17-18.]

- [In the Kingston Subarea Plan, the County identified 46 reasonable measures, 35 which were incorporated into the Subarea Plan. Many of the adopted measures were a reiteration of existing measures and others were specifically tied to and contingent upon the expansion of the UGA.] The GMA specifically requires that a county adopt "reasonable measures, *other than adjusting urban growth areas*, that will be taken to comply with the requirements of this chapter." [R]equiring urban density and other measures in the expanded portion of the UGA is not a measure reasonably likely to improve the infill of presently-underutilized urban areas or reduce pressure for permitting sprawl development in rural areas in the future. [*KCRP VI, 06307*, FDO, at 19-20.]

• Reconsideration

- A Board Order on Dispositive Motions is a final decision of the Board subject to reconsideration. [*Hanson, 8315c*, 10/15/98 Order, at 2.]
- [On reconsideration, the Board considered Petitioners' response brief, but affirmed its decision to dismiss the PFRs alleging the County failed to adopt the amendments proposed by Petitioners.] [*Tacoma, 9323c*, 3/27/00 Order, at 1-2.]
- [In its FDO, the Board did not address an issue related to compliance with the GMA's critical areas provisions. Petitioners asked that this issue be addressed during the compliance phase; Respondent argued the Board no longer had jurisdiction to resolve this issue. A majority of the Board agreed.] While both sides present cogent arguments [regarding continuing jurisdiction over the issue], the most compelling is the argument that the Petitioners did not avail themselves of the opportunity to file a post-FDO motion specifically requesting that the Board also address Legal Issue No. 5 [the CA issue]. Had Petitioners done so, the Board clearly would have had jurisdiction to answer [it] in the context of clarifying or reconsidering the FDO. The Board concludes that it lacks authority to answer [the issue] during the compliance phase of this proceeding. [*1000 Friends I, 03319c*, 6/24/04 Order, at 8.]

• Record

- When this Board reviews supplemental evidence, it will only use that additional evidence to assist the Board in determining whether the underlying legislative action complies with the GMA; it will not substitute its judgment for that of a local legislative body based on supplemental evidence that, by its definition was not before

the local legislative authority, to ascertain how the legislative action is applied to a particular parcel of property. The Board's use of supplemental evidence "as applied" evidence will be used merely to assist the Board in determining whether the legislative action taken by the local jurisdiction complies with the GMA. [*Twin Falls, 3303c,* FDO, at 55.]

- A jurisdiction is required to include as part of the record of its development of its [critical areas regulations or amendments] the scientific information that was developed by the jurisdiction and presented to the jurisdiction by others during its development of its regulations. The City included the best available science when it developed its amendments to its critical areas regulations, and did not violate RCW 36.70A.172. [*HEAL, 6312,* FDO, at 21.]
- Each GMA case is a discrete entity and the entire record before the Board in a prior case does not automatically become part of the record before the Board in a subsequent case. A party wishing to have the Board consider an exhibit from the record in a prior case must file a motion to supplement the record pursuant to WAC 242-02-540 and attach a copy of the proposed exhibit to the motion. [*COPAC, 6313c,* FDO, at 5.]
- [A jurisdiction's Index to the Record need not be organized topically.] [*Bremerton/Alpine, 5339c/8332c,* FDO, at 25.]
- [Filing motions (dispositive or to supplement the record) are untimely if filed after the deadline established in the prehearing order, unless written permission is granted by the Board.] [*WRECO, 8335,* FDO, at 2-3.]
- The record supports the County's determination that the [property] is forested in character. Petitioners have not shown that the County's portrayal of the property as "forested in character" was clearly erroneous. [*Screen II, 9312,* FDO, at 8.]
- Copies of the exhibits proposed for supplementing the record must accompany the motion to supplement. [*Ramey Remand, 9302,* 11/11/00 Order, at 5, 8-9.]
- [There is] a burden on the respondent jurisdiction to compile and Index that documents the proceeding undertaken by the jurisdiction. The Index should contain information obtained by the jurisdiction in its proceedings, that it used in reaching the decision that is the subject of the GMA challenge before the Board. . . . The Board does not direct the contents of the jurisdiction's Index, it accepts it as a good faith effort by the jurisdiction to document the record of the proceedings and the materials used by the jurisdiction in taking to the GMA action. Amendments to the Index, by the jurisdiction, or motions to supplement the record are the means to finalize the record for Board review. [*Ramey Remand, 9302,* 11/11/00 Order, at 9.]
- The purpose of an exhibit list is to identify those documents listed in the Index that the party intends to use as an exhibit. (Citation omitted.) It may not contain exhibits that are not listed in the Index or exhibits that have not been admitted as supplemental evidence by the Board. [*Ramey Remand, 9302,* 11/11/00 Order, at 11.]
- If in Petitioner's prehearing opening brief, Petitioner attaches as an exhibit and relies upon the recently admitted exhibits [declarations] to support argument in the opening brief; then the City may include rebuttal declarations along with its prehearing response brief and move the Board to supplement the record with such new City declarations. [*Ramey Remand, 9302,* 12/15/00 Order, at 2.]

- Off-the-record and informal conversations [and telephone conversations] with advisory board members and staff do not constitute 'meaningful' public participation with the local government decision-makers since these concerns [raised in conversations] are not part of the decision record. [*Ramey Remand, 9302*, 12/15/00 Order, at 9-10.]
- The only supporting evidence for a 1000' buffer that Tacoma cites seems to be statements based on perception, unsubstantiated fear or community displeasure. [DOC showed that there was no evidence indicating that work release facilities increase criminal activity, or that recidivism tends to occur within 1000' of a facility itself. DOC provided substantial evidence to the City regarding its work release program, success rates, number of [local] offenders, escapes from work release facilities and crimes related to escapes.] [*DOC/DSHS, 0307*, FDO, at 10.]
- [If the parties attach exhibits to their briefs that are not part of the record, without moving to supplement; and each party addresses the exhibits in their response or reply briefs, without moving to strike or objecting; the Board will determine whether they would be necessary or of substantial assistance in rendering its decision, and rule accordingly.] [*MBA/Brink, 02310*, FDO, at 4-5.]
- [Regarding whether the land had long term commercial significance, the Board reviewed the County's findings and evidence in the record. Basing a finding upon] Anecdotal testimony, particularly from an individual whose direct experience with the area is decades removed from the present and whose declared expertise was in dairy rather than crop farming, does not constitute credible evidence on which to support the County's action. [Other anecdotal evidence also contradicted this testimony.] Further damaging to the credibility of the County's reasoning is that nowhere do Respondent or Intervenor cite to credible, objective evidence to refute or reconcile the substantial record evidence (*i.e.* the PDS report, the DSEIS, USDA soils survey) to the contrary. [*1000 Friends, 03319c*, FDO, at 28.]
- The Board construes any declarations or conclusions entered from [consultant reports prepared on behalf of the proponent of the action] to be reflections, if not direct expressions, of "landowner intent" and assigns them the appropriate weight (*i.e.* expressions of landowner intent, alone, are not determinative). [*1000 Friends, 03319c*, FDO, at 29.]
- The County's Ordinance draws scant credible evidence and objective support from the record. In contrast, the arguments advanced by Petitioners, are supported by credible and objective evidence in the record. The record suggests that the land continues to meet the criteria for the designation of agricultural land. [*1000 Friends, 03319c*, FDO, at 29-30.]
- [T]he land use plan and zoning designations wrought by [the ordinance adopted on remand] are identical to those created by [the prior] noncompliant and invalid [ordinance]. The only remedial action taken by the County on remand from the Board was to place more testimony in its record, both pro and con, regarding the historical or speculative future ability of specific individuals to profitably farm specific parcels within the Island Crossing triangle. The County insists that, notwithstanding soil characteristics, the Council may divine the long-term commercial significance of agricultural lands by weighing the credibility of opposing opinions. [None of the testimony relied upon addressed the criteria listed at WAC

365-190-050, or testimony reflected land-owner intent.] . . . In the final analysis, however, the relative weight or credibility that the County assigned to the opinions expressed by individuals during the [public] hearing sheds little light on the question of whether agricultural lands at Island Crossing have long-term commercial significance. While the Board would agree that soils information alone is not determinative, neither is reliance on anecdotal, parcel-focused expression of opinion nor is landowner intent. Instead, to cull from the universe of lands that are "devoted to" agriculture the subset that also has "long-term commercial significance" demands an objective, area-wide inquiry that examines locational factors (footnote omitted) as well as the adequacy of infrastructure to support the agricultural industry. [*1000 Friends I, 03319c*, 6/24/04 Order, at 16-17.]

- The County's reliance on anecdotal, parcel-focused witness testimony as the primary determining factor of LTCS has too narrow a focus – it misses the broad sweep of the Act's natural resource goal, which is to maintain and enhance the agricultural resource *industry*, not simply agricultural operations on individual parcels of land. (Citations omitted.) This breadth of vision informs a proper reading of the Act's requirements for resource lands designation under .10 and conservation under .060. Reading these provisions as a whole, it is apparent that agricultural lands with "long-term commercial significance" are *area-wide patterns of land use*, not localized parcel specific ownerships. Historical or speculative statements by individuals regarding their personal inability to profitably farm certain parcels does not inform a GMA-required inquiry into the *long-term commercial significance* of *area-wide patterns of land use* that are to *assure the maintenance and enhancement of the agricultural land resource base to support the agricultural industry*. [*1000 Friends I, 03319c*, 6/24/04 Order, at 18.]
- [A jurisdiction's BLR] should be part of the record and used to verify the basis for a variety of proposed Plan or development regulation amendments – especially UGA adjustments. [*S/K Realtors, 04328*, FDO, at 16.]
- The Board finds that the [Petitioners] assertion concerning inefficient land use is supported by the CTED comment letter and the assertion concerning premature expansion of UGA boundaries is supported by a comment letter from King County. [*Camwest II, 05341*, FDO, at 21-23.]
- The Board reads Goal 12 as referring to specific capacity analysis and adopted levels of service. In reading the voluminous transcripts of City meetings in this case, the Board is struck by the repeated acknowledgments of lack of infrastructure plans, lack of concurrency standards (except for roads), lack of impact fees – in short, that the GMA tools for identifying and addressing infrastructure deficits are not in place. While the burden is on Petitioners here, the Board notes that Petitioners have argued that the City has no hard evidence – only anecdotal complaints – of capital facility deficits. In the face of this assertion, the Board anticipated the City would point to staff reports, consultant studies, capital facility financing plan, and the like. No such information has been supplied. [*Camwest II, 05341*, FDO, at 24.]
- The Board notes that several of the City Interveners asked whether they would have to move to supplement the record with copies of their Plans and development regulations, etc. by the motions filing deadline or prior to briefing. The Board, through its Administrative Officer, informed the Cities that the Board can, and will

[pursuant to WAC 242-02-660], take official notice of such matters of law providing they have been officially enacted by the local government. [*Pilchuck VI, 06315c*, 5/4/06 Order, at 3.]

- **Regional Planning**

- Allocating growth (and its constituent parts, population and employment) is a regional policy exercise rather than a local regulatory exercise. [*Edmonds, 3305c*, FDO, at 31.]
- The Act's requirements for consistency and coordination oblige cities and counties to balance local interests with regional and state interests when implementing the GMA. [*Rural Residents, 3310,* FDO, at 14.]
- Counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act. [*Tacoma, 4301,* FDO, at 10.]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c*, FDO, at 9.]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the

landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, at 28.]

- The Act intends local governments to plan meaningfully for the future – to change the way land use planning has traditionally been done. . . . The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. [*Bremerton, 5339c,* FDO, at 28-29.]
- The GMA's focus on regional diversity contemplates that the solutions that are necessary and appropriate for the Central Puget Sound region may not pertain to other parts of Washington. [*Bremerton, 5339c,* FDO, at 29.]
- In specifically rejecting the sprawl model for Washington State, the GMA asserts the importance of taking a balanced, long-term view and promoting and serving the broad public interest. When the GMA's substantive requirements for county plans and FUGAs are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community, that, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, at 51-52.]
- The certification process of Chapter 47.80 RCW [Regional Transportation Planning Organizations] is completely separate from the GMA. The Board has jurisdiction under the GMA to determine compliance of a comprehensive plan's transportation element with the requirements of the Act. [*Sky Valley, 5368c,* FDO, at 129.]
- The Act requires the comprehensive plans of counties and cities to include a process for siting EPFs, and prohibits provisions in local plans or development regulations that would render impossible or impractical the siting of EPFs. [*Hapsmith I, 5375c,* 5/10/96 Order, at 7. *See also* 4/24/98 Order.]
- The Act requires interjurisdictional planning for public facilities that are of a county or statewide nature, through the development of CPPs. [*Hapsmith I, 5375c,* 5/10/96 Order, at 8.]
- It is not inappropriate for a process for siting EPFs to require that policies (not sites), pertaining to the regional or state EPF, be included within a state or regional plan. [*Hapsmith I, 5375c,* 5/10/96 Order, at 8.] *See also* 4/24/98 Order.
- It is not inappropriate for a process for siting EPFs to require that a financing strategy for mitigation use (including but not limited to) non-local sources. [*Hapsmith I, 5375c,* 5/10/96 Order, at 8. *See also* 4/24/98 Order.]
- [T]he regional decision regarding STIA [an EPF] triggered Des Moines' duty to review its Plan for preclusive policies and amend its Plan to eliminate the preclusive effect of any of its policies. [*Port of Seattle, 7314,* 5/26/98 Order, at 1.]
- In light of the facts presently before the Board, Sound Transit's challenge under RCW 36.70A.200 fails for two reasons: (1) no regional decision has yet been made selecting the alignment of light-rail through Tukwila and (2) no amended plan policy of zoning regulation expressly requires the City to preclude any of the light-rail alignments presently being considered by Sound Transit. [*Sound Transit, 9303,* FDO, at 6.]

- Cities are not regional decision-making bodies under the GMA and thus do not make decisions regarding system location or design of regional essential public facilities; nevertheless, the Act does contemplate a collaborative role for cities in making and implementing regional decisions. Before a regional decision is made, a city may attempt to influence that choice by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the essential public facility, and the exercise of its land use powers may only impose reasonable conditions and mitigations that will not effectively preclude the essential public facility by rendering it impracticable. [*Sound Transit, 9303,* FDO, at 6-7.]
- Sound Transit is the authority vested with the responsibility to make routing and system design decisions for regional light-rail service. [Cities have a duty not to preclude the light-rail alignment or system design selected by Sound Transit.] [*Sound Transit, 9303,* FDO, at 7.]
- Until a regional decision is made, the City may lobby Sound Transit to adopt the City's favored alignment and, to the extent that its comprehensive plan expresses the City's aspiration for its future development, Tukwila may express its preferences in its plan. However, once that regional decision is made, the City has a duty not to preclude the light-rail alignment and system design selected by Sound Transit. [*Sound Transit, 9303,* FDO, at 7-8.]
- Although possibly helpful in interpreting other GMA provisions, RCW 36.70A.420 does not impose GMA requirements subject to Board review. RCW 36.70A.420 does provide context for the application of RCW 36.70A.430. [This GMA requirement is imposed upon counties not cities.] [*Sound Transit, 9303,* FDO, at 12.]
- [Judged against these criteria and factors, the record shows that] Redmond's conclusion that [most of the] properties [in the Northern Sammamish Valley] no longer have long-term commercial significance is reasonable and supportable. Even if lands have prime soils, and have been historically farmed, it does not follow that they must remain designated as agricultural resource lands if a significant physical change has occurred to destroy the long-term viability of *those parcels* as agricultural land. Likewise, the fact that [certain parcels] are surrounded by incompatible residential uses and [are] severed from connection with a larger pattern of agricultural land makes them also untenable long-term as commercial agriculture. [These parcels no longer meet the definition of "long-term commercial significance."] [*Grubb, 0304,* FDO, at 13.]
- The [two] properties [within the city-limits that are referred to as] in the "Northern Sammamish Valley" are, in fact, the *southerly portion* of the much larger lands of the Sammamish River Valley. Thus, when Redmond argues that 80% of the "Northern Sammamish Valley" [within the city-limits] is irrevocably committed to non-agricultural uses, it is actually talking only about the relatively small piece of a much bigger picture – a picture that is overwhelmingly agricultural. [*Grubb, 0304,* FDO, at 13.]
- A city cannot . . . reject the siting of an essential public facility on the grounds that other jurisdictions have not taken an equitable share of such facilities. (Citation omitted.) [Jurisdictions may not rely upon their own independent interpretations of

"fair share" as the basis for EPF siting decisions.] The Board disagrees with Tacoma's [concession and] assertion that future changes to EPF siting based upon "fair share" may only be accomplished by the Legislature. [Through its CPPs, a county and the cities within that county, in conjunction with relevant state agencies,] could conceivably establish a process or procedure for the equitable distribution of EPFs within the County and among the cities within the County, absent involvement of the Legislature. [*DOC/DSHS, 0307*, FDO, at 12.]

- [Petitioner tried to distinguish this case from *AFT, 9304*, and *Cole, 6309c*, arguing that it is more like *Port of Seattle II, 7314*. In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Poet wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]
- [The Board has jurisdiction to review actions of the legislative bodies of cities and counties within the central Puget Sound region. The Snohomish County Council has not acted. The challenged action] has been taken by Snohomish County Tomorrow, (SCT) an informal planning body with no governmental authority. [SCT's adoption of a Metropolitan urban growth area (MUGA) review process is not within the Board's jurisdiction to review.] [*Shoreline, 0310*, 9/5/00 Order, at 3-4.]
- EPFs that are sited by a regional or state agency are distinct from those that are "sited by" a local jurisdiction or a private organization or individual. When a local jurisdiction is contemplating its own EPF, public or private, it is free to establish a non-preclusive siting process with any criteria it deems relevant. However, when the siting decision is made by a state or regional agency, the role of the host jurisdiction is much more limited. It may attempt to influence the siting decision "by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan." *Sound Transit*, at 6. But once a site has been chosen regionally, local plans and regulations cannot preclude it, even if those plans predate the EPF's conception. "If a decision regarding an EPF follows the adoption of a plan, and if the plan violates the .200 duty 'not to preclude,' the jurisdiction has a duty to amend its plan." *Port of Seattle*, at 8. [*King County, 03311*, FDO, at 15.]

• Remand by Board – *See:* TABLES [Disposition of Cases on Board website]

- Tables are not included in 6th Edition of Digest – 1992 to February 2007, the tables will be posted separately on the Board's website.

- [The Court directed the Board to address an issue not answered in the FDO. The Board concluded that while the conditional use permit process, with appeals from the examiner to the Council with possible remands to the examiner, could result in an iterative loop], a repetitive cycle of remands and appeals could occur only if the process is used to deliberately delay a decision on an application. The Board cannot assume this kind of bad faith. [*King County I, 03311*, 7/29/05 Order, at 12.]

• Remand by Court – *See:* TABLES [Cases by County and City on Board website]

- Tables are not included in 5th Edition of the Digest – 1992 to February 2007, the tables will be posted separately on the Board's website.

• Retroactive

- This Board has addressed the application of the 1997 amendment to the standard of review in several prior cases. All of these prior cases shared a common procedural posture: except for the issuance of the Board's final order, all events, including all briefing and oral argument, had occurred prior to the effective date of the amended standard of review (citations omitted). The Board's review and deliberation of whether the local government was in compliance with the GMA had already commenced prior to the effective date of the amended standard of review. Unlike these prior cases, the briefing of the substantive issues now on remand from the Supreme Court, the hearing on the merits, and the Board's review and deliberation have not yet begun. [*Bear Creek*, 5308c, 1/24/00 Order, at 3.]
- ESB6094 provided that most of the Legislature's 1997 GMA amendments "are prospective in effect and shall not effect the validity of <u>actions taken or decisions made</u> before the effective date of this section." 1997 Wash. Laws ch. 429 § 53 (emphasis added). The amendment to the standard of review clearly affects "action taken and decisions made" by the Board. There is nothing in RCW 36.70A.320(3), the codification of the amended standard of review that speaks to actions or decisions of the local governments. Consequently, the Board's deliberation and review in this case, where briefing, oral arguments, and the issuance of the Board's order will occur after the effective date of the 1997 amendment, the Board is obligated to apply the Legislature's amended standard of review – clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. [*Bear Creek*, 5308c, 1/24/00 Order, at 3.]
- [Except for the Board's standard of review] the Board will apply the provisions of the GMA that were in effect at the time the County took the challenged actions. [*Bear Creek*, 5308c, 1/24/00 Order, at 4.]

• Rules of Evidence

- WAC 242-02-650 does not require the strict application of the Washington Rules of Evidence in hearings before the Board. [*Northgate, 3309*, 11/8/93 Order, at 8.]

- **Rural Centers**

- The Board can conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such a rural development proposal could constitute "compact rural development" rather than "urban growth." [*KCRP, 4305,* FDO, at 15.]
- RCW 36.70A.030(14)'s definition of urban growth focuses on the intensity of the use of land, specifically naming such physical improvements as "buildings, structures and impermeable surfaces." Thus, the net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted, or if it crosses the threshold into impermissible urban growth. [*Vashon-Maury, 5308c,* FDO, at 67.]
- Proposed uses that meet the definition of urban growth will be prohibited in rural areas unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility. [*Vashon-Maury, 5308c,* FDO, at 69.]
- "Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource base activities." *Vision 2020 – 1995 Update, at 27.* This description of rural land accurately describes the intensity and character of new residential activity and development that the Act permits in rural areas. [*Bremerton, 5339c,* FDO, at 51.]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, at 44-48.]
- Synopsis of seven CPSGMHB County Cases dealing with the Rural Element . [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 21-25.]
- The Board has recognized reasonable and necessary exceptions to the prohibition of urban growth in the rural areas. The Board has even construed the Act to permit compact rural development, under certain circumstances and if sufficiently limited in scope and character. The essence of the Board's decisions – that rural areas are to be very different from urban areas, while recognizing reasonable and necessary exceptions and flexibility for compact rural development, is reflected in ESB 6094, amending RCW 36.70A.070(5). [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 24.]
- ESB 6094's amendments to RCW 36.70A.070(5) explicitly clarifies: the legislature's continuing intent to protect rural areas from low-density sprawl; and that while some accommodation may be made for infill of certain "existing areas" of more intense development in the rural area, that infill has to be "minimized" and "contained" within a "logical outer boundary." *With* such limitations and conditions, more intense rural development in areas where more intense development already exists could

constitute permissible compact urban development; *without* such limitations and conditions more intense rural development would constitute an impermissible pattern of urban growth in the rural area. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 24.]

- The GMA distinguishes shorelines as one area where higher density is allowed in a rural setting. The Act states that "the rural element *may* allow for limited areas of more intensive development [such as shoreline development]." RCW 36.70A.070(5)(d). However, the Act does not require that the rural element allow areas of more intensive development. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 71.]

• Rural Densities

- The Board can conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such a rural development proposal could constitute "compact rural development" rather than "urban growth." [*KCRP, 4305,* FDO, at 15.]
- For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider "such lands" to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity. [*Vashon-Maury, 5308c,* FDO, at 68.]
- Any residential pattern of 10 acre lots, or larger, is rural. [*Vashon-Maury, 5308c,* FDO, at 79.]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, at 79.]
- A density of one unit per ten acres is a rural density. [*Bremerton, 5339c,* FDO, at 21.]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, at 44-48.]
- A pattern of 1- and 2.5-acre lots meets the Act's definition of urban growth. . . . However, a pattern of 1- or 2.5-acre lots is not an appropriate urban density either. . . . An urban land use pattern of 1- or 2.5-acre parcels would constitute sprawl; such a development pattern within the rural area would also constitute sprawl. [*Bremerton, 5339c,* FDO, at 49.]
- "Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource base activities." *Vision*

2020 – 1995 Update, at 27. This description of rural land accurately describes the intensity and character of new residential activity and development that the Act permits in rural areas. [*Bremerton, 5339c,* FDO, at 51.]

- Synopsis of seven CPSGMHB County Cases dealing with the Rural Element. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 21-25.]
- One of the GMA's most fundamental principles is that urban areas are to be characterized by urban growth and rural areas are not. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 23.]
- The Board has recognized reasonable and necessary exceptions to the prohibition of urban growth in the rural areas. The Board has even construed the Act to permit compact rural development, under certain circumstances and if sufficiently limited in scope and character. The essence of the Board's decisions – that rural areas are to be very different from urban areas, while recognizing reasonable and necessary exceptions and flexibility for compact rural development, is reflected in ESB 6094, amending RCW 36.70A.070(5). [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 24.]
- ESB 6094's amendments to RCW 36.70A.070(5) explicitly clarifies: the legislature's continuing intent to protect rural areas from low-density sprawl; and that while some accommodation may be made for infill of certain "existing areas" of more intense development in the rural area, that infill has to be "minimized" and "contained" within a "logical outer boundary." *With* such limitations and conditions, more intense rural development in areas where more intense development already exists could constitute permissible compact urban development; *without* such limitations and conditions more intense rural development would constitute an impermissible pattern of urban growth in the rural area. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 24.]
- The advent of the GMA changed land use law in this state in a profound way, changing the land use patterns that counties may permit in rural areas. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 25.]
- Pre-existing parcelization cannot be undone, however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 25.]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c,* FDO, at 46.]
- The designation of 7,822 acres (approximately twelve square miles) – which permits 2.3-acre lots, creates an impermissible pattern (number, location and configuration of

lots) of urban growth in the rural area. (3,400 lots of 2.3 acres, astride the North Fork of the Stillaguamish River, east, west and south of the Darrington UGA.) This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern. [*Sky Valley, 5368c,* 10/2/97 Order, at 13-14.]

- The GMA distinguishes shorelines as one area where higher density is allowed in a rural setting. The Act states that "the rural element *may* allow for limited areas of more intensive development [such as shoreline development]." RCW 36.70A.070(5)(d). However, the Act does not require that the rural element allow areas of more intensive development. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 71.]
- The Board reads [RCW 36.70A.070(5)(a)] as requiring a written record in those instances where a county has considered local circumstances and has established a pattern of densities and uses that would not be considered rural absent the local circumstances (citations omitted). [Allowing 1 dwelling unit per 20 acres is clearly a rural land use designation. Here, the County did not rely on local circumstances to justify an "atypical" rural density or use.] [*Screen II, 9312,* FDO, at 10.]
- [The legend on the zoning map indicating urban densities, contradicts the "compliant" text of the zoning code making the area rural. The legend discrepancy, whether or not inadvertent, means the legend designation is non-compliant with the GMA. [*Bear Creek, 3508c,* 11/3/00 Order, at 12.]
- LAMIRDs are neither urban growth, nor are they to be the predominant patter of future rural development. [LAMIRDs are not quite urban, but not quite rural.] LAMIRDs are settlements that existed on July 1, 1990 in some land use pattern or form more intensive than what might typically bed found in a rural area. LAMIRDs are "characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." In essence, they are *compact forms of rural development*. [*Burrow, 9318,* FDO, at 18.]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in visual character. The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New England towns that Pope and Talbot used as templates for their company town. The Board finds that Port Gamble's mix of uses and physical forms clearly qualify as a "village," a "hamlet" or a "rural activity" center within the meaning of RCW 36.70A.070(5)(d)(i). [*Burrow, 9318,* FDO, at 18.]
- The Act's definitions (RCW 36.70A.030(17)) expressly state that development within LAMIRDs is not urban. The Act does not put an explicit limit on the absolute residential density permitted in LAMIRDs. The limit is unique to each LAMIRD and is established by the conditions that existed on July 1, 1990. [*Burrow, 9318,* FDO, at 19.]
- A pattern of more intensive rural development, as allowed within a valid LAMIRD, does not constitute "urban" development. [*Burrow, 9318,* FDO, at 24.]
- [T]he Act permits the County to include cluster development and density bonus incentive programs for "Rural" lands (*i.e.,* in the Rural Element of the Plan), as

mechanisms to provide for a variety of rural densities. See RCW 36.70A.070(5)(b) and .090. The County can rely on local circumstances to help shape its rural density provisions. [*Bremerton II, 04309c*, FDO, at 23.]

- Manufactured-home ADUs as freestanding new structures on lots of less than 10 acres create a density of more than one unit in five acres. The Board finds nothing in the subordination requirement or conditional use process to persuade it to abandon its established precedents. As the Board stated in *PNA II*, "Regardless of the size of the rural lot, ADUs attached to the main residence or a conversion of a detached existing structure (*e.g.* garage) in close association with the primary residence would not constitute urban growth." *Id.* at 22. However, by adding manufactured homes on lots of less than 10 acres, the County permits a growth level in rural areas that the Growth Management Hearings Boards have consistently found to constitute sprawl. [*1000 Friends IV, 04312*, FDO, at 13.]
- It is undisputed that a significant portion of the Mid-county [rural] area is already platted and developed with lots that are 2.5 acres or less without urban services such as sewers. It is hard to think of a better example of low-density sprawl than the land use pattern reflected in this area. Much of this area was already platted and developed prior to the GMA. It is also undisputed that after the GMA was adopted the County's Plan designations and implementing zoning allowed residential development to occur in this area a 1 du/2.5 acres. . . .Had these designations been challenged at the time, it is highly likely that they would have been declared sprawl densities and remanded to the County to correct. . . . What the County has done [with the FLUM amendment] is to finally establish a base density of 1 du/5 acres – a rural density. What the establishment of this density does is end the perpetuation of the previously permitted sprawl pattern and protect what is left. It may not affect much land, and it is something that definitely could have been done earlier; nonetheless, now it is done with the effect of reducing continued low-density sprawl in the area. [*Bonney Lake, 05316c*, FDO, at 44.]
- [The County's unincorporated marine shorelines involve the Key and Gig Harbor peninsulas, Fox, Ketron and Anderson Islands. The County's FLUM and zoning maps indicate that the vast majority of these shoreline areas are designated as 1 du/10 acres. There is no delineation on the FLUM or zoning maps to suggest that this designation does not apply within 200' of the shoreline.] . . . [There are no findings to support a conclusion that 200 feet from ordinary high water county-wide, delineates a logical outer boundary for existing development or that such development can be minimized and contained.] . . . [T]he County's record does not support the notion that the County actively considered these shoreline areas to be a LAMIRD. Rather the County seems to have merely continued to allow its shoreline management regulations to govern within 200 feet of the shoreline without regard to its rural land use or zoning designations. [The shoreline regulations allow densities above what is an appropriate rural density. i.e. lots smaller than five acres, which constitute urban sprawl in the rural area and is noncompliant with the Act.] The Board cannot accept the County's position that virtually the entire area within 200 feet of the shorelines of unincorporated Pierce County constitutes a LAMIRD. [*Bonney Lake, 05316c*, FDO, at 50-52.]

- **Rural Element**

- Only after the actual capacity of cities to take this growth is definitively known, and it is determined how much of the forecasted growth could not be accommodated by cities, would it then be appropriate for the FUGA to include unincorporated lands that now have urban growth on them. Urban growth may be allocated to unincorporated areas that are not now characterized by urban growth only as a third rank order choice and only in unusual circumstances. [*Rural Residents, 3310,* FDO, at 15.]
- "Nonurban lands" includes all natural resource lands, whether designated as such pursuant to RCW 36.70A.170 or not, and rural lands. [*Rural Residents, 3310,* FDO, at 41.]
- A density of one unit per ten acres is a rural density. [*Bremerton, 5339c,* FDO, at 21.]
- The Board can conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such a rural development proposal could constitute "compact rural development" rather than "urban growth." [*KCRP, 4305,* FDO, at 15.]
- Land use designations within a UGA must allow for urban development regardless of the rural character a parcel of land may have today. [*Aagaard, 4311c,* FDO, at 17.]
- RCW 36.70A.070(5)'s requirement for "variety" and "compatibility with rural character" apply to non-residential uses as well as to residential uses. [*Vashon-Maury, 5308c,* FDO, at 66.]
- RCW 36.70A.030(14)'s definition of urban growth focuses on the intensity of the use of land, specifically naming such physical improvements as "buildings, structures and impermeable surfaces." Thus, the net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted, or if it crosses the threshold into impermissible urban growth. [*Vashon-Maury, 5308c,* FDO, at 67.]
- For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider "such lands" to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity. [*Vashon-Maury, 5308c,* FDO, at 68.]
- Proposed uses that meet the definition of urban growth will be prohibited in rural areas unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility. [*Vashon-Maury, 5308c,* FDO, at 69.]
- Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter. [*Vashon-Maury, 5308c,* FDO, at 77.]
- Any residential pattern of 10 acre lots, or larger, is rural. [*Vashon-Maury, 5308c,* FDO, at 79.]

- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, at 79.]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, at 44-48.]
- New urban land uses may be located only within UGAs. [*Bremerton, 5339c,* FDO, at 48.]
- A pattern of 1- and 2.5-acre lots meets the Act's definition of urban growth. . . . However, a pattern of 1- or 2.5-acre lots is not an appropriate urban density either. . . . An urban land use pattern of 1- or 2.5-acre parcels would constitute sprawl; such a development pattern within the rural area would also constitute sprawl. [*Bremerton, 5339c,* FDO, at 49.]
- "Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource base activities." *Vision 2020 – 1995 Update, at 27.* This description of rural land accurately describes the intensity and character of new residential activity and development that the Act permits in rural areas. [*Bremerton, 5339c,* FDO, at 51.]
- Pursuant to RCW 36.70A.070(5), rural lands must exclude designated agricultural, forest and mineral resource lands. A county cannot designate these natural resource lands within its rural element. [*Bremerton, 5339c,* FDO, at 73.]
- Synopsis of seven CPSGMHB County Cases dealing with the Rural Element. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 21-25.]
- One of the GMA's most fundamental principles is that urban areas are to be characterized by urban growth and rural areas are not. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 23.]
- The Board has recognized reasonable and necessary exceptions to the prohibition of urban growth in the rural areas. The Board has even construed the Act to permit compact rural development, under certain circumstances and if sufficiently limited in scope and character. The essence of the Board's decisions – that rural areas are to be very different from urban areas, while recognizing reasonable and necessary exceptions and flexibility for compact rural development, is reflected in ESB 6094, amending RCW 36.70A.070(5). [*Bremerton/Port Gamble, 533c/7324c,* 9/8/97 Order, at 24.]
- ESB 6094's amendments to RCW 36.70A.070(5) explicitly clarifies: the legislature's continuing intent to protect rural areas from low-density sprawl; and that while some accommodation may be made for infill of certain "existing areas" of more intense development in the rural area, that infill has to be "minimized" and "contained" within a "logical outer boundary." *With* such limitations and conditions, more intense

rural development in areas where more intense development already exists could constitute permissible compact urban development; *without* such limitations and conditions more intense rural development would constitute an impermissible pattern of urban growth in the rural area. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 24.]

- The advent of the GMA changed land use law in this state in a profound way, changing the land use patterns that counties may permit in rural areas. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 25.]
- Pre-existing parcelization cannot be undone, however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, at 25.]
- The fact that property today is basically undeveloped property that has a "rural" character, does not mean that future-planning efforts must maintain that flavor. If that property is within a UGA, it must be planned for future urban development. Generally, designating property within a UGA for industrial uses is consistent with the Act. [*Anderson Creek, 5353c,* FDO, at 21.]
- The Board rejects the theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas and the Act's explicit prohibition of urban growth outside the UGAs. [*Sky Valley, 5368c,* FDO, at 45.]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c,* FDO, at 46.]
- The designation of 7,822 acres (approximately twelve square miles) – which permits 2.3-acre lots, creates an impermissible pattern (number, location and configuration of lots) of urban growth in the rural area. (3,400 lots of 2.3 acres, astride the North Fork of the Stillaguamish River, east, west and south of the Darrington UGA.) This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern. [*Sky Valley, 5368c,* 10/2/97 Order, at 13-14.]
- The GMA distinguishes shorelines as one area where higher density is allowed in a rural setting. The Act states that "the rural element *may* allow for limited areas of more intensive development [such as shoreline development]." RCW 36.70A.070(5)(d). However, the Act does not require that the rural element allow areas of more intensive development. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 71.]

- RCW 36.70A.070(5)(d) was "designed to allow limited enclaves for existing development, not to open up hundreds of acres of farmland to commercial development. . . ." [*Sky Valley*, 5368c, 4/22/99 Order, at 12.]
- The Board reads [RCW 36.70A.070(5)(a)] as requiring a written record in those instances where a county has considered local circumstances and has established a pattern of densities and uses that would not be considered rural absent the local circumstances (citations omitted). [Allowing 1 dwelling unit per 20 acres is clearly a rural land use designation. Here, the County did not rely on local circumstances to justify an "atypical" rural density or use.] [*Screen II, 9312*, FDO, at 10.]
- *See also:* **LAMIRDs** [*Burrow, 9318*]
- LAMIRDs are neither urban growth, nor are they to be the predominant pattern of future rural development. [LAMIRDs are not quite urban, but not quite rural.] LAMIRDs are settlements that existed on July 1, 1990 in some land use pattern or form more intensive than what might typically bed found in a rural area. LAMIRDs are "characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." In essence, they are *compact forms of rural development*. [*Burrow, 9318*, FDO, at 18.]
- As to the question of range of permitted uses. . . the GMA's focus is on the *types* of uses in existence on July 1, 1990, rather than on specific businesses. Therefore, the limitations imposed are upon the types of uses (i.e., office, or residential, or commercial) that existed on July 1, 1990, not on the specific businesses that can be documented. . . . In future cases, with a smaller scale development and a narrower range of historical uses, the Board may be compelled to more closely examine the actual businesses or uses to determine what the appropriate range of uses might be. [*Burrow, 9318*, FDO, at 19-20.]
- RCW 36.70A.070(5)(d)(iv) requires existing areas (LAMIRDs) to be minimized and contained. [Physical constraints can minimize and constrain a LAMIRD, but nothing in the act mandates the exclusive use of such physical features; nor must a LAMIRD contain only homes of a certain historic vintage. The extent of existing infrastructure and service area can be used to set the logical outer boundary that minimizes and contains the LAMIRD.] [*Burrow, 9318*, FDO, at 23.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, FDO, at 6.]
- The County's argument about the propriety of its RAID designation evidence several fundamental misapprehensions. What the Act contemplates is flexibility for counties, in certain circumstances and subject to careful restrictions, to "round off" with logical outer boundaries "limited areas of more intensive rural development" [LAMIRDs]. However, simply because an unincorporated parcel was urbanized as of July 1, 1990, does not mean that it is appropriate to designated it as a LAMIRD. The County's spacing criteria for rural activity centers (RACs) and rural neighborhood centers

(RNCs) indicates that it grasps the concept of a "central place," the idea that a commercial center serves a surrounding hinterland. The placement of its RAID less than 400 feet from the UGA flies in the face of this "central place" theory. The location of the [property] immediately adjacent to the UGA makes it a candidate not for LAMIRD designation, but potentially for UGA expansion. [*Tacoma II, 9323c,* FDO, at 7.]

- [The argument that the LAMIRD designations authorized in 1997 are simply smaller and more limited rural centers than those included in its pre-1997 rural designations (RACs and RNCs) is a flawed perception.] The County's RACs and RNCs were designated before the legislature created the specific template for how such rural centers were to be designated and limited. RCW 36.70A.070(5)(d)(iv) establishes the exclusive means for designating RACs and RNCs and other rural centers. The range of uses and scale of rural commercial centers allowed in a RAID [LAMIRD] is governed by this section of the GMA, not the County's preexisting RAC and RNC provisions. [*Tacoma II, 9323c,* FDO, at 7.]
- The types of uses in a RAID [LAMIRD] must have been among the types of uses in existence within the RAID [LAMIRD] on July 1, 1990. . . .Uses permitted in RACs [or RNCs] are irrelevant to uses permitted in RAIDs [LAMIRDs]. [*Tacoma II, 9323c,* FDO, at 7-8.]
- The County's hierarchy of rural centers provides that RACs be located no closer than five miles from a UGA; and that RNCs be located no closer than two miles from a UGA. Without explanation as to UGA proximity requirements, this RAID [LAMIRD] is located within 360 feet of the UGA, which is the present city limits for the City of Tacoma. Designation of a RAID [LAMIRD in this location fosters the low-density sprawl that RAIDS [LAMIRDs] are required to avoid. Proximity to the UGA alone suggests to the Board that if the area were to be urban, adjustments to the UGA would be a more appropriate means of accomplishing this objective. [*Tacoma II, 9323c,* FDO, at 8.]
- [Designation of LAMIRDs in subarea plans must comply with the requirements of RCW 36.70A.070(5)(d); requirements for their designation are not discretionary.] [*Tacoma II, 9323c,* FDO, at 9.]
- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c,* FDO, at 10.]
- Existing sewer service in the "rural area" is a reality in some areas that must be acknowledged. However, the mere presence of existing sewer service does not guarantee that the area will be included within a RAID [LAMIRD] designation. [*Tacoma II, 9323c,* FDO, at 10.]
- Providing sewer service to RAIDs [LAMIRDs] is explicitly permitted by the GMA. [*Tacoma II, 9323c,* FDO, at 11.]
- [The de-designation of the property to rural is consistent with the County's policies regarding rural character] because the property lies between and buffers the Forster Woods [residential] development and the adjacent Rattlesnake Mountain Scenic Recreational Area. [*Forster Woods, 1308c*, FDO, at 23.]

- [The rural property involved was rezoned from one unit per ten acres to one unit per five acres. A Plan policy provided "A residential density of one home per ten acres shall be applied in the rural area where the predominant lot size is ten acres or larger. . ." After review of the information on [a map exhibit], the Board concludes that the most conspicuous and prevalent lot sizes 'in the rural area" are more than ten acres in size. Some five-acre lots exist within this area; however, the predominant lot size is more than ten acres (20 and 40 acre lots). [*Forster Woods, 1308c*, FDO, at 27.]
- RCW 36.70A.030(17) clarifies that "A pattern of more intensive rural development as provided in RCW 36.70A.070(5)(d) *is not urban growth*." This provision acknowledges and specifically authorizes the continuance of, and even the expansion of, the *types* of uses that existed in 1990. (Footnote omitted.) It is over-reaching, however, to suggest that this provision authorizes the inclusion in a LAMIRD of types of commercial uses that did not exist in 1990. Thus, by definition, the existing pattern of commercial development (*i.e.*, those uses that existed in Clearview in 1990) is not urban growth. However, a *future* pattern that includes urban commercial uses of a type that did not exist in 1990 would constitute urban growth. The Board concludes that such "urban growth" is not permitted in a LAMIRD because of the substantive effect of Goal 1 "to encourage [urban] development in urban areas." [*Hensley V, 03004*, 8/12/02 Order, at 3-4.]
- The existing urban pattern in the Clearview LAMIRD is not considered urban growth by definition. However, the introduction into Clearview of new types (i.e., those that did not exist in 1990) of commercial uses would constitute urban, not rural, development. Such development would be inconsistent with the preservation of rural character of rural lands required for LAMIRDs. (Footnote omitted.) LAMIRDs are *Limited* Areas of More Intensive *Rural Development*. [*Hensley V, 03004*, 8/12/02 Order, at 5.]
- The County has an obligation to work with school districts in the siting of schools; it also has an obligation to facilitate the siting of schools within urban areas while discouraging them outside of UGAs - which the County has done. The Board concludes that the FLUM and zoning designations the County has in place does facilitate the location of schools within the UGA and appropriately discourage middle and high schools outside the UGA. The County need not prohibit schools throughout the rural area. The County already discourages schools in the rural area by limiting the number of zoning districts that permit schools. Further, the conditional use permit process provides a mechanism to ensure that any proposed school on the site is designed and configured to be compatible with the rural character or the rural area. [*Hensley VI, 03309c*, FDO, at 22.]
- The Act [RCW 36.70A.110(4)] is clear, extension of sewer into the rural area is inappropriate *except* when a sewer extension *is necessary to protect the public health, safety or environment* and the sewer extension is financially supportable at rural densities and will not permit urban growth. (*Citation* omitted.) . . . [The language in the first part of the challenged CPP] captures the only statutorily recognized exception (footnote omitted) of extending sewers into the rural area - when they are necessary to protect the public health, safety and environment. It also recognizes that such extensions must be financially supportable and not allow urban development. [*CTED, 03317*, FDO, at 18-19.]

- [T]he remaining language of this CPP goes beyond the single statutory exception. It allows the extension of sewers to churches in a rural area that abut a UGA. Under this CPP, to extend a sewer line to a church outside the boundaries of the UGA, there need not be a showing that the extension is necessary to protect the public health, safety or environment, which is the only exception .110(4) recognizes. . . .The amendment to [the challenged CPP] creates an entirely new exception for churches that goes beyond the limited exception stated in RCW 36.70A.110(4). [The CPP does not comply with the Act.] [*CTED, 03317*, FDO, at 19.]
- Schools, as well as churches, are unique in that they are institutional facilities that *serve* the population. Although they do consume land, they are needed to support and serve existing and projected population and development. They are also unique in that both uses are needed to serve both the urban and rural population. Therefore these uses are allowed and may be located in many urban or rural areas. [*CTED, 03317*, FDO, at 28.]
- RCW 36.70A.110(4), especially as construed and applied by the Supreme Court in *Cooper Point*, is very clear. The extension of urban governmental services into the rural area is **prohibited** except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment. Unless there is a public health, safety or environmental problem to be addressed, the extension of sewers into the rural area is **not permitted**. There is one exception, and only one – necessary to protect the public health, safety and environment – recognized in .110(4). The Board previously acknowledged and recognized this sole exception to .110(4) in its FDO in *CTED I*. [*CTED II, 03320*, FDO, at 9.]
- The amendatory language of the ordinance is unambiguous; it either allows, or requires, schools or churches in the rural area to connect to sewers, based solely upon proximity to sewers. This action is contrary to the explicit provisions or .110(4) and its limited exception – necessary for protection of public health, safety and environment. [*CTED II, 03320*, FDO, at 10.]
- [I]t logically follows that where churches or schools in the rural area are not presently connected to a sewer system, the sewer system would have to be extended, or expanded, to accomplish the connection or hook-up (Footnote omitted.) [*CTED II, 03320*, FDO, at 10-11.]
- [The Board defined "more intense rural development" in the context of LA*MIRD*s.] The Board notes with interest that while the GMA defines "rural development" and "rural character," it does not define "more intense." Neither the definitions of "rural development" nor "rural character" shed much light on the meaning of "more intense." However, .030(14) suggests *the County* as the entity that identifies rural character, and refers to the GMA's rural element provisions. RCW 36.70A.070(5)(a) provides, in relevant part, "Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances. . . ." Thus, the determination of what "more intense rural development" is falls to the counties. Consequently, absent other relevant authority, resort to the County's current zoning code is the appropriate document for making this decision. [*1000 Friends II, 03326*, FDO, at 11-12.]
- Forestry activities are permissible on lands designated "Rural" in the County's Plan. *See* RCW 36.70A.070(5)(b). However, forestry on these [rural] "wooded lands" is

not entitled to the protections from encroachment of incompatible uses that attach to lands designated as forest resource lands of long-term commercial significance. See RCW 36.70A.170, .060, .030(8) and .020(8). [*Bremerton II, 04309c*, FDO, at 23.]

- [T]he Act permits the County to include cluster development and density bonus incentive programs for "Rural" lands (*i.e.*, in the Rural Element of the Plan), as mechanisms to provide for a variety of rural densities. See RCW 36.70A.070(5)(b) and .090. The County can rely on local circumstances to help shape its rural density provisions. [*Bremerton II, 04309c*, FDO, at 23.]
- While the Act recognizes that the County may consider local circumstances in establishing rural densities in the Plan's Rural Element, the Act also *requires* that the County "develop a written record explaining how the rural element [here how the rural wooded land policies] harmonize the planning goals in RCW 36.70A.020 and meets the requirements of this chapter." RCW 36.70A.070(5)(a). The Board construes this "written record explanation" requirement to be a discrete document produced by the County, which may compile record evidence to explain how the goals are harmonized. [The Board found no written record addressing this requirement.] [*Bremerton II, 04309c*, FDO, at 24.]
- It is clear that density bonuses and cluster development [in the rural area] are permitted under the Act, but they are limited to the extent they "will accommodate *appropriate rural densities* and uses that are *not characterized by urban growth* and that are *consistent with rural character*." RCW 36.70A.070(5)(b). [The Board found that the lack of environmental review and development regulations as well as the ambiguity in the policies themselves did not address whether the rural character would be preserved and urban growth prevented in the rural area.] [*Bremerton II, 04309c*, FDO, at 24-26.]
- The Board has concluded that Comprehensive Plan Policies UT 3.B.1 and LU 1.C.4 are noncompliant with RCW 36.70A.110(4). The County has argued that these Plan Policies were to implement CPP OD-4. The Board therefore concludes, as suggested by the Thurston County Court, that CPP OD-4 is directive, not precatory. The Supreme Court stated in *King County* that "A UGA designation that blatantly violates GMA requirements should not stand simply because CPPs mandated its adoption. Rather, upon a determination that the provision violates the GMA, it should be stricken from both the comprehensive plan and CPPs." *King County*, 138 Wn 2d, at 177. Reasoning by analogy, since the County acknowledges UT 3.B.1 and LU 1.C.4 were necessary to implement the policy direction of CPP OD-4 and the Board has determined that Plan Policies UT 3.B.1 and LU 1.C.4 violate the GMA and must be stricken, likewise CPP OD-4 must be stricken. *The Board notes that school or church property that is adjacent to a UGA may be *included* within the UGA without running afoul of RCW 36.70A.110(4). Apparently, the County is also aware of this approach to dealing with the situation where a school or church is adjacent to the UGA, since it: 1) added five acres to the Arlington UGA for school purposes (Ordinance No. 05-073, Section 1, Finding II 3, at 13; and attached UGA map); and 2) added 67 acres to the Marysville UGA for church and school purposes (Ordinance No. 05-077, Section 1, Finding EE 4, at 10; and attached UGA map). This approach does not conflict with RCW 36.70A.110, since the school or church properties are

drawn into the UGA where the needed urban services are available. [*Pilchuck VI, 06315c*, FDO, at 53.]

- ## Sanctions

- General Discussion of sanctions. [*FOTL I, 4303,* 5/18/94 Order, at 5-6.]
- *Pilchuck, 4302,* 10/28/94 Order. [Withdrawn]
- *Hensley, 5343,* 11/3/95 Order. [Withdrawn]
- *Children's I, 5311,* 2/2/96 Order, [Withdrawn]
- *Bremerton, 5339c,* 5/28/96 Order. [Contingent Sanctions – Withdrawn]
- *Port of Seattle, 7314,* 5/28/98 Order. [Contingent Sanctions – Withdrawn]
- [Adoption of the challenged ordinance] represents Snohomish County's **third** attempt under the GMA (and second attempt within the past nine months) to convert Island Crossing from a part of the designated agricultural resource lands of the Stillaquamish River Valley into Arlington's UGA. It has done so notwithstanding consistent contrary readings of the Growth Management Act by the Snohomish County SEPA Responsible Official, Snohomish County Executive, the Growth Management Hearings Board, Snohomish County Superior Court, the First Division of the Washington State Court of Appeals and the Governor of the State of Washington. [The Board recommended, and the Governor imposed financial sanctions as authorized by RCW 36.70A.340. The County subsequently complied and sanctions were withdrawn.] [*1000 Friends I, 03319c*, 6/24/04 Order, at 24 and 1/6/05 Order.]

- ## Savings Clause

- The severability/savings clauses in [the Ordinances], by operation of law, effectively repeal the ordinances found to be invalid by the Board, and revive the prior plan and zoning designations for the area. The Board has previously found that [prior plan and zoning designations] complied with the provisions of the GMA. (Citations omitted.) Therefore, pursuant to RCW 36.70A.302(4), the Board concludes that the prior plan designation and zoning designation were valid during the remand period – commencing on [the date of the FDO invalidating the Ordinances]. [*McVittie V, 0316*, 8/16/01 Order, at 4.]
- [The County's prior land use and zoning designations at Island Crossing were revived by a savings clause in the noncompliant and invalid ordinance; therefore the Board rescinded its finding of noncompliance and invalidity.] [*1000 Friends I, 03319c*, 4/9/04 Order, at 4.]
- [The issue for the Board was whether the basis of the Board's April 9, 2004 Order was removed by the County's adoption of a new ordinance adopting the same designations as were found noncompliant and invalid.] Quite simply, the Board's April 9, 2004 Order found that the *prior designations* of "Riverway Commercial Farmland" and "Rural Freeway Service," for the lands in question, complied with the GMA and thus provided a basis for rescinding invalidity. However, subsequent to this Board Order, the County adopted Emergency Ordinance No. 04-057. Therefore, pursuant to RCW 36.70A.320(4), .302(4) and 302(7)(a), the County's action of adopting Emergency Ordinance No. 04-057, removes the basis for the Board's April

9, 2004 Order, since the compliant designations ("Riverway Commercial Farmland" and "Rural Freeway Service") have been supplanted. Consequently, the Board finds that the County's comprehensive plan and development regulation provisions for the Island Crossing area remain noncompliant and invalid. [*1000 Friends I, 03319c*, 6/1/04 Order, at 5.]

- Undertaking . . . legislative action [in lieu of sole reliance on a savings clause] would remove any ambiguity or doubt regarding the County's Plan and zoning designations that existed for the Island Crossing area. Specific legislative action to clearly establish the designations is important to provide clarity and certainty to the citizens of Snohomish County, since the maps and designations shown in an Ordinance are more readily apparent and relied upon than a severability clause which negates those same designations. Additionally, interested citizens would have to look beyond the face of the Ordinance to determine whether any of its provisions had been invalidated by this Board or a Court to determine whether the facial provisions of the Ordinance were, or were not, effective. While severability clauses are certainly legal, their practical effect in the land use context is dubious without follow up legislation to provide clarity and certainty. [1000 Friends I, 03319c, 7/22/04 Order, at 8.]

- **Sequencing**

- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, at 6.]
- A local jurisdiction's comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities. [*Children's I, 5311,* 5/17/95 Order, at 12.]
- Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." [*Bremerton, 5339c,* FDO, at 31.]
- If GMA stands for nothing else, it stands for the proposition that the citizens of a neighborhood are also citizens of a larger community, be it a city and/or county, a region and indeed, the state itself. To allow the City to proceed with a neighborhood planning process that is segmented and insulated from the goals and requirements of

the Act, and the policy documents that the Act requires of cities and counties, would ignore this basic axiom of comprehensive planning. [*WSDF III, 5373,* FDO, at 28.]

- The GMA's planning goals guide the development and adoption of comprehensive plans, and guide the adoption of amendments to comprehensive plans. [*Cole, 6309c,* FDO, at 15.]
- Under the sequencing scheme of the GMA, the land does speak first; but, on the rare occasion, as is the case here, where the land may speak late – it will be heard. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 35.]
- [Generally, in sizing its UGAs pursuant to RCW 36.70A.110(3) to accommodate the residential population, a county should look first to existing city limits, then its existing UGA before considering expansion of the UGA. The record should document this process – "show its work".] [*Kitsap Citizens, 0319c,* FDO, at 15.]
- The Lake Stevens UGA Plan includes a Capital Facilities Element. Within this element, the County states, "The following are key findings of the capital facilities plan *for the Lake Stevens UGA*: *There is a gap between the capital facility needs and the public funding available for surface water and transportation.*" When a "gap" or "revenue shortfall" between needed facilities and ability to finance them occurs, the GMA requires the jurisdiction to "reassess the land use element" to respond to such revenue shortfalls. *See* RCW 36.70A.070(3)(e). Reduction of the size of the UGA is one obvious response to address a revenue shortfall. However, in lieu of reducing the size of the UGA, there are several other accepted options available as part of the reassessment process. These options are recognized and set forth in the LSUGA Plan. The LSUGA Plan's key findings continue: [This Plan] describes a number of options as a *response to the revenue shortfall*, including:
    - Reducing the LOS [level of service standards].
    - Increasing the revenues available to pay for the necessary facilities.
    - Reducing the average cost of facilities.
    - *Reducing demand by timing development* or redistributing growth to other areas.
    - Reducing demand for services through conservation programs

  Thus, one means of addressing a revenue shortfall is to time or phase development to reduce demand. This is the approach Snohomish County undertook in relation to the Lake Stevens UGA in relation to its revenue shortfall for transportation and surface water. [The County used a Development Phasing Overlay (DPO) in the unincorporated Lake Stevens UGA to phase development. "Green" areas had adequate transportation and surface water facilities and could develop; "Red" areas did not have adequate facilities and development was deferred until financing of the needed facilities was assured.] [*Citizens, 03313,* FDO, at 7-8.]
- The Board notes that RCW 36.70A.110(3) does not impose a mandatory requirement on planning jurisdictions, it provides that urban growth *should*, not *shall*, be located . . .. RCW 36.70A.110(3) urges local jurisdictions to locate urban growth within the UGA in a rational, efficient and fiscally responsible manner. However, no matter how well advised such an approach might be, this section of the Act does not compel the inclusion of a development phasing or timing mechanism in UGAs or comprehensive plans. Adoption of such a mechanism is certainly an option – an option that the County took. [RCW 36.70A.110(3) is not directly applicable to

development regulations; it directly applies to UGA designations and comprehensive plans, which are not at issue in this case.] [*Citizens, 03313*, FDO, at 11.]

- By its own enactments the County has attached significant importance to the DPO and the removal of the DPO through a deliberative rezoning process. [The County shall not approve a permit within the DPO until it has been removed through a rezone process.] This amendment simply excludes certain developments [those generating less than 50 peak hour trips] from consideration under the DPO processes. Therefore, the question for the Board regarding this exemption is whether its inclusion is consistent with and implements this fundamental purpose of the DPO. The Board concludes that it is not consistent with and does not implement the DPO and therefore does not comply with the requirements of RCW 36.70A.130(1). [*Citizens, 03313*, FDO, at 19.]
- [The County has] discretion to determine what criteria it includes as part of the DPO process. However, notwithstanding the alleged controversy surrounding the 40-acre minimum criterion, when the County adopted the LSUGA Plan and the initial DPO regulations it chose to include and explain the 40-acre minimum requirement in both the DPO regulations and the Plan. Thus, the 40-acre minimum requirement was treated and addressed consistently in both the Plan and regulations. The Plan explains in more detail how the entire DPO process is to work. By amending [its regulations] to delete the 40-acre minimum requirement for removal of the DPO, the County has created an inconsistency with the LSUGA Plan, an inconsistency that no longer implements the DPO process as described in the Plan. The Plan itself was not altered. [The Board found noncompliance.] [*Citizens, 03313*, FDO, at 23.]
- [T]he DPO must be linked to the capital facilities plan or CIP for the LSUGA and . . . necessary capital projects may be reviewed and updated annually. It is also not disputed that the LSUGA Plan requires that a "director's list" identifying the facilities required for removal of the DPO be prepared. If annual review and updates indicate changes in the projects affecting the DPO in the LSUGA, such changes must be reflected in the LSUGA and its associated capital plan. Those newly needed or completed projects must be identified and included for the entire DPO to be kept it current. The GMA requires that plans be internally consistent. *See* RCW 36.70A.070(preamble). Likewise, the director's list that pinpoints needed projects within an identified area must be based upon the projects identified in the UGA plans, as may be updated. This assures that the amendments removing the DPO implement the updated and revised plans, pursuant to RCW 36.70A.130(1). The existing language was clear and unambiguous. Prior to the amendments, for the County to engage in the lifting of a DPO through an area-wide rezone, it was required to look to the projects listed in the UGA Plan *and* a list created by the director based upon the UGA Plan. The director's list would obviously be based upon the projects identified in the UGA Plan, but tailored to the reflect projects necessary to support development within the proposed area-wide rezone area – a more refined list. This process is clear. However, deletion of these two reference points only obscures and confuses the basis for the Council's area-wide DPO lifting process. . . The deleted language . . .clearly linked the director's project list to area-wide rezones, it required a list developed pursuant to SCC 30.33C.125. Now this clear linkage is gone. . . . Now it is not clear that the director's list or the UGA Plan list is a prerequisite to a lifting of the DPO

through an area-wide rezone. [The Board found noncompliance.] [*Citizens, 03313*, FDO, at 31-32.]

- [An area-wide rezone removed the DPO from over 800 acres of property. For this area-wide rezone the County reviewed both the LSUGA Plan list and the Director's list, which is the proper procedure as set forth in the LSUGA Plan. The Board concluded that the County assured adequate funding for needed surface water and transportation projects within the required timeframe and was consistent with the LSUGA Plan and the Act.] [*Citizens, 03313*, FDO, at 33-44.]
- The Board holds that for area-wide rezones that are intended to remove a development phasing overlay or other timing mechanism that will allow deferred development to proceed, the action removing the development phasing restriction or area-wide rezone and an action amending the governing Plan must occur *concurrently* to maintain consistency and ensure implementation of the Plan. [*Citizens, 03313*, FDO, at 45.]
- The GMA anticipates development phasing that is linked to the availability of public infrastructure. That linkage may be *spatial*, with development allowed first in the locations already served by public services and then following the extension of those services, [RCW 36.70A.110(3)], or the linkage may be *temporal*, with development timed to match an infrastructure investment plan [RCW 36.70A.070(6) and .020(12)]. The phasing provisions of the GMA allow a jurisdiction to "manage" and guide growth both locationally and temporally. However, such phasing is inextricably linked to the availability and adequacy of the necessary infrastructure to support that growth. The GMA never contemplates development phasing that is purely random, with one's rights to develop under the adopted Plan designations and zoning dependent on the luck of the draw. [The City's growth phasing lottery is a random system, not based on geographic or spatial linkage or timed with infrastructure availability.] [*Camwest III, 05341*, FDO, at 15 -18.]
- [T]he GMA allows growth phasing to be linked to a Capital Facilities Plan and service availability through the mechanisms of concurrency, level of service standards and impact fees [citations omitted]. This principle was incorporated into the Samammish Comprehensive Plan but then essentially disregarded in enacting the random lottery. [The City provided no evidence of concurrency documentation, capital facility plans or an infrastructure financing plan. Alleged deficiencies in infrastructure are discussed and rejected.] [*Camwest III, 05341*, FDO, at 16-19.]
- The Board finds that, rather than using the growth phasing tools provided by the GMA, the Samammish Growth Phasing Lottery allocates development opportunities on a purely random basis, without reference to infrastructure availability, location, or funding strategy to address specific identified deficits in the interim. The Growth Phasing Lottery simply denies near-term property development which is otherwise allowed by the Comprehensive Plan and zoning code in order to defer build-out in the 20-year planning horizon. [*Camwest III, 05341*, FDO, at 20.]
- [The growth phasing lottery is not a de facto moratorium.] While the Growth Phasing Lottery at issue here has the effect of continuing to preclude development except for the lucky winners in the October 2005 drawing, the lottery does not preclude all development or freeze development to preserve the status quo. Because some new applications are accepted, and development may proceed if such applications are

approved, the Board cannot characterize the Growth Phasing Lottery as a moratorium as provided for in RCW 36.70A.390. [*Camwest III, 05341*, FDO, at 28.]

- [The City cited almost a dozen decisions from around the nation that addressed "phasing" regulations. The Board noted these cases were not helpful in that they were decided on constitutional grounds or under the laws of other states that are not within the Board's purview.] It is not up to the Board to determine whether the Growth Phasing Lottery would survive a constitutional challenge. [*Camwest III, 05341*, FDO, at 28.]

- **Service**

- The PFR was served on the "City of Bonney Lake," 10 days after the Board received the PFR. WAC 242-02-230(1) is less strict than RCW 4.28.080, but substantial compliance is still required. [*Salisbury, 5358*, 10/27/95 Order, at 3.]
- The prosecutor was served, not the Council Clerk as required by local ordinance; mail service is proper, but must be served on the proper agent. [*Keesling, 5378*, 3/18/96 Order, at 3.]
- Petitioner failed to properly serve the respondent, in accordance with the Board's rules of practice and procedure. [*Wallock, 6337*, 2/20/97 Order, at 3-4.]
- When serving by mail, there is no excuse for failing to address the documents to one of the specific persons named in WAC 242-02-230 (Mayor, City Manager or City Clerk); when serving in person, the specific person named may not be available, even during regular office hours. Acceptance of service by one of the named person's secretaries substantially complies with the Board's rules. [*Rabie, 8305c*, 4/24/98 Order, at 2-3.]
- [The GMA, specifically RCW 36.70A.290, does not provide for service requirements. However, the Board's rules, at WAC 242-02-230, do establish service requirements. The Board views failure to comply with the WAC service requirements as jurisdictional, not merely procedural.] [*Lane, 8333c*, 1/20/99 Order, at 2.]
- [WAC 242-02-230 provides in relevant part, "When the State of Washington is a party, the office of the attorney general (**ATG**) shall be served at its main office in Olympia unless service upon the state is otherwise provided by law."] Petitioner Hall served the PFR on the ATG at its Everett Office. That PFR was then faxed form the Everett Office to the main office of the ATG in Olympia [in a timely manner]. Thus, the Board concludes that Petitioner Hall substantially complied with the service requirements of WAC 242-02-230. [*Everett Shorelines Coalition, 02309c*, 9/19/02 Order, at 4.]
- The Board's rules do not permit the filing [or serving] of any documents with the Board or any of the parties by e-mail. [Petitioner failed to properly serve notice of the PFR on the City.] [*Robison II, 02320*, 3/6/03 Order, at 4.]
- [Petitioner] made a good faith effort to serve the City Clerk and even correctly addressed the envelope. The error of the messenger service would be analogous to the U.S. Postal Service mis-delivering a correctly addressed letter. In neither occasion would it be fair to penalize the Petitioner. [Petitioner] substantially complied with the service requirements of WAC 242-02-230. [*Kent CARES III, 03323*, 7/31/03 Order, at 3-4.]

- [At the PHC, the parties agreed to serve each other by e-mail. The Board indicated e-mail filings would not be acceptable to the Board. Parties were unable to serve each other with timely response briefs due to viruses, and inaccurate e-mail addresses were used. These failures of the agreement necessitated adjustments to the motions schedule. For the remainder of the proceedings, the Board required all pleadings, briefs, exhibits and other documents to be served pursuant to WAC 242-02-340. [*Citizens, 03313*, 8/15/03 Order, at 12.]
- It is undisputed that the Waller PFR was not served on the Pierce County Auditor. Failure to serve the Auditor, the "filing official" designated by the Pierce County Charter, fails to comply with the Board's Rules of Practice and Procedure. [WAC 242-02-230] The Board cannot construe Petitioner's lack of effort to properly serve the County as "substantial compliance" with the Board's service provisions. [The Board dismissed the PFR.] {*Tacoma IV, 06311c*, 5/1/06 Order, at 5.]

• Settlement Extensions – *See:* Extensions

- Although both DOC and DSHS attempted to negotiate a settlement agreement with the City of Tacoma, agreement was reached only between DSHS and the City. The City stipulated to entry of an order of noncompliance. [*DOC/DSHS, 0307*, FDO, at 5.]

• Sewer – *See also:* Public Facilities and Services and Capital Facilities Element

- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD or RAID] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to {LAMIRDs or RAIDs] is explicitly permitted by the GMA. [*Gain, 9319*, FDO, at 6.]
- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c*, FDO, at 10.]
- Existing sewer service in the "rural area" is a reality in some areas that must be acknowledged. However, the mere presence of existing sewer service does not guarantee that the area will be included within a RAID [LAMIRD] designation. [*Tacoma II, 9323c*, FDO, at 10.]
- Providing sewer service to RAIDs [LAMIRDs] is explicitly permitted by the GMA. [*Tacoma II, 9323c*, FDO, at 11.]
- RCW 36.70A.110(4), especially as construed and applied by the Supreme Court in *Cooper Point*, is very clear. The extension of urban governmental services into the rural area is **prohibited** except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment. Unless there is a public

health, safety or environmental problem to be addressed, the extension of sewers into the rural area is **not permitted**. There is one exception, and only one – necessary to protect the public health, safety and environment – recognized in .110(4). The Board previously acknowledged and recognized this sole exception to .110(4) in its FDO in *CTED I*. [*CTED II, 03320*, FDO, at 9.]

- The amendatory language of the ordinance is unambiguous; it either allows, or requires, schools or churches in the rural area to connect to sewers, based solely upon proximity to sewers. This action is contrary to the explicit provisions or .110(4) and its limited exception – necessary for protection of public health, safety and environment. [*CTED II, 03320*, FDO, at 10.]
- [I]t logically follows that where churches or schools in the rural area are not presently connected to a sewer system, the sewer system would have to be extended, or expanded, to accomplish the connection or hook-up (Footnote omitted.) [*CTED II, 03320*, FDO, at 10-11.]
- Here, the City is requiring annexation as a condition of providing sewer service within the UGA. The City is responsible for providing urban services to development within the UGA at the time such development is available for use and occupancy and within the twenty year horizon of the City's Plan for the UGA. The approach the City has chosen in managing growth, specifically the provision of sewer service, is a valid option which the City may choose in order to transform governance and phase development within the UGA. As such, the premise upon which [Petitioner] builds its case – the amendment [requiring annexation as a condition of sewer service] is a denial of services and a moratorium – is false. In fact, such provision is consistent with, and complies with, the GMA as the Board has interpreted it. [*MBA/Larson, 04301*, FDO, at 11.]
- Requiring annexation as a condition of providing sewer service is a valid option which the City may choose in order to transform governance and phase development within the UGA. It is not a denial of sewer service or *de facto* moratorium on development within the UGA. [*MBA/Larson, 04301*, FDO, at 18.]
- Like the Water Plan, Sultan's Sewer Plan is based upon a target twenty-year population significantly less than the population allocated and adopted in the Comp Plan. . . . The City concedes to these inconsistencies and ambiguities. As with water systems, the GMA contemplates that sewer systems will be available "concurrently" with land development at urban densities within the urban area. Under the GMA, the City must match land use planning and infrastructure development by means of "comprehensive" planning that provides capacity to serve the total assigned area and allocated population within the 20-year planning horizon. [*Fallgatter V, 06303*, FDO, at 15.]
- The Board has concluded that Comprehensive Plan Policies UT 3.B.1 and LU 1.C.4 are noncompliant with RCW 36.70A.110(4). The County has argued that these Plan Policies were to implement CPP OD-4. The Board therefore concludes, as suggested by the Thurston County Court, that CPP OD-4 is directive, not precatory. The Supreme Court stated in *King County* that "A UGA designation that blatantly violates GMA requirements should not stand simply because CPPs mandated its adoption. Rather, upon a determination that the provision violates the GMA, it should be stricken from both the comprehensive plan and CPPs." *King County*, 138 Wn 2d, at

177. Reasoning by analogy, since the County acknowledges UT 3.B.1 and LU 1.C.4 were necessary to implement the policy direction of CPP OD-4 and the Board has determined that Plan Policies UT 3.B.1 and LU 1.C.4 violate the GMA and must be stricken, likewise CPP OD-4 must be stricken. *The Board notes that school or church property that is adjacent to a UGA may be *included* within the UGA without running afoul of RCW 36.70A.110(4). Apparently, the County is also aware of this approach to dealing with the situation where a school or church is adjacent to the UGA, since it: 1) added five acres to the Arlington UGA for school purposes (Ordinance No. 05-073, Section 1, Finding II 3, at 13; and attached UGA map); and 2) added 67 acres to the Marysville UGA for church and school purposes (Ordinance No. 05-077, Section 1, Finding EE 4, at 10; and attached UGA map). This approach does not conflict with RCW 36.70A.110, since the school or church properties are drawn into the UGA where the needed urban services are available. [*Pilchuck VI, 06315c*, FDO, at 53.]

- **Shoreline Management Act - SMA**

- The Department of Ecology's approval of an amendment to a SMP for a shoreline of state-wide significance, is not subject to the consistency requirements of the GMA. The requirement to achieve consistency among a city's comprehensive plan elements is the city's duty, not Ecology's. Instead, Ecology's action must be reviewed for consistency with the policy of RCW 90.58.020 and the applicable guidelines. [*Gilpin, 7303,* FDO, at 6-7.]
- The GMA distinguishes shorelines as one area where higher density is allowed in a rural setting. The Act states that "the rural element *may* allow for limited areas of more intensive development [such as shoreline development]." RCW 36.70A.070(5)(d). However, the Act does not require that the rural element allow areas of more intensive development. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 71.]
- Everett is incorrect when it contends that RCW 90.58.190(2)(c) limits the Board's review of the *City's* action solely to the provisions of the Shoreline Management Act. It is significant that only the "department," meaning the Department of Ecology, not local government, is named in RCW 90.58.190. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 16.]
- Everett's argument, with respect to shorelines of state-wide significance, it is immune from review for fidelity to GMA requirements, was pre-empted by the legislature's actions in 1995, codified in RCW 36.70A.480. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 16.]
- The language of RCW 36.70A.480 is not prospective – it does not provide direction for future local legislative action to integrate shoreline policies and regulations into local GMA comprehensive plans and regulations, respectively, rather, .480 is prescriptive – the legislature has already taken legislative action to merge the constituent parts of every shoreline master program in this region [CPS] into the GMA mandated local comprehensive plans and development regulations. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 16.]
- In light of the plain language of RCW 36.70A.480, it is no longer possible for a local government to amend its shoreline master program without also amending its GMA

comprehensive plan and development regulations. When doing so, a local government's action must comply with the goals and requirements of the GMA as well as the SMA. [However, SMP adoption procedures are pursuant to the SMA.] [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 17.]

- [Pursuant to RCW 36.70A.480] a local government's shoreline master program is now part and parcel of the GMA comprehensive plan and development regulations. It is also undisputed that the Board has jurisdiction to review comprehensive plans and implementing development regulations for compliance with the GMA. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 17.]
- General discussion of the GMA/SMA total statutory scheme – RCW 36.70A.480 integration of SMA and GMA. [*Everett Shorelines Coalition, 02309c*, FDO, at 11-28, and Figures 1-3, at 89-91.]
- The Shoreline Management Act and the Growth Management Act are the related statutes that the Board must "read together to determine legislative purpose to achieve a harmonious total statutory scheme which maintains the integrity of the respective statutes." [*Everett Shorelines Coalition, 02309c*, FDO, at 12.]
- [RCW 36.70A.480 effectuates the legislature's intent to integrate GMA and SMA.] [*Everett Shorelines Coalition, 02309c*, FDO, at 13-14.]
- Simply stated, [RCW 36.70A.480] means: 1) the provisions of RCW 90.58.020 are the 14th Goal in the GMA; 2) the goals and policies contained in a shoreline master program (SMP) itself become an element of a GMA comprehensive plan (footnote and reference omitted); 3) other provisions of an SMP, including the SMP use regulations, are considered as GMA development regulations (reference omitted); and 4) adoption procedures for an SMP are governed by the SMA – *i.e.*, requiring Ecology's approval. [*Everett Shorelines Coalition, 02309c*, FDO, at 15.]
- The legislature intended the GMA and SMA to be integrated into a unified and coordinated land use decision-making regime as it applies to the areas of geographic overlap between the SMA and GMA jurisdictions. [*Everett Shorelines Coalition, 02309c*, FDO, at 15.]
- GMA critical areas and SMA shorelines are found in all three fundamental land use types (urban, rural and resource lands). When this occurs, the inherent natural attributes of the critical areas and shorelines will affect, and may limit, or prohibit, development of certain lands within such areas. . . .These inherent natural attributes place constraints on the development of land that are typically eliminated, minimized or mitigated as development proceeds. Nonetheless, the inherent natural attributes of the land must be given substantial weight in differentiating the fundamental land use types and the compatibility of various land uses, improvements and activities. [*Everett Shorelines Coalition, 02309c*, FDO, at 16-17.]
- To sum up, it is overstating matters to contend that [the GMA and SMA] advocate either the "stoppage" of growth or unbridled growth. What these laws contemplate, separately and collectively, is the coordinated planning for, and control of the use of land to achieve articulated state-wide goals, objectives and purposes. [T]he "management" contemplated by both the GMA and the SMA is coordinated planning and the differential *control of the use of land* to achieve state-wide goals, objectives and purposes. Management is achieved through local comprehensive plans, including the shoreline master program element, development regulations and public

spending priorities. In this management scheme, substantial weight must be given to the *inherent natural attributes of the land* in differentiating the fundamental land use types and the compatibility of various land uses, improvements and activities. [*Everett Shorelines Coalition, 02309c*, FDO, at 17.]

- In contrast to the SMA, the GMA directs a balancing of statutory goals and a larger degree of deference to local decisions. [*Everett Shorelines Coalition, 02309c*, FDO, at 18.]
- In contrast to the GMA, neither the words "balancing" nor "balance" appear in the SMA, nor are local government decisions accorded as much deference as under the GMA. [*Everett Shorelines Coalition, 02309c*, FDO, at 20.]
- The SMA is not intended to prohibit any reasonable and appropriate use of the shorelines. However, [section RCW 90.58.020] of the SMA then goes on to articulate what are reasonable and appropriate uses *in order of preference*. [*Everett Shorelines Coalition, 02309c*, FDO, at 20.]
- [Use of the shorelines for marinas and port facilities are contemplated by the SMA. However, altering the natural conditions of the shorelines for these uses may occur in limited instances. Reading the entirety of RCW 90.58.020, including the use preferences,] reveals a clear legislative intent that, while such uses have been and will be permitted, it will be under *limited* circumstances. The Board therefore rejects the notion that the SMA contemplates shoreline development of marinas, port facilities or other industrial uses as a legislative priority on a par with other listed [in RCW 90.58.020] use preferences. [*Everett Shorelines Coalition, 02309c*, FDO, at 21.]
- Review of the SMA use preferences indicates to the Board that the preservation of the natural character of the shorelines, protection and restoration of the resources and ecology of the shorelines, recreation and public access to the shoreline are weighted more heavily than, and take priority over, other various and sundry uses that would fit within the seventh level of preferences listed [in RCW 90.58.020]. This is the essence of the 14th GMA Goal. [*Everett Shorelines Coalition, 02309c*, FDO, at 21.]
- [T]he most directive of the original thirteen GMA goals do not undermine or contradict the 14th goal; rather they buttress the SMA direction to 'preserve, protect and restore" shorelines. The primary and paramount policy mandate that the Board gleans from a complete reading of RCW 90.58.020, particularly in the context of the goals and overall growth management structure of Chapter 36.70A RCW, is one of shoreline preservation, protection, enhancement and restoration. [*Everett Shorelines Coalition, 02309c*, FDO, at 22.]
- From a review of the interplay between the relevant provisions of the two statutes, the Board concludes that, while development will continue to be permitted within the shorelines of the state, the primary and paramount goal, objective and purpose of the GMA/SMA total statutory scheme is to preserve, protect, enhance and restore the resources, ecology and ecosystem functions of the shorelines of the state, with special consideration paid to habitat for anadromous fish. [*Everett Shorelines Coalition, 02309c*, FDO, at 23.]
- In addition to wetlands, such "ecosystems" include "areas with a critical recharging effect on aquifers used for potable water," "fish and wildlife habitat conservation areas," and "frequently flooded areas." These features collectively constitute the

component parts of the hydrologic ecosystems that are "shorelines of state-wide significance." [*Everett Shorelines Coalition, 02309c*, FDO, at 24.]

- It is difficult to imagine a shoreline ecology, that is the subject of the SMA planning regime, that does not consist of "ecosystem" values and functions defined by wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas and frequently flooded areas. The two regulatory schemes plainly address the same natural landscape, the same natural attributes, and the same natural processes. It is an inescapable conclusion that SMA "shorelines of statewide significance," are critical areas that are "large in scope, complex in structure and functions, and of a high rank order value." (Citation omitted) The Board concludes that shorelines of state-wide significance are critical areas subject to both the GMA and the SMA. [*Everett Shorelines Coalition, 02309c*, FDO, at 24; *See also Everett Shorelines Coalition, 02309c*, 2/10/03 Order.]
- The protection and regulation of "shorelines of state-wide significance [a critical area and ecosystem] is to be based on the scientific method derived from the supportive and harmonious provisions of RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26.]
- [A]ll "shorelines of state-wide significance" designated under Chapter 90.58 RCW are "critical areas" pursuant to RCW 36.70A.030(5). Therefore, the shoreline master program element of comprehensive plans, and all designations and development regulations that purport to control the use of land in such areas, are subject to the requirements of RCW 36.70A.060 and .172. Consequently, all shoreline master program element plan provisions and development regulations designed to govern shorelines of state-wide significance must: 1) be guided substantively by the protect, preserve, enhance and restore goals of RCW 36.70A.020(8), (10) and (14); and 2) utilize the scientific method derived from RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26; *See also Everett Shorelines Coalition, 02309c*, 2/10/03 Order.]
- [In adopting or amending SMPs] the SMA public involvement requirements of RCW 90.58.130 would control rather than the GMA public participation provisions of RCW 36.70A.020(11), .035 and .130 or .140. Thus, adoption or amendment to the Shoreline Element of the comprehensive plan and development regulations must be done in conformance with RCW 90.58.130. [*Everett Shorelines Coalition, 02309c*, FDO, at 27.]
- Regarding the critical areas regulations that are incorporated into the SMP as shoreline management implementing regulations, and the separate shoreline regulations within the SMP, the Board concludes that it cannot allow these regulations that have not been reviewed and evaluated for consistency with the GMA's [best available science] requirement to stand as significant implementing tools for the SMP. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- But for the critical areas/BAS error discussed supra, the Board would find the following regarding the City's core scientific documents: 1) that the [Snohomish Estuary Wetland Integration Program – SEWIP] complies with RCW 90.58.100(1) and constitutes BAS [RCW 36.70A.172] in support of certain use designations established by the City's SMP; 2) that concerning the compensatory mitigation measures in the [Salmon Overlay to the SEWIP – SOSEWIP], the Board does not

have the same degree of confidence in concluding the SOSEWIP constitutes BAS; and 3) regarding the actual regulatory measures to be applied within the various shoreline use designations, the Board again is not confident that it can conclude that the [Use of Best Available Science in City of Everett's Buffer Regulations - Pentec Report] constitutes BAS. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]

- Regarding restoration, the Board concludes that portions of the City's SMP contain goals, objectives and policies that comply with the restoration requirements of the total GMA/SMA statutory scheme. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- The Board also concludes that the inventory, specifically the SEWIP, that supports the SMP restoration goals, objectives and policies meet the standard of best available science. However, the Board concludes that the City's SMP's restoration provisions do not comply with the total GMA/SMA statutory scheme because they do not assure that ecosystem restoration will actually occur. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- In order to do so, the SMP needs to include: (1) specific timetables and benchmarks to measure system improvements; (2) land use policies that assure that shoreline development results in no net loss of ecosystem functions and (3) credible commitments of public resources to restoration purposes on public lands. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- The City never contended it amended its critical areas regulations as part of the SMP update. As discussed previously, this is a fatal flaw in the City's action. Consequently, it is undisputed that the City's shorelines implementing development regulations, including critical areas regulations and shorelines regulations in the SMP (reference omitted), were not adopted as critical areas regulations pursuant to RCW 36.70A.060, nor were they supported by best available science pursuant to RCW 36.70A.172. Moreover, the Board concludes that critical area regulations must assure no net loss of the functions and values of shorelines of state-wide significance. [*Everett Shorelines Coalition, 02309c*, FDO, at 45.]
- General discussion and application of the GMA/SMA total statutory scheme to five shoreline designations in the City of Everett. [*Everett Shorelines Coalition, 02309c*, FDO, at 45-59.]
- RCW 90.58.100 does not obligate [a jurisdiction] to include a "natural element" within its SMP. General discussion and application of the GMA/SMA total statutory scheme to five shoreline designations in the City of Everett. [*Everett Shorelines Coalition, 02309c*, FDO, at 60.]
- [The City's SMP Public Access Element includes commitments by the City to identify public access improvements and incorporate them into its GMA comprehensive plan and including appropriate improvements in the capital facilities element of the plan.] [*Everett Shorelines Coalition, 02309c*, FDO, at 62.]
- [The City's failure to comply with requirements of the GMA] are essentially beyond the scope of Ecology's review and approval process under the SMA. However, Ecology's approval of the use designations [for certain areas] is not consistent with the policies of RCW 90.58.020. [*Everett Shorelines Coalition, 02309c*, FDO, at 65.]

- The City's SMA development regulations, whether labeled by the City as such, have been rendered by RCW 36.70A.480 as GMA development regulations. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 5.]
- The natural systems that are purported to be regulated by the City's SMP for shorelines of state-wide significance reveals that these areas constitute critical areas and are subsumed within the hydrological ecosystems discussed at RCW 36.70A.030(5) and discussed in the FDO, at 23-26. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 5.]
- The Board's conclusion that *these* SMA shorelines of state-wide significance are GMA critical areas does not limit or skew the range of preferred or permitted land use designations adopted pursuant to the SMA nor does it preclude development within 200 feet of the ordinary high water mark. It is understandable that this may be a new and different concept, given that traditional critical areas regulations have frequently focused on such inland aquatic features as wetlands, streams, lakes and rivers, rather than estuaries and salt-water environments. Moreover, such traditional critical areas regulations have largely been concerned with matters such as buffers and setbacks. However, while development standards will continue to be an issue even in shorelines with an intensive, committed pattern of land use, the primary consequence of the critical area status for such lands will be a duty to evaluate and take necessary actions to assure protection of these ecosystems. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 7.]
- [T]he [Shoreline Management Act's provisions], not the GMA's notice and public participation procedures have governed the procedures for adoption of SMPs [shoreline master programs] for almost a decade. The [recent amendments to the GMA/SMA provisions] did not revise, alter or modify this longstanding requirement. [*Samson, 04313*, &/6/04 Order, at 5.]
- It is well-settled that a jurisdiction may limit or even prohibit construction of a single-use private recreational dock in a permit proceeding. . . .There is no requirement in the SMA that local governments proceed on a permit-by-permit basis; to the contrary, the SMA requires master programs in order to "prevent the inherent harm in uncoordinated and piecemeal development." [Citation omitted.] . . .The City of Bainbridge Island does not allow docks within the natural and aquatic conservancy environment, and now has amended its SMP to prohibit new single-use private docks in Blakely Harbor. This is well within the City's authority given the record and consistent with the goals and policies of the SMA – RCW 90.58.020. [*Samson, 04313*, FDO, at 10-12.]
- The RCW 90.58.020 priority for single family residences and their appurtenant structures does not require the City to allow private docks on every shoreline. It is within the authority of the local government, in developing and amending its master plan, to determine where various priority uses may be located. [*Samson, 04313*, FDO, at 12.]
- [The City's SMP amendments were approved by Ecology when there were no "guidelines" in effect. The "new guidelines' had been approved, but were not yet effective. The Board concluded that Ecology's review of the SMP amendment in the context of the policies of the SMA was the correct and appropriate basis for review.

Even if the "new guidelines" were applied, the Board would find compliance.] [*Samson, 04313*, FDO, at 13-16]

- ["Other shoreline functions," in addition to shoreline ecological functions, may be taken into account in cumulative impact review of local master programs and shoreline use regulations.] Without question, the SMA fosters such shoreline functions as navigation, public recreation, and scenic views. [*Samson, 04313*, FDO, at 14-15.]
- [RCW 90.58.100 sets standard for local government amendments to master programs, and WAC 173-26-090 contemplates review and amendments in response to "new information and improved data."] Since Puget Sound Chinook were listed under the Endangered Species Act in 1999, new understandings have emerged in the scientific literature concerning the value of nearshore marine environments and the ecological impacts of overwater structures …. to merit [amendment of the City's SMP] rather than reliance on case-by-case analysis through the permit process. [*Samson, 04313*, FDO, at 19-20.]
- Since the enactment of ESHB 1933 in 2003, the Board has been presented with a number of challenges to local CAO enactments involving critical areas, as defined by the GMA, that are within shorelines, as defined by the SMA. Since ESHB 1933, at least six CAO updates have been challenged before this Board – three counties and three cities. First, no jurisdiction whose CAO has been appealed to this Board has omitted CAO regulations for wetlands, freshwater shorelines, or floodplains on the basis of ESHB 1933. Similarly, no jurisdiction, to our knowledge, has submitted its CAO update to DOE for approval under the SMA. Central Puget Sound counties and cities appear to agree that – *for wetlands, freshwater shorelines, and floodplains* – the current round of CAO updates is a GMA process that must be based on the GMA best available science provisions notwithstanding the interaction with SMA land use designations. [*Hood Canal, 06312c*, FDO, at 26.]
- [The Board discussed various approaches used by different Puget Sound jurisdictions to protect marine shorelines.] The Board finds that there is no single interpretation of the ambiguity inherent in ESHB 1933 – specifically RCW 36.70A.480(5) – but a range of reasonable responses by local cities and counties in the Central Puget Sound region. The Board will defer to the County's decision, [the County designated all saltwater shorelines, stream segments with flow greater than 20 cubic feet per second, and lakes greater than 20 acres as critical areas under the category of "fish and wildlife habitat conservation areas."] based on local circumstances, unless persuaded by Petitioners that the County's approach was clearly erroneous. [The County had in its record ample BAS to support its designation of marine shorelines and Petitioners failed in this effort.] [*Hood Canal, 06312c*, FDO, at 26-29.]
- Kitsap County's marine buffers buffer widths are assigned based on SMA land use classifications, not based on the functions and values of the critical areas designation – here, fish and wildlife habitat conservation areas. . . .The County has not differentiated among the functions and values that may need to be protected on shorelines that serve, for example, as herring and smelt spawning areas, juvenile chum rearing areas, Chinook migratory passages, shellfish beds or have other values. Rather they have chosen an undifferentiated buffer width that is at or below the bottom of the effective range for pollutant and sediment removal cited in [BAS].

And they have applied that buffer to SMP land use classifications, not to the location of specific fish and wildlife habitat. . . .The flaw [in this approach] is illustrated by the fact that eelgrass, kelp, and shellfish beds are protected by larger buffers if they happen to be off shores designated Natural or Conservancy [in the SMP], while the same critical resources – eelgrass, kelp, shellfish – have just 35 feet of buffer off the Urban, Semi-rural or Rural shore. Protection for critical areas functions and values should be based first on the needs of the resource as determined by BAS. . . .Here Kitsap County has opted to designate its whole shoreline as critical area but then has not followed through with the protection of *all* the applicable functions and values. [*Hood Canal, 06312c*, FDO, at 39-41.]

- **Shorelines**

- The GMA distinguishes shorelines as one area where higher density is allowed in a rural setting. The Act states that "the rural element *may* allow for limited areas of more intensive development [such as shoreline development]." RCW 36.70A.070(5)(d). However, the Act does not require that the rural element allow areas of more intensive development. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 71.]
- GMA critical areas and SMA shorelines are found in all three fundamental land use types (urban, rural and resource lands). When this occurs, the inherent natural attributes of the critical areas and shorelines will affect, and may limit, or prohibit, development of certain lands within such areas. . . .These inherent natural attributes place constraints on the development of land that are typically eliminated, minimized or mitigated as development proceeds. Nonetheless, the inherent natural attributes of the land must be given substantial weight in differentiating the fundamental land use types and the compatibility of various land uses, improvements and activities. [*Everett Shorelines Coalition, 02309c*, FDO, at 16-17.]
- The SMA is not intended to prohibit any reasonable and appropriate use of the shorelines. However, [section RCW 90.58.020] of the SMA then goes on to articulate what are reasonable and appropriate uses *in order of preference*. [*Everett Shorelines Coalition, 02309c*, FDO, at 20.]
- [Use of the shorelines for marinas and port facilities are contemplated by the SMA. However, altering the natural conditions of the shorelines for these uses may occur in limited instances. Reading the entirety of RCW 90.58.020, including the use preferences,] reveals a clear legislative intent that, while such uses have been and will be permitted, it will be under *limited* circumstances. The Board therefore rejects the notion that the SMA contemplates shoreline development of marinas, port facilities or other industrial uses as a legislative priority on a par with other listed [in RCW 90.58.020] use preferences. [*Everett Shorelines Coalition, 02309c*, FDO, at 21.]
- Review of the SMA use preferences indicates to the Board that the preservation of the natural character of the shorelines, protection and restoration of the resources and ecology of the shorelines, recreation and public access to the shoreline are weighted more heavily than, and take priority over, other various and sundry uses that would fit within the seventh level of preferences listed [in RCW 90.58.020]. This is the essence of the 14th GMA Goal. [*Everett Shorelines Coalition, 02309c*, FDO, at 21.]

- From a review of the interplay between the relevant provisions of the two statutes, the Board concludes that, while development will continue to be permitted within the shorelines of the state, the primary and paramount goal, objective and purpose of the GMA/SMA total statutory scheme is to preserve, protect, enhance and restore the resources, ecology and ecosystem functions of the shorelines of the state, with special consideration paid to habitat for anadromous fish. [*Everett Shorelines Coalition, 02309c*, FDO, at 23.]
- In addition to wetlands, such "ecosystems" include "areas with a critical recharging effect on aquifers used for potable water," "fish and wildlife habitat conservation areas," and "frequently flooded areas." These features collectively constitute the component parts of the hydrologic ecosystems that are "shorelines of state-wide significance." [*Everett Shorelines Coalition, 02309c*, FDO, at 24.]
- It is difficult to imagine a shoreline ecology, that is the subject of the SMA planning regime, that does not consist of "ecosystem" values and functions defined by wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas and frequently flooded areas. The two regulatory schemes plainly address the same natural landscape, the same natural attributes, and the same natural processes. It is an inescapable conclusion that SMA "shorelines of statewide significance," are critical areas that are "large in scope, complex in structure and functions, and of a high rank order value." (Citation omitted) The Board concludes that shorelines of state-wide significance are critical areas subject to both the GMA and the SMA. [*Everett Shorelines Coalition, 02309c*, FDO, at 24; *See also Everett Shorelines Coalition, 02309c*, 2/10/03 Order.]
- The protection and regulation of "shorelines of state-wide significance [a critical area and ecosystem] is to be based on the scientific method derived from the supportive and harmonious provisions of RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26.]
- [A]ll "shorelines of state-wide significance" designated under Chapter 90.58 RCW are "critical areas" pursuant to RCW 36.70A.030(5). Therefore, the shoreline master program element of comprehensive plans, and all designations and development regulations that purport to control the use of land in such areas, are subject to the requirements of RCW 36.70A.060 and .172. Consequently, all shoreline master program element plan provisions and development regulations designed to govern shorelines of state-wide significance must: 1) be guided substantively by the protect, preserve, enhance and restore goals of RCW 36.70A.020(8), (10) and (14); and 2) utilize the scientific method derived from RCW 90.58.100 and RCW 36.70A.172. [*Everett Shorelines Coalition, 02309c*, FDO, at 26; *See also Everett Shorelines Coalition, 02309c*, 2/10/03 Order.]
- But for the critical areas/BAS error discussed supra, the Board would find the following regarding the City's core scientific documents: 1) that the [Snohomish Estuary Wetland Integration Program – SEWIP] complies with RCW 90.58.100(1) and constitutes BAS [RCW 36.70A.172] in support of certain use designations established by the City's SMP; 2) that concerning the compensatory mitigation measures in the [Salmon Overlay to the SEWIP – SOSEWIP], the Board does not have the same degree of confidence in concluding the SOSEWIP constitutes BAS; and 3) regarding the actual regulatory measures to be applied within the various

shoreline use designations, the Board again is not confident that it can conclude that the [Use of Best Available Science in City of Everett's Buffer Regulations - Pentec Report] constitutes BAS. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]

- Regarding restoration, the Board concludes that portions of the City's SMP contain goals, objectives and policies that comply with the restoration requirements of the total GMA/SMA statutory scheme. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- The Board also concludes that the inventory, specifically the SEWIP, that supports the SMP restoration goals, objectives and policies meet the standard of best available science. However, the Board concludes that the City's SMP's restoration provisions do not comply with the total GMA/SMA statutory scheme because they do not assure that ecosystem restoration will actually occur. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- In order to do so, the SMP needs to include: (1) specific timetables and benchmarks to measure system improvements; (2) land use policies that assure that shoreline development results in no net loss of ecosystem functions and (3) credible commitments of public resources to restoration purposes on public lands. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- The City never contended it amended its critical areas regulations as part of the SMP update. As discussed previously, this is a fatal flaw in the City's action. Consequently, it is undisputed that the City's shorelines implementing development regulations, including critical areas regulations and shorelines regulations in the SMP (reference omitted), were not adopted as critical areas regulations pursuant to RCW 36.70A.060, nor were they supported by best available science pursuant to RCW 36.70A.172. Moreover, the Board concludes that critical area regulations must assure no net loss of the functions and values of shorelines of state-wide significance. [*Everett Shorelines Coalition, 02309c*, FDO, at 45.]
- The natural systems that are purported to be regulated by the City's SMP for shorelines of state-wide significance reveals that these areas constitute critical areas and are subsumed within the hydrological ecosystems discussed at RCW 36.70A.030(5) and discussed in the FDO, at 23-26. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 5.]
- The Board's conclusion that *these* SMA shorelines of state-wide significance are GMA critical areas does not limit or skew the range of preferred or permitted land use designations adopted pursuant to the SMA nor does it preclude development within 200 feet of the ordinary high water mark. It is understandable that this may be a new and different concept, given that traditional critical areas regulations have frequently focused on such inland aquatic features as wetlands, streams, lakes and rivers, rather than estuaries and salt-water environments. Moreover, such traditional critical areas regulations have largely been concerned with matters such as buffers and setbacks. However, while development standards will continue to be an issue even in shorelines with an intensive, committed pattern of land use, the primary consequence of the critical area status for such lands will be a duty to evaluate and take necessary actions to assure protection of these ecosystems. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 7.]

- It is well-settled that a jurisdiction may limit or even prohibit construction of a single-use private recreational dock in a permit proceeding. . . .There is no requirement in the SMA that local governments proceed on a permit-by-permit basis; to the contrary, the SMA requires master programs in order to "prevent the inherent harm in uncoordinated and piecemeal development." [Citation omitted.] . . .The City of Bainbridge Island does not allow docks within the natural and aquatic conservancy environment, and now has amended its SMP to prohibit new single-use private docks in Blakely Harbor. This is well within the City's authority given the record and consistent with the goals and policies of the SMA – RCW 90.58.020. [*Samson, 04313*, FDO, at 10-12.]
- The RCW 90.58.020 priority for single family residences and their appurtenant structures does not require the City to allow private docks on every shoreline. It is within the authority of the local government, in developing and amending its master plan, to determine where various priority uses may be located. [*Samson, 04313*, FDO, at 12.]
- [The City's SMP amendments were approved by Ecology when there were no "guidelines" in effect. The "new guidelines' had been approved, but were not yet effective. The Board concluded that Ecology's review of the SMP amendment in the context of the policies of the SMA was the correct and appropriate basis for review. Even if the "new guidelines" were applied, the Board would find compliance.] [*Samson, 04313*, FDO, at 13-16]
- ["Other shoreline functions," in addition to shoreline ecological functions, may be taken into account in cumulative impact review of local master programs and shoreline use regulations.] Without question, the SMA fosters such shoreline functions as navigation, public recreation, and scenic views. [*Samson, 04313*, FDO, at 14-15.]
- [RCW 90.58.100 sets standard for local government amendments to master programs, and WAC 173-26-090 contemplates review and amendments in response to "new information and improved data."] Since Puget Sound Chinook were listed under the Endangered Species Act in 1999, new understandings have emerged in the scientific literature concerning the value of nearshore marine environments and the ecological impacts of overwater structures …. to merit [amendment of the City's SMP] rather than reliance on case-by-case analysis through the permit process. [*Samson, 04313*, FDO, at 19-20.]
- [Pursuant to RCW 36.70A.480] the Board agrees with Pierce County that marine shorelines are not *per se* fish and wildlife habitat conservation areas [critical areas]. The Board then asks (1) whether Pierce County used best available science to protect critical fish and wildlife habitat conservation areas on its marine shorelines; (2) whether Pierce County's regulations gave priority to anadromous fish; (3) whether Pierce County's regulations protect the functions and values of marine shorelines as salmon habitat, and (4) whether a vegetative buffer is required. [The County's CAO] identifies a number of critical fish and wildlife conservation areas on its marine shorelines. These include eelgrass beds, shellfish beds, surf smelt spawning areas and the like. However, [the CAO] was drafted to designate and protect *all* Pierce County marine shorelines. When the County Council voted to remove the marine shorelines from critical areas, it did so (a) without ascertaining whether the remaining protected

salt-water areas included all the areas important for protection and enhancement of anadromous fisheries and (b) without assessing whether the overlay of elements remaining in the CAO [i.e. steep slopes, erosion areas, eelgrass beds, etc.] would protect the "values and functions" necessary for salmon habitat. [A discussion of *WEAN v. WWGMHB*, 122 Wn. App. 173, (2004) follows.] [*Tahoma/Puget Sound, 05304c*, FDO, at 37.]

- [The Board reviewed the detailed scientific evidence in the record regarding salmon habitat along marine shorelines to determine whether the County gave "special consideration to anadromous fish."] Despite the detailed information about the function and values of salmonids habitat specific to each shoreline reach, Pierce County eliminated "marine shorelines" from the fish and wildlife habitat conservation areas listed in its critical areas ordinance without determining whether the remaining designated critical areas adequately met the needs of salmon. Undoubtedly some of Pierce County's remaining designated and mapped salt-water critical areas, such as eelgrass beds, surf smelt beaches, salt marshes and steep bluffs, overlap with habitats critical to the survival of anadromous fish. But there is nothing in the record to indicate that the high-value shoreline reaches identified by the Pentec Report for salmonids habitat [much less the restorable habitat stretches] are designated and protected in the Pierce County critical areas regulations. [*Tahoma/Puget Sound, 05304c*, FDO, at 38-40.]
- Deferring salmon habitat protection to a site-by-site analysis based on disaggregated factors is inconsistent with Pierce County's best available science. Nothing in the science amassed by the County supports disaggregating the values and functions of marine shorelines. [Various studies are reviewed pertaining to the integrated function and value of salmon habitat [*Tahoma/Puget Sound, 05304c*, FDO, at 40.]
- The Board finds that Pierce County's site-by-site assessment of marine shorelines during the permit application process, as established in (the CAO), does not meet the requirement of using best available science to devise regulations protective of the integrated functions and values of marine shorelines as critical salmon habitat. [*Tahoma/Puget Sound, 05304c*, FDO, at 40-41.]
- A final issue is whether vegetative buffers are required. Pierce County declined to establish a regulatory requirement for vegetative buffers on marine shorelines, except to the extent they might be required in connection with a narrower protective regime (eelgrass beds, for example, or bald eagle nesting sites), and has substituted a 50-foot setback from ordinary high water mark. There is a wealth of scientific opinion in the County's record supporting vegetative buffers to protect multiple functions and values of marine shoreline salmon habitat. [The Board reviewed the record documents provided to the County; and concludes that the County rejected the recommendations of experts and agencies with expertise without any sound reasoned process.] [*Tahoma/Puget Sound, 05304c*, FDO, at 41-44.]
- While the 2003 GMA amendments [ESHB 1933, amending RCW 36.70A.480] prohibit blanket designation of all marine shorelines (or indeed, all freshwater shorelines) as critical fish and wildlife habitat areas, the GMA requires the application of best available science to designate critical areas, explicitly recognizing that some of these will be shorelines. The legislature sought to ensure that this correction did not create loopholes. "Critical areas within shorelines" must be

protected, with buffers as appropriate, if they meet the definition of critical areas under RCW 36.70A.030(5). RCW 36.70A.480(5) and (6). [The BAS in the County's record supported the conclusion that near-shore areas meet this definition, and the BAS] may provide the basis for designating less than all of Pierce County's marine shorelines as critical habitat for salmon. ESHB 1933 does not justify Pierce County's blanket deletion of marine shorelines and marine shoreline vegetative buffer requirements from its [CAO]. [*Tahoma/Puget Sound, 05304c*, FDO, at 49.]

- [The County's unincorporated marine shorelines involve the Key and Gig Harbor peninsulas, Fox, Ketron and Anderson Islands. The County's FLUM and zoning maps indicate that the vast majority of these shoreline areas are designated as 1 du/10 acres. There is no delineation on the FLUM or zoning maps to suggest that this designation does not apply within 200' of the shoreline.] . . . [There are no findings to support a conclusion that 200 feet from ordinary high water county-wide, delineates a logical outer boundary for existing development or that such development can be minimized and contained.] . . . [T]he County's record does not support the notion that the County actively considered these shoreline areas to be a LAMIRD. Rather the County seems to have merely continued to allow its shoreline management regulations to govern within 200 feet of the shoreline without regard to its rural land use or zoning designations. [The shoreline regulations allow densities above what is an appropriate rural density. i.e. lots smaller than five acres, which constitute urban sprawl in the rural area and is noncompliant with the Act.] The Board cannot accept the County's position that virtually the entire area within 200 feet of the shorelines of unincorporated Pierce County constitutes a LAMIRD. [*Bonney Lake, 05316c*, FDO, at 50-52.]
- In remanding the noncompliant regulations to [the County], the Board pointed out that . . . the record already contained abundant science concerning the matters at issue. Nevertheless, [the County] undertook additional public process and re-analysis in developing the proposal for [the remand Ordinance]. Base on the prior well-developed record, as refined in the compliance process, [the County] has now enacted both designation of critical salmon habitat in [the County] marine shorelines and measures to protect the functions and values of that habitat. While there are various ways that the science in the record might have been applied by [the County] to comply . . . the Board is persuaded that Ordinance No. 2005-80s meets the GMA standard. [*Tahoma/Puget Sound, 05304c*, 1/12/06 Order, at 6.]

• Shorelines Master Programs – SMPs

- To sum up, it is overstating matters to contend that [the GMA and SMA] advocate either the "stoppage" of growth or unbridled growth. What these laws contemplate, separately and collectively, is the coordinated planning for, and control of the use of land to achieve articulated state-wide goals, objectives and purposes. [T]he "management" contemplated by both the GMA and the SMA is coordinated planning and the differential *control of the use of land* to achieve state-wide goals, objectives and purposes. Management is achieved through local comprehensive plans, including the shoreline master program element, development regulations and public spending priorities. In this management scheme, substantial weight must be given to the

inherent natural attributes of the land in differentiating the fundamental land use types and the compatibility of various land uses, improvements and activities. [*Everett Shorelines Coalition, 02309c*, FDO, at 17.]

- [In adopting or amending SMPs] the SMA public involvement requirements of RCW 90.58.130 would control rather than the GMA public participation provisions of RCW 36.70A.020(11), .035 and .130 or .140. Thus, adoption or amendment to the Shoreline Element of the comprehensive plan and development regulations must be done in conformance with RCW 90.58.130. [*Everett Shorelines Coalition, 02309c*, FDO, at 27.]
- Regarding the critical areas regulations that are incorporated into the SMP as shoreline management implementing regulations, and the separate shoreline regulations within the SMP, the Board concludes that it cannot allow these regulations that have not been reviewed and evaluated for consistency with the GMA's [best available science] requirement to stand as significant implementing tools for the SMP. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- But for the critical areas/BAS error discussed supra, the Board would find the following regarding the City's core scientific documents: 1) that the [Snohomish Estuary Wetland Integration Program – SEWIP] complies with RCW 90.58.100(1) and constitutes BAS [RCW 36.70A.172] in support of certain use designations established by the City's SMP; 2) that concerning the compensatory mitigation measures in the [Salmon Overlay to the SEWIP – SOSEWIP], the Board does not have the same degree of confidence in concluding the SOSEWIP constitutes BAS; and 3) regarding the actual regulatory measures to be applied within the various shoreline use designations, the Board again is not confident that it can conclude that the [Use of Best Available Science in City of Everett's Buffer Regulations - Pentec Report] constitutes BAS. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- Regarding restoration, the Board concludes that portions of the City's SMP contain goals, objectives and policies that comply with the restoration requirements of the total GMA/SMA statutory scheme. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- The Board also concludes that the inventory, specifically the SEWIP, that supports the SMP restoration goals, objectives and policies meet the standard of best available science. However, the Board concludes that the City's SMP's restoration provisions do not comply with the total GMA/SMA statutory scheme because they do not assure that ecosystem restoration will actually occur. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- In order to do so, the SMP needs to include: (1) specific timetables and benchmarks to measure system improvements; (2) land use policies that assure that shoreline development results in no net loss of ecosystem functions and (3) credible commitments of public resources to restoration purposes on public lands. [*Everett Shorelines Coalition, 02309c*, FDO, at 42.]
- The City never contended it amended its critical areas regulations as part of the SMP update. As discussed previously, this is a fatal flaw in the City's action. Consequently, it is undisputed that the City's shorelines implementing development regulations, including critical areas regulations and shorelines regulations in the SMP (reference omitted), were not adopted as critical areas regulations pursuant to RCW

36.70A.060, nor were they supported by best available science pursuant to RCW 36.70A.172. Moreover, the Board concludes that critical area regulations must assure no net loss of the functions and values of shorelines of state-wide significance. [*Everett Shorelines Coalition, 02309c*, FDO, at 45.]

- RCW 90.58.100 does not obligate [a jurisdiction] to include a "natural element" within its SMP. General discussion and application of the GMA/SMA total statutory scheme to five shoreline designations in the City of Everett. [*Everett Shorelines Coalition, 02309c*, FDO, at 60.]
- [The City's SMP Public Access Element includes commitments by the City to identify public access improvements and incorporate them into its GMA comprehensive plan and including appropriate improvements in the capital facilities element of the plan.] [*Everett Shorelines Coalition, 02309c*, FDO, at 62.]
- The City's SMA development regulations, whether labeled by the City as such, have been rendered by RCW 36.70A.480 as GMA development regulations. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 5.]
- The natural systems that are purported to be regulated by the City's SMP for shorelines of state-wide significance reveals that these areas constitute critical areas and are subsumed within the hydrological ecosystems discussed at RCW 36.70A.030(5) and discussed in the FDO, at 23-26. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 5.]
- The Board's conclusion that *these* SMA shorelines of state-wide significance are GMA critical areas does not limit or skew the range of preferred or permitted land use designations adopted pursuant to the SMA nor does it preclude development within 200 feet of the ordinary high water mark. It is understandable that this may be a new and different concept, given that traditional critical areas regulations have frequently focused on such inland aquatic features as wetlands, streams, lakes and rivers, rather than estuaries and salt-water environments. Moreover, such traditional critical areas regulations have largely been concerned with matters such as buffers and setbacks. However, while development standards will continue to be an issue even in shorelines with an intensive, committed pattern of land use, the primary consequence of the critical area status for such lands will be a duty to evaluate and take necessary actions to assure protection of these ecosystems. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 7.]
- Once critical areas have been identified and designated, they must also be protected. (Citation omitted.) There are at least two levels of protection: first, the designation level, which prescribes the permitted uses allowed within the designated area(s); and second, the development standards level, which articulates the specific requirements and standards that governs the actual development of the permitted uses within the designation. In this case the Board reviewed the designation level – the designations adopted by Everett, and approved by Ecology, to five different area designations in the Shoreline Master Program. Through the use of the information portrayed and contained in the SEWIP (a BAS document), the Board concluded that either specific designations did, or did not, comply with the first level protections required by the GMA/SMA statutory scheme. However, since the City conceded it had relied, in part, upon existing sensitive area regulations (which contain the development standards), which had not been revised or updated as required by RCW 36.70A.172,

the Board found that this level of protection did not comply with the requirements of the integrated GMA/SMA statutory scheme. [*Everett Shorelines Coalition, 02309c*, 2/10/03 Order, at 7.]

- It is well-settled that a jurisdiction may limit or even prohibit construction of a single-use private recreational dock in a permit proceeding. . . .There is no requirement in the SMA that local governments proceed on a permit-by-permit basis; to the contrary, the SMA requires master programs in order to "prevent the inherent harm in uncoordinated and piecemeal development." [Citation omitted.] . . .The City of Bainbridge Island does not allow docks within the natural and aquatic conservancy environment, and now has amended its SMP to prohibit new single-use private docks in Blakely Harbor. This is well within the City's authority given the record and consistent with the goals and policies of the SMA – RCW 90.58.020. [*Samson, 04313*, FDO, at 10-12.]
- The RCW 90.58.020 priority for single family residences and their appurtenant structures does not require the City to allow private docks on every shoreline. It is within the authority of the local government, in developing and amending its master plan, to determine where various priority uses may be located. [*Samson, 04313*, FDO, at 12.]
- [The City's SMP amendments were approved by Ecology when there were no "guidelines" in effect. The "new guidelines' had been approved, but were not yet effective. The Board concluded that Ecology's review of the SMP amendment in the context of the policies of the SMA was the correct and appropriate basis for review. Even if the "new guidelines" were applied, the Board would find compliance.] [*Samson, 04313*, FDO, at 13-16]
- ["Other shoreline functions," in addition to shoreline ecological functions, may be taken into account in cumulative impact review of local master programs and shoreline use regulations.] Without question, the SMA fosters such shoreline functions as navigation, public recreation, and scenic views. [*Samson, 04313*, FDO, at 14-15.]
- [RCW 90.58.100 sets standard for local government amendments to master programs, and WAC 173-26-090 contemplates review and amendments in response to "new information and improved data."] Since Puget Sound Chinook were listed under the Endangered Species Act in 1999, new understandings have emerged in the scientific literature concerning the value of nearshore marine environments and the ecological impacts of overwater structures …. to merit [amendment of the City's SMP] rather than reliance on case-by-case analysis through the permit process. [*Samson, 04313*, FDO, at 19-20.]

- ## Show Your Work

- Counties must specify how many acres (or some other common measurement of land) are within a UGA so that, in the event of an appeal, the Board can determine whether the selected UGA is indeed sufficient. Counties have a great deal of discretion in how they achieve this requirement. The Board only demands that counties "show their work." [*Rural Residents, 3310*, FDO, at 35.]

- Counties do not have cart blanche permission to include nonurban areas in UGAs. In those rare cases when exceptional circumstances so warrant, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled. [*Rural Residents, 3310,* FDO, at 45.]
- A county must base its UGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and specify the methods and assumptions used to support the IUGA designation. In essence, a county must "show its work" so that anyone reviewing a UGAs ordinance, can ascertain precisely how the county developed the regulations it adopted. [*Tacoma, 4301,* FDO, at 19.]
- The land use capacity analysis for designated UGAs is not required to be in the comprehensive plan; however, showing of work must be done somewhere in the record. Technical Appendix D is not required to be incorporated into the Plan. [*Vashon-Maury, 5308c,* FDO, at 16.]
- "Show your work" has been applied to the documentation of factors and data used in the accounting exercise of counties in sizing UGAs as required by RCW 36.70A.110; it does not apply to the mandatory plan elements of RCW 36.70A.070. [*Litowitz, 6305,* FDO, at 17.]
- [A land capacity analysis that deducts for redevelopment and unavailable land factors cumulatively, and for roads, public facilities and critical areas sequentially (from the same gross total) avoids double counting.] [*Bremerton/Alpine, 5339c/8332c,* FDO, at 20.]
- The sizing of the UGA must be supported by analytical rigor and an explicit accounting, yet [the sizing of UGAs] is an inexact science. The specificity and precision important to the accounting are tempered by the imprecise nature of long-range population projections, and indeed comprehensive planning itself. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 37.]
- [Show your work applies to sizing UGAs, it has not been required to demonstrate compliance with the mandatory elements requirements of the Act.] [*MacAngus, 9317,* FDO, at 11.]
- The UGA-sizing requirements of RCW 36.70A.110 rely to a great extent on mathematical calculations (allocation of population growth, assumptions regarding numbers of persons per dwelling, land needs based on planned densities and market factors, etc.) Without a clear showing in the record of the mathematical calculations and assumptions, interested persons have no criteria against which to judge a county's UGA delineation. Such is not the case here. [Petitioner] disagrees with the land use designation of its property and wants the County to show or explain why it did not change the [agricultural] designation. This is not required since the record clearly shows the basis for the County's [designation. The county relied upon Soil Conservation Service Prime Farmland List for the County.] [*MacAngus, 9317,* FDO, at 11.]

- Actions of local governments are presumed valid; however, when [UGA designations or expansions are] challenged the record must provide support for the actions the jurisdiction has taken; otherwise the action may be determined to have been taken in error – clearly erroneous. The Board will continue to adhere to the requirement that counties must "show their work" when designating UGAs and affirms its prior decisions on this question. [*Kitsap Citizens, 0319c*, FDO, at 13.]
- [The County adopted a subarea plan that included a residential component in an area originally envisioned as an industrial reserve.] The Board recognizes that both the City of Bremerton and Kitsap County have placed a high priority on identifying land for future economic development. [The record developed during the County's decision-making process [on the subarea plan] indicates [the County has "shown its work" – citing various documents from the record]. [*Kitsap Citizens, 0319c*, FDO, at 14-15.]
- Its review of challenges to initial UGA designations caused this Board to articulate a "show your work" requirement that compelled Counties to demonstrate the analytical rigor and accounting that supported the sizing and designations of UGAs. The "show your work" provision for sizing and designating UGAs has been applied to the four Puget Sound counties within this Board's geographic jurisdiction. Thus far, this Board has limited the application of the "show your work" requirement to the sizing of UGAs. (Citations omitted.) [*Master Builders Association, 1316*, FDO, at 8.]
- Based upon the arguments presented, the Board construes the crux of the dispute in this [issue] to be a question of: whether the County had a GMA duty to update its [UGA capacity analysis] (a new showing of work) when it adopted the amendments to the PRD regulations. In reviewing the question, the Board agrees with the County and affirms its prior holding in *Kelly* [*7312*, FDO] that the GMA creates no duty to continuously update UGA land capacity analysis every time development regulations are amended. [*Master Builders Association, 1316*, FDO, at 10.]
- [T]o argue that the record does not support a jurisdiction's action, does not amount to "burden shifting." Additionally it is extremely important, in managing growth, for the public to understand the basis for legislative policy decisions and how they relate to the jurisdiction's goals and policies as articulated in its adopted plans and regulations. The burden of proof plainly lies with Petitioner. [*Hensley VI, 03309c*, FDO, at 26.]
- The City is partially correct in noting that the genesis of "showing your work" derives from RCW 36.70A.110 and the sizing of UGAs. However, the work that must be shown, in the context of sizing UGAs, is whether there is sufficient land capacity to accommodate the projected growth within the UGA. The present matter involves the same question and derives from the duty imposed by .110(2), as well as the duties imposed by .130(3) and .115. Therefore, the same rationale applies here, and the City must discharge this GMA duty on **remand**. [*Strahm, 05342*, FDO, at 26.]

- **Sprawl**

- The Act has a clear bias for efficiency and concurrency in the placement and financing of infrastructure and urban governmental services. *See also* Planning Goal 12 at RCW 36.70A.020(12). The urban form and land use pattern that is implicit in

these legislative directions is one that is more compact and dense than what market forces alone have historically produced. The Board holds that *compact urban development* is the antithesis of sprawl. By *striving* to achieve a land use pattern and urban form that is compact, cities and counties will serve the explicit direction of Planning Goals 1 and 2. [*Rural Residents, 3310*, FDO, at 18-19, footnotes omitted]

- Frank Lloyd Wright's design for Broadacre City is an accurate prediction of post - World War II suburban sprawl. The GMA intends to reduce, rather than perpetuate sprawl, no matter how well designed. [*Aagaard, 4311c*, FDO, at 8, fn. 7]
- The technological capability has existed for 50 years for growth to sprawl across a vast landscape. In combination with powerful market forces, and absent an effective public policy to resist it, sprawl has resulted in the proliferation of low-density metropolitan regions such as Phoenix and Los Angeles. The rise of sprawl in the United States after the Second World War, and the public policy reasons why state and local governments across the country have chosen to combat it, is well documented in the literature of urban planning and real estate development. [*Bremerton, 5339c*, FDO, at. 25.]
- [T]here are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c*, FDO, at 28.]
- When the GMA's substantive requirements for county plans . . . are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community that, in turn, has dire social consequences. [*Bremerton*, 5339c, FDO, at 51-52]
- An urban land use pattern of 1- or 2.5-acre parcels would constitute sprawl; such a development pattern within the rural area would also constitute sprawl. [*Bremerton, 5339c*, FDO, p. 49.]
- Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl . . . While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. [*Burrow, 9318*, FDO, at 18.]

- Land within an UGA, [including subarea planning areas], reflects the jurisdiction's commitment and assurance that it will develop with urban uses, at urban densities and intensities, and it will ultimately be provided with urban facilities and services. [*MBA/Brink, 02310*, FDO, at 11.]
- The duty of a County as a local government to accommodate growth within its UGA is the same as the duty of a City to accommodate growth within its city limits (Footnotes omitted). Therefore, any opportunity to *perpetuate* an "historic low-density residential" development pattern, [in the subarea], ended in 1994 when the County included the area within the UGA. Consequently, [the subarea plan and implementing regulations] must provide for appropriate urban densities. [*MBA/Brink, 02310*, FDO, at 11-12.]
- The GMA clearly encourages the preservation of existing housing stock (*See* RCW 36.70A.020(4)) and provides for ensuring the vitality and character of established residential neighborhoods (*See* RCW 36.70A.070(4)). However, as the Board stated, *supra*, "any opportunity to perpetuate an "historic low-density residential" development pattern, [in the subarea], ended in 1994 when the County included the area within the UGA." It is clear that existing housing stock and neighborhoods may be maintained and preserved, however existing low-density patterns of development cannot be perpetuated. [*MBA/Brink, 02310*, FDO, at 14-15.]
- It is generally accepted, and not disputed here, that 4 dwelling units per acre is an appropriate urban density. However, the Board has stated that, in certain circumstances, urban densities of less than 4 dwelling units per acre can be an appropriate urban density, and therefore comply with Goals 1 and 2. "Whenever environmentally sensitive systems are large in scope (e.g., watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre." *Litowitz v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order, (Jul. 22, 1997), at 12. The *Litowitz* test, although originally used to assess a land use plan designation, is also the appropriate test to apply here in relation to the challenged zoning designations. [*MBA/Brink, 02310*, FDO, at 15.]
- In a GMA sense, the "sprawl" that the Act directs local governments to "reduce" is "the inappropriate conversion of undeveloped land into sprawling, low-density development." RCW 36.70A.020(2). Therefore, in a city context, the only way to run afoul of this statutory direction is to designate urban land for "low-density development" without sufficient environmental justification. That is not the case here, and the Board therefore rejects WHIP's arguments on this point. (Footnotes omitted.) [*WHIP/Moyer, 03306c*, FDO, at 20.]
- The physical form the GMA is driving towards in its mission to curb sprawl is "a compact urban landscape." . . . Residential development is a major component of the region's compact urban form. Therefore, as growth continues, higher residential urban densities become a corollary to compact urban development. However, urban density is not necessarily an end in itself; it is a means of achieving numerous goals in the GMA – goals which are to guide all the GMA planning jurisdictions. [*Kaleas, 05307c*, FDO, at 13-14.]

- It is undisputed that a significant portion of the Mid-county [rural] area is already platted and developed with lots that are 2.5 acres or less without urban services such as sewers. It is hard to think of a better example of low-density sprawl than the land use pattern reflected in this area. Much of this area was already platted and developed prior to the GMA. It is also undisputed that after the GMA was adopted the County's Plan designations and implementing zoning allowed residential development to occur in this area a 1 du/2.5 acres. . . .Had these designations been challenged at the time, it is highly likely that they would have been declared sprawl densities and remanded to the County to correct. . . . What the County has done [with the FLUM amendment] is to finally establish a base density of 1 du/5 acres – a rural density. What the establishment of this density does is end the perpetuation of the previously permitted sprawl pattern and protect what is left. It may not affect much land, and it is something that definitely could have been done earlier; nonetheless, now it is done with the effect of reducing continued low-density sprawl in the area. [*Bonney Lake, 05316c*, FDO, at 44.]
- In considering Planning Goals 1 and 2, the Board looks to the ruling in *Quadrant*, supra, where the Court indicated that "the primary method for meeting the goals of subsections .020(1) (urban growth) and .020(2) (reduce sprawl) is set forth in RCW 36.70A.110." Citation omitted. [*Camwest II, 05341*, FDO, at 23.]

- **Standard of Review**

- The preponderance of the evidence standard listed in the last sentence of RCW 36.70A.320 does apply to OFM's population projections. [*Kitsap/OFM, 4314*, FDO, at 12.]
- The statutory presumption of validity discussed in the first sentence of RCW 36.70A.320 does not apply to OFM's population projections. [*Kitsap/OFM, 4314*, FDO, at 12.]
- The standard of review for determining whether a county's issuance of a DNS violated SEPA is the "clearly erroneous" standard. [*PNO, 4318*, FDO, at 17.]
- A petitioner must first show that the Act imposes a duty upon a local jurisdiction to undertake a particular action and then show by a preponderance of the evidence how the local jurisdiction has breached that duty. Conclusory statements that the Act imposes a duty are insufficient to carry the petitioner's burden of proof. [*Robison, 4325c*, FDO, at 10.]
- Pursuant to RCW 36.70A.320(3), the Board shall find compliance unless it determines that the action by [the local government] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]. For the Board to find the [local government's] action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993). [*Burien, 8310*, FDO, at 4.]
- [For purposes of analyzing challenges to RCW 36.70A.020(6),] a clearly erroneous action is not necessarily an arbitrary action. "Arbitrary" means to be determined by whim or caprice. Washington's courts have further defined "arbitrary or capricious" action to mean willful and unreasoning action taken without regard to or

consideration of the facts and circumstances surrounding the action. Citing cases. [*LMI/Chevron, 8312,* FDO, at 31.]

- [Where the language of a Plan's amended goals, policies and text is ambiguous, the Board may interpret the ambiguity consistently with the goals and requirements of the Act, and remand the ambiguous amendatory language for clarification that is consistent with the goals and requirements of the GMA.] [*LMI/Chevron, 8312,* FDO, at 37-38.]
- This Board has addressed the application of the 1997 amendment to the standard of review in several prior cases. All of these prior cases shared a common procedural posture: except for the issuance of the Board's final order, all events, including all briefing and oral argument, had occurred prior to the effective date of the amended standard of review (citations omitted). The Board's review and deliberation of whether the local government was in compliance with the GMA had already commenced prior to the effective date of the amended standard of review. Unlike these prior cases, the briefing of the substantive issues now on remand from the Supreme Court, the hearing on the merits, and the Board's review and deliberation have not yet begun. [*Bear Creek,* 5308c, 1/24/00 Order, at 3.]
- ESB6094 provided that most of the Legislature's 1997 GMA amendments "are prospective in effect and shall not effect the validity of <u>actions taken or decisions made</u> before the effective date of this section." 1997 Wash. Laws ch. 429 § 53 (emphasis added). The amendment to the standard of review clearly affects "action taken and decisions made" by the Board. There is nothing in RCW 36.70A.320(3), the codification of the amended standard of review that speaks to actions or decisions of the local governments. Consequently, the Board's deliberation and review in this case, where briefing, oral arguments, and the issuance of the Board's order will occur after the effective date of the 1997 amendment, the Board is obligated to apply the Legislature's amended standard of review – clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. [*Bear Creek,* 5308c, 1/24/00 Order, at 3.]
- [Except for the Board's standard of review] the Board will apply the provisions of the GMA that were in effect at the time the County took the challenged actions. [*Bear Creek,* 5308c, 1/24/00 Order, at 4.]
- To suggest that the legislature has "expressly directed" the granting of "considerable" deference is wrong. The word "considerable" does not appear in the statute, nor was it used by the *Manke* Court, as cited by the County in its brief. To characterize the degree of deference that attaches to the clearly erroneous standard codified at RCW 36.70A.320(2) the law simply uses the relative term "more" in reference to the earlier "preponderance of the evidence standard of review. [*Burrow, 9318,* FDO, at 5.]
- The [City's action – adopting a shoreline master plan update is] subject to the goals and requirements of the GMA, and thus the Board's review of the City's action is governed by RCW 36.70A.320. [The Board uses the clearly erroneous standard – RCW 36.70A.320(3).] [*Everett Shorelines Coalition, 02309c,* FDO, at 9-10.]
- Both [the City's] and Ecology's actions must be consistent with the goals and requirements of the Shoreline Management Act. However, because Ecology must approve a local government action in order for it to take effect, the Board here focuses on the applicable standard of review for Ecology's actions. In this instance

the Board's review is governed by RCW 90.58.190(2) because the shorelines at issue here are "shorelines of statewide significance." [The Board uses a clear and convincing evidence standard – RCW 90.58-190(2)(c).] [*Everett Shorelines Coalition, 02309c*, FDO, at 10.]

- **Standing**

- Talking to local government staff or, in the case of elected officials, talking to them off the record (i.e., not at a public hearing or meeting), as opposed to communicating in writing to either or talking to elected officials on the record at a public hearing or meeting, does not constitute appearance. [*FOTL I, 4303,* 4/22/94 Order, at 9.]
- For purposes of enabling a representative organization or association such as FOTL to obtain standing, a member of the organization must appear and indicate that he or she represents that organization. Simply being a member of an organization and being in attendance at a public hearing without indicating that one represents the organization will not suffice to confer standing upon the organization. [*FOTL I, 4303,* 4/22/94 Order, at 9.]
- The Board treats the language "regarding the matter" narrowly to mean the specific matter before the local government. It does not mean the general subject matter such as land use planning or the GMA. [*FOTL I, 4303,* 12/30/94 Order, at 11.]
- [To have APA standing, the interest that the petitioner is seeking to protect must be arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question; and the petitioner must allege an ""injury in fact," i.e., that he or she will be "specifically and perceptibly harmed" by the proposed action.] [*FOTL I, 4303,* 4/22/94 Order, at 14-15.]
- [In order to show injury in fact, one] must present facts that show he will be adversely affected. His affidavits must collectively demonstrate sufficient evidentiary facts to indicate that he will suffer an "injury in fact." Further, when a person alleges a threatened injury, as opposed to an existing injury, he or she must show an immediate, concrete, and specific injury to him or herself. If the injury is merely conjectural or hypothetical, there can be no standing.] [*FOTL I, 4303,* 4/22/94 Order, at 14-15.]
- As a matter of law, when a local jurisdiction has failed to act, any person who resides or owns property within that jurisdiction has standing to bring a "failure to act" challenge. [*FOTL I, 4303,* 4/22/94 Order, at 19.]
- A party wishing to challenge a SEPA determination must meet a two-part test to establish standing: (1) The plaintiff's supposedly endangered interest must be arguably within the zone of interests protected by SEPA; (2) the plaintiff must allege an injury in fact; that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her specific and perceptible harm. The plaintiff who alleges a threatened injury rather than an existing injury must also show that the injury will be "immediate, concrete, and specific"; a conjectural or hypothetical injury will not confer standing. [*WSDF I, 4316,* 4/22/94 Order, at 6-7.]
- Challenges to either SEPA or GMA standing before the Board can be brought at any time by either a party or the Board on its own initiative. [*PNO, 4318,* FDO, at 19.]

- It will be difficult for any petitioner to demonstrate the "specific injury" required by the *Leavitt* [*Leavitt v. Jefferson County*, 74 Wn. App. 668, 875 P.2d 681 (1994)] and *Trepanier* [*Trepanier v. Everett*, 64 Wn. App. 380, 824 P.2d 524, review denied, 119 Wn.2d 1012 (1992)] courts when challenging the final environmental impact statement for a comprehensive plan. [*Bremerton, 5339c,* 6/5/95 Order, at 17.]
- In order to raise issues before the Board, it is not necessary for participants and petitioners to have addressed those specific issues when they appeared before the county or city during the public participation process regarding the adoption of the comprehensive plan. [*Bremerton/Port Gamble, 5339/7324c,* 4/22/97 Order, at 6.]
- Petitioners must describe their standing in the PFR. Petitioners can make the necessary showing by: (1) including a narrative in the PFR itself; (2) attaching a declaration or affidavit to the PFR; or (3) incorporating by reference exhibits from the record below. [*Pilchuck II, 5347c,* 8/17/95 Order, at 3.]
- The Board will apply the *Trepanier/Leavitt* test as follows: When the underlying action is the adoption of an "environmental protection" piece of legislation such as a critical areas ordinance, the Board will strictly apply the SEPA standing test. When the underlying action is the adoption of a piece of legislation that does not inherently or explicitly involve the direct protection of the environment, the Board will apply the SEPA test more loosely. Examples of such legislation are the capital facilities, transportation or housing elements of a comprehensive plan. [*Pilchuck II, 5347c,* 8/17/95 Order, at 6.]
- The Board has never held, nor does the Act state, that the triggering event or action that conveys standing to a person must also describe the total scope of issues on which a person may subsequently request review. According to the Board's holdings and the Act, the scope of the Board's review is defined by the "detailed statement of issues" that a petitioner is required to include in its request for review. [*Sky Valley, 5368c,* FDO, at 23.]
- The question of standing is to be interpreted liberally, that any party who appears during the GMA planning process should have the ability to request review of the resulting document or any portion of that document. [*Sky Valley, 5368c,* FDO, at 23.]
- The certification process of Chapter 47.80 RCW [Regional Transportation Planning Organizations] is completely separate from the GMA. The Board has jurisdiction under the GMA to determine compliance of a comprehensive plan's transportation element with the requirements of the Act. [*Sky Valley, 5368c,* FDO, at 129.]
- A petitioner is not precluded from challenging development regulations that implement a certain comprehensive plan policy, even though the petitioner did not challenge the specific policies in the plan (assuming the petitioner otherwise meets the standing and timely petition filing requirements of the Act). [*PNA II, 5371,* FDO, at 23.]
- The Board's Rules of Practice and Procedure require that, as part of a petition for review, a petitioner must show standing. WAC 242-02-210(d). However, no such requirement exists for an intervenor. [*Benaroya I, 5372c,* 1/9/96 Order, at 6.]
- General discussion of standing requirements. [*Hapsmith I, 5375c,* FDO, at 12-18.]
- Petitioners must specify within their petitions for review which method of standing allows them to proceed with a case before the Board. For instance, petitions for review relying upon APA standing must either allege that the petitioners are within

the zone of interest of the GMA and that they have been injured by the local government's GMA action, or they must cite to the specific GMA standing provision under which they qualify (i.e., RCW 36.70A.280(2)'s language "qualified pursuant to RCW 34.05.530). However, although the petition should also contain information that supports these allegations, it need not contain such evidence. Instead, if the petitioner's alleged standing is challenged, the petitioner will be given the opportunity to provide additional evidence in response. [*Hapsmith I, 5375c,* FDO, at 16.]

- The Board's holding in Pilchuck that a prima facie case [for standing] must be made within the petition for review is reversed. [*Hapsmith I, 5375c,* FDO, at 16.]
- RCW 36.70A.210(6) permits only a city or the governor to appeal an adopted county-wide planning policy. [*Sundquist, 6301,* 2/21/96 Order, at 3.]
- For an organization to "appear," its representative must state that he or she represents the organization. The purpose of this requirement is to give notice to the local government that the people before it represent more than individual interests, that they are a group. Failure to give such notice is fatal to an organization's standing. [*Banigan, 6316c,* 7/29/96 Order, at 8.]
- If the appeal period has lapsed, the organization cannot substitute an individual as petitioner in a petition for review. [*Banigan, 6316c,* 7/29/96 Order, at 11.]
- Although participation in the legislative process as an identified representative of a citizen group may establish GMA standing, obtaining GMA standing does not automatically bestow SEPA standing upon a petitioner. [*Buckles, 6322c,* FDO, at 23.]
- Issue 5 challenged whether the City had made any threshold determination as required by SEPA. The City did not adduce case law sufficient to support its position that standing should be denied where no threshold determination had been made. [*Morris, 7329c,* 1/9/98 Order, at 2.]
- Recap of the Board's standing analysis. [*Bremerton/Alpine, 5339c/8332c,* 10/7/98 Order, at 4-6.]
- The Board rejects the County's urging that to have participation standing, petitioners must have raised the specific issues before the County that are now before the Board. [*Bremerton/Alpine, 5339c/8332c,* 10/7/98 Order, at 7.]
- To have meaningful public participation and avoid "blind-siding" local governments, members of the public must explain their land use planning concerns to local government in sufficient detail to give the government the opportunity to consider these concerns as it weighs and balances its priorities and options under the GMA. [*Bremerton/Alpine, 5339c/8332c,* 10/7/98 Order, at 8.]
- To determine participation standing, the Board reviews the issue as set forth in the Prehearing Order, the PFR, the briefing and the record to ascertain the nature of the petitioner's participation. If the petitioner's participation is reasonably related to the petitioner's issues as presented to the Board, then the petitioner has standing to raise and argue that issue. If petitioner's participation is not reasonably related to petitioner's issue as presented to the Board, then the petitioner will not have standing to raise and argue that issue. [*Bremerton/Alpine, 5339c/8332c,* 10/7/98 Order, at 8.]
- Reliance on another person's participation before the County as a basis for standing is not supported by RCW 36.70A.280(2)(b). A person (or organization) cannot

establish standing based solely on the participation of another. [*Bremerton/Alpine, 5339c/8332c*, 10/7/98 Order, at 9.]

- Briefing an issue in a prior phase of the pending proceeding, which is part of the record before the Board, and an issue in the pending case is reasonably related to the matter. [*Bremerton/Alpine, 5339c/8332c*, 10/7/98 Order, at 10.]
- The Board's "organizational standing" rule was first articulated in *Friends of the Law v. King County:* For an organization to have participation standing, a member of that organization must identify himself or herself as a representative of the organization when that person testifies at a hearing or submits a letter to the county or city." [*Montlake, 9302c*, 4/23/99 Order, at 4.]
- The Legislature's scheme for broad and continuous public participation during the development and adoption of plans and regulations is distinct from the Legislature's scheme for appellate review of GMA actions. Any person may participate in the local government's GMA plan development and adoption process. Persons who participated may file a PFR, but only under the Legislature's statutorily prescribed conditions set out at RCW 36.70A.280(2) and .290(2). [*Montlake, 9302c*, 4/23/99 Order, at 4.]
- Petitioner can allege standing [in their PFR] by either citing to RCW 36.70A.280(2)(a),(b),(c) or (d); or by alleging facts clearly indicating the basis for their standing. [*WRECO, 8335,* FDO, at 4.]
- The GMA does not mandate, nor has the Board ever required this degree of specificity [indicating whether the alleged participation was oral or written] in the standing allegations in a PFR. [*WRECO, 8335,* FDO, at 5]
- Once again, the Board rejects a GMA based "issue-specific standing requirement" and reaffirms its reasoning in *Alpine* [participation is "reasonably related" to the issue presented to the Board]. [*NW Golf, 9314*, 9/29/99 Order, at 5.]
- Participation on behalf of landowners in not unlike participation on behalf of organizations. Representatives of a landowner must put the local government on notice that the landowner has an interest in the matter. [*MacAngus, 9317,* FDO, at 4.]
- To have standing under the APA test, a petitioner must be within the zone of interests protected by the GMA and must allege an injury in fact. To satisfy the evidentiary burden to show an injury in fact, a petitioner must show that the government action will cause him or her 'specific and perceptible harm' and that the injury will be 'immediate, concrete and specific.' If the injury is merely conjectural or hypothetical, there can be no standing. In addition, a petitioner must show that a judgment in his or her favor 'would substantially eliminate or redress' that prejudice. [*MacAngus, 9317,* FDO, at 5.]
- [Where a Plan designation is not changed from the original designation, but merely continued, a petitioner cannot show injury in fact due to the original designation. A change in the zoning, that implements the Plan designation, but eliminates certain previously permitted uses (such as churches, county clubs, day care facilities, group homes, hospitals, libraries and schools), does not constitute injury in fact.] [*MacAngus, 9317,* FDO, at 6.]
- Participation before the local government regarding one aspect of its GMA action is not necessarily sufficient to challenge other aspects of its GMA action. This Board recently explained that a petitioner's participation before the local government must

be reasonably related to the petitioner's issues as presented to the Board (Citation omitted). [*Gain, 9319*, 1/28/00 Order, at 4.]

- The State Court of Appeals for Division One recently clarified the Legislature's intended meaning of the word "matter" in [RCW 36.70A.280(2)(b)]. The Court stated: "We conclude that [the Legislature] intended the word 'matter' to refer to a subject or topic of concern or controversy." (Citation omitted.) [Also, to determine whether a petitioner has participation standing, the Court affirmed the CPSGMHB reasonable relationship test adopted in *Alpine, 8332c*, 10/7/98 Order, at 8.] [*Ramey Remand, 9302*, 12/15/00 Order, at 3.]
- Off-the-record and informal conversations [and telephone conversations] with advisory board members and staff do not constitute 'meaningful' public participation with the local government decision-makers since these concerns [raised in conversations] are not part of the decision record. [*Ramey Remand, 9302*, 12/15/00 Order, at 9-10.]
- A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5]
- A jurisdiction may not bar GMA public participation standing by not providing notice or the opportunity to participate at any time, either prior to, or after, adoption of an amendment to a GMA Plan, development regulation or other related GMA document. If no notice or opportunity for public participation is provided for a GMA action, a petitioner may assert GMA participation standing pursuant to RCW 36.70A.280(2)(b). [*McVittie V, 0316*, FDO, at 29.]
- The record clearly shows that, while [Petitioners] attempted to attend the public hearing, by their own admission they arrived after the close of the hearing. There was no allegation that the notice was inadequate or that the 5:30 p.m. starting time was not clear, nor an argument that the City was somehow obligated to keep the hearing open until all interested citizens arrived. Instead there is an admission on the record that the Petitioner did not arrive before the close of the public hearing. This fact, coupled with Petitioners' lack of written comment prior to the well-publicized deadline, was fatal to [the] claim to participation standing pursuant to RCW 36.70A.280(2)(b). [*Mesher, 1307*, 8/2/01 Order, at 9.]
- The Board finds that its ruling in *Sound Transit* [9303, 6/18/99 Order] is directly on point. The Board's jurisdiction is properly limited to Chapters 36.70A RCW, 90.58 RCW and 43.21C RCW. It is not for this Board to interpret other statutes, nor to determine whether a petitioner has acted within its authority as described by other statutes (i.e. Chapter 35.14 RCW). It is undisputed that the East Bellevue Community Council has established participation standing pursuant to RCW

36.70A.280. If the City wishes to pursue its argument that EBCC lacks authority to bring this appeal, its recourse is to the courts. [*Bennett, 1322c*, 1/7/02 Order, at 5.]

- [Intervenor and Respondent challenged the standing of Petitioner.] Interestingly, neither [Intervenor nor Respondent] cite to any authority for the proposition that where an association or organization has standing, its individual members do not. The general rule [*i.e.*, and organization has standing if one of its members has standing as an individual (Citations omitted)] is the converse of the argument presented here. [*Maltby UGA Remand*, 12/19/02 Order, at 5.]
- It is undisputed that at the time the December 4, 2000 letter objecting to the Maltby UGA expansion was submitted to the County, [Petitioner] was a member, and president, of the [Association]. As such, the Board concludes that [Petitioner], as an individual, and member of the [Association], shared the views of the [Association]. The signed and written testimony was sufficient, under the standing requirements of the GMA [RCW 36.70A.280(2)], to establish standing not only for the [Association], but also for [Petitioner]. [Petitioner] clearly participated in writing before the County on the matter for which review was requested [the Maltby UGA expansion]. [*Maltby UGA Remand*, 12/19/02 Order, at 5.]
- The appropriate "test" to apply to issue-specific standing challenges such as this was articulated by this Board in *Alpine/Bremerton* [8332c/5339c, 10/7/98 Order, at 10], and cited favorably by the Court of Appeals in *Wells* [100 Wash. App. 657; 997 P.2d 205 (2000)]. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 19 and 21.]
- The Board has acknowledged that it will be difficult for any petitioner to demonstrate the "specific injury" required by Leavitt and Trepanier when challenging the SEPA sufficiency of non-project actions, such as local legislative actions adopting amendments to comprehensive plans and development regulations. As the Board has held, supra, pursuant to RCW 36.70A.480, Everett's adoption of its SMP amendments constitutes legislative amendments to its comprehensive plan and development regulations. Therefore, it will likewise be difficult for any petitioner to demonstrate "specific injury" when challenging GMA/SMA actions such as Everett's. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 28.]
- The Board's Rules require a petitioner to allege and specify the type of standing being sought. . . .[Failure to allege SEPA standing is grounds for the Board to dismiss a SEPA claim.] [*MBA/Brink, 02310*, 10/21/01 Order, at 5.]
- [The Board's two-part SEPA standing test (based upon *Leavitt* and *Trepanier*) is reiterated and set forth in this case.] [*MBA/Brink, 02310*, 10/21/01 Order, at 5-6.]
- [In commenting on the strictness of the *Trepanier* test and subsequent difficulty in establishing SEPA standing, the Board noted in a footnote] The Board notes that a petitioner that challenges a non-project action that shifted land from one of the GMA's three fundamental and significant land use categories – Resource, Rural or Urban – to a more intense land use category, could arguably satisfy the strict application of *Trepanier* SEPA standing test. [*MBA/Brink, 02310*, 10/21/01 Order, footnote 6, at 5-6.]
- [T]here is no documentary evidence that the Petitioner participated in the City's deliberation and adoption process relative to [the TIP]. The Board agrees with the City that Petitioner has failed to establish standing to challenge the GMA compliance of [the TIP]. [*Kent CARES II, 02319*, 3/14/03 Order, at 10.]

- Petitioner failed to allege SEPA standing in the PFR, reference any relevant exhibits or even address this issue in response to the motion to dismiss. Petitioner's SEPA claims are dismissed. [*Hensley VI, 03309c*, 5/19/03 Order, at 11.]
- The Board concludes that the threatened injuries suggested by [Petitioners] are conjectural and hypothetical at this point in the County's process. If a UGA is expanded, or if a school seeks a conditional use permit, additional site specific environmental analysis will be required; at that point Petitioners may have immediate, concrete and specific injuries. However, that is not the case now. [*Hensley VI, 03309c*, 5/19/03 Order, at 14.]
- Allowing potential intensification of urban uses within an urban area is within the County's discretion. [Petitioner] has identified threatened injuries, but has not established that any injury stemming from the redesignation or rezone has caused any immediate, concrete or specific injury – such injuries are conjectural and hypothetical. [*Hensley VI, 03309c*, 5/19/03 Order, at 15.]
- To resolve this issue the Board need not inquire into [Petitioner's] role as a Planning Commission member. Simply stated, the issue before the Board is whether by raising concerns about [one of the challenged] amendment[s] before the County Council, Petitioner . . . established, in her own right, GMA participation standing to challenge that amendment for compliance with the provisions of the GMA other than RCW 36.70A.070(5). . . . Here, when [Petitioner's] appeal was filed, the County was not "blind sided." It is undisputed that the County was clearly on notice and aware that [Petitioner] had concerns and opposed [the amendment] before it acted. The County, acting within its authority, nonetheless, adopted the amendment. Further, the County was not "blind sided" to the fact that the GMA requires Plan amendments to be: guided by the goals of the Act; internally consistent with other elements; consistent with the CPPs; and conduct its planning activities consistently with its Plan. These GMA requirements apply to each and every amendment a jurisdiction chooses to adopt. These requirements were not new to the County. The Board concludes that [Petitioner], by voicing her concerns about [the amendment], satisfied the GMA participation standing requirement. [Petitioner's] opposition to [the amendment] before the County Council is reasonably related to the challenges presented to the Board. [*Hensley VI, 03309c*, 5/19/03 Order, at 17-18.]
- Petitioners have failed to assert an immediate, concrete and specific injury. The potential increased surface, subsequent potential runoff, and potential flooding and erosion damages noted by Petitioners are threatened future injuries. They are speculative. [T]hese speculative injuries and potential impacts can either be addressed, or mitigated as actual developments are proposed, or the [jurisdiction] can deny the proposals. [SEPA claims were dismissed for lack of SEPA standing.] [*Citizens, 03313*, 8/15/03 Order, at 11.]
- [Petitioner did not participate, orally or in writing, during the jurisdiction's public participation process on the challenged ordinance. Petitioner was dismissed for lack of GMA standing.] [*Citizens, 03313*, 8/15/03 Order, at 11.]
- [The Board's jurisdiction to review, standing requirements and the filing period for challenging CPPs all derive from RCW 36.70A.210(6), not RCW 36.70A.280 and .290.] [*CTED, 03317*, FDO, at 5.]

- [In the Board's *MBA/Brink, 02310*, 10/21/02 Order, footnote 6, at 5, the Board indicated, that in the situations described in the footnote, the Board intends to take a fresh look at its SEPA standing analysis and application of the *Trepanier* test.] It does not appear, in light of the arguments, exhibits and information provided, that [the challenged Plan amendment] involves a shift in designation from one of the fundamental and significant land use categories discussed in the *MBA/Brink* footnote. [Therefore, the Board did not address or apply the *Trepanier* SEPA standing test.] [*Bremerton II, 04309c*, 4/22/04 Order, at 7-8.]
- The test for participation standing, as stated in *Wells*, was codified into RCW 36.70A.280(4) during the 2003 Legislative Session. [The issues and concerns raised in participation before the jurisdiction must be reasonably related to the person's issue as presented to the Board.] [*Jensen, 04310*, FDO, at 7.]
- It is undisputed that Petitioners participated before the City of Bonney Lake during the City's Phase 1 Plan Update process. Petitioners' letters of November 10, 2003 and November 30, 2003 clearly establish the scope of the concerns Petitioners sought to bring to the attention of the City. Those concerns go beyond the Phase I Plan Update's effect upon their property and adjoining acreage. These letters demonstrate concern with the City's Plan Update densities, sprawl, compact urban growth, infill practices and polices, affordable housing and UGA expansions. These concerns coincide with the issues presented to the Board for review. [*Jensen, 04310*, FDO, at 9-10.]
- [Comments on documents (SEIS) pertaining to a prior ordinance or amendment do not convey GMA participation standing on a current enactment amending a Plan.] [*Shaffer II, 04323*, 12/9/04 Order, at 4.]
- [N]one of the general objections, questions or comments presented by Petitioner in those materials reasonably relates to the City's adoption of the Plan Update. Nor do those letters establish a reasonable relationship to the Legal Issues presented in the PFR/PHO challenging the 2004 Plan Update. [*Shaffer II, 04323*, 12/9/04 Order, at 7.]
- Pursuant to WAC 242-02-210(2)(d), the Board has consistently required Petitioners to allege the basis for Petitioner's standing in the PFR. [The City] did not do so. [The City was dismissed as Petitioner, but granted status as an intervener.] [*King County IV, 05331*, 8/8/05 Order, at 4.]
- [The City moved to dismiss most of the Petitioners for failing to establish APA standing.] The City's motion to dismiss borders on the frivolous. The participation of these eight petitioners, both orally and in writing, primarily through their attorney who repeatedly identified herself as such, but also on many occasions through the testimony of their principals, is thoroughly documented in the City's record. . . . The Board finds that the Petitioners, through counsel and through their principals, were diligent in presenting their points of view on the proposed ordinance during the course of its consideration. Their participation was directly related to the issues presented to the Board for review. Petitioners clearly have standing based on participation [RCW 36.70A.280(2)(b)]. The statute allows standing pursuant to RCW 34.05.530 (APA standing) as an alternative; the operative conjunction is "*or*" [.280(2)(d)]. Petitioners here, having met the GMA threshold, do not need to demonstrate individual injury or prejudice. [*Camwest II, 05341*, FDO, at 6.]

- Once GMA participation standing is challenged by a jurisdiction after review of the record Index, Petitioners have the duty to come forward with evidence to demonstrate their participation. [*Pilchuck VI, 06315c*, 5/4/06 Order, at 5-6.]
- The County indicated that several other Petitioners did participate, but only on one or several issues; these assertions were not rebutted. While there is merit to the County's position that other Petitioners should be limited to certain issues where they have standing, the Board declines to do so in this matter for the following practical reasons. These Petitioners appear to have coordinated their appeal efforts. In lieu of receiving perhaps seven different PFRs from these Petitioners, the Board received one. At least two Petitioners have standing on all remaining Legal Issues in the *Pilchuck* matter. All Petitioners involved in the *Pilchuck* matter are represented by the same counsel. Counsel will be coordinating Petitioners' case and submitting briefing, exhibits and oral argument on behalf of all Petitioners. The Board must trust Petitioners' counsel to keep in mind the degree of participation of the various Petitioners when preparing briefing and filing exhibits. Therefore, given a coordinated briefing effort, the Board will not attempt to orchestrate the participation by the remaining Petitioners with standing. [*Pilchuck VI, 06315c*, 5/4/06 Order, at 6.]
- [The City challenged Petitioners' standing, asserting that they could only challenge the rezone's effect on the parcels they owned. The City did not dispute that Petitioners had participated in the rezone review process. The City's theory is not the GMA test for standing. The Board concluded that Petitioners had established GMA participation standing on the area-wide rezone.] [*Abbey Road, 05348*, FDO, at 5-6.]
- [In its response brief, the County moved to dismiss a legal issue dealing with consistency between the County's Plan and the new odor, seismic and EPF regulations. Petitioners' did not offer or provide any evidence to support their participation claims on the issue of consistency. Petitioners did not establish participation standing and the Board dismissed the consistency challenge.] [*Sno-King, 06305*, FDO, at 17-19.]

- **State Agency Compliance**

- [The County adopted level of service (LOS) "objectives" for state highways.] The fact that the State has not yet adopted "standards" placed the County in a difficult situation, in view of the GMA mandate that the County adopt something by December of 2000. Relying upon the guidance of the [Puget Sound Regional Council] to adopt the [Washington State Department of Transportation] "objectives" in the County Plan was not unreasonable. In fact, for the County to have described as a standard that which the State described as an "objective" would have been more than misleading, it would have been flatly incorrect. [*McVittie VIII, 1317*, FDO, at 9.]
- [Petitioner argued that] there appears to be a serious disconnect between transportation plans and improvements done by the County and the State. [Therefore] the spirit of Goals 3 and 12 [must apply because they] would demand a better degree of coordination and consistency between the plans and actions of State and County government. Even the County laments the timing of State improvement, to say nothing of the timing of the adoption of State LOS standards. Nevertheless, the

Board must conclude that neither Goals 3 and 12, indeed **none** of the goals listed in RCW 36.70A.020 apply to the State because the preamble to that section unequivocally states the goals "shall be used *exclusively* for the purpose of guiding the development of comprehensive plans and development regulations." This is an unfortunate but inescapable conclusion, because to truly achieve managed growth there must be a better linkage between local efforts and state efforts. [*McVittie VIII, 1317*, FDO, at 10.]

- As provided in the statute [RCW 36.70A.070(6)(a)(iii)(C)], the purpose for including state LOS standards at the local level is for monitoring, evaluating and facilitating coordination between the state and local plans. Providing information to the state for its further analysis and assessment is the driver behind this section of the GMA. As discussed in [elsewhere], there is no financing or implementation "hook" for binding the state to undertake any given state road project, critical or otherwise. [*McVittie VIII, 1317*, FDO, at 14.]
- Unlike the situation for state highways and the state government, the GMA requires transportation concurrency for development at the local level. All local jurisdictions in the Central Puget Sound region, must "*prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan,* unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development." RCW 36.70A.070(6)(b). Petitioners' assumption that development (infill development or redevelopment) will occur immediately, and such development will proceed unchecked and without regard for transportation concurrency is erroneous. The GMA requires growth to be managed. [*Hensley IV* and *V, 1304c/2304*, 6/17/02 Order, at 20.]

• State Environmental Policy Act - SEPA

- The GMA establishes public participation requirements separate from the SEPA. [*Tracy, 2301*, FDO, at 11.]
- Unlike GMA, the SEPA statute does not require "enhanced public participation"; absent legislative direction, the Board will not create an enhanced citizen participation requirement for SEPA. [*Rural Residents, 3310*, 2/16/94 Order, at 12.]
- A party wishing to challenge a SEPA determination must meet a two-part test to establish standing: (1) The plaintiff's supposedly endangered interest must be arguably within the zone of interests protected by SEPA; (2) the plaintiff must allege an injury in fact; that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her specific and perceptible harm. The plaintiff who alleges a threatened injury rather than an existing injury must also show that the injury will be "immediate, concrete, and specific"; a conjectural or hypothetical injury will not confer standing. [*WSDF I, 4316*, 12/30/94 Order, at 6-7.]
- A four-part test for determining whether the exhaustion requirement bars a SEPA claim is: (1) whether administrative remedies were exhausted; (2) whether an adequate remedy was available; (3) whether adequate notice of the appeals procedure

was given; and (4) whether exhaustion would have been futile. [*WSDF I, 4316,* 12/30/94 Order, at 11.]

- The standard of review for determining whether a county's issuance of a DNS violated SEPA is the "clearly erroneous" standard. [*PNO, 4318,* FDO, at 17.]
- Challenges to either SEPA or GMA standing before the Board can be brought at any time by either a party or the Board on its own initiative. [*PNO, 4318,* FDO, at 19.]
- It will be difficult for any petitioner to demonstrate the "specific injury" required by the *Leavitt* [*Leavitt v. Jefferson County*, 74 Wn. App. 668, 875 P.2d 681 (1994)] and *Trepanier* [*Trepanier v. Everett*, 64 Wn. App. 380, 824 P.2d 524, review denied, 119 Wn.2d 1012 (1992)] courts when challenging the final environmental impact statement for a comprehensive plan. [*Bremerton, 5339c,* 6/5/95 Order, at 17.]
- Petitioners must describe their standing in the PFR. Petitioners can make the necessary showing by: (1) including a narrative in the PFR itself; (2) attaching a declaration or affidavit to the PFR; or (3) incorporating by reference exhibits from the record below. [*Pilchuck II, 5347c,* 8/17/95 Order, at 3.]
- The Board will apply the *Trepanier/Leavitt* test as follows: When the underlying action is the adoption of an "environmental protection" piece of legislation such as a critical areas ordinance, the Board will strictly apply the SEPA standing test. When the underlying action is the adoption of a piece of legislation that does not inherently or explicitly involve the direct protection of the environment, the Board will apply the SEPA test more loosely. Examples of such legislation are the capital facilities, transportation or housing elements of a comprehensive plan. [*Pilchuck II, 5347c,* 8/17/95 Order, at 6.]
- The Board does not have independent SEPA jurisdiction where it lacks subject matter jurisdiction over the underlying matter. [*Hayes, 5381,* 4/23/95 Order, at 7.]
- Although participation in the legislative process as an identified representative of a citizen group may establish GMA standing, obtaining GMA standing does not automatically bestow SEPA standing upon a petitioner. [*Buckles, 6322c,* FDO, at 23.]
- Issue 5 challenged whether the City had made any threshold determination as required by SEPA. The City did not adduce case law sufficient to support its position that standing should be denied where no threshold determination had been made. [*Morris, 7329c,* 1/9/98 Order, at 2.]
- [To challenge a jurisdiction's action under SEPA before this Board] [t]his Board has consistently followed the direction of the courts and has consistently required petitioners to exhaust a local jurisdiction's administrative appeal process before seeking SEPA review before this Board (citations omitted). [*Tulalip II, 9313,* 1/28/00 Order, at 5.]
- [Edgewood challenged Sumner's use of an addendum, instead of a supplemental environmental impact statement, to accompany the amendments. Edgewood specifically was concerned with air quality, noise and traffic. The Board reviewed the addendum provisions for air quality, noise and traffic and found that the generalized information included or referenced in the addendum did not substantially change the analysis of significant impacts and alternatives in the existing environmental impact statement. The Board concluded Sumner's use of the

addendum was not clearly erroneous and complied with the requirements of SEPA. [*Edgewood, 1318*, FDO, at 18-23.]

- [The Board's four-part test for determining whether the exhaustion [of administrative remedies] requirement bars a SEPA claim is reiterated and set forth in the case. [*MBA/Brink, 02310*, 10/21/01 Order, at 3-4.]
- The Board's Rules require a petitioner to allege and specify the type of standing being sought. . . .[Failure to allege SEPA standing is grounds for the Board to dismiss a SEPA claim.] [*MBA/Brink, 02310*, 10/21/01 Order, at 5.]
- [The Board's two-part SEPA standing test (based upon *Leavitt* and *Trepanier*) is reiterated and set forth in this case.] [*MBA/Brink, 02310*, 10/21/01 Order, at 5-6.]
- [In commenting on the strictness of the *Trepanier* test and subsequent difficulty in establishing SEPA standing, the Board noted in a footnote] The Board notes that a petitioner that challenges a non-project action that shifted land from one of the GMA's three fundamental and significant land use categories – Resource, Rural or Urban – to a more intense land use category, could arguably satisfy the strict application of *Trepanier* SEPA standing test. [*MBA/Brink, 02310*, 10/21/01 Order, footnote 6, at 5-6.]
- The Kent Station planned action ordinance neither adopts nor amends a subarea plan per chapter 36.70A RCW. Therefore, the Board lacks subject matter jurisdiction to review the planned action ordinance. [*Kent CARES, 02315*, 11/27/02 Order, at 6.]
- [The language of RCW 43.21C.031(2)(a)] suggests that planned action ordinances are more akin to project actions that to the broader legislative actions involved in adopting or amending Comprehensive Plans, subarea plans or development regulations. It is well settled that the Boards do not have jurisdiction to review land use project permit decisions. [*Kent CARES, 02315*, 11/27/02 Order, at 7.]
- Petitioner failed to allege SEPA standing in the PFR, reference any relevant exhibits or even address this issue in response to the motion to dismiss. Petitioner's SEPA claims are dismissed. [*Hensley VI, 03309c*, 5/19/03 Order, at 11.]
- The Board concludes that the threatened injuries suggested by [Petitioners] are conjectural and hypothetical at this point in the County's process. If a UGA is expanded, or if a school seeks a conditional use permit, additional site specific environmental analysis will be required; at that point Petitioners may have immediate, concrete and specific injuries. However, that is not the case now. [*Hensley VI, 03309c*, 5/19/03 Order, at 14.]
- Allowing potential intensification of urban uses within an urban area is within the County's discretion. [Petitioner] has identified threatened injuries, but has not established that any injury stemming from the redesignation or rezone has caused any immediate, concrete or specific injury – such injuries are conjectural and hypothetical. [*Hensley VI, 03309c*, 5/19/03 Order, at 15.]
- Petitioners have failed to assert an immediate, concrete and specific injury. The potential increased surface, subsequent potential runoff, and potential flooding and erosion damages noted by Petitioners are threatened future injuries. They are speculative. [T]hese speculative injuries and potential impacts can either be addressed, or mitigated as actual developments are proposed, or the [jurisdiction] can deny the proposals. [SEPA claims were dismissed for lack of SEPA standing.] [*Citizens, 03313*, 8/15/03 Order, at 11.]

- Where there is an allegation that SEPA has been ignored and no environmental review has been done to accompany the GMA action, the Board has, after review of the documents provided, denied the motion to dismiss [for lack of SEPA standing], but not reached the SEPA standing question. [Discussing *Morris, 7329c*.] [*Bremerton II, 04309c*, 4/22/04 Order, at 5.]
- [Petitioner had notice and the opportunity to appeal the Respondent's SEPA decision, but failed to exhaust the administrative remedy available.] [*Bremerton II, 04309c*, 4/22/04 Order, at 6.]
- [Petitioner failed to allege SEPA standing in the PFR.] [*Bremerton II, 04309c*, 4/22/04 Order, at 6-7.]
- [In the Board's *MBA/Brink, 02310*, 10/21/02 Order, footnote 6, at 5, the Board indicated, that in the situations described in the footnote, the Board intends to take a fresh look at its SEPA standing analysis and application of the *Trepanier* test.] It does not appear, in light of the arguments, exhibits and information provided, that [the challenged Plan amendment] involves a shift in designation from one of the fundamental and significant land use categories discussed in the *MBA/Brink* footnote. [Therefore, the Board did not address or apply the *Trepanier* SEPA standing test.] [*Bremerton II, 04309c*, 4/22/04 Order, at 7-8.]
- [Petitioner challenged the low density designation of an area containing wetlands, but the site of a proposed roadway expansion – the Bothell Connector. Petitioner sought a higher density and more intense designation for the area.] It is obvious to the Board that Petitioner would have preferred a different designation; and Petitioner had the opportunity to persuade the Council to do so. However, the City chose to do otherwise; and as the Board discussed, supra, the R-40,000 designation in the Fitzgerald Subarea was not clearly erroneous and complied with the GMA. The fact that the road may, or even will, go through a critical area and connect two Regional Activity Centers, does no negate the validity of the R-40,000 designation, especially between two higher intensity areas. The Board acknowledges that such a project, if it does materialize, will be subject to the provisions of [SEPA]. Any probable adverse environmental impacts would be identified and mitigated through that process. [*Fuhriman II, 05325c*, FDO, at 58.]
- Both Petitioners and Respondent agree – a party wishing to challenge a SEPA determination must meet a two-part test. [*Citing* the Board's two-part SEPA standing test, based upon *Trepanier v. Everett*, 64 Wn. App. 380, 382-383 (1992).] [*Hood Canal, 06312c*, 5/8/06 Order, at 7.]
- Economic interests are not within the "zone of interests" protected by SEPA. *Harris v. Pierce County*, 84 WN. App. 222, 231,929 P.2d 1111 (1996). Purely economic interests include "the protection of individual property rights, property values, property taxes [and] restrictions on the use of property." *Snohomish County Property rights Alliance v. Snohomish County*, 76 Wn. App. 44, 52, 882 P.2d 807 (1994). Merely being a "resident, property owner or taxpayer" or a party "active in seeking full public participation in the planning procedure" is insufficient for SEPA standing. *Id*. [*Hood Canal, 06312c*, 5/8/06 Order, at 8.]
- [Actions by a jurisdiction that increase protection to the environment (*e.g.* calculating buffer widths based upon habitat function, increases to base wetland buffers, and elimination of administrative exemptions), do not give rise to significant adverse

environmental impacts that necessitate additional environmental review.] [*Hood Canal, 06312c*, 5/8/06 Order, at 11.]

- **Stipulation**

- [Pursuant to a stipulation of the parties the Board remanded the challenged ordinance and entered a finding of noncompliance. Due to the unusual scope and complexity of the issues involved, the Board gave the County 270 days to comply, from the date the Order issued.] (*Tacoma III, 03302*, 7/23/03 Order, at 2.]
- The Board agrees with the County. Petitioners have not alleged that the Plan Update includes actions that are beyond the scope of the alternatives available for comment in the EIS, thereby precipitating an additional opportunity for public comment. RCW 36.70A.035(2)(b)(ii). Nor has it been argued or suggested that the County was unaware of the potential impacts that a reduction in state funding for approximately 10 projects in the County's road network might have. The Board must assume that the County decision-makers were aware of these potential impacts, but were not convinced that they merited a change or alteration in the pending Plan Update. By failing to identify any mandatory change in the Plan Update necessitated by this new information, Petitioners have simply **failed to carry their burden of proof**. The County's action was within its discretion and **not clearly erroneous**. [*Pilchuck VI, 06315c*, FDO, at 70-71.]

- **Stormwater – *See:* Land Use Element and Capital Facilities Element**

- A jurisdiction must provide in its land use element an indication that it has reviewed drainage, flooding and stormwater run-off in the area and nearby jurisdictions. [*Hensley III, 6331*, FDO, at 7.]

- **Subarea Plans**

- Subarea plans also are planning policy documents under the GMA. [*Happy Valley, 3308c*, 10/25/93 Order, at 18.]
- A pre-existing neighborhood or community plan does not automatically become a part of the GMA required comprehensive plan. If desired, the jurisdiction must explicitly make it so by subsequent legislative action. [*Northgate, 3309*, 11/8/93 Order, at 17.]
- Pre-GMA sub-area plans need not be adopted as GMA enactments in order to continue to have useful application in local land use decision-making. However, such pre-GMA sub-area plans may not be used to satisfy a GMA requirement unless they are specifically incorporated by reference and adopted for that purpose pursuant to the requirements of the Act; nor may they supersede any specific policy or regulatory directive contained in a GMA enactment. [*Sky Valley, 5368c*, FDO, at 55.]
- The requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are

desirable in areas where service capacity already exists, i.e., in urban areas – while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." [*Benaroya I, 5372c,* FDO, at 21.]

- The Act does not permit a "neighborhood veto", whether *de jure* or *de facto*, and the policies challenged cannot achieve such an outcome. The ultimate decision-makers in land use matters under the GMA are the elected officials of cities and counties, not neighborhood activists or neighborhood organizations. [*Benaroya I, 5372c,* FDO, at 22.]
- A city may choose to undertake optional neighborhood planning, pursuant to RCW 36.70A.080; however, those neighborhood plans must comply with the Plan and the requirements of the GMA. Conversely, a city cannot "pick and choose" – to adopt some and not other neighborhood plans under the authority of the GMA. [*Benaroya I, 5372c,* FDO, at 22.]
- While "subarea plan" is not defined in the Act, it appears as an "optional" element of comprehensive plans ate RCW 36.70A.080. [*WSDF III, 5373,* FDO, at 22.]
- General discussion of prior holdings and issues with subarea plans. [*WSDF III, 5373,* FDO, at 22-28.]
- By whatever name (e.g., neighborhood plan, community plan, business district plan, specific plan, master plan, etc.) a land use policy plan that is adopted after the effective date of the GMA and purports to guide land use decision-making in a portion of a city or a county, is a subarea plan within the meaning of RCW 36.70A.080. While a city or a county has discretion whether or not to adopt such optional enactment, once it does so, the subarea plan is subject to the goals and requirements of the Act and must be consistent with the comprehensive plan. [*WSDF III, 5373,* FDO, at 25.]
- The discretion conferred upon cities and counties by RCW 36.70A.080(2) is the discretion to undertake new detailed subarea land use policy plans. If they do so, such plans must be adopted as part of the comprehensive plan; the GMA has removed the discretion of cities and counties to undertake new localized land use policy exercises disconnected from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan. [*WSDF III, 5373,* FDO, at 26.]
- Since the neighborhood plans must become a part of the Plan, all the Act's other requirements apply to neighborhood plans. [*WSDF III, 5373,* FDO, at 27.]
- If GMA stands for nothing else, it stands for the proposition that the citizens of a neighborhood are also citizens of a larger community, be it a city and/or county, a region and indeed, the state itself. To allow the City to proceed with a neighborhood planning process that is segmented and insulated from the goals and requirements of the Act, and the policy documents that the Act requires of cities and counties, would ignore this basic axiom of comprehensive planning. [*WSDF III, 5373,* FDO, at 28.]
- Any provision or policy of a neighborhood plan that purports to guide land use decision-making (including subarea or neighborhood plans including land use, capital facilities and transportation planning) must be incorporated into the jurisdiction's comprehensive plan to be implemented pursuant to Chapter 36.70A RCW. Conversely, provisions or policies of a neighborhood plan or program that will not be used to guide land use decision-making, and therefore will not be implemented

pursuant to Chapter 36.70A RCW, need not be incorporated into a jurisdiction's comprehensive plan. [*WSDF IV, 6333,* FDO, at 11.]

- The legislative body must ultimately decide and balance: the competing interests of different neighborhoods in the City, the interests of the City as a whole, and the interests of the City as a significant entity in the region and the state. [*WSDF IV, 6333,* FDO, at 12.]
- The jurisdiction's legislative body has the ultimate responsibility to determine, consistent with Chapter 36.60A RCW, what provisions of neighborhood plans will be incorporated into a comprehensive plan, to be implemented and thereby guide land use decision-making. [*WSDF IV, 6333,* FDO, at 12.]
- [A plan, or subarea plan, policy that seeks to protect and maintain the large lot, low density, residential character of a city without encouraging urban growth at appropriate urban densities or reducing the conversion of undeveloped land to low density development is inconsistent with, thwarts, and does not comply with Goals 1 and 2 (RCW 36.70A.020(1) and (2).] [*LMI/Chevron, 8312,* FDO, at 28.]
- [Designating localized special planning areas [Subarea Plan areas] does not constitute discriminatory action.] [*LMI/Chevron, 8312,* FDO, at 31.]
- Once a jurisdiction decides to adopt a subarea for purposes of guiding land use decision-making, the subarea plan must be adopted as part of the comprehensive plan. Subarea plans are subject to the goals and requirements of the Act and must be consistent with the jurisdiction's comprehensive plan. [*LMI/Chevron, 8312,* FDO, at 51.]
- Subarea plan refinements must be consistent with the jurisdiction's comprehensive plan and comply with the goals and requirements of the Act. Where the subarea plan modifies only portions of a jurisdiction's comprehensive plan for the subarea, the unaffected provisions of the comprehensive plan continue to apply and govern in the subarea. [*LMI/Chevron, 8312,* FDO, at 51.]
- When a subarea plan refines one of the mandatory elements of the jurisdiction's comprehensive plan the requirements set forth in RCW 36.70A.070 apply to that subarea plan. [*LMI/Chevron, 8312,* FDO, at 51.]
- The County's decision to attempt to comply with the FDO and address the land use of the [property] in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy. The time and effort expended on the present process illustrate the difficulty and complexity of developing an optional Lake Stevens UGA subarea plan. The Board does not want to dissuade the County from subarea planning and notes that neither the substance or the Lake Stevens subarea plan nor the appropriateness of that public process is presently before the Board. Unfortunately, the action needed for the County to address the Board's finding that the notice was defective for the County's amendment to 33.7 acres in Ordinance No. 96-074 had been needlessly enmeshed in the subarea planning process. The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan. Further, the County's Lake Stevens UGA subarea plan process had interjected broader GMA and subarea planning issues into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of

Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance No. 96-074. [The Board directed the County to repeal those portions of Ordinance 96-074 that were invalidated due to defective notice.] [*Kelly, 7312c*, 3/31/99 Order, at 6-7.]

- General Discussion of the relationship between the neighborhood plans adopted by the City; and the unadopted neighborhood plans that represent the wishes of the citizens of the neighborhoods. [*Montlake, 9302c*, FDO, at 6-8.]
- The City Council has exercised its discretion and adopted (portions of the neighborhood plan) which is distinct and separate from the unadopted (neighborhood plan). The City is also clear that it recognizes . . . that the unadopted (neighborhood plan) represents "the *wishes* of the citizens of the University Community," and that the (unadopted neighborhood plan) provides the basis for "a *desired* work program . . . for the neighborhood." However, the City has explicitly chosen **not** to include the neighborhood's . . . planning document, including the work program . . ., as part of the City-wide Comprehensive Plan. It is the City-wide Comprehensive Plan that the City must use to guide land use decision-making in the University Community Plan area. [*Montlake, 9302c*, FDO, at 8.]
- Neither RCW 36.70A.130(1) nor *WSDF III* stand for the proposition that subarea plans must contain, in every case, each of the mandatory comprehensive plan elements set out in RCW 36.70A.070 (footnote pertaining to *LMI* omitted). [*Tulalip II, 9313*, 1/28/00 Order, at 11.]
- [A] challenge to a 1999 adoption of a subarea plan is an action that, if timely filed, is subject to the GMA appeal procedures. [However, adoption of a subarea plan, that does not alter a land use designation originally adopted in a prior GMA plan, does not open the original designation to challenge. The challenge to the original designation is untimely.] [*MacAngus, 9317*, FDO, at 7.]
- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317*, FDO, at 7-8.]
- The adoption of [a subarea plan] is a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to [an unchanged plan designation.] [A jurisdiction's decision to maintain an existing designation does not reopen the appeal period of that unchanged designation.] [*MacAngus, 9317*, FDO, at 8.]
- In adopting the Tulalip Subarea Plan, the County did not change, re-adopt, or re-affirm the [agricultural] designation; it merely maintained the existing designation. Additionally, the County's action was not taken in response to a statutory requirement, such as RCW 36.70A.215, which may require the County to change, re-adopt, or re-affirm its comprehensive plan or development regulations. [*MacAngus, 9317*, FDO, at 8-9.]

- [Designation of LAMIRDs in subarea plans must comply with the requirements of RCW 36.70A.070(5)(d); requirements for their designation are not discretionary.] [*Tacoma II, 9323c,* FDO, at 9.]
- The Board has previously determined that it is within a city's sound discretion to adopt as part of its comprehensive plan optional elements such as sub-area plans. [It is correct] that neither the Act, nor the [City's Plan itself, contain standards, or even generalized parameters, for the boundaries of an urban village or neighborhood plan. The Board holds that decisions about the geographic extent or shape of such sub-areas, absent explicit direction elsewhere in the plan, are also within the sound discretion of the City. [*Radabaugh, 0302,* FDO, at 5.]
- When a local government adopts an optional element, such as a neighborhood plan, it must be consistent with both the GMA and the provisions of the City-wide comprehensive plan. [Subarea Plan policies] may not over-ride, amend or "modify" such city-wide provisions [or policies.] [*Radabaugh, 0302,* FDO, at 7.]
- The Board understands that the City wishes to provide non-urban village citizens with some assurances that capital facility investments can be made outside of designated urban village boundaries. However, such a policy choice would have implications for existing (city-wide) comprehensive plan policies. For this and other reasons, not the least of which is the public notice requirements of RCW 36.70A.035, the avenue to pursue that end would be in a proposed amendment to the adopted city-wide policy rather than incremental, ad-hoc amendment to thirty-seven individual neighborhood plans. [*Radabaugh, 0302,* FDO, at 10.]
- The initial adoption of a subarea plan is explicitly excepted from [the] annual concurrent review process RCW 36.70A.130(2)(a)(i). [*Kitsap Citizens, 0319c,* FDO, at 12.]
- [The County adopted a subarea plan that included a residential component in an area originally envisioned as an industrial reserve.] The Board recognizes that both the City of Bremerton and Kitsap County have placed a high priority on identifying land for future economic development. [The record developed during the County's decision-making process [on the subarea plan] indicates [the County has "shown its work" – citing various documents from the record]. [*Kitsap Citizens, 0319c,* FDO, at 14-15.]
- [Generally, in sizing its UGAs pursuant to RCW 36.70A.110(3) to accommodate the residential population, a county should look first to existing city limits, then its existing UGA before considering expansion of the UGA. The record should document this process – "show its work".] [*Kitsap Citizens, 0319c,* FDO, at 15.]
- Land within an UGA, [including subarea planning areas], reflects the jurisdiction's commitment and assurance that it will develop with urban uses, at urban densities and intensities, and it will ultimately be provided with urban facilities and services. [*MBA/Brink, 02310,* FDO, at 11.]
- The duty of a County as a local government to accommodate growth within its UGA is the same as the duty of a City to accommodate growth within its city limits (Footnotes omitted). Therefore, any opportunity to *perpetuate* an "historic low-density residential" development pattern, [in the subarea], ended in 1994 when the County included the area within the UGA. Consequently, [the subarea plan and

implementing regulations] must provide for appropriate urban densities. [*MBA/Brink, 02310*, FDO, at 11-12.]

- There is no GMA requirement that subarea plans contain *all* the mandatory elements required by RCW 36.70A.070. Thus, the [subarea plan] is not required to contain a housing element since the goals, objectives, and policies of the Housing Element in the County's Comprehensive Plan apply and govern in the [subarea plan] area. [*MBA/Brink, 02310*, FDO, at 29.]
- The Kent Station planned action ordinance neither adopts nor amends a subarea plan per chapter 36.70A RCW. Therefore, the Board lacks subject matter jurisdiction to review the planned action ordinance. [*Kent CARES, 02315*, 11/27/02 Order, at 6.]
- Subarea plans are neither defined nor required by the GMA; Subarea plans are an optional element that a jurisdiction may include in its GMA Plan. RCW 36.70A.080(2). All that can be inferred from the statute, and prior Board cases, is that subarea plans are, as the pre-fix "sub" implies, subsets of the comprehensive plan of a jurisdiction. Additionally, subarea plans typically augment and amplify policies contained in the jurisdiction-side comprehensive plan. [*Laurelhurst, 03308*, FDO, at 8.]
- GMA comprehensive plans and subarea plans guide land use decision-making by providing policy guidance and direction to development regulations that, in turn, must be consistent with and implement the plan. These development regulations, in turn, directly control the use of land and govern over proposal review and approval and the issuance of permits. [*Laurelhurst, 03308*, FDO, at 9.]
- [T]he University of Washington Campus Master Plan is not a subarea plan within the meaning of RCW 36.70A.080. Rather, [it] is part of a permit application process resulting from a development regulation. [*Laurelhurst, 03308*, FDO, at 11.]
- RCW 36.70A.080(2) *allows* subarea planning as an option, so long as the subarea plan is consistent with the comprehensive plan. If there is no "subarea" planning, the provisions of the County's GPP and implementing regulations apply and govern development throughout the County. [*Windsong, 03307*, FDO, at 11.]
- The Board rejects Petitioners' theory that *county-wide* land capacity analysis is required in these instances [UGA expansions in the context of subarea plan adoptions]. However, a *county-wide* land capacity analysis is required for periodic reviews. The next periodic review, per RCW 36.70A.130, is required for Kitsap County by December 1, 2004. The Board reads RCW 36.70A.130 to require that on or before December 1, 2004 (.130(4)(a)), Kitsap County's planning cycle must be brought into the GMA sequence, using OFM's most recent ten-year population forecast (.130(1)(a)), evaluating its UGA boundaries and densities (.130(3) and .215). [*Bremerton II, 04309c*, 9/16/04 Order, at 8.]
- [Petitioner's] concern with the delegation of ARLs designation or de-designation to a community planning group is unfounded. As explained by the County, any subarea plans must be consistent with the County-wide Plan and any recommendations of a land use advisory committee for a subarea plan are advisory only. The ultimate decisions are made by the County Council, representing the views of the entire County. [*Bonney Lake, 05316c*, FDO, at 19.]
- The City's characterization of the Transportation Master Plan (TMP) as a "functional plan" and not a GMA plan, development regulation or amendment thereto, is a

misnomer. The TMP "functions" as a supplement or amendment or amendment to the City's Transportation Element. The City acknowledges that the TMP basically "swallows" the City's Transportation Element when the City notes that Chapter 2 of the TMP "reproduces the 2004 Transportation Element in full." [*Kap, 06302*, 4/12/06 Order, at 2-3.]

- The City's TMP cannot exist in a vacuum; it is part and parcel to the City's system for accommodating and managing growth. Managing growth in the Central Puget Sound Region is done exclusively under Chapter 36.70A RCW. The City's TMP is precisely the type of land use planning that the GMA was created to coordinate and manage. [Kap, 06302, 4/12/06 Order, at 4.]
- Kitsap County amended its County-wide Planning Policies to include a new OFM population target through 2025, allocating population to all ten UGAs in the County. The next step under the statute [RCW 36.70A.130(3)(a)] should be the ten-year UGA and density review, followed by comprehensive plan amendments. Here, Kitsap County has not yet completed the GMA process of ten-year UGA and density review [.130(a)] nor amended its comprehensive plan to accommodate all the 20-year growth projection [.130(3)(b)]. Nonetheless, in the Kingston Subarea Plan the County used a portion of the 2025 growth allocation to justify the expanded subarea UGA. As Petitioners point out, expanding the subarea UGA in advance of the required countywide assessment undermines the GMA purpose of absorbing growth in existing urban areas. [The Board found the County's inversion of this process and piecemeal approach noncompliant with the GMA.] [*KCRP VI, 06307*, FDO, at 11-12.]
- [In the Kingston Subarea Plan, the County identified 46 reasonable measures, 35 which were incorporated into the Subarea Plan. Many of the adopted measures were a reiteration of existing measures and others were specifically tied to and contingent upon the expansion of the UGA.] The GMA specifically requires that a county adopt "reasonable measures, *other than adjusting urban growth areas*, that will be taken to comply with the requirements of this chapter." [R]equiring urban density and other measures in the expanded portion of the UGA is not a measure reasonably likely to improve the infill of presently-underutilized urban areas or reduce pressure for permitting sprawl development in rural areas in the future. [*KCRP VI, 06307*, FDO, at 19-20.]
- The Board concurs with Petitioners that the Kingston Sub-Area Plan . . . is a recipe for the kind of leap-frog development that the Legislature hoped to forestall when it enacted the GMA. While deferring the capital facilities needed to support buildout of the existing UGA at urban densities, Kitsap County has expanded the UGA to incorporate a large subdivision with an eager proponent. Undoubtedly the . . . proposal has many commendable features for an expanded urban area, but without infill in the *existing* UGA, sprawl is perpetuated, contrary to Goal (2), and the provision of urban services becomes inefficient and more costly, contrary to Goals (1) and (12). [*KCRP VI, 06307*, FDO, at 28.]

- **Subject Matter Jurisdiction - SMJ**

- The Board has jurisdiction to determine whether a development regulation adopted pursuant to RCW 36.70A.060 is in compliance with the GMA. [*Tracy, 2301,* FDO, at 8.]
- The GMA authorizes the Board to determine whether an enactment by a local jurisdiction is in compliance with the requirements of the act. In so doing, the Board will necessarily consider whether a local jurisdiction planning under the GMA has exceeded the requirements of that act. The Board will do this by examining whatever action was taken by the local jurisdiction and comparing it to the purposes, requirements and goals of the GMA as a whole. If the local action is consistent with the requirements of the GMA, this Board will find that the local government was in compliance with the GMA. Conversely, inconsistent actions will be remanded. [*Tracy, 2301,* FDO, at 21.]
- If a local jurisdiction indicates that the challenged adopted ordinance was enacted pursuant to the requirements of the GMA, this Board will review the entire document. Only if a local jurisdiction clearly specifies that certain provisions of an adopted ordinance were adopted under the authority of another act or the jurisdiction's general police powers, will this Board not accept jurisdiction to review that portion of the enactment. If it is clear that a local jurisdiction has split its ordinance into GMA and non-GMA provisions, a potential challenger will have to file more than one appeal: one with a growth planning hearings board and the other with the local superior court. This Board has jurisdiction only over matters specified in RCW 36.70A.280. [*Tracy, 2301,* FDO, at 21.]
- When a petition for review alleges that a local jurisdiction failed to comply with a statute other than one named in RCW 36.70A.280(1), the Board does not have jurisdiction to make a decision on the issue of compliance. [*Gutschmidt, 2306,* FDO, at 8.]
- The Board does not have jurisdiction to determine federal and state constitutional issues arising from a county or city's implementation of the Act. [*Gutschmidt, 2306,* FDO, at 10.]
- Although the Board may consider the common law, other statutes and processes in determining GMA claims, it does not have jurisdiction to decide whether these "other statutes" and the common law, which are not specifically referenced in RCW 36.70A.280(1), have been violated. [*Twin Falls, 3303c,* 10/6/93 Order, at 5.]
- The Board's jurisdiction does not apply to all planning documents enacted by a local government or a state agency. Instead, the Board's jurisdiction is limited to planning documents, such as comprehensive plans and development regulations, that were adopted in an effort to comply with the requirements of the GMA. The Board's subject matter jurisdiction is strictly limited to the matters specified in RCW 36.70A,210(6) and RCW 36.70A.280(1). This conclusion is bolstered by the legislature's use of the word "only" in RCW 36.70A.210(1) and the fact that RCW 36.70A.300(1) indicates that the Board's final decision ". . . shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, or chapter 43.21C RCW as it relates to plans,

regulations, and amendments thereto, adopted under RCW 36.70A.040. . . ." [*Happy Valley, 3308c,* 10/25/93 Order, at 13-14.]

- The Board does not have the authority to determine equitable issues. [*Tacoma, 4301,* 3/4/94 Order, at 3.]
- Challenges to non-GMA actions taken after GMA deadlines have passed, and alleging failure to comply with the requirements of the Act, must be brought before a superior court, unless the legislature subsequently expands the Board's jurisdictional authority. [*KCRP, 4305,* 7/27/94 Order, at 14.]
- As a matter of law, any jurisdiction planning under the Act and within the Board's jurisdiction must comply with the current requirements of the Act and this Board's decisions, unless the latter have been reversed upon judicial review. [*FOTL II, 4309,* 11/8/94 Order, at 8.]
- Unless the legislature amends either the Board's jurisdictional statute or the BRB statute or both, the Board will not review decisions of any boundary review board. [*Sumner, 4313,* 12/14/94 Order, at 6.]
- The CPSGMHB's jurisdiction is limited to the four-county Central Puget Sound region by RCW 36.70A.250. Thus, the precedential impact of this Board's decisions is limited to King, Pierce, Snohomish and Kitsap counties. This is consistent with the regional diversity that is one of the hallmarks of the Growth Management Act. [*Kitsap/OFM, 4314,* FDO, at 5.]
- Although respondent city did not specifically raise a subject matter jurisdiction defense in this case, the Board is bound by its own precedent. The Board cannot determine in one case (i.e., *Bainbridge Island*) that it does not have jurisdiction over challenges to Chapter 82.02 RCW, and then ignore that decision in another case where the jurisdictional defense was not specifically raised. [*Slatten, 4328,* 2/24/95 Order, at 2.]
- The Board does not have jurisdiction to review the approval of a sewer district comprehensive plan amendment by a county legislative authority acting pursuant to RCW 56.02.060 and 56.08.020. [*Hensley I, 4329,* 2/24/95 Order, at 3.]
- Although the Board does not have jurisdiction to determine whether RCW 35A.14.330 has been violated, in determining whether RCW 36.70A.110 applies, the Board is free to examine other statutes besides those codified in Chapter 36.70A RCW. [*Bremerton, 5339c,* 6/5/96 Order, at 4.]
- The Board does not have jurisdiction over annexation issues in Title 35 RCW. [*Bremerton, 5339c,* 11/6/95 Order, at 2.]
- The Board does not have jurisdiction to determine whether the vested rights doctrine applies or has been violated. [*Bremerton, 5339c,* 11/6/95 Order, at 2.]
- All jurisdictions in the Central Puget Sound region, regardless of size or local circumstances, are obliged to meet the procedural and substantive requirements of the GMA. [*CCSV, 5344,* 6/14/95 Order, at 5.]
- The Board has jurisdiction over both adopted GMA enactments <u>and</u> failures to adopt specifically mandated GMA enactments. [*CCSV, 5344,* 6/14/95 Order, at 6.]
- The Board does not have jurisdiction over Title 35 as it relates to annexation. [*Anderson Creek, 5353c,* 10/18/95 Order, at 7.]
- The Board does not have jurisdiction over legal issues regarding whether a municipality sold surplus property. [*Anderson Creek, 5353c,* 10/18/95 Order, at 9.]

- The Board does not have jurisdiction over Chapter 82.02 RCW. [*Anderson Creek, 5353c,* 10/18/95 Order, at 10.]
- The Board does not have jurisdiction over whether the County complied the requirements of Chapter 36.32 RCW [County Commissioners] prior to filing its petition for review. [*Anderson Creek, 5353c,* 10/18/95 Order, at 10.]
- General discussion and recap of Board's subject matter jurisdiction. [*South Bellevue, 5355,* 11/30/95 Order, at 3-6.]
- The Board does not have jurisdiction to review petitions for review that allege that a state agency, county or city action fails to comply with Chapter 82.02, or other chapters in the RCW besides Chapters 36.70A or 43.21C RCW. [*South Bellevue, 5355,* 11/30/95 Order, at 8.]
- The Board does not have jurisdiction over the common law vested rights doctrine. [*South Bellevue, 5355,* 11/30/95 Order, at 10.]
- General discussion and recap of the quasi-judicial nature of the Board, jurisdictional issues and the APA. [*Sky Valley, 5368c,* FDO, at 6-20.]
- Counties are required to be guided by the goals set forth at RCW 36.70A.020, and that the requirement has both a procedural and a substantive component. RCW 36.70A.280 gives the Board jurisdiction over that requirement; RCW 36.70A.300 directs the Board to determine whether compliance with that requirement has occurred. [*Sky Valley, 5368c,* FDO, at 124.]
- The question of emergency ordinances, since repealed and replaced by interim ordinances, are moot; the Board will not hear and decide moot issue. [*Hayes, 5381,* 4/23/96 Order, at 4.]
- The Board does not have authority to review an action of a county acting pursuant to RCW 36.94.140 – relating to funding for new or expanded treatment plants. [*Hayes, 5381,* 4/23/96 Order, at 6.]
- The Board does not have independent SEPA jurisdiction where it lacks subject matter jurisdiction over the underlying matter. [*Hayes, 5381,* 4/23/96 Order, at 7.]
- The Board has jurisdiction to determine a challenged local government action's compliance with the goals *and* requirements of the Act. [*Cole, 6309c,* FDO, at 11-13.]
- The Board is authorized to review a jurisdiction's legislative action that is alleged not to comply with the Act. The Board will not review quasi-judicial actions of local jurisdictions. Simply because a person has requested that a designation be changed does not mean that the resulting action taken by the legislative body was quasi-judicial. [*Buckles, 6322c,* FDO, at 24.]
- Nowhere in the GMA is "emergency" defined, nor is there a requirement for a jurisdiction to define emergency in its plan. More directly on point, RCW 36.70A.130(2)(b) does not address the procedures for declaring an emergency, nor confer jurisdiction upon the Board to review such a declaration. [*Wallock I, 6325,* FDO, at 10.]
- If a County adopts annexation policies as part of its CPPs or if annexation policies are included in an adopted comprehensive plan, the Board would have jurisdiction to review such annexation policies. [*Lake Forest Park, 6336,* 2/14/97 Order, at 4.]

- The Board does not have subject matter jurisdiction to review interim annexation policies that were not adopted to comply with, or in furtherance of, a requirement of Chapter 36.70A RCW. [*Lake Forest Park, 6336,* 2/14/97 Order, at 5.]
- The Board is without authority to rule on issues not properly before it. [*Rabie, 8305c,* 4/24/98 Order, at 3.]
- Although the purchase of [certain parcels or property] was linked to subsequent Plan and development regulation amendments, the purchase itself is not a GMA action and thus not subject to RCW 36.70A.140. (*See also* Footnote 4, [T]he Board recognizes that local government must undertake many steps, internal communications and activities prior to the development of a proposed amendment to a GMA plan or regulation, at least some of which actions are not GMA actions. The Board has not previously articulated, and does not here articulate, a standard for when such local government steps, communications and activities arise to the status of a "proposed GMA amendment" that would be subject to the requirements of RCW 36.70A.140 or other provisions of the Act. [*Green Valley, 8308c,* FDO, at 10.]
- Just as the Board lacks authority to consider and rule on the GMA propriety of the process or rationale for the County's purchasing decision, so, too, does the Board lack authority to assign any weight to the historical factors that ostensibly led the County to adopt the agricultural land amendments that it did. [*Green Valley, 8308c,* FDO, at 10.]
- It is not the Board's role to evaluate the advisability of different policy choices that a local government may make. [*Green Valley, 8308c,* FDO, at 10.]
- The Board does not have jurisdiction to determine compliance with RCW 89.08.010 and to determine the [jurisdiction's] ability to deed-restrict itself. [*Green Valley, 8308c,* FDO, at 12.]
- A challenge to a vote of the citizenry is beyond the jurisdiction of the Board. The Board' authority is limited to legislative actions of the legislative body of the local government. [*Style, 8309,* 2/13/98 Order, at 1.]
- The Board does not have subject matter jurisdiction over claims arising under Chapter 47.80 RCW. [*Burien, 8310,* 4/23/98 Order, at 1.]
- The negotiation and execution of an Interlocal Agreement, that is a non-GMA action, is not subject to the public participation requirements of the GMA over which the Board has jurisdiction. [*Burien, 8310,* FDO, at 9.]
- RCW 36.70A.280(1) does not confer jurisdiction upon the Board to review a land use project permit decision, including but not limited to, conditional use permits. This Board has no authority or jurisdiction to review land use project permit decisions of a local government. [*Hanson, 8315c,* 9/28/98 Order, at 5.]
- [The Board may refer to the Civil Rules for guidance, but it is not bound by them.] The Board is not a court; its jurisdiction and authority is prescribed by the Legislature. The explicit statutory filing period for a petition is sixty days yet [petitioner] asks that the Board in effect, extend it. . . . To allow the addition of [or substitution of] a new petitioner at this time and allow this change to relate back to [the original filing date of the PFR], would substantially expand the jurisdictional limits the Legislature established for the Boards. This the Board cannot do. [*Montlake, 9302c,* 4/23/99 Order, at 6.]

- Nowhere in RCW 36.70A.280 is the Board explicitly or implicitly delegated the authority to determine compliance with Chapter 81.112 RCW or with the law of agency. Tukwila has not identified any authority establishing Board jurisdiction over these matters. [*Sound Transit, 9303,* 6/18/99 Order, at 2]
- The action of approving a docket of proposed amendments and revisions to a GMA Plan does not adopt or amend the Plan or development regulations. Therefore, pursuant to RCW 36.70A.280(2), the Board does not have jurisdiction to review AFT's PFR. [*AFT, 9302,* 6/18/99 Order, at 4.]
- The Board will not address Petitioner's contention that the Board's participation standing requirements violate constitutional rights of due process and equal protection. The Board has no jurisdiction to decide constitutional issues. [*NW Golf, 9314,* 9/29/99 Order, at 3.]
- Respondent argued that the Board [nor a court] could not grant the "ultimate relief" [free from the impacts of development] sought by Petitioners therefore the case was moot. The Board stated, whatever the "ultimate relief" sought by [Petitioners], the relief sought before this Board is a finding of non-compliance and a determination of invalidity. [*Bear Creek, 5308c*, 4/4/00 Order, at 3.]
- Authority to determine . . . vested rights is beyond the jurisdiction of this Board; resolution of such a question must be made in the judicial forum. [*Bear Creek, 5308c*, 4/4/00 Order, at 3.]
- [RCW 36.70A.290(2)] is unambiguous; if a petition is not filed within sixty days after publication, the Board is without authority to review the petition. [*Gain, 9319*, 1/28/00 Order, at 3.]
- Those issues that challenge project approval that does not involve the issue of whether the [jurisdiction] properly complied with the GMA must be dismissed. [*Gain, 9319*, 1/28/00 Order, at 5.]
- [Nowhere in the GMA is the Board granted jurisdiction to determine an appearance of fairness doctrine issue.] [*Gain, 9319*, 1/28/00 Order, at11.]
- [Nowhere in the GMA is the Board granted jurisdiction to determine the scope of authority of a hearings examiner.] [*Gain, 9319*, 1/28/00 Order, at12.]
- The Board has no authority to determine whether a decision of a hearing examiner is legally binding. [*Gain, 9319*, 1/28/00 Order, at12.]
- While the Board clearly has authority to hear and determine *compliance* with the GMA, here we lack the circumstances to do so. Absent a properly framed legal issue, couched in a timely PFR, the Board has no means to reach Shoreline's questions. Lacking such a PFR, the Board cannot evaluate whether Shoreline's Plan (or Woodway's 1994 Plan, Snohomish County's Plan or the County's County-wide Planning Policies) comply with the goals and requirements of the Act; nor address the Plan's validity or binding effect, if any, beyond its corporate limits. For these reasons, the lack of an appropriate PFR and an inappropriate question for a PDR, the Board declines to issue a declaratory ruling in this matter. [*Shoreline pdr, 0301pdr*, at 3.]
- [The Board has jurisdiction to review actions of the legislative bodies of cities and counties within the central Puget Sound region. The Snohomish County Council has not acted. The challenged action] has been taken by Snohomish County Tomorrow, (SCT) an informal planning body with no governmental authority. [SCT's adoption

of a Metropolitan urban growth area (MUGA) review process is not within the Board's jurisdiction to review.] [*Shoreline, 0310*, 9/5/00 Order, at 3-4.]

- [Cities that incorporate in Central Puget Sound are subject to the GMA and must comply with its goals and requirements. Such cities are within the Board's jurisdiction.] [*WHIP, 0312*, 11/6/00 Order, at 4-7.]
- The City of Covington is a GMA planning jurisdiction. It was under no obligation to adopt any amendments the GMA plan and regulations that it adopted in 1997 as its own – having chosen to do so, the City must comply with the goals and requirements of the GMA. Because it has chosen to do so by adopting the challenged ordinances, it has taken actions that are subject to the goals and requirements of the GMA. Therefore, the Board concludes, that pursuant to RCW 36.70A.280, it has jurisdiction to hear and decide the PFR. [*WHIP, 0312*, 11/6/00 Order, at 7.]
- [The Board's jurisdiction was recently addressed by the Supreme Court, which held that the Boards do not have jurisdiction to hear a petition that does not involve a comprehensive plan or development regulation under the GMA.] The PFR . . . challenges [the jurisdiction's] approval of a project permit application (a conditional use permit authorizing a multi-family mental health housing facility); the PFR does not challenge a comprehensive plan or development regulation, or amendment thereto. Consequently, RCW 36.70A.280(1) does not confer jurisdiction upon this Board to review such land use project permit decisions. [*Petersville Road Residents, 0313*, at 4-5.]
- The Board affirms its decision in *Hanson, 8315*, and concludes that RCW 36.70A.280(1), in light of the definitions contained in RCW 36.70A.030(7) and RCW 36.70B.020(3), does not confer jurisdiction upon this Board to review a local government's decision on a land use permit application. [*Petersville Road Residents, 0313*, at 5.]
- [I]t is axiomatic that the Board has jurisdiction to review legislative actions that adopt or amend a jurisdiction's GMA comprehensive plan or implementing development regulations, regardless of the vehicle (emergency ordinance, ordinance, resolution or motion) chosen by the jurisdiction to accomplish such action. [*McVittie V, 0316*, 1/22/01 Order, at 4.]
- [In *Wallock I*], the Board did conclude, "it does *not have jurisdiction* to review the [jurisdiction's] *declaration* of emergency as it relates to the adoption of the [challenged ordinance]." (Citation omitted.) The Board also stated it did not have jurisdiction to review "the circumstances, situations, or events that may precipitate a proposed [emergency] amendment." (Citation omitted.) The Board reaffirms this conclusion. . . . Petitioner fails to cite to any authority in the GMA, authorizing the Board to review the facts, circumstances, situations or events that underlie a jurisdiction's basis for *declaring* an emergency. [*McVittie V, 0316*, 1/22/01 Order, at 5.]
- [There is] interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. The Growth Boards have jurisdiction to determine compliance with the GMA, including UGA designations. UGA designation enables city annexations, since cities are prohibited from annexing areas beyond designated UGAs. Boundary Review Board decisions must be consistent with provisions of the GMA, including the UGA provisions. This

system is consistent and coordinated and yields certainty in situations where UGAs have been found by the Board to comply with the Act, or where UGA designations have not been challenged. However, this system yields uncertainty where the UGA designation has been challenged, but not resolved as the annexation process proceeds. It is a situation that the Legislature has not, to date, addressed. [This uncertainty is prevalent in this case. In this case, the Board cannot, and will not, address the effect of the annexation, nor will it speculate on the outcome of pending litigation. However, the Board must carry out its mandated responsibilities.] Determining compliance with the goals and requirements of the GMA is the primary responsibility of the Board; it cannot shirk this duty. The Board must determine whether the challenged UGA designation complies with the goals and requirements of the Act. [*Kitsap Citizens, 0319c*, 2/16/01 Order, at 9-11.]

- [The Court of Appeals Division I] found that the Board had erroneously concluded that it did not have jurisdiction to review a resolution amending the City of Seattle's critical area policies. The Court found that where a jurisdiction chooses to adopt critical area policies the Growth Boards have jurisdiction to review such policies and determine whether the policies comply with the requirements of RCW 36.70A.172. [*HEAL, 6312*, 10/4/01 Remand Order, at 4.]
- [WHIP requested that the Board continue jurisdiction over "repealed" but still "pending" ordinances.] The City's continuing consideration of the ordinances previously invalidated on public participation grounds is not a violation of the Board's Order or the GMA. Once the City acts to adopt "something" (the same, revised, or entirely different ordinances), WHIP can challenge such action, as it deems necessary. However, the Board no longer has jurisdiction over the substance of the challenged ordinances because the challenged ordinances have been repealed. [*WHIP, 0312*, 3/5/01 Order, at 5.]
- [The County asserted that its Charter did not require public participation for emergency ordinances, and that its Charter supercedes special and general laws of the state.] A PFR has been filed with the Board challenging the County's compliance with the public participation requirements of the Act. This Board is obliged to reach a determination on this question. If that determination yields a conflict with the County's Charter, it is not for this Board to determine whether a general law of the state, such as the GMA, or the County Charter prevails. The Courts are the appropriate forums for addressing that question. [*McVittie V, 0316*, FDO, at 12-13.]
- RCW 36.70A.390 falls squarely within this Board's subject matter jurisdiction; the Board has clear authority to determine whether its provisions have been met. This section [of the GMA] is unique in the GMA context; it is a blunt instrument within a statute containing very detailed and refined requirements. It allows for temporary, interim or stopgap measures to manage development activity while appropriate analysis and planning can occur. This section also explicitly authorizes local jurisdictions to undertake the rather draconian measure of placing a freeze on development, i.e. to maintain the status quo while it undertakes the necessary planning to analyze and address the perceived issue(s). However, to successfully impose such a moratorium, the jurisdiction must adhere to the section's procedural provisions. [*SHAG, 1314*, 8/3/01 Order, at 5.]

- Petitioners cite to no authority for its ["necessary linkage" assertion that the Board must determine the constitutionality of a action to determine compliance with Goal 6.] [The Board agrees with the City] the Board does not have to 'necessarily' determine the constitutionality of a city's action when reviewing a challenge under Goal 6. Under Goal 6, the requirement to find both arbitrary and discriminatory action is not the same as finding a violation of a constitutional provision. [The Board has jurisdiction to review an action for whether it complies with Goal 6, but not for whether it is constitutional.] [*HBA II, 1319*, 10/18/01 Order, at 2-3.]
- The Board finds that its ruling in *Sound Transit* [9303, 6/18/99 Order] is directly on point. The Board's jurisdiction is properly limited to Chapters 36.70A RCW, 90.58 RCW and 43.21C RCW. It is not for this Board to interpret other statutes, nor to determine whether a petitioner has acted within its authority as described by other statutes (i.e. Chapter 35.14 RCW). It is undisputed that the East Bellevue Community Council has established participation standing pursuant to RCW 36.70A.280. If the City wishes to pursue its argument that EBCC lacks authority to bring this appeal, its recourse is to the courts. [*Bennett, 1322c*, 1/7/02 Order, at 5.]
- When there is confusion and a lack of analysis [on whether the MPR was designated pursuant to RCW 36.70A.360, RCW 36.70A.362 or both statutes], it is within the Board's jurisdiction and purview to determine whether the County applied and imposed the correct legal framework for the MPR designation and not limit its analysis only to whether [two tracts] were correctly designated MPR pursuant to the GMA. [*Kenyon II, 1301*, FDO, at 5.]
- The Board does not have jurisdiction to review the County's actions for compliance with the Constitutions of the United States of America or the State of Washington, nor for compliance with the federal Religious Land-Use and Institutionalized Persons Act. [*Maltby UGA Remand*, 12/19/02 Order, at 6.]
- Nothing in the GMA or case law has changed regarding the Board's authority to review declarations of emergencies since the Board issued its decision in *Wallock I*. Therefore, the Board declines to address this issue, as it lacks subject matter jurisdiction. [*Clark, 02305*, FDO, at 5.]
- Everett is incorrect when it contends that RCW 90.58.190(2)(c) limits the Board's review of the *City's* action solely to the provisions of the Shoreline Management Act. It is significant that only the "department," meaning the Department of Ecology, not local government, is named in RCW 90.58.190. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 16.]
- Everett's argument, with respect to shorelines of state-wide significance, it is immune from review for fidelity to GMA requirements, was pre-empted by the legislature's actions in 1995, codified in RCW 36.70A.480. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 16.]
- The language of RCW 36.70A.480 is not prospective – it does not provide direction for future local legislative action to integrate shoreline policies and regulations into local GMA comprehensive plans and regulations, respectively, rather, .480 is prescriptive – the legislature has already taken legislative action to merge the constituent parts of every shoreline master program in this region [CPS] into the GMA mandated local comprehensive plans and development regulations. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 16.]

- In light of the plain language of RCW 36.70A.480, it is no longer possible for a local government to amend its shoreline master program without also amending its GMA comprehensive plan and development regulations. When doing so, a local government's action must comply with the goals and requirements of the GMA as well as the SMA. [However, SMP adoption procedures are pursuant to the SMA.] [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 17.]
- [Pursuant to RCW 36.70A.480] a local government's shoreline master program is now part and parcel of the GMA comprehensive plan and development regulations. It is also undisputed that the Board has jurisdiction to review comprehensive plans and implementing development regulations for compliance with the GMA. [*Everett Shorelines Coalition, 02309c*, 10/1/02 Order, at 17.]
- There is no question that the Board does not interpret or determine the scope of any tribal treaty rights established in any treaty; this question is simply beyond the Board's jurisdiction. [*Everett Shorelines Coalition, 02309c*, FDO, at 63.]
- The Kent Station planned action ordinance neither adopts nor amends a subarea plan per chapter 36.70A RCW. Therefore, the Board lacks subject matter jurisdiction to review the planned action ordinance. [*Kent CARES, 02315*, 11/27/02 Order, at 6.]
- [The Kent Station planned action ordinance] implements [Kent's] existing land use policies and development regulations. This PAO is intended to expedite and simplify the land use permit process by relying on Kent's land use plan policies and its development regulations. [*Kent CARES, 02315*, 11/27/02 Order, at 6.]
- [The language of RCW 43.21C.031(2)(a)] suggests that planned action ordinances are more akin to project actions that to the broader legislative actions involved in adopting or amending Comprehensive Plans, subarea plans or development regulations. It is well settled that the Boards do not have jurisdiction to review land use project permit decisions. [*Kent CARES, 02315*, 11/27/02 Order, at 7.]
- On its face, the Memorandum of Agreement (MOA) establishes a *planning process* for the area; it does not, in and of itself, amend the Kitsap County Plan or implementing regulations. It is reasonable to expect that the product of this planning process will be a recommendation or proposal to amend the Kitsap County Plan and development regulations, which if challenged, would be subject to Board review. But the MOA does not accomplish this result and does not fall within the Board's jurisdiction. [*Harless, 02318c*, 1/23/03 Order, at 7.]
- [The challenged ULID Ordinance] clearly directs the preparation of amendments to the County's Plan and development regulations, it does not adopt any proposed amendments. Neither the Plan nor development regulations are amended, thus this Ordinance has no binding effect, as would be the case if the Plan or regulations were adopted. [Consequently the Ordinance is not subject to Board review.] [*Harless, 02318c*, 1/23/03 Order, at 7.]
- [Street vacations are] governed by a statute, Chapter 35.79 RCW, which is not one of those named in RCW 36.70A.280. The Board concludes that the street vacation is outside the scope of the Board's authority to review. [*Kent CARES II, 02319*, 3/14/03 Order, at 7.]
- [A]mendments to its appeal procedures regarding the Uniform Building Code are outside the Board's jurisdiction. . . . Here the Board is not persuaded that the "permit processes" contemplated by RCW 36.70A.070(7) [*sic* .020(7)] include life/safety

codes, such as the Uniform Building Code or Fire Safety Codes, as opposed to development regulations such as those specifically named at RCW 36.70A.030(7) [footnote omitted]. Indeed, by its specific terms, that GMA definition excludes "a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city." [*Kent CARES II, 02319*, 3/14/03 Order, at 7-8.]

- [A challenge of a repealed ordinance cannot be brought before the Board since the repealed ordinance is moot.] [*Kent CARES II, 02319*, 3/14/03 Order, at 8.]
- [W]hile a transportation improvement program [**TIP**] is a discrete document apart from a Transportation or Capital Facilities Element of a comprehensive plan, a challenge to at TIP or an amendment to a TIP is not beyond the scope of the Board's jurisdiction (citing McVittie v. Snohomish County, CPSGMHB Case No. 99-3-0016c, Final Decision and Order, (Feb. 9, 2000), at 20.) [*Kent CARES II, 02319*, 3/14/03 Order, at 8.]
- [The challenged action was adoption of a resolution that repealed another resolution which was concerned with a street plan.] The City's Resolutions appear to be policy statements that are not in Ordinances or binding laws. Clearly, [the resolution] did not amend the City's Plan or development regulations and is consequently, not subject to this Board's review. [*Robison II, 02320*, 3/6/03 Order, at 4.]
- Petitioner failed to specify or allege noncompliance with any of the provisions of the GMA; the alleged "violations" are with either the State or U.S. Constitutions, or both, not Chapter 36.70A RCW. [The Board's grant of jurisdiction is limited to RCW 36.70A.280 which does not include authority to review constitutional issues.] [*Salish Village, 02322*, 3/19/03 Order, at 5-6.]
- Chapter 42.36 RCW [Appearance of Fairness Doctrine] is not among the statutes the Board has jurisdiction to review.] [*Salish Village, 02322*, 3/19/03 Order, at 7.]
- Although Petitioner has not filed a dispositive motion asking the Board to determine whether it has jurisdiction to review [the City's action] it appears that Petitioner does question whether the Board has jurisdiction. [Notwithstanding the superior court determination, Petitioner seems to contend that the City's action is a site-specific rezone that the Board does not have jurisdiction to review.] Therefore, the Board grants permission and will allow Petitioner to include such a dispositive motion in Petitioner's prehearing brief. [*Salish Village, 02322*, 3/19/03 Order, at 8.]
- In a case decided on other grounds, the Supreme Court agreed with a previous GMHB ruling that the Board did not have jurisdiction to decide issues raised by a petition filed outside the sixty-day limit. *Torrance v. King County*, 136 Wn. 2d 783, 792 966 P. 2d 891 (1998). [*Palmer, 03301*, 3/20/03 Order, at 3.]
- A development regulation that establishes the time period for which a permit is valid does, in effect, control development and the use of land. And the same is true of amendments that alter previously established timeframes. Such timing regulations are "development regulations" under the GMA and are thus subject to Board review. [*Olsen, 03303*, 4/7/03 Order, at 5.]
- In making the determination of whether a local action is subject to the GMA generally and Board jurisdiction specifically, it is important to focus on the substance and policy context of that action, rather than the procedure employed or the label

attached. Simply characterizing a local action as a "master plan" or employing a quasi-judicial process, rather than a legislative one, is not determinative of whether the action is properly a policy or regulation subject to GMA or a permit action that falls beyond the pale of GMA compliance. That determination must be made after reviewing many facts and factors. [*Laurelhurst, 03308*, FDO, at 11-12.]

- The Board declines the County's invitation to revisit its holdings regarding equitable doctrines. The Board affirms its reasoning and conclusion that it lacks the requisite specific jurisdiction to determine whether equitable doctrines have been violated. [*Hensley VII, 03310*, 8/11/03 Order, at 6.]
- [Intervenor's assertion that Petitioner is precluded by collateral estoppel from challenging the present ordinance as noncompliant with certain goals of the Act because Petitioner has previously challenged other ordinances for noncompliance with the same goals] is absolutely without merit. Petitioner has every right to challenge amendments to a Plan or development regulation for noncompliance with the goals and requirements of the Act. The Ordinances challenged are recent GMA enactments that can be challenged by any person with standing who timely files with the Board. [*Citizens, 03313*, 8/15/03 Order, at 11.]
- [T]he 1998 Agreement is a development regulation within the meaning of RCW 36.70A.030(7), and that the First Amendment wrought by Ordinance No. 121193 is therefore an amendment to a development regulation. Consequently, the Board has subject matter jurisdiction over the challenged Ordinance, and will dismiss the portion of the City/UW Motion to Dismiss that goes to subject matter jurisdiction. [*Laurelhurst II, 03316*, FDO, at 16-17.]
- [The Board's jurisdiction to review, standing requirements and the filing period for challenging CPPs all derive from RCW 36.70A.210(6), not RCW 36.70A.280 and .290.] [*CTED, 03317*, FDO, at 5.]
- [In its FDO, the Board did not address an issue related to compliance with the GMA's critical areas provisions. Petitioners asked that this issue be addressed during the compliance phase; Respondent argued the Board no longer had jurisdiction to resolve this issue. A majority of the Board agreed.] While both sides present cogent arguments [regarding continuing jurisdiction over the issue], the most compelling is the argument that the Petitioners did not avail themselves of the opportunity to file a post-FDO motion specifically requesting that the Board also address Legal Issue No. 5 [the CA issue]. Had Petitioners done so, the Board clearly would have had jurisdiction to answer [it] in the context of clarifying or reconsidering the FDO. The Board concludes that it lacks authority to answer [the issue] during the compliance phase of this proceeding. [*1000 Friends I, 03319c*, 6/24/04 Order, at 8.]
- The Board holds that any action to amend either the text or map of a comprehensive plan or the text of a development regulation is a legislative action subject to the goals and requirements of RCW 36.70A, including the subject matter jurisdiction provisions of RCW 36.70A.280. Any amendment to the official zoning map that is proposed and processed concurrently with enabling plan map or text amendments or development regulation text amendments is necessarily a legislative action subject to the goals and requirements of the GMA. [*BridgeportWay, 04303*, FDO, at 8.]
- The heart of Petitioners' complaint is the assertion that local elected officials have a duty to hear from their constituents before taking legislative action. The Board would

agree that this principle is a hallmark of good government, good planning and has constitutional antecedents as well. Nevertheless, as the Board has consistently held, allegations regarding constitutional matters are beyond the Board's jurisdiction. Likewise it is not the Board's role to determine whether local government action constitutes wise policy, or the choice the Board might have made; rather, the Board's charge is to discern whether the GMA duty articulated at RCW 36.70A.020(11) and RCW 36.70A.140 has been violated. [*BridgeportWay, 04303*, FDO, at 12.]

- [W]hen an ordinance amends or expands portions of an existing development code, the amendment is subject to appeal within sixty days of publication. *1000 Friends IV, 04318*, FDO, at 5.]
- The Board has no authority to review Plans for compliance with the GMA of its own accord. Petitioners must bring their grievances to the Board and make their case. The Act places a heavy burden on Petitioners in demonstrating noncompliance with the Act, but it is Petitioners' burden nonetheless. [*S/K Realtors, 04328*, FDO, at 35.]
- [A seismic ordinance regulating conditions on construction in seismic areas is a development regulation subject to review by the Board.] [*King County IV, 05331*, 8/8/05 Order, at 6.]
- [Petitioner asserted that *James v. Kitsap County*, 154 Wn.2d 574, 115 P.3d 286 (2005) stands for the proposition that impact fees are land use regulations subject to Board review. The Board disagreed, reasoning as follows:] In *James*, the Supreme Court determined that Kitsap County's imposition of impact fees was a "land use decision" which must be appealed under the Land Use Petition Act [LUPA], Chapter 36.70C RCW. While James discusses the linkage between Chapter 82.02 RCW and the public facilities element of GMA comprehensive plans, the Court's characterization of impact fees as "land use decisions" does not bring them within the purview of Board review. The *James* holding was that because impact fees are land use decisions concerning development permits, the procedural requirements of LUPA apply. Land use decisions in the development permit arena, subject to LUPA review in Superior Court, are beyond the Board's jurisdiction. *See* *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn2d 169, 179, 4 P.3d 123 (2000). [*MBA/Bonney Lake, 05345*, 1/12/06 Order, at 6-7.]
- Petitioner asks the Board to determine whether [the impact fee increase] is a "capital budget decision in conformity with the City's comprehensive plan." The Ordinance on its face merely increases the amount of the parks impact fee. Nothing in the text of the Ordinance compels the conclusion that the increased fee or the money raised will be used inconsistently with the City's comprehensive plan. Petitioner's allegations of inconsistency with the plan all require the Board to look beyond the face of the Ordinance and, in fact, to analyze the fee increase under the impact fee criteria spelled out in RCW 82.02.050(4). . . . This the Board declines to do. [*MBA/Bonney Lake, 05345*, 1/12/06 Order, at 8-9.]
- [Two legal issues alleging noncompliance with Chapters 72.65 and 72.01 RCW, pertaining to the authority of the director of DOC to determine staffing and security at correctional facilities, were dismissed for lack of Board subject matter jurisdiction.] [*DOC III/IV, 05343c*, FDO, at 7 and 9.]
- [The growth phasing lottery is not a de facto moratorium.] While the Growth Phasing Lottery at issue here has the effect of continuing to preclude development except for

the lucky winners in the October 2005 drawing, the lottery does not preclude all development or freeze development to preserve the status quo. Because some new applications are accepted, and development may proceed if such applications are approved, the Board cannot characterize the Growth Phasing Lottery as a moratorium as provided for in RCW 36.70A.390. [*Camwest II, 05341*, FDO, at 28.]

- The City cited almost a dozen decisions from around the nation that addressed "phasing" regulations. The Board noted these cases were not helpful in that they were decided on constitutional grounds or under the laws of other states that are not within the Board's purview.] It is not up to the Board to determine whether the Growth Phasing Lottery would survive a constitutional challenge. [*Camwest II, 05341*, FDO, at 28.]
- It is important for both Petitioners and the City to understand that the Board has no jurisdiction to review the challenged sewer or water plans for compliance with chapters 90.48, 35.67 or 43.20 RCW. However, since these plans were incorporated into the City's capital facilities element to fulfill certain GMA requirements, they fall within the Board's review parameters. [*Fallgatter V, 06303*, 1/24/06 Order, at 7.]
- [The City moved to dismiss the challenge, asserting that the adoption of the rezone simply was to have the regulations implement the Plan designations, and that Petitioners were therefore challenging the Plan which had been previously adopted. The Board concluded that the challenged action was the adoption of an area-wide rezone, which is subject to Board review. The City's motion was denied.] [*Abbey Road, 05348*, FDO, at 6; 12-13.]
- [General Discussion of Development Agreements and the Board's general lack of jurisdiction to review them.] [*Sno-King, 06305*, 5/25/06 Order, at 7-8.]
- The Boards and the Courts have made it clear that the Boards do not have jurisdiction to review project decisions, including development agreements for projects, such as the one at issue here. [*Sno-King, 06305*, 5/25/06, at 8.]
- [A] task order, in and of itself, does not adopt or amend any comprehensive plan provision of development regulation; it is simply an authorization for the retention of a consultant to assist the City in developing a proposal for changes to the Water System Plan that may or may not be enacted by the Council. . . . The Board's jurisdiction, as limited by RCW 36.70A.280(1) does not include such preliminary matters. [*Fallgatter VI, 06317*, 6/29/06 Order, at 6.]
- The fact of the matter is that the North Highline Community area remains an unincorporated UGA within King County. No jurisdiction has designated the area as a [Planned Annexation Area] as provided for by King County [Countywide Planning Policies]. However, the present [memorandum of understanding between the Cities of Burien, Seattle and King County indicates that decisions regarding a PAA designation for this area are anticipated by December of 2006. Once those decisions are made, and plans or development regulations are amended to designated a PAA(s) and policies are adopted affecting the PAA area, an appeal to this Board of those decisions would be ripe. [*Giba II, 06320*, 7/4/06 Order, at 6-7.]
- [The Board declined to dismiss particular legal theories raised in the PFR but not during prior public review.] The *Wells* court held that a "matter," as intended by RCW 36.70A.280(2)(b), is not the equivalent of an "issue." *Id.* at 671. The court acknowledged that "all three growth management hearings boards have consistently

rejected a requirement of issue-specific standing." *Id.* The *Wells* court noted that the 1996 Legislature rejected a proposed amendment that would have required petitioners to raise "issues" rather than "matters" before the local government. The *Wells* court concluded that "matter" in RCW 36.70A.280(2)(b) refers to a broad "subject or topic of concern or controversy." *Id*. at 672-3. The court said: "it would be unrealistic given the time and resource constraints inherent in the planning process to require each individual petitioner to demonstrate to the growth management hearings board that he or she raised a specific legal issue before the board can consider it." *Id.* at 674. [*McNaughton, 06327*, 10/30/06 Order, at 9.]

- What the Petitioner challenges with the stated action is not a final action of the City but the City's preliminary decision making process. . . . Nothing in the Record demonstrates that any of these actions constitutes a final action by the City in "locating" the Transit Center. The preliminary steps in the administrative decision-making process do not equate to a final order or decision [Citations omitted.] . . . The matter is not ripe for Board review. The Board review is limited by RCW 36.70A.280(1), does not include preliminary matters. The dispute in this matter is . . . about a series of preliminary actions and/or decisions made in the process of, but prior to, reaching a decision on the location for a proposed transit center. . . [T]here is nothing for the Board to review. The controversy presented by the Petitioner is hypothetical and speculative, and may be rendered moot depending on actions yet to be taking by the . . . City Council. [*Open Frame, 06328*, 11/17/2006 Order, at 6-7.]

• Suburban

- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, at 44-48.]
- New urban land uses may be located only within UGAs. [*Bremerton, 5339c,* FDO, at 48.]
- Suburban is a subset of urban. [*Bremerton, 5339c,* FDO, at 49.]
- The legislature recognized that MPRs are urban growth outside of UGAs. The GMA permits the urban growth of an MPR if the County's regulations do not permit other urban or suburban growth in the vicinity of the MPR. [Urban growth in MPRs is recognized by, not prohibited by the Act.] [*Gain, 9319*, FDO, at 8.]

• Summary Judgment – *See:* Dispositive Motions

- Although a dispositive motion before a board and a motion for summary judgment before a superior court may be similar, the Board is not constrained by CR 56 time limits or case law interpretation of that rule. [*Twin Falls, 3303c,* 6/11/93 Order, at 19.]

• Supporting Evidence – *See:* Evidence or Exhibits or Record

- **Tiering**

- The Act neither mandates nor prohibits temporal phasing of development within a UGA. [*Rural Residents, 3310,* FDO, at 46.]
- If a county elects to utilize tiering within its UGAs, it is best served at the FUGA stage, when the capital facilities plan element of the comprehensive plan has been prepared. It is premature to require tiering at the IUGA level. [*Tacoma, 4301,* FDO, at 35.]
- [Regarding when there is conversion of] Urban Reserve lands to UGA, the Board finds no requirement in the Act obligating the County to set forth a phasing schedule, *per se*. [However, RCW 36.70A.215] obligates the County to monitor the rate at which lands within the UGA are being utilized and to take appropriate action, which could include expansion of the UGA, if circumstances so warrant. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 44-45.]
- [Generally, in sizing its UGAs pursuant to RCW 36.70A.110(3) to accommodate the residential population, a county should look first to existing city limits, then its existing UGA before considering expansion of the UGA. The record should document this process – "show its work".] [*Kitsap Citizens, 0319c*, FDO, at 15.]
- The Lake Stevens UGA Plan includes a Capital Facilities Element. Within this element, the County states, "The following are key findings of the capital facilities plan *for the Lake Stevens UGA*: *There is a gap between the capital facility needs and the public funding available for surface water and transportation*." When a "gap" or "revenue shortfall" between needed facilities and ability to finance them occurs, the GMA requires the jurisdiction to "reassess the land use element" to respond to such revenue shortfalls. *See* RCW 36.70A.070(3)(e). Reduction of the size of the UGA is one obvious response to address a revenue shortfall. However, in lieu of reducing the size of the UGA, there are several other accepted options available as part of the reassessment process. These options are recognized and set forth in the LSUGA Plan. The LSUGA Plan's key findings continue: [This Plan] describes a number of options as a *response to the revenue shortfall*, including:
    - Reducing the LOS [level of service standards].
    - Increasing the revenues available to pay for the necessary facilities.
    - Reducing the average cost of facilities.
    - *Reducing demand by timing development* or redistributing growth to other areas.
    - Reducing demand for services through conservation programs

  Thus, one means of addressing a revenue shortfall is to time or phase development to reduce demand. This is the approach Snohomish County undertook in relation to the Lake Stevens UGA in relation to its revenue shortfall for transportation and surface water. [The County used a Development Phasing Overlay (DPO) in the unincorporated Lake Stevens UGA to phase development. "Green" areas had adequate transportation and surface water facilities and could develop; "Red" areas did not have adequate facilities and development was deferred until financing of the needed facilities was assured.] [*Citizens, 03313*, FDO, at 7-8.]
- The Board notes that RCW 36.70A.110(3) does not impose a mandatory requirement on planning jurisdictions, it provides that urban growth *should*, not *shall*, be located .

. .. RCW 36.70A.110(3) urges local jurisdictions to locate urban growth within the UGA in a rational, efficient and fiscally responsible manner. However, no matter how well advised such an approach might be, this section of the Act does not compel the inclusion of a development phasing or timing mechanism in UGAs or comprehensive plans. Adoption of such a mechanism is certainly an option – an option that the County took. [RCW 36.70A.110(3) is not directly applicable to development regulations; it directly applies to UGA designations and comprehensive plans, which are not at issue in this case.] [*Citizens, 03313*, FDO, at 11.]

- By its own enactments the County has attached significant importance to the DPO and the removal of the DPO through a deliberative rezoning process. [The County shall not approve a permit within the DPO until it has been removed through a rezone process.] This amendment simply excludes certain developments [those generating less than 50 peak hour trips] from consideration under the DPO processes. Therefore, the question for the Board regarding this exemption is whether its inclusion is consistent with and implements this fundamental purpose of the DPO. The Board concludes that it is not consistent with and does not implement the DPO and therefore does not comply with the requirements of RCW 36.70A.130(1). [*Citizens, 03313*, FDO, at 19.]
- [The County has] discretion to determine what criteria it includes as part of the DPO process. However, notwithstanding the alleged controversy surrounding the 40-acre minimum criterion, when the County adopted the LSUGA Plan and the initial DPO regulations it chose to include and explain the 40-acre minimum requirement in both the DPO regulations and the Plan. Thus, the 40-acre minimum requirement was treated and addressed consistently in both the Plan and regulations. The Plan explains in more detail how the entire DPO process is to work. By amending [its regulations] to delete the 40-acre minimum requirement for removal of the DPO, the County has created an inconsistency with the LSUGA Plan, an inconsistency that no longer implements the DPO process as described in the Plan. The Plan itself was not altered. [The Board found noncompliance.] [*Citizens, 03313*, FDO, at 23.]
- [T]he DPO must be linked to the capital facilities plan or CIP for the LSUGA and . . . necessary capital projects may be reviewed and updated annually. It is also not disputed that the LSUGA Plan requires that a "director's list" identifying the facilities required for removal of the DPO be prepared. If annual review and updates indicate changes in the projects affecting the DPO in the LSUGA, such changes must be reflected in the LSUGA and its associated capital plan. Those newly needed or completed projects must be identified and included for the entire DPO to be kept it current. The GMA requires that plans be internally consistent. *See* RCW 36.70A.070(preamble). Likewise, the director's list that pinpoints needed projects within an identified area must be based upon the projects identified in the UGA plans, as may be updated. This assures that the amendments removing the DPO implement the updated and revised plans, pursuant to RCW 36.70A.130(1). The existing language was clear and unambiguous. Prior to the amendments, for the County to engage in the lifting of a DPO through an area-wide rezone, it was required to look to the projects listed in the UGA Plan *and* a list created by the director based upon the UGA Plan. The director's list would obviously be based upon the projects identified in the UGA Plan, but tailored to the reflect projects necessary to support development

within the proposed area-wide rezone area – a more refined list. This process is clear. However, deletion of these two reference points only obscures and confuses the basis for the Council's area-wide DPO lifting process. . . The deleted language . . .clearly linked the director's project list to area-wide rezones, it required a list developed pursuant to SCC 30.33C.125. Now this clear linkage is gone. . . . Now it is not clear that the director's list or the UGA Plan list is a prerequisite to a lifting of the DPO through an area-wide rezone. [The Board found noncompliance.] [*Citizens, 03313*, FDO, at 31-32.]

- [An area-wide rezone removed the DPO from over 800 acres of property. For this area-wide rezone the County reviewed both the LSUGA Plan list and the Director's list, which is the proper procedure as set forth in the LSUGA Plan. The Board concluded that the County assured adequate funding for needed surface water and transportation projects within the required timeframe and was consistent with the LSUGA Plan and the Act.] [*Citizens, 03313*, FDO, at 33-44.]
- The Board holds that for area-wide rezones that are intended to remove a development phasing overlay or other timing mechanism that will allow deferred development to proceed, the action removing the development phasing restriction or area-wide rezone and an action amending the governing Plan must occur *concurrently* to maintain consistency and ensure implementation of the Plan. [*Citizens, 03313*, FDO, at 45.]
- The GMA anticipates development phasing that is linked to the availability of public infrastructure. That linkage may be *spatial*, with development allowed first in the locations already served by public services and then following the extension of those services, [RCW 36.70A.110(3)], or the linkage may be *temporal*, with development timed to match an infrastructure investment plan [RCW 36.70A.070(6) and .020(12)]. The phasing provisions of the GMA allow a jurisdiction to "manage" and guide growth both locationally and temporally. However, such phasing is inextricably linked to the availability and adequacy of the necessary infrastructure to support that growth. The GMA never contemplates development phasing that is purely random, with one's rights to develop under the adopted Plan designations and zoning dependent on the luck of the draw. [The City's growth phasing lottery is a random system, not based on geographic or spatial linkage or timed with infrastructure availability.] [*Camwest II, 05341*, FDO, at 15 -18.]
- [T]he GMA allows growth phasing to be linked to a Capital Facilities Plan and service availability through the mechanisms of concurrency, level of service standards and impact fees [citations omitted]. This principle was incorporated into the Samammish Comprehensive Plan but then essentially disregarded in enacting the random lottery. [The City provided no evidence of concurrency documentation, capital facility plans or an infrastructure financing plan. Alleged deficiencies in infrastructure are discussed and rejected.] [*Camwest II, 05341*, FDO, at 16-19.]
- The Board finds that, rather than using the growth phasing tools provided by the GMA, the Samammish Growth Phasing Lottery allocates development opportunities on a purely random basis, without reference to infrastructure availability, location, or funding strategy to address specific identified deficits in the interim. The Growth Phasing Lottery simply denies near-term property development which is otherwise

allowed by the Comprehensive Plan and zoning code in order to defer build-out in the 20-year planning horizon. [*Camwest II, 05341*, FDO, at 20.]

- [The growth phasing lottery is not a de facto moratorium.] While the Growth Phasing Lottery at issue here has the effect of continuing to preclude development except for the lucky winners in the October 2005 drawing, the lottery does not preclude all development or freeze development to preserve the status quo. Because some new applications are accepted, and development may proceed if such applications are approved, the Board cannot characterize the Growth Phasing Lottery as a moratorium as provided for in RCW 36.70A.390. [*Camwest II, 05341*, FDO, at 28.]
- [The City cited almost a dozen decisions from around the nation that addressed "phasing" regulations. The Board noted these cases were not helpful in that they were decided on constitutional grounds or under the laws of other states that are not within the Board's purview.] It is not up to the Board to determine whether the Growth Phasing Lottery would survive a constitutional challenge. [*Camwest II, 05341*, FDO, at 28.]

- **Timeliness**

- Until a jurisdiction complies with the Act's procedural requirements, a failure to act challenge can be brought at any time. Once the Act's procedural requirements are met, substantive challenges to an enactment must be brought within the sixty-day statute of limitations. [*KCRP, 4305,* 7/27/94 Order, at 19.]
- In the absence of a brief on any of the issues set forth in the prehearing order, by the deadline, all issues have been abandoned – per WAC 242-02-570(1). [*Kitsap, 4306,* 12/2/94 Order, at 1.]
- No statute of limitations exists for petitioning for adjustments of OFM's population projections. [*Kitsap/OFM, 4314,* FDO, at 12.]
- Challenges to either SEPA or GMA standing before the Board can be brought at any time by either a party or the Board on its own initiative. [*PNO, 4318,* FDO, at 19.]
- It is notice of publication of the Plan, not the date a SEPA document is prepared nor the date a hearing examiner issues a decision on an administrative appeal of that SEPA document(s), that triggers the sixty-day statute of limitations for bringing appeals to the Board. [*PNA I, 5359,* FDO, at 8.]
- A petitioner is not precluded from challenging development regulations that implement a certain comprehensive plan policy, even though the petitioner did not challenge the specific policies in the plan (assuming the petitioner otherwise meets the standing and timely petition filing requirements of the Act). [*PNA II, 5371,* FDO, at 23.]
- If the appeal period has lapsed, the organization cannot substitute an individual as petitioner in a petition for review. [*Banigan, 6316c,* 7/29/96 Order, at 11.]
- The Board does not have the authority to review petitions for review filed more than sixty days after publication of the jurisdiction's challenged action. The Board cannot create exceptions that expand this authority. [*Torrance, 6338,* 3/31/97 Order, at 4.]
- Petitioners cannot now challenge the original designation of their property (untimely); neither can they challenge the County's decision not to adopt the proposed amendments. [*Torrance, 6338,* 3/31/97 Order, at 5-6.]

- [The Board may refer to the Civil Rules for guidance, but it is not bound by them.] The Board is not a court; its jurisdiction and authority is prescribed by the Legislature. The explicit statutory filing period for a petition is sixty days yet [petitioner] asks that the Board in effect, extend it. . . . To allow the addition of [or substitution of] a new petitioner at this time and allow this change to relate back to [the original filing date of the PFR], would substantially expand the jurisdictional limits the Legislature established for the Boards. This the Board cannot do. [*Montlake, 9302c*, 4/23/99 Order, at 6.]
- [Filing motions (dispositive or to supplement the record) are untimely if filed after the deadline established in the prehearing order, unless written permission is granted by the Board.] [*WRECO, 8335*, FDO, at 2-3]
- The issues set forth in AFT's PFR challenge the County's 1995 UGA and future land use map designations. Pursuant to RCW 36,70A.290(2), the time for challenging these 1995 designations is long past. AFT's PFR is untimely. [*AFT, 9302*, 6/18/99 Order, at 4.] The issues set forth in AFT's PFR challenge the County's 1995 UGA and future land use map designations. Pursuant to RCW 36,70A.290(2), the time for challenging these 1995 designations is long past. AFT's PFR is untimely. [*AFT, 9302*, 6/18/99 Order, at 4.]
- [The City's "screenline" LOS methodology and Concurrency Regulations were adopted in 1994. The Ordinance challenged here, which adopted the Plan amendments, did not amend the LOS provisions of the Transportation Element or Concurrency Regulations as adopted in 1994. Petitioner cannot now challenge these provisions.] [*Montlake, 9302c*, FDO, at 10-12.]
- [A challenge to an Ordinance amending the Capital Facilities Element cannot be a vehicle to challenge the jurisdiction's Housing, Utilities and Transportation Element. Such challenges to these elements are untimely, since they were not amended in the challenged Ordinance.] [*McVittie, 9316c, FDO, at* 15-17.]
- [A] challenge to a 1999 adoption of a subarea plan is an action that, if timely filed, is subject to the GMA appeal procedures. [However, adoption of a subarea plan, that does not alter a land use designation originally adopted in a prior GMA plan, does not open the original designation to challenge. The challenge to the original designation is untimely.] [*MacAngus, 9317*, FDO, at 7.]
- The adoption of [a subarea plan] is a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to [an unchanged plan designation.] [A jurisdiction's decision to maintain an existing designation does not reopen the appeal period of that unchanged designation.] [*MacAngus, 9317*, FDO, at 8.]
- [RCW 36.70A.290(2)] is unambiguous; if a petition is not filed within sixty days after publication, the Board is without authority to review the petition. [*Gain, 9319*, 1/28/00 Order, at 3.]
- [A failure to act challenge may be brought at any time after the deadline has passed. WAC 242-02-220(5).] If a city or county failed to take any action relating to a GMA deadline, a petitioner may challenge the failure of that city or county to act by that deadline. On the other hand, if a city or county has taken some action relating to a GMA deadline, and published notice of that action, a challenge to that action must be filed within sixty days after publication. [*Gain, 9319*, 1/28/00 Order, at 4.]

- The record is clear that the County designated GMA forest lands and adopted development regulations. The County did not "fail to act." Petitioner's disagreement with the County's actions at this late date cannot re-open review of the County's action. [*Gain, 9319*, 1/28/00 Order, at 6.]
- Without any explanation, Petitioners filed their response brief with the Board two days after the Board's deadline. The Board may dismiss any action for failure to comply with any order of the Board. WAC 242-02-720. Because Petitioners' brief was filed late and without prior approval of the Board, the Board has not considered Petitioners' response brief. [*Tacoma II, 9323c*, 3/10/00 Order, at 2]
- [On reconsideration, the Board considered Petitioners' response brief, but affirmed its decision to dismiss the PFRs alleging the County failed to adopt the amendments proposed by Petitioners.] [*Tacoma, 9323c*, 3/27/00 Order, at 1-2.]
- [Filing a PFR prior to publication is not a premature and invalid filing. PFRs may be filed from the date of legislative action until sixty-days after publication.] [*McVittie IV, 0306c*, 4/25/00 Order, at 4-5.]
- RCW 36.70A.290(2) limits the time within which a jurisdiction is exposed to a potential GMA challenge. However, it is the jurisdiction's legislative action of adopting or amending its Plan, development regulations or taking other GMA actions to implement its plan that "triggers" the possibility of challenge or opens the window for petitioning the Board. To close the window, RCW 36.70A.290(2) requires a jurisdiction to publish notice of its GMA action. Publication puts the public on notice that the opportunity to appeal will close in sixty-days. RCW 36.70A.290(2) enables a jurisdiction to establish a date certain, after which its GMA actions will not be subject to challenge. [*McVittie IV, 0306c*, 4/25/00 Order, at 4.]
- If notice of the GMA action is not published, there is no closure of the appeal period and no protection provided by RCW 36.70A.290(2). However, once published, the protection provided by RCW 36.70A.290(2) is available. That protection is a limitation on the appeal period. [*McVittie IV, 0306c*, 4/25/00 Order, at 4-5.]
- [The jurisdiction's] legislative action starts the clock for filing appeals toe the Board. Publication by the [jurisdiction] of notice of its legislative action establishes the date the clock stops. [*McVittie IV, 0306c*, 4/25/00 Order, at 5.]
- [Withdrawal of publication, when there is no change in the legislative action, does not close the appeal period or remove it; the appeal period remains open until re-publication establishes the end of the sixty-day period.] [*McVittie IV, 0306c*, 4/25/00 Order, at 5.]
- [Since the County did not revise its minimum standards (LOS), inventories, or needs assessment in the challenged CFE enactments, the challenge is untimely.] [*McVittie IV, 0306c*, 4/25/00 Order, at 13-14.]
- [Since the County did not revise its minimum standards (LOS), inventories, or needs assessment in the challenged Transportation Element enactments, the challenge is untimely.] [*McVittie IV, 0306c*, 4/25/00 Order, at 17-18.]
- The Board rejects the argument that the 1994 designation of the . . .parcel as forest resource lands was a "mistake." The record supporting that prior designation is not before the Board and the time to challenge the GMA sufficiency of that designation has long since passed. [The Board notes that the original property owner did not characterize the prior resource lands designation as a "discrepancy" or "mistake" in

1994, nor in 1995 when it sold the property with that designation intact. Nor did Intervenor characterize the prior designation as a "mistake" until after the property was logged in reliance upon that resource land designation. To advance such argument at this time is ironic, if not disingenuous.] [*Forster Woods, 1308c*, FDO, at 16 and footnote 5.]

- In a case decided on other grounds, the Supreme Court agreed with a previous GMHB ruling that the Board did not have jurisdiction to decide issues raised by a petition filed outside the sixty-day limit. *Torrance v. King County*, 136 Wn. 2d 783, 792 966 P. 2d 891 (1998). [*Palmer, 03301*, 3/20/03 Order, at 3.]
- The Board's PHO was dated March 25, 2003. Petitioner's letter objecting to the PHO and requesting a revision was received on April 24, 2003 – 30 days after issuance of the PHO. [WAC 242-02-558 requires objections to a PHO must be made within seven days of issuance.] The time to object or request revisions to the PHO lapsed on April 1, 2003. Petitioner's request is untimely. The request to amend Legal Issue 11 in the PHO is denied. [*Moyer, 03306c*, 4/25/03 Order, at 2-3.]
- [The challenged ordinance] repealed and reenacted [portions of] the [City's] development code. This constitutes adoption of a development regulation. The PFR was [timely filed.] *Tupper, 03318*, 12/3/03 Order, at 9.]
- [The Board's jurisdiction to review, standing requirements and the filing period for challenging CPPs all derive from RCW 36.70A.210(6), not RCW 36.70A.280 and .290.] [*CTED, 03317*, FDO, at 5.]
- The whole focus of [Petitioners'] challenge is to the potential application of existing Plan policies and regulations specifically regarding clustering and density bonuses in the [areas newly designated as being] Rural -10 designation. These provisions [i.e. clustering and density bonuses] were not amended by the action of the County in amending its Plan in 2003. At best [Petitioners'] challenge is a collateral attack on existing Plan policies and regulations. Had [Petitioners] wanted to challenge the clustering provisions of the R-10 classification, it should have done so when those provisions were enacted. Petitioner cannot challenge those provisions in the context of this present action [2003 Annual Plan Review]. [*Orton Farms, 04307c*, FDO, at 41-42.]
- The Board's Rules of Practice and Procedure provide, "A facsimile document will only be stamped "received" by the Board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped on the following business day. The date and time indicated on the Board's facsimile machine shall be presumptive evidence of the time and date of receipt of transmission." *See* WAC 242-02-240(2)(a). [A PFR transmitted by fax was received by the Board after the close of business on a Friday; it was stamped received on Tuesday following a legal holiday. The PFR was dismissed as untimely.] [*LCC, 05318*, 3/14/05 Order, at 3-4.]
- The PFR was filed on the 61st day after publication of notice of adoption of [the challenged ordinance]. Petitioner's challenge is not saved by characterizing one of his legal issues as a 'failure to act' when the County in fact adopted legislation under the GMA concerning reasonable measures, UGAs and CPPs. [*1000 Friends/KCRP, 04331c*, 3/15/05 Order, at 6.]

- [The County asserted that it *completed* its BLR by September 2002, and to challenge it in 2004 was untimely, since no appeal was brought within 60-days of its *completion*.] [RCW 36.70A.290(2)(a) and (b) and .130(1) provide guidance to the Board on this question. These publication requirements] provide the means to limit a jurisdiction's exposure to challenges before the Board. Likewise, if a jurisdiction wants to establish a limitation on its exposure to appeal, a similar course should be followed for its BLR. Therefore, it logically follows that to establish a timeframe for appeals to the Board, the completion of a BLR should be acknowledged through legislative action and the adoption of a resolution or ordinance finding that the review and evaluation has occurred and noting its major conclusions. Consequently, the Board cannot accept the timely "completion" of a document as a basis for determining timeliness of a petition for review. The basis for the Board to determine the timeliness of a petition is confined to the provisions of RCW 36.70A.290(2)(a) and (b). The County did not acknowledge completion of the BLR through legislative action, nor publish notice of completion. Therefore, the County did not establish a timeframe for its appeal. S/K Realtors PFR challenging King County's BLR, specifically Legal Issue 8, is timely. [*S/K Realtors, 04328*, FDO, at 15.]
- Petitioners missed their opportunity to argue that the City did not comply with the GMA's notice and public participation procedures or BAS requirements . . . because their challenge is untimely [filed 2 years after Plan adoption]. The fact that notice may or may not, have been adequate does not stay this statutory deadline. [Citation omitted.] [*Orchard Beach, 06319*, 7/6/06 Order, at 4.]
- The challenged Ordinances did not create the RNC, but rather expanded it. The "existing RNC" apparently has been depicted in the County's Plan, and zoning, since the mid-1990's. . . .[I]t is undisputed that the area was included as an RNC when the County adopted Ordinance No. 2004-87s, updating the County Plan. Therefore, the time for the City of Tacoma to challenge the "existing RNC" designation was following adoption of the Plan Update in 2004, not now in 2006. The Ordinances which the City challenges simply include the 4-acre expansion of the RNC in question. Consequently, **a challenge to the existing RNC is untimely and the Board will only address the expansion of the RNC accomplished by the challenged Ordinances**. [*Tacoma IV, 06311c*, FDO, at 10.]

- ## Transfer of Development Rights - TDRs

- RCW 36.70A.170(1)(a) requires counties and cities to designate all lands that meet the definition of agricultural lands, unless the lands fall within a UGA lacking a program for purchase or transfer of development rights, and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all designated agricultural lands. [*Sky Valley, 5368c*, FDO, at 113.]
- A city is without authority to make any agricultural designations within a UGA prior to the enactment of a program authorizing a transfer or purchase of development rights pursuant to RCW 36.70A.060(4). Unless and until it adopts such a program, it is obliged to designate such properties for non-agricultural urban uses. [*Benaroya I, 5372c*, FDO, at 11-12.]

- It is not the jurisdiction's burden to demonstrate the effectiveness of a TDR program. [*Cosmos, 6319,* 6/17/96 Order, at 4.]
- The Board reaffirmed its holding in the FDO that the City could not designate lands agriculture unless and until it adopted a program authorizing the transfer or development of development rights. [*Benaroya I, 5372c,* 12/31/98 Order-Court Remand, at 3.]
- The Board notes that RCW 36.70A.060 does not prohibit agricultural resource lands from being included within a UGA. However, RCW 36.70A.060(4) requires a program authorizing the transfer or purchase of development rights as a condition precedent to such inclusion in the UGA. In this case, none of the parties argued or offered any evidence pertaining to whether such a program exists to allow agricultural land within the UGA. [*1000 Friends, 03319c,* FDO, at 36, footnote 11.]

- **Transformation of Governance**

- County-wide planning policies are policy documents that have both a procedural and a substantive effect on the comprehensive plans of cities and the county. The immediate purpose of the CPPs is to achieve consistency between and among the plans of cities and the county on regional matters. A long-term purpose of the CPPs is to facilitate the transformation of local governance in urban growth areas so that cities become the primary providers of urban governmental services and counties become the providers of regional and rural services and the makers of regional policies. [*Poulsbo, 2309c,* FDO, at 23.]
- UGAs take direction from the Act's planning goals at RCW 36.70A.020 and from CPPs. UGAs therefore also serve the three purposes of CPPs: (1) to achieve consistency between plans as required by RCW 36.70A.100; (2) to achieve a transformation of local governance within the UGA; and (3) to direct urban development to urban areas and to reduce sprawl. [*Rural Residents, 3310,* FDO, at 14.]
- Comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve compact urban development. [*Tacoma, 4301,* FDO, at 12.]
- The Board concludes that the six exceptions to the general rule that counties cannot designate UGAs beyond city limits, as set forth in *Rural Residents, at 44,* were not changed by the 1995 legislative amendments. However, a new holding is in order, as follows:

  > Regardless of whether a satisfactory showing has been made that existing cities can accommodate the projected population growth, counties will be permitted to designate FUGAs beyond existing incorporated areas on lands covered by the third exception. However, this does not give counties the carte blanche permission to designate as UGAs *all* urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both UGAs and CPPs

must serve: to achieve the *transformation of local governance* within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve *compact urban development. See Tacoma,* at 12. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical to now blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted. *Amending Bremerton,* at. 39-40.

[*Vashon-Maury, 5308c,* FDO, at 26.]

- Just because unincorporated lands today contain urban growth on them does not necessarily mean that they should be included within a UGA. Instead counties must examine how a UGA designation for such lands would achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services, and will achieve compact urban development. [*Vashon-Maury, 5308c,* FDO, at 27.]
- The GMA acknowledged that the "old way of doing things" (i.e., non-GMA planning and decision-making) threatened the quality of life enjoyed by Washington's residents, and that in order to meet this threat, new and important steps needed to be taken. RCW 36.70A.010 (FN1) describes a legislatively preferred future for our state, just as the subsequent sections of the Act mandate that communities manage the problems of growth and change in a new way. [*Children's I, 5311,* FDO, at 4.]
- In the GMA, there are a number of specific references that address housing and residential land uses, some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population. [*Children's I, 5311,* FDO, at 5.]
- Growth is more than simply a quantitative increase in the numbers of people living in a community and the addition of "more of the same" to the built environment. Rather, it encompasses the related and important dynamic of change. Because the characteristics of our population have changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup, the GMA requires that housing policies and residential land use regulations must follow suit. This transformation in our society must be reflected in the plans and implementing measures adopted to manage growth and change. [*Children's I, 5311,* FDO, at 9.]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of

locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, at 28.]

- The Act intends local governments to plan meaningfully for the future – to change the way land use planning has traditionally been done. . . . The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. [*Bremerton, 5339c,* FDO, at 28-29.]
- The GMA's focus on regional diversity contemplates that the solutions that are necessary and appropriate for the Central Puget Sound region may not pertain to other parts of Washington. [*Bremerton, 5339c,* FDO, at 29.]
- Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." [*Bremerton, 5339c,* FDO, at 31.]
- In specifically rejecting the sprawl model for Washington State, the GMA asserts the importance of taking a balanced, long-term view and promoting and serving the broad public interest. When the GMA's substantive requirements for county plans and FUGAs are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community, that, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, at 51-52.]
- A county cannot base its future planning for new growth on its past development practices if those past practices, as here, do not comply with the GMA. What was once permissible is no longer so. The GMA was passed to stop repeating past mistakes in the future. [*Bremerton, 5339c,* FDO, at 71.]
- The advent of the GMA changed land use law in this state in a profound way, changing the land use patterns that counties may permit in rural areas. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 25.]
- Pre-existing parcelization cannot be undone, however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 25.]
- All jurisdictions in the Central Puget Sound region, regardless of size or local circumstances, are obliged to meet the procedural and substantive requirements of the GMA. [*CCSV, 5344,* 6/14/95 Order, at 5.]
- Although counties cannot be expected to undo past land use practices, they cannot adopt regulations that fail to place appropriate conditions on growth outside UGAs to limit it to achieve conformance with requirements of RCW 36.70A.110. [*PNA II, 5371,* FDO, at 13.]

- In the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the GMA. [*WSDF IV, 6333,* FDO, at 11.]
- Designation of a UGA adjacent to existing city limits fosters compact urban development and the transformation of local governance. [*Johnson II, 7302,* FDO, at 7.]
- Here, the City is requiring annexation as a condition of providing sewer service within the UGA. The City is responsible for providing urban services to development within the UGA at the time such development is available for use and occupancy and within the twenty year horizon of the City's Plan for the UGA. The approach the City has chosen in managing growth, specifically the provision of sewer service, is a valid option which the City may choose in order to transform governance and phase development within the UGA. As such, the premise upon which [Petitioner] builds its case – the amendment [requiring annexation as a condition of sewer service] is a denial of services and a moratorium – is false. In fact, such provision is consistent with, and complies with, the GMA as the Board has interpreted it. [*MBA/Larson, 04301,* FDO, at 11.]
- Requiring annexation as a condition of providing sewer service is a valid option which the City may choose in order to transform governance and phase development within the UGA. It is not a denial of sewer service or *de facto* moratorium on development within the UGA. [*MBA/Larson, 04301,* FDO, at 18.]

- **Transportation Element**

- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, at 60.]
- [Where a large percentage of population and employment growth is concentrated by a city's comprehensive planning process, a city's comprehensive plan must at least discuss what impact its concentrated population growth strategy will have on future traffic forecasts.] [*WSDF I, 4316,* FDO, at 63.]
- City comprehensive plans must contain an assessment of its impact on adjacent jurisdictions. . . . At the very least, a plan must indicate which jurisdictions are adjacent to the city, what the present traffic volumes and system capacities of major arterials in those jurisdiction connected to the city's are, and an analysis of what impact, if any, the city's transportation plan will have on those neighboring jurisdictions. [*WSDF I, 4316,* FDO, at 68.]
- The certification process of Chapter 47.80 RCW [Regional Transportation Planning Organizations] is completely separate from the GMA. The Board has jurisdiction under the GMA to determine compliance of a comprehensive plan's transportation element with the requirements of the Act. [*Sky Valley, 5368c,* FDO, at 129.]

- The Act does not require the use of any particular methodology for the 10-year traffic forecast. The nature of traffic forecasting is that it applies a methodology to data and assumptions to generate a prediction of the likely future. Where the Act does not prescribe a particular methodology, a state or local government is free to employ its own methodology, provided that it is supported by objective data and credible assumptions. [*Hapsmith I, 5375c*, FDO, at 30.]
- General discussion of transportation coordination with adjacent jurisdictions. [*Hapsmith I, 5375c*, FDO, at 32-34.]
- Any railroads with facilities, such as trackage, railyards and intermodal centers, that serve the region or state, as a matter of law, constitute state or regional transportation facilities and therefore are essential public facilities. [*Hapsmith I, 5375c*, FDO, at 39.]
- For purposes of RCW 36.70A.070(4) railroads are not utilities. Given the nature and size of railroads and their potential impact on land use planning, sound policy dictates that railroads be considered under the transportation element rather than the utilities element of a comprehensive plan. [*Hapsmith I, 5375c*, FDO, at 49.]
- For purposes of evaluating a jurisdiction's compliance with RCW 36.70A.070(6)(d), adjacent jurisdictions are those which are connected to the jurisdiction by a major arterial. [*WSDF IV, 6333*, FDO, at 35.]
- RCW 36.70A.020(3) does not require that each and every land use designation of a jurisdiction permit residential densities that support all modes of transportation. [Reliance on urban density designations alone is not enough to demonstrate noncompliance with Goal 3.] [*LMI/Chevron, 8312*, FDO, at 29.]
- A threshold issue for determining whether [Snohomish] County has made its capital budget decisions, pertaining to roads, in conformity with its comprehensive plan, is the relationship of the County's Transportation Element, the six-year financing plan in the 1999-2004 Capital Plan Detail and the Transportation Improvement Plan (TIP). Conceptually, the starting point for this inquiry is the County's Transportation Element, [as adopted in 1995]. Within this document, the County identifies its proposed transportation improvements for the short range (1995-2000 Phase) and long range (2001-2012 Phase). The transportation improvements identified in the Transportation Element are the baseline Plan provisions against which conformity of capital budget decisions are measured. The next question for assessing [a RCW 36.70A.120] challenge is which documents contain the capital budget decisions that must conform to the comprehensive plan? [Here these decisions were contained in the County's TIP, and summarized in the CFE's six-year financing plan. In this case, Petitioner did not challenge the TIP; consequently, the issue was dismissed.] [*McVittie, 9316c, FDO, at* 18-20.]
- *See also:* **Goals** [*McVittie, 9316c*]
- While Board review of a challenge to RCW 36.70A.070(3) or (6) focuses on the specific requirements of the section, the Board's review must be done in light of Goal 12, not in lieu of Goal 12. [*McVittie, 9316c, FDO*, at 22.]
- The GMA requires local governments to establish a single LOS standard for transportation facilities. [In a footnote, the Board acknowledges that screenline methodologies comply.] [*McVittie, 9316c, FDO*, at 23.]

- For transportation, the "trigger mechanism" is found in RCW 36.70A.070(6)(a)(iv)(C). (Quotation omitted.) It is clear that a local government must take action to ensure that the level of service standards will be met if (the "trigger") probable transportation funding falls short of meeting identified transportation needs. [*McVittie, 9316c, FDO,* at 26.]
- It is important to recognize that local government may use various regulatory techniques to avoid the situation where funding shortfalls occur. However, once local action is forced by a probable funding shortfall, a local government has numerous options to consider in reassessing and reevaluating its plan. In reassessing or reevaluating its plan, a local government is not automatically required to revise its land use element. There are other options that may be considered to meet identified capital facility needs and maintain plan consistency. [Options include: reducing standard of service (LOS); increase revenue; reduce average cost of the capital facility; reduce demand – reallocate or redirect population within the jurisdiction; reduce consumption; combinations of these options.] [*McVittie, 9316c, FDO,* at 26-27.]
- If reassessment action is triggered, the local government's response must culminate in public action in the public forum. [pursuant to RCW 36.70A.020(11), .035, .130 and .140] This includes, but is not limited to, disclosure of the need for a reassessment, disclosure of options under consideration, and public participation prior to local legislative action. (Footnote omitted.) [*McVittie, 9316c, FDO,* at 27.]
- The transportation element requires a local government to adopt a "concurrency" ordinance that will prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan. (Footnote omitted.) [*McVittie, 9316c, FDO,* at 29.]
- The record before the Board does not make clear whether the "Sidewalk Inventory" map was produced, or available, during the pendency of the adoption of the Greenwood/Phinney Ridge Urban Village. Even if the Board were to agree with Petitioner that the necessary inventory was not available during that process, the fact that it presently exists arguably renders legal issue 4 [alleging no inventory of sidewalks] moot. [*Radabaugh, 0302,* FDO, at 11.]
- [Sidewalks are a critical component of successful compact urban development. However,] the Board cannot, with the facts and argument presented in this case, discern a GMA duty that would oblige the City to adopt "levels of service" for sidewalks in urban villages nor subject projects in urban villages to a "concurrency" requirement for the installation of such facilities. [*Radabaugh, 0302,* FDO, at 14.]
- In order to determine whether [a jurisdiction] is experiencing a shortfall in transportation funding, the question is simply, have the needs identified in the transportation element (and supporting documents) been carried forward to the transportation improvement plan and funded. [*McVittie IV, 0306c,* FDO, at 18.]
- [Petitioner alleged seven perspectives to demonstrate funding shortfalls in transportation funding:
    1) Uncertain funding – if probable funding is not secured the County is committed to secure new revenue sources;

2) Exclusion of projects – projects desired by Petitioner are not included, but needed capacity projects identified in the transportation element are funded;

3) Lack of funding for projects in arrears (below LOS) – LOS deficiencies are due to state roads, concurrency does not apply to transportation facilities of state-wide significance. [However, the County is not helpless in this situation];

4) Partial funding – if part can stand as an independent unit, there is no need to delay until full financing is secured. [However, projects must be completed within 20-year Plan];

5) Use of "1995 dollars" in the transportation element underestimates the current need for revenue in 2000 – adequate revenue has been collected in "updated dollars";

6) Costs have increased faster than revenues – capacity projects in the transportation element are funded; and

7) Postponing projects creates a shortfall – Postponing projects, during the early or middle years of the 20-year planning horizon, does not create a funding shortfall. From each perspective, Petitioner failed to show a shortfall in funding.] [*McVittie IV, 0306c*, FDO, at 19-21.]

- [Jurisdictions] should be aware that those needs identified in the 20-year Plan (transportation element ending in 2012), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan i.e. by 2012. If these needs are not met by 2012, at a minimum, the [jurisdiction] will be noncompliant in meeting the funding requirements of RCW 36.70A.070(6). [*McVittie IV, 0306c*, FDO, at 21.]
- [O]nce a shortfall is established and a reassessment precipitated, the GMA's public participation requirements come into play. [Conversely, if a shortfall is not established, and reassessment is unnecessary, public participation is not required.] [*McVittie IV, 0306c*, FDO, at 23.]
- One of [the Board's] fundamental conclusions was the Board review of a challenge to RCW 36.70A.020(3) or (6) must be done "in light of Goal 12, not in lieu of Goal 12. [*McVittie VI, 1302*, FDO, at 11.]
- [The County adopted level of service (LOS) "objectives" for state highways.] The fact that the State has not yet adopted "standards" placed the County in a difficult situation, in view of the GMA mandate that the County adopt something by December of 2000. Relying upon the guidance of the [Puget Sound Regional Council] to adopt the [Washington State Department of Transportation] "objectives" in the County Plan was not unreasonable. In fact, for the County to have described as a standard that which the State described as an "objective" would have been more than misleading, it would have been flatly incorrect. [*McVittie VIII, 1317*, FDO, at 9.]
- [Petitioner argued that] there appears to be a serious disconnect between transportation plans and improvements done by the County and the State. [Therefore] the spirit of Goals 3 and 12 [must apply because they] would demand a better degree of coordination and consistency between the plans and actions of State and County government. Even the County laments the timing of State improvement, to say

nothing of the timing of the adoption of State LOS standards. Nevertheless, the Board must conclude that neither Goals 3 and 12, indeed **none** of the goals listed in RCW 36.70A.020 apply to the State because the preamble to that section unequivocally states the goals "shall be used *exclusively* for the purpose of guiding the development of comprehensive plans and development regulations." This is an unfortunate but inescapable conclusion, because to truly achieve managed growth there must be a better linkage between local efforts and state efforts. [*McVittie VIII, 1317*, FDO, at 10.]

- As provided in the statute [RCW 36.70A.070(6)(a)(iii)(C)], the purpose for including state LOS standards at the local level is for monitoring, evaluating and facilitating coordination between the state and local plans. Providing information to the state for its further analysis and assessment is the driver behind this section of the GMA. As discussed in [elsewhere], there is no financing or implementation "hook" for binding the state to undertake any given state road project, critical or otherwise. [*McVittie VIII, 1317*, FDO, at 14.]
- The Board notes that it is WSDOT [Washington State Department of Transportation], not cities or counties, that designates LOS standards on state highways, and Meridian *is* a state highway. [*Lewis, 1320*, FDO, at 19.]
- The Board finds it significant that Bellevue was aware of its option, as described in *West Seattle* [*4316*], to amend its Plan to adjust the level of service standards for East Bellevue [to allow greater levels of congestion], but chose not to do so. Instead, without revision to previously adopted LOS for East Bellevue set forth in the Plan and again in the [traffic standard code], the City simply exempted from its locally-adopted concurrency requirements what can only be described as potentially a very considerable amount of commercial development. [*Bennett, 1322c*, FDO, at 11.]
- The Act makes no mention of "exemptions" from the requirement that a local ordinance . . . "prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan . . ." RCW 36.70A.070(6)(b). [*Bennett, 1322c*, FDO, at 12.]
- The importance of the GMA's concurrency provisions were underscored by a recent Court of Appeals decision which commented on RCW 36.70A.070(6)(b), "The [GMA] requires that the City prohibit development that causes a decline in level of service standards. An action-forcing ordinance of this type is known as a concurrency ordinance because its purpose is to assure that development permits are denied unless there is concurrent provision for transportation impacts . . ." *Montlake Community Club v. CPSGMHB*, 110 Wash App. 731, 43 P.2d 57, (2002). [*Bennett, 1322c*, FDO, at 12.]
- For the Board to agree that a city can exempt from concurrency requirements commercial (re)development of the nature and order of magnitude described in this record would eviscerate the concurrency requirement of the Act. This the Board will not do. [Bennett, *1322c*, FDO, at 12-13.]
- [Since the County had a concurrency program requiring denial of permits if LOS declined, and funding in its transportation improvement program (TIP) for some of the area, the Board concluded that the County had maintained consistency between the land use and transportation elements of its Plan and the transportation element

continues to implement the land use plan.] The Board notes that if ongoing traffic concurrency problems (*i.e.*, segments of arterials in arrears with no funding for improvements programmed) stifle development opportunities [*i.e.*, denying permits] in the Clearview [LAMIRDs], then Petitioners' preferred solution (*i.e.*, not designating the two Clearview intersections as LAMIRDs) could be considered a more straightforward approach. However, since the County has a concurrency management system and it has funding for improvements for into its TIP (i.e., no funding shortfall), the County's approach is not prohibited by the GMA. [*Hensley IV* and *V*, *1304c/2304*, 6/17/02 Order, at 21-22.]

- [W]hile a transportation improvement program [**TIP**] is a discrete document apart from a Transportation or Capital Facilities Element of a comprehensive plan, a challenge to at TIP or an amendment to a TIP is not beyond the scope of the Board's jurisdiction (citing McVittie v. Snohomish County, CPSGMHB Case No. 99-3-0016c, Final Decision and Order, (Feb. 9, 2000), at 20.) [*Kent CARES II*, *02319*, 3/14/03 Order, at 8.]
- By its own enactments the County has attached significant importance to the DPO and the removal of the DPO through a deliberative rezoning process. [The County shall not approve a permit within the DPO until it has been removed through a rezone process.] This amendment simply excludes certain developments [those generating less than 50 peak hour trips] from consideration under the DPO processes. Therefore, the question for the Board regarding this exemption is whether its inclusion is consistent with and implements this fundamental purpose of the DPO. The Board concludes that it is not consistent with and does not implement the DPO and therefore does not comply with the requirements of RCW 36.70A.130(1). [*Citizens*, *03313*, FDO, at 19.]
- Notwithstanding the "development within the UGA will occur only when adequate public facilities are *in place*" statement from the two FEIS Addenda, the GMA and the LSUGA Plan provide otherwise. The GMA allows a six-year window to provide capital and transportation facilities. The GMA requires a six-year financing plan for capital facilities and a multi-year financing plan for transportation improvements. [*Citizens*, *03313*, FDO, at 31.]
- [Inclusion of projects from a previously adopted transportation improvement program into a Plan Update does not insulate their inclusion from a challenge alleging internal inconsistency.] [*Shaffer II*, *04323*, 12/9/04 Order, at 8.]
- [Where the Plan identifies the need for "grade separations" for rail crossings at east-west arterials, the City has discretion to choose the grade separations it will pursue.] [*Shaffer II*, *04323*, FDO, at 7-10.
- [D]ecreases in population allocations to cities that may or may not affect transportation planning becomes a responsibility of the individual city, and need not be addressed in the County's [transportation element] for unincorporated Pierce County. [*Bonney Lake*, *05316c*, FDO, at 47.]
- The Board has previously determined that Goals 3 and 4 do not require that every residential land use designation employed by a jurisdiction support transit or provide for affordable housing. (Citations omitted.) A Plan providing a variety and mix of housing densities and types is guided by these GMA goals. Without more evidence, a

challenge to residential map designations must fail. [*Fuhriman II, 05325c*, FDO, at 49.]

- [Petitioner challenged the low density designation of an area containing wetlands, but the site of a proposed roadway expansion – the Bothell Connector. Petitioner sought a higher density and more intense designation for the area.] It is obvious to the Board that Petitioner would have preferred a different designation; and Petitioner had the opportunity to persuade the Council to do so. However, the City chose to do otherwise; and as the Board discussed, supra, the R-40,000 designation in the Fitzgerald Subarea was not clearly erroneous and complied with the GMA. The fact that the road may, or even will, go through a critical area and connect two Regional Activity Centers, does no negate the validity of the R-40,000 designation, especially between two higher intensity areas. The Board acknowledges that such a project, if it does materialize, will be subject to the provisions of [SEPA]. Any probable adverse environmental impacts would be identified and mitigated through that process. [*Fuhriman II, 05325c*, FDO, at 58.]
- The City's characterization of the Transportation Master Plan (TMP) as a "functional plan" and not a GMA plan, development regulation or amendment thereto, is a misnomer. The TMP "functions" as a supplement or amendment or amendment to the City's Transportation Element. The City acknowledges that the TMP basically "swallows" the City's Transportation Element when the City notes that Chapter 2 of the TMP "reproduces the 2004 Transportation Element in full." [*Kap, 06302*, 4/12/06 Order, at 2-3.]
- The City's TMP cannot exist in a vacuum; it is part and parcel to the City's system for accommodating and managing growth. Managing growth in the Central Puget Sound Region is done exclusively under Chapter 36.70A RCW. The City's TMP is precisely the type of land use planning that the GMA was created to coordinate and manage. [*Kap, 06302*, 4/12/06 Order, at 4.]
- The GMA specifically sets out language that a six-year plan (the TIP) required under RCW 35.77.010 *must be consistent with the transportation element*. RCW 36.70A.070(6)(c). The City cannot sidestep this mandate of consistency. [*Fallgatter V, 06303*, FDO, at 13.]

- **Update**

- [I]f the buildable lands review and evaluation that is completed by September 1, 2002 demonstrates inconsistencies as noted in RCW 36.70A.215(3), *then* jurisdictions must adopt and implement the identified measures [reasonable measures] to increase consistency. A duty to act is stated, but RCW 36.70A.130(3), which provides, "The review required by this subsection [December 1, 2004 (for CPS jurisdictions)] may be combined with the review and evaluation required by RCW 36.70A.215." Therefore, the Board concludes that the outside limit for a local government to adopt reasonable measures to avoid the need to adjust the UGA is December 1, 2004 deadline established in .130(4). [*FEARN, 04304*, 5/20/04 Order, at 7-8.]
- RCW 36.70A.130 GMA imposes a duty upon [CPS jurisdictions] to undertake certain actions by the statutory deadline. On or before December 1, 2004, [CPS jurisdictions are] required to: 1) complete its Plan and development regulation review to determine

whether the Plan and implementing development regulations comply with the goals and requirements of the GMA; 2) *take legislative action indicating its determination regarding whether the Plan and development regulations comply with the Act*; and 3) if necessary, take legislative action to *revise the comprehensive plan and/or development regulations to achieve compliance with the goals and requirements of the Chapter 36.70A RCW – the GMA*. [*FEARN, 04304*, 5/20/04 Order, at 9.]

- It is undisputed that Petitioners participated before the City of Bonney Lake during the City's Phase 1 Plan Update process. Petitioners' letters of November 10, 2003 and November 30, 2003 clearly establish the scope of the concerns Petitioners sought to bring to the attention of the City. Those concerns go beyond the Phase I Plan Update's effect upon their property and adjoining acreage. These letters demonstrate concern with the City's Plan Update densities, sprawl, compact urban growth, infill practices and polices, affordable housing and UGA expansions. These concerns coincide with the issues presented to the Board for review. [*Jensen, 04310*, FDO, at 9-10.]
- The Board recognizes that only the Plan was amended by [the Plan Update]; not the City's zoning and development regulations. However, the Board notes that [certain exhibits] identify 11 areas where the Plan and FLUM designations permit higher densities or more intense uses than the existing zoning designations allow. The staff recommendation for these 11 areas does not resolve the inconsistency. In these instances, the staff recommendation is to "Entertain a rezone if and when ripe for development." Taking this avenue would be noncompliant with the Act since the unchanged zoning designations *would not implement the Plan and FLUM designations*, as required by RCW 36.70A.040 and .130. The City has the duty to maintain consistency between its Plan and regulations that implement its Plan; it may not ignore or delay this requirement and shift the duty to project proponents by "entertain[ing] rezones if and when ripe for development." If the City did not amend its Plan to remove all the inconsistencies identified and documented [in certain exhibits], it must now amend its development regulations to allow the densities and uses authorized in the Plan and FLUM in order to be consistent with and implement the Plan and FLUM designations. [This action must be completed by December 1, 2004, per .130.] [*Jensen, 04310*, FDO, at 17-18.]
- Although the City of Bonney Lake reviewed and evaluated its Plan, FLUM and development regulations for consistency and adopted the Phase 1 Plan Update, its review falls short of the compliance review required by RCW 36.70A.130. The December 1, 2004 compliance review requires the City to take legislative action to review, and if needed, revise its comprehensive plan and regulations to *ensure the plan and regulations comply with the requirements* of this chapter [by December 1, 2004.]" RCW 36.70A.130(1). Compliance with the GMA is more than a Plan, FLUM and development regulation "consistency review." A significant directive within the review process is for jurisdictions to determine whether their existing Plan and development regulations comply with *all* the goals and requirements of the Act, not just the GMA's various consistency requirements. [*Jensen, 04310*, FDO, at 18.]
- The City focuses its approach on meeting affordable housing needs through: multi family housing, manufactured or mobile homes,* duplexes,* small lot developments* and accessory dwelling units* [* in some zoning designations]. Other than small lot

developments, the City has not indicated its strategy for encouraging affordable single-family housing units in the Very Low Density Residential [up to 2 du/ac] or Low Density Residential [up to 4du/ac] areas. Likewise, with over half the City designated for low density residential uses, the Plan falls short of providing for a variety of residential densities. [The Plan Update is not guided by goal 4.] [*Jensen, 04310*, FDO, at 18.]

- [Over 50% of the land in the City is designated on the FLUM to allow "up to 4 du/ac" – a maximum, not a minimum. The City Plan indicates an existing gross residential density of 1.45 du/ac, and a net residential density of 2.76 du/ac. The County's BLR indicates an average gross residential density for the City between 2.98 or 3.35 du/ac. CPPs and Plan provisions require a net density of 4 du/ac. Petitioner, the County and the State all urged the City to address its low density sprawling development pattern during the update. However, the City did not address these concerns.] [*Jensen, 04310*, FDO, at 18-25.]
- General Discussion – Review of the legislative history of the GMA regarding UGAs and the ten-year review requirement. [*1000 Friends/KCRP, 05331c*, FDO, at 31-35.]
- The Board finds that in the course of almost-annual amendments to the GMA from 1990 to 2005, there has been no change in the timetable for UGA reviews. Central Puget Sound counties and their cities were required to adopt their county-wide planning policies, comprehensive plans, and development regulations and establish their urban growth areas by July 1994 and review their UGAs comprehensively "at least every ten years" thereafter. The Board further finds that the legislature has amended GMA deadlines from time to time, expressly allowing CTED to grant certain specific extensions, in recognition of the complexity of analysis and public process that may be involved, but there has been no such statutory extension or authority granted to CTED concerning the required UGA review. Therefore, the Board concludes that the Act required Kitsap County to conduct its .130(3) UGA review by no later than December 1, 2004. [*1000 Friends/KCRP, 05331c*, FDO, at 35.]
- There are important policy reasons for a consistent timeline for UGA review. Cities and counties need to coordinate their planning for urban growth, and allowing the dates for review cycles to begin when plans are brought into GMA compliance would quickly result in the kind of "uncoordinated and unplanned" land use that GMA was enacted to prevent. [Quoting RCW 36.70A.010.] Allowing tardy or non-compliant plans to "reset the clock" undermines that coordination. [*1000 Friends/KCRP, 05331c*, FDO, at 35.]
- The UGA review cycle also fits well with the OFM population forecasts and the buildable lands review cycle. The population forecasts are based on the census data available early each decade. The buildable lands review and evaluation program is on a five-year cycle, beginning in 2002 and every five years thereafter, to assess actual development trends in a county and its cities. RCW 36.70A.215(2)(b). This leads logically into an assessment of the appropriate sizing of the Urban Growth Area. Urban Growth Area review "may be combined with" the buildable lands review. RCW 36.70A.130(3). [*1000 Friends/KCRP, 05331c*, FDO, at 35-36.]
- [In the context of the 2004 compliance updates, amendments to the] Comprehensive Plan and the Zoning Map, whether revised from previous versions or not, are required

to comply with the Act, and are subject to a timely challenge. [*1000 Friends VII, 05306*, FDO, at 5.]

- Kitsap County amended its County-wide Planning Policies to include a new OFM population target through 2025, allocating population to all ten UGAs in the County. The next step under the statute [RCW 36.70A.130(3)(a)] should be the ten-year UGA and density review, followed by comprehensive plan amendments. Here, Kitsap County has not yet completed the GMA process of ten-year UGA and density review [.130(a)] nor amended its comprehensive plan to accommodate all the 20-year growth projection [.130(3)(b)]. Nonetheless, in the Kingston Subarea Plan the County used a portion of the 2025 growth allocation to justify the expanded subarea UGA. As Petitioners point out, expanding the subarea UGA in advance of the required countywide assessment undermines the GMA purpose of absorbing growth in existing urban areas. [The Board found the County's inversion of this process and piecemeal approach noncompliant with the GMA.] [*KCRP VI, 06307*, FDO, at 11-12.]
- The sequence set forth in RCW 36.70A.130(3) – first conduct a ten-year review of UGAs and permitted densities and then amend comprehensive plans to accommodate new twenty-year growth projections – is reinforced by RCW 36.70A.115, which requires counties to "ensure" that comprehensive plan amendments "taken collectively" accommodate their allocated growth consistent with the twenty-year OFM population forecasts and with the applicable county-wide planning policies. [*KCRP VI, 06307*, FDO, at 14.]
- To provide the consistent, coordinated planning that is at the heart of the GMA, comprehensive plan amendments, including those enacted to resolve appeals and those enacted as part of the ten-year UGA review and update, must be consistent with Countywide Planning Policies. [*McNaughton, 06327*, FDO, at 13.]
- The parties agree that the pivotal issue here is whether the County's adoption of the [challenged] Ordinances is to be evaluated and processed in the context and under the standards of the preceding action – the ten-year-update of the urban growth area – or in the context of concurrent UGA applications – the 2006 Docket process. The Board cannot find – and the parties have not identified – any controlling provision of the GMA that directs the County as to which process to use. The GMA requires action consistent with County CPPs. While the GMA directs the adoption of CPPs, it is local governments which develop the substance and content of the CPPs by which they agree to be bound. The CPPs at issue here were developed and ratified by Snohomish County and its cities. [*McNaughton, 06327*, FDO, at 14.]

- **Urban Densities**

- Compact urban development is the antithesis of sprawl. [*Rural Residents, 3310*, FDO, at 19.]
- Comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban

governmental services; and (3) to achieve compact urban development. [*Tacoma, 4301,* FDO, at 12.]

- A density of one unit per ten acres is a rural density. [*Bremerton, 5339c,* FDO, p. 21]
- Although urban growth should be located where there is adequate infrastructure to support it, the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. [*Robison, 4325c,* FDO, at. 20-21.]
- A pattern of 1- and 2.5-acre lots meets the Act's definition of urban growth. . . . However, a pattern of 1- or 2.5-acre lots is not an appropriate urban density either. . . . An urban land use pattern of 1- or 2.5-acre parcels would constitute sprawl; such a development pattern within the rural area would also constitute sprawl. [*Bremerton, 5339c,* FDO, at 49.]
- Generally, any residential pattern of four net dwelling units per acre, or higher, is compact urban development and satisfies the low end of the range required by the Act. Any larger urban lots will be subject to increased scrutiny. [*Bremerton, 5339c,* FDO, at 50.]
- For a county to calculate the amount of unincorporated UGA land necessary to accommodate its allocated population growth, the county must utilize a population density assumption that reflects development densities anticipated by the county plan. [*Bremerton/Port Gamble, 5339c/7324c, 9/8/97* Order, at 16.]
- On parcels large enough to have more than one density designation, the Board will look at the average net density of that entire ownership. [*Benaroya I, 5372c,* FDO, at 33.]
- The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide adequate justification for residential densities under 4 du/acre within a UGA. [*Benaroya I, 5372c,* 3/13/97 Order, at 13.]
- Neither goal (1) and (2) nor *Anderson Creek,* establish a GMA duty that precludes a jurisdiction from limiting the scope and magnitude of development in critical areas or environmentally sensitive areas. [*Litowitz, 6305,* FDO, at 9.]
- When environmentally sensitive systems are large in scope (e.g., a watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may also choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre. Such designation must be supported by adequate justification. [*Litowitz, 6305,* FDO, at 12.]
- The GMA does not require cities to designate for the highest intensity uses every parcel of property with infrastructure adequate to support urban development. Just because infrastructure may be available to support intense development does not mean the land must be designated for intense development. [*Litowitz, 6305,* FDO, at 20.]

- The GMA does not require a jurisdiction to designate property with urban infrastructure for a particular intensity of use. [*Litowitz, 6305,* FDO, at 20.]
- That which is urban should be municipal. The corollary is: that which is municipal must be urban, which is to say, must generally have residential densities at 4 du/acre or higher. The Act is clear in providing that urban governmental services are to be available and provided in urban areas. [*Hensley III, 6331,* FDO, at 9.]
- The consequence of including within an urban area a net residential density below 4 du/acre is that the plan will be subject to increased scrutiny for justification. [*Hensley III, 6331,* FDO, at 9.]
- Designation of a traditional UGA generally establishes certainty that: 1) the development of the land within it will be urban in nature; 2) this urban land will ultimately be provided with adequate urban facilities and services within the planning horizon; and 3) the land will ultimately be developed at urban densities and intensities. [*Johnson II, 7302,* FDO, at 10.]
- [Pursuant to RCW 36.70A.110(1), all cities are included in UGAs. Pursuant to RCW 36.70A.110(2), each UGA must permit urban densities. Therefore, the GMA imposes a duty upon all cities to designate lands within their city limits (UGA) to permit urban densities.] The GMA requires every city to designate lands within its jurisdiction at appropriate urban densities. [*LMI/Chevron, 8312,* FDO, at 23.]
- Fundamental to a city's complying with Goals 1 and 2 is that its land use element, including its future land use map, permits appropriate urban densities throughout its jurisdiction**.** [*LMI/Chevron, 8312,* FDO, at 24.]
- [A future land use map designation for residential development that permits 4 du/ac within city limits (UGA) is an appropriate urban density.] [*LMI/Chevron, 8312,* FDO, at 24.]
- [A future land use map designation for residential development that permits only 1 du/2 ac within city limits (UGA) is not an appropriate urban density and constitutes sprawling low-density development.] [*LMI/Chevron, 8312,* FDO, at 24.]
- When critical areas are large in scope, with a high rank order value and are complex in structure and function, a city may use its future land use map designations to afford a higher level of critical areas protection than is available through its regulations to protect critical areas. In these limited circumstances, the resulting residential density will be deemed an appropriate urban density. [*LMI/Chevron, 8312,* FDO, at 25.]
- [A]bsent the requisite environmental attributes of a critical area that is large in scope, of high rank order value and is complex in structure and function, [a city's] future land use map density designations must permit appropriate urban densities. [*LMI/Chevron, 8312,* FDO, at 26.]
- [A plan, or subarea plan, policy that seeks to protect and maintain the large lot, low density, residential character of a city without encouraging urban growth at appropriate urban densities or reducing the conversion of undeveloped land to low density development is inconsistent with, thwarts, and does not comply with Goals 1 and 2 (RCW 36.70A.020(1) and (2).] [*LMI/Chevron, 8312,* FDO, at 28.]
- RCW 36.70A.020(3) does not require that each and every land use designation of a jurisdiction permit residential densities that support all modes of transportation. [Reliance on urban density designations alone is not enough to demonstrate noncompliance with Goal 3.] [*LMI/Chevron, 8312,* FDO, at 29.]

- [RCW 36.70A.020(4) does not require that each and every land use designation of a jurisdiction provide for affordable housing. [*LMI/Chevron, 8312,* FDO, at 29.]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, at 30.]
- [The GMA does not compel redevelopment of existing developed parcels, but it does require that the plans that govern new development or redevelopment allow compact urban development at appropriate urban densities in order to be consistent with the goals of the GMA.] [*LMI/Chevron, 8312,* FDO, at 37.]
- [The legend on the zoning map indicating urban densities, contradicts the "compliant" text of the zoning code making the area rural. The legend discrepancy, whether or not inadvertent, means the legend designation is non-compliant with the GMA. [*Bear Creek, 3508c*, 11/3/00 Order, at 12.]
- [A 53 acre property within the County's UGA was rezoned from four units per acre to one unit per acre.] It is undisputed that four dwelling units per acre constitutes compact urban growth. Over the last decade, as the GMA has evolved and been interpreted, it has generally been accepted that this density is an appropriate urban density. . . .However, densities of less than four dwelling units per acre have been challenged before this Board and found to be appropriate urban densities in limited circumstances. The Board has stated, "The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide adequate justification for residential densities under 4 du/acre within a UGA. (Citation omitted.) [*Forster Woods, 1308c*, FDO, at 31.]
- Just as the future land use map must permit appropriate urban densities in the UGA, so too must the implementing zoning designations. Also, the duty of a city to provide for appropriate urban densities within a UGA, likewise applies to a county. Counties must provide for appropriate urban densities within unincorporated UGAs. [*Forster Woods, 1308c*, FDO, at 32.]
- [The Board found no environmental constraints to support the County's action.] The County's contention that the rezoning is appropriate because it is within the 'range of urban densities' the County permits, is unpersuasive. The 'range of urban densities' may dip below typical urban densities when environmental constraints support such and outcome. That is not the case here. [*Forster Woods, 1308c*, FDO, at 32.]
- The focus of this appeal is Snohomish County's recent amendments to its Planned Residential Development (**PRD**) regulations. Basically, PRDs allow higher residential densities than the underlying zoning classifications would otherwise permit. In Snohomish County, the PRD regulations set the maximum number of dwelling units permitted in the urban single family zones at 120 percent of the maximum number of units permitted under the underlying zoning classification. In essence, a 20% density bonus is permitted for using the PRD approach. The crux of this challenge involves changes in the basis and methodology in calculating the unit yield and bonus, including a limitation on the maximum number of dwelling units allowed and a limitation on the minimum lot size to which the PRD regulations can be applied. The challenged Ordinance changed the basis of the calculations from a gross acreage to a net acreage, modified factors to be included in calculating the

developable area, established a maximum density in certain zones and limited the application of PRDs to lots over a certain size. [The Board upheld these amendments.] [*Master Builders Association, 1316*, FDO, at 6.]

- The MBA contends that the undisputed cumulative impact of these changes is a reduction in the *quantity* of dwelling units that had previously been allowed in certain zones under the PRD approach. This reduction in *quantity* of dwelling units [*i.e.* density] permitted by the new PRD regulations forms the foundation of the MBA challenge. However, the County seeks to justify these changes as being the product of debate and compromise that ultimately seeks to encourage quality construction of higher density development in the urban area while protecting open space, recreation and critical areas. Additionally, the County contends that these changes to the PRD regulations are not a violation of any of the challenged provisions of the GMA. [The Board agreed with the County.] [*Master Builders Association, 1316*, FDO, at 6.]
- It is undisputed that the County's amendments to the PRD regulations have the effect of reducing the allowable density within [challenged urban single family residential] zoning designations. . . .[A County Plan policy] states, "development regulations shall be adopted which will require that new residential subdivisions achieve a minimum net density of 4-6 dwelling units per acre in all unincorporated UGAs." The Snohomish County Code requires "A minimum density of four dwelling units per net acre shall be required in all UGAs (noting exceptions not relevant here)." (Citations omitted.) The County's zoning designations [for the challenged urban single family residential zones], coupled with the PRD regulations and [the Code provision], allow for between 4 and 7 dwelling units per net acre. These densities are consistent with the Plan policies and fall within the bounds of appropriate urban densities. [*Master Builders Association, 1316*, FDO, at 18-19.]
- The MBA assertion that the County's development pattern within the unincorporated UGA only permits 3.71 du/*gross* acre is unpersuasive. Snohomish County Code specifically requires a minimum density of 4 dwelling units per *net* acre within the unincorporated UGA. The County's 2000 Growth Monitoring Report indicates *net* residential densities of 7.11 du/net acre in the unincorporated UGA. The Board finds that this density is an appropriate urban density for unincorporated UGAs in Snohomish County. [*Master Builders Association, 1316*, FDO, at 19.]
- The purpose statements of the PRD regulations evidence the versatility the PRD regulations are trying to serve. Achieving density is not the sole purpose of the PRD process (nor the GMA). Instead, as the County states, the PRD regulations "seek to encourage the construction of *quality*, high-density development while protecting open space, recreation areas and natural site amenities." The Board agrees. [*Master Builders Association, 1316*, FDO, at 23.]
- It is generally accepted, and not disputed here, that 4 dwelling units per acre is an appropriate urban density. However, the Board has stated that, in certain circumstances, urban densities of less than 4 dwelling units per acre can be an appropriate urban density, and therefore comply with Goals 1 and 2. "Whenever environmentally sensitive systems are large in scope (e.g., watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre." *Litowitz v. City of Federal Way*,

CPSGMHB Case No. 96-3-0005, Final Decision and Order, (Jul. 22, 1997), at 12. The *Litowitz* test, although originally used to assess a land use plan designation, is also the appropriate test to apply here in relation to the challenged zoning designations. [*MBA/Brink, 02310*, FDO, at 15.]

- The County makes no pretense or effort to explain the [2-4 du/acre zone designation] by suggesting it is necessary to preserve large scale, complex and high value critical areas, as it did for the [1-3 du/acre zone designation]. Therefore the foundation for any lower density designations [below 4 du/acre], is absolutely absent. [Therefore, the designation does not comply with Goals 1 and 2.] [*MBA/Brink, 02310*, FDO, at 20.]
- On its face, the zoning provisions for the SF zone in the PSMCP area allow more than four dwelling units per acre – average lot sizes of 6,000 square feet yield over 7 lots per acre. Not only does this exceed the 4 units per acre threshold that the parties to this case agree is an appropriate urban density, it can exceed the density threshold that the Board has previously acknowledged supports transit objectives. The 6000 square foot average lot size can yield an excellent urban density. [*MBA/Brink, 02310*, 9/4/03 Order, at 9.]
- Petitioners seem to assert that <u>every parcel or property</u> within the city-limits and within an unincorporated UGA must ultimately be developed at at least 4 du/acre. The GMA does not require this, nor has the Board ever said this. In reviewing the Future Land Use Map in the *Litowitz* and *LMI/Chevron* cases, the Board focused on the question of appropriate land use designations in an area-wide context, not a parcel-specific one. When translating densities from an area-wide FLUM to a localized parcel-specific zoning map it is expected that *de minimus* variations will occur. However, even in these limited situations jurisdictions can, and are encouraged to, attain urban densities through site design, cluster development, lot averaging, zero lot line zoning, and other local innovative techniques. [*MBA/Brink, 02310*, 9/4/03 Order, at 10.]
- [Changing the Plan designation for Petitioners' property from high density residential to medium density residential to make it consistent with the City's development regulations, is within the City's discretion; especially since either designation maintains appropriate urban densities.] [*Jensen, 04310*, FDO, at 16.]
- The City focuses its approach on meeting affordable housing needs through: multi family housing, manufactured or mobile homes,* duplexes,* small lot developments* and accessory dwelling units* [* in some zoning designations]. Other than small lot developments, the City has not indicated its strategy for encouraging affordable single-family housing units in the Very Low Density Residential [up to 2 du/ac] or Low Density Residential [up to 4du/ac] areas. Likewise, with over half the City designated for low density residential uses, the Plan falls short of providing for a variety of residential densities. [The Plan Update is not guided by goal 4.] [*Jensen, 04310*, FDO, at 18.]
- [Over 50% of the land in the City is designated on the FLUM to allow "up to 4 du/ac" – a maximum, not a minimum. The City Plan indicates an existing gross residential density of 1.45 du/ac, and a net residential density of 2.76 du/ac. The County's BLR indicates an average gross residential density for the City between 2.98 or 3.35 du/ac. CPPs and Plan provisions require a net density of 4 du/ac. Petitioner, the County and

the State all urged the City to address its low density sprawling development pattern during the update. However, the City did not address these concerns.] [*Jensen, 04310*, FDO, at 18-25.]

- Although there were various ways the City could have revised the land use designation on its FLUM and in its Plan text to achieve compliance with the Board's Order, the City exercised its discretion and chose to redefine the two noncompliant designations as one, rather large, "Single Family Residential" designation that requires 4-5 dwelling units per net acre throughout the designated areas – clearly an undisputed appropriate urban density. [*Jensen, 04310*, 4/26/05 Order, at 7.]
- If the legal sufficiency of a BLR is challenged, the Board's scrutiny will focus on whether the resulting BLR fulfills the *purposes* of the program and whether the BLR contains the key evaluation components – *i.e.* compliance with RCW 36.70A.215(1) and (3). Simply put, based upon the review and evaluation contained in a BLR, have the jurisdictions been able to determine whether they are achieving urban densities within the UGAs and are reasonable measures needed to avoid adjusting the UGA? Thus, if a county and its cities agree upon an evaluation methodology that satisfy the minimum evaluation components of RCW 36.70A.215(3) [BLR], and the results of that review and evaluation meet the purposes [achieving urban densities within UGAs and are reasonable measures needed to avoid adjusting UGAs] of RCW 36.70A.215(1), the Board will find compliance. [*S/K Realtors, 04328*, FDO, at 15.]
- General discussion of the factors the Board considers and weigh in determining whether a city' designated urban densities are "appropriate urban densities." [*Kaleas, 05307c*, FDO, at 5-6.]
- The physical form the GMA is driving towards in its mission to curb sprawl is "a compact urban landscape." . . . Residential development is a major component of the region's compact urban form. Therefore, as growth continues, higher residential urban densities become a corollary to compact urban development. However, urban density is not necessarily an end in itself; it is a means of achieving numerous goals in the GMA – goals which are to guide all the GMA planning jurisdictions. [*Kaleas, 05307c*, FDO, at 13-14.]
- Allowing higher residential densities in areas and neighborhoods where urban services and facilities already exist, or are readily available, increases service efficiencies and can lower the costs of providing urban services. The per capita costs of providing urban services tends to be lower when development is compact and at higher densities [Goals 1 and 12 and RCW 36.70A.110 and .070(3)]. [*Kaleas, 05307c*, FDO, at 14.]
- Increasing densities in urban areas prevents the inappropriate conversion of undeveloped land thereby curbing the perpetuation of sprawl. Compact urban development is the antithesis of sprawl. [Goal 2 and RCW 36.70A.110]. Higher urban densities at locations along major transportation corridors and allowing mixed uses at designated centers support transit and other alternative forms of transportation as well as encourage economic development. [Goals 3 and 5 and RCW 36.70A.070(6) and (7)]. [*Kaleas, 05307c*, FDO, at 14.]
- Higher density single family and multifamily housing (apartments, cottage housing, condominiums and townhouses, etc.) adds variety to housing alternatives within

urban areas to help make housing affordable for all segments of the population. [Goal 4 and RCW 36.70A.070(4)]. [*Kaleas, 05307c*, FDO, at 14.]

- Likewise, increasing the intensity and density of development in urban areas is a means of preserving our natural resource industries and historical or archaeological sites, protecting open space and the environment. [Goals 8, 9, 10 and 13 and RCW 36.70A.070(8), .050, .060, .170 and .172]. [*Kaleas, 05307c*, FDO, at 14.]
- The Plan Update's designation of low residential density [84%] and the miniscule portion of the City designated for higher residential density [3%] are not evidence of, nor a demonstration of the City's fulfillment of furtherance of these "urban density" Goals of the Act. [*Kaleas, 05307c*, FDO, at 15.]
- [Although the Act does not define "urban density," it requires urban densities to be permitted in urban areas – within UGAs.] Therefore, having a benchmark, a safe harbor or bright line to identify a baseline urban density provides a high degree of *certainty* and *predictability* in the critical process of sizing, locating and designating UGAs. This UGA designation process is a critical coordination function under the GMA. The Act directs counties to designate UGAs. However, there are almost 90 cities located within the four Central Puget Sound counties. Thus to avoid the "threat to the environment, sustainable economic development, and the health, safety and high quality of life enjoyed by the residents of this state" a high degree of coordination and consultation between each county and each of its jurisdictions is required. [*Kaleas, 05307c*, FDO, at 15-16.]
- To provide some predictability and certainty to the GMA planning process, and to assist in this coordination function, the Board articulated an urban residential density [defining compact urban development] for purposes of determining compliance with the requirements of the Act. [*Kaleas, 05307c*, FDO, at 16.]
- The Board's formulation of the 4 du/acre density as an appropriate urban density has withstood the test of time. For a decade it has provided a basis for coordinated planning and the necessary certainty and predictability for GMA planning in the Central Puget Sound region. It has provided a baseline definition of appropriate urban densities for UGA designations, comprehensive land use plans and their implementing development regulations. [For over a decade, neither the legislature nor the courts have altered the 4 du/acre formulation of appropriate urban density.] The *certainty* and *predictability* that a residential density of 4 du/acre is an "appropriate urban density" continues to be acknowledged and accepted – a safe harbor in the tumultuous sea of GMA. But there is constant tension between the need and desire for *certainty* and the need and desire for *flexibility*. It is significant that even in the Board's 1995 *Bremerton* decision, the Board acknowledged the *need for flexibility and recognition of local discretion*. In *Bremerton*, the Board acknowledged that depending upon local circumstances, residential densities either higher or lower than 4 du/acre could be "appropriate urban densities." [*Kaleas, 05307c*, FDO, at 16-17.]
- Jurisdictions have an explicit GMA duty to identify, designate and protect critical areas (as defined in the Act). This duty is "density blind" – critical areas must be protected whether they are found within resource lands, rural lands or urban lands, no matter the Plan or zoning "density" designation that is assigned. It is only when a determination is made that the existing critical areas regulations will not provide the

needed level of protection that a jurisdiction may consider limits on urban density [in its FLUM and zoning map designations] as an additional layer of protection to regulate critical areas. At this point, the jurisdiction is "balancing" and making trade-offs among its GMA duties. The duty and responsibility to protect critical areas is being balanced against the duty and responsibility to provide for appropriate urban densities. [*Kaleas, 05307c*, FDO, at 18.]

- [If the rationale for a low density urban designation is not linked to a large scale, complex, high rank order critical area and providing additional protection to that critical area, but instead the rationale is to perpetuate existing low-density residential development patterns – sprawl – the Board has found noncompliance.] [*Kaleas, 05307c*, FDO, at 18.]
- Existing housing stock and neighborhoods may be maintained and preserved; however, existing low-density patterns of development cannot be perpetuated. [*Kaleas, 05307c*, FDO, at 19.]
- The Board has acknowledged that there may be unique local circumstances such as existing equestrian communities or extensive geological features that would merit low residential density designations within urban areas. [*Kaleas, 05307c*, FDO, at 20.]
- The Board can conceive of appropriate urban densities below 4 du/acre where a city is balancing its GMA duties to provide adequate urban services and facilities with its duty to provide urban densities. Thus, it is conceivable that if a city has an explicit phasing program that sequences and times the provision of urban services and facilities to coincide with the jurisdiction's capital facilities and transportation financing plans and programs, lower densities in some areas may be appropriate for an established time horizon, particularly if offset by much higher densities where capital facilities are already in place. [*Kaleas, 05307c*, FDO, at 20.]
- [Low (2.2 and 2.9 du/acre) and medium (3.5 du/acre) density residential designations, affecting 84% of the residential land in the jurisdiction, are below the regionally accepted norm – 4 du/acre – for an appropriate urban density within an urban area. Almost 90% of the vacant land in the City is within these designations. Petitioners have demonstrated that there is nothing in the record to lead to the conclusion that there are large-scale, complex, high rank order critical areas that are present in the affected areas or that any of designated critical areas cannot be adequately protected by existing critical areas regulations. However, Plan policies indicate that the designations are to perpetuate the existing low-density development pattern and not encourage infill and redevelopment at appropriate urban densities. The designations do not comply with the urban density provisions of the Act.] [*Kaleas, 05307c*, FDO, at 20-24.]
- [The City's Conservancy Residential District (47 acres @ 1 du/5 acres) and the Single Family Estates District (393 acres @ 1.24 du/acre) account for approximately 6% of the City's total land. About 10% of the vacant land in the City is within these designations. Approximately 81% of the land designated by the City for single family residential use, permits densities ranging from 4.5 to 7.26 du/acre. Multi-family, mixed uses and urban village designations, which all allow residential development, account for almost 20% of the land in the City. The City made a policy determination, in the text describing the challenged designations, that its critical areas regulations do not adequately protect identified critical areas within some areas of the

Conservancy Residential District and the Single Family Estates District and relied upon low density designations to provide added protections. With the exception of one of the areas with the challenged designations, the Board found the designations to be appropriate urban densities, due to critical areas constraints. For one area the Board found noncompliance.] [*1000 Friends VII, 05306*, FDO, at 25-29.]

- In this case the City is not the provider of sewer service and the sewer district has not established a time certain for the provision of sewer service. The City may be able to influence the sewer districts timing policies but it cannot mandate them. The City has the latitude under the existing land use designations to change the zoning to a higher density residential district, but no policy commitment to do so. If the City were to change the zoning district to one that permitted 4 du/acre it would be an incentive for the sewer district to establish a time certain for extension of sewer service to the subdivision. The higher density zoning together with a time certain for sewer service would support the redevelopment of this area at appropriate urban densities. [*1000 Friends VII, 05306*, FDO, at 28-29.]
- [General Discussion of gross versus net density calculations.] [*Fuhriman II, 05325c*, FDO, at 23-33.]
- [In its Plan Update, the City defined "net buildable area" as "the gross land area, measured in acres, minus the land area in roads and other rights-of-way, surface stormwater retention/detention/water quality facilities, critical areas, critical area buffers, and land dedicated to the City." The Board discussed the definition and the effect of its application.] Once again it is not disputed by any of the parties that 4 du/acre is an appropriate urban residential density. The disputed issue here is how that urban residential density is calculated. Although the parties have characterized the conflict as being whether urban residential density is calculated on a *gross* acreage basis [permitted density divided into total acres] or a *net* acreage basis [permitted density divided into buildable acres; buildable meaning gross acreage minus unbuildable acreage], there is no persuasive argument offered indicating that the GMA, or this Board, has ever indicated that urban residential density must be calculated based upon gross acreage. [*Fuhriman II, 05325c*, FDO, at 23-24.]
- The GMA is silent. It does not define urban density or the basis for calculating urban density. [The Board then reviews several CPS cases where the distinction between gross and net density was discussed.] [B]ased upon experience in reviewing UGAs, the Board again acknowledged and recognized that net acreage equated to buildable acreage, which involved the deduction of unbuildable areas [*i.e.* rights of way and certain critical areas] from the gross acreage. . . . [T]he Board has discussed density in terms of a net yield of units on buildable acreage. [*Fuhriman II, 05325c*, FDO, at 24-25.]
- The Board has interpreted various means of calculating density for various purposes, and acknowledged certain "deductions" from gross area as an appropriate means of determining buildable area and determining the net density yield in units per acre. However, which factors are deducted in the calculations is a policy choice for local governments to make, so long as they are supported by evidence in the record and consistent with the goals and requirements of the Act. [*Fuhriman II, 05325c*, FDO, at 26.]

- [The City's definition of net buildable area] equates net acreage with buildable acreage and reflects the concept of buildable density. The definition clearly allows for the deduction of roads, rights-of-way and critical areas, which are generally acknowledged, and recognized by the Board, as being "unbuildable" areas that are not available for housing. Therefore, these areas could appropriately be deducted from gross acreage to determine net buildable area. . . . The Board notes that public facilities have generally been recognized as unavailable for housing and may be deducted from gross acreage to determine buildable acreage. (Citations omitted.) The Board finds there is supporting evidence for the City's decision to include areas encumbered by stormwater retention/detention/water quality facilities and lands dedicated to the City as deductions in its "net buildable area" definition; . . . including these components falls within the scope of the City's discretion. [The most disputed "deduction" included by the City was *critical area buffers*.] . . . The Board finds that the City's decision to deduct critical area buffers in determining net buildable density was not unreasonable. There was ample evidence in the record to support the decision of the City to include critical area buffers as a deduction in the definition of net buildable area to be used in calculating net residential density. [Adoption of the definition was not clearly erroneous.] [*Fuhriman II, 05325c*, FDO, at 26-27.]
- Although the Board concludes that the deductions in the City's definition of "net buildable area" were reasonable, not clearly erroneous, and fall within the scope of the City's discretion; that does not mean that the Board is not concerned with a very practical problem voiced by Petitioners. Namely, that, different definitions of "net buildable area" with varying deductions could be adopted by each jurisdiction. This uncoordinated and inconsistent approach in methodology could create a balkanization in the Central Puget Sound region, and could undermine coordinated planning under the GMA. [The Board mentioned instances where coordination and cooperation regarding methodology and calculations were enhanced through the use of agreed upon county-wide planning policies (*i.e.* urban growth areas, and buildable lands program) and offered that CPPs might be used for setting parameters for density transfers or credits in buffers areas or for transferable development rights programs). [*Fuhriman II, 05325c*, FDO, at 27-29.]
- [The City's minimum lot size designations of R-9,600 (square feet), R-8,400, R-7,200 and R-5,400 arrayed *on one net buildable acre yields* a residential density of 4 du/acre or more – 4.5, 5.2, 6.0 and 8.0 dwelling units per *net buildable acre*, respectively. On their face they are appropriate urban densities. Nonetheless, Petitioners asserted that the R-9,600 minimum lot size would not yield 4 du/acre. The Board concluded. . .] Net buildable area calculations that *yield* a density of 4 du/acre is an appropriate urban density. Review of the relevant provisions of the City's 2004 Plan Update suggest that the City has taken appropriate steps, such as eliminating the R-1, R-2 and R-3 [1 du, 2 du and 3 du/acre, respectively] designations, and has provided for a yield of 4 du/acre with the [new] R-9,600 residential designation *in its Plan*. The City's pending implementing development regulations must be consistent with and implement the Plan. [*Fuhriman II, 05325c*, FDO, at 31.]
- While the Board concludes that the Plan's R-9,600 minimum lot size is intended to yield an appropriate urban density of 4 du/acre; the Board is also mindful that *de minimus* variations may occur. However, such variations should be minimized

through techniques such as lot-size averaging, density bonuses or credits, cluster development, perhaps maximum lot sizes and other innovative techniques. [*Fuhriman II, 05325c*, FDO, at 32.]

- [The City designated a 357 acre area with an R-40,000 minimum lot size – Fitzgerald Subarea. The basis for the designation to protect large-scale, complex, high rank value critical areas that could not be adequately protected by existing critical areas regulations.] It seems apparent to the Board that, at least for the 357-acres disputed here, the City's present critical areas regulations were believed to be inadequate in protecting the critical areas at issue. This is evidenced by the *Litowitz* Test Report [which identified the area as having large-scale, complex and high rank value critical areas] and the fact that even the Planning Commission [which did not support the designation] recommended a "special overlay designation" and "special protections and regulations" to be developed to adequately protect the critical areas in question. The Commission's recommendation by itself evidences perceived inadequacies in the City's existing critical areas regulations that can support the added protection of the R-40,000 designation. Further, the overall size and interconnectedness of the affected hydrologic system is well documented; it is not inappropriate to look at a sub-basin or related hydrologic feature to assess critical areas in a specific area. [The Board upheld the R-40,000 designation for the affected area.] [*Fuhriman II, 05325c*, FDO, at 34-36.]
- [The City designated a portion of the Norway Hill area with an R-40,000 minimum lot size. Steep slopes, erosive soils, difficulty in providing urban services and connection to an aquifer and salmon stream were the basis for the designation. The Board noted that only a portion of the area designated was within the city limits, the remainder being within the unincorporated county, but within the UGA and planned annexation area of the City.] There is no question that the area designated R-40,000 within the Norway Hill Subarea is not a large scale, complex, high rank order value critical area as analyzed in the Board's *Litowitz* case. The City's *Litowitz* Test Report confirms this conclusion. However, in a recent Board decision [*Kaleas, 05307c*, FDO.], the Board acknowledged that the critical areas discussed in the Litowitz case, and several cases thereafter, were linked to the hydrologic ecosystem, and that the Board could conceive of unique geologic or topographical features that would also require the additional level of protection of lower densities in those limited geologically hazardous landscapes. [To qualify, geologically hazardous critical areas would have to be mapped, and use best available science, to identify their function and values. The Board concluded that the geologically hazardous areas on Norway Hill were mapped, and the area contained aquifers connected to salmon bearing streams. The Board upheld the R-40,000 designation for the affected area.] [*Fuhriman II, 05325c*, FDO, at 37-39.]
- RCW 36.70A.110(2) and .130(3) contain two compatible and major directives. The first is that the State Office of Financial Management (OFM) must project population ranges for each GMA county. These are the *population drivers*, the urban growth, which the county, in conjunction with its cities must accommodate. Second, this section of the Act directs the county and its cities to include areas and densities *sufficient to permit the urban growth* that is projected to occur. In order to comply with these directives, jurisdictions must undertake some form of land capacity

analysis to determine whether their *areas and permitted densities* for the lands within their jurisdiction can accommodate the projected and allocated growth. Both of these GMA requirements speak in terms of providing *densities* to accommodate growth – compact urban development. [*Strahm, 05342*, FDO, at 12.]

- While the GMA requires compact urban development through higher densities, it does not compel increases in FLUM designations as the only means of achieving higher density, as Petitioner suggests. Here, the Board agrees with the City that there is evidence in the record to support the City of Everett's Housing Strategy Areas approach as one that will likely increase density, not decrease it. However, the City has failed to quantify this contribution and demonstrate that it has not breached its GMA duty to accommodate projected growth. By failing to do so, the City has not rebutted the *prima facia* case made by Petitioner. [*Strahm, 05342*, FDO, at 24.]

- **Urban Growth**

- Annexation is an exercise of the land use powers of cities, and therefore a CPP cannot express a preference or otherwise provide direction to cities as to the methods of annexation. If a county wishes to discuss methods of annexation within the CPPs, it may do so, provided that such language serves to facilitate rather than frustrate the legislative directive of "that which is urban should be municipal." In any event, such language must not alter the land use powers of cities. [*Poulsbo, 2309c,* FDO, p. 26]
- UGAs take direction from the Act's planning goals at RCW 36.70A.020 and from CPPs. UGAs therefore also serve the three purposes of CPPs: (1) to achieve consistency between plans as required by RCW 36.70A.100; (2) to achieve a transformation of local governance within the UGA; and (3) to direct urban development to urban areas and to reduce sprawl. [*Rural Residents, 3310,* FDO, p. 14]
- Compact urban development is the antithesis of sprawl. [*Rural Residents, 3310,* FDO, p. 19]
- Cities are the focal points of urban growth, governmental service delivery, and governance within UGAs. [*Rural Residents, 3310,* FDO, p. 42]
- The only place urban growth is permitted is within a UGA. [*Rural Residents, 3310,* FDO, p. 42]
- Land use designations within a UGA must allow for urban development regardless of the rural character a parcel of land may have today. [*Aagaard, 4311c,* FDO, p. 17]
- Although urban growth should be located where there is adequate infrastructure to support it, the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. [*Robison, 4325c,* FDO, at 20-21.]
- The land use capacity analysis for designated UGAs is not required to be in the comprehensive plan; however, showing of work must be done somewhere in the

record. Technical Appendix D is not required to be incorporated into the Plan. [*Vashon-Maury, 5308c*, FDO, at 16.]

- The process of converting total population into household size does not violate the Act, provided that the County clearly and credibly demonstrates how the household figures are derived from the population projections. [*Vashon-Maury, 5308c*, FDO, at 20.]
- The Board concludes that the six exceptions to the general rule that counties cannot designate UGAs beyond city limits, as set forth in *Rural Residents, at 44*, were not changed by the 1995 legislative amendments. However, a new holding is in order, as follows:

  > Regardless of whether a satisfactory showing has been made that existing cities can accommodate the projected population growth, counties will be permitted to designate FUGAs beyond existing incorporated areas on lands covered by the third exception. However, this does not give counties the carte blanche permission to designate as UGAs *all* urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both UGAs and CPPs must serve: to achieve the *transformation of local governance* within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve *compact urban development. See Tacoma,* at 12. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical to now blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted. *Amending Bremerton,* at 39-40.

  [*Vashon-Maury, 5308c*, FDO, at 26.]
- Just because unincorporated lands today contain urban growth on them does not necessarily mean that they should be included within a UGA. Instead counties must examine how a UGA designation for such lands would achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services, and will achieve compact urban development. [*Vashon-Maury, 5308c*, FDO, at 27.]
- RCW 36.70A.030(14)'s definition of urban growth focuses on the intensity of the use of land, specifically naming such physical improvements as "buildings, structures and impermeable surfaces." Thus, the net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted, or if it crosses the threshold into impermissible urban growth. [*Vashon-Maury, 5308c*, FDO, at 67.]
- For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider "such lands" to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity. [*Vashon-Maury, 5308c*, FDO, at 68.]
- Proposed uses that meet the definition of urban growth will be prohibited in rural areas unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the

immediate vicinity; OR (2) the use is an essential public facility. [*Vashon-Maury, 5308c,* FDO, at 69.]

- Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter. [*Vashon-Maury, 5308c,* FDO, at 77.]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, at 79.]
- The GMA acknowledged that the "old way of doing things" (i.e., non-GMA planning and decision-making) threatened the quality of life enjoyed by Washington's residents, and that in order to meet this threat, new and important steps needed to be taken. RCW 36.70A.010 (FN1) describes a legislatively preferred future for our state, just as the subsequent sections of the Act mandate that communities manage the problems of growth and change in a new way. [*Children's I, 5311,* FDO, at 4.]
- In the GMA, there are a number of specific references that address housing and residential land uses some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population. [*Children's I, 5311,* FDO, at 5.]
- Growth is more than simply a quantitative increase in the numbers of people living in a community and the addition of "more of the same" to the built environment. Rather, it encompasses the related and important dynamic of change. Because the characteristics of our population have changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup, the GMA requires that housing policies and residential land use regulations must follow suit. This transformation in our society must be reflected in the plans and implementing measures adopted to manage growth and change. [*Children's I, 5311,* FDO, at 9.]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, at 44-48.]
- New urban land uses may be located only within UGAs. [*Bremerton, 5339c,* FDO, t. 48.]
- Suburban is a subset of urban. [*Bremerton, 5339c,* FDO, at 49.]
- One of the GMA's most fundamental principles is that urban areas are to be characterized by urban growth and rural areas are not. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 23.]
- The Board has recognized reasonable and necessary exceptions to the prohibition of urban growth in the rural areas. The Board has even construed the Act to permit compact rural development, under certain circumstances and if sufficiently limited in scope and character. The essence of the Board's decisions – that rural areas are to be

very different from urban areas, while recognizing reasonable and necessary exceptions and flexibility for compact rural development, is reflected in ESB 6094, amending RCW 36.70A.070(5). [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 24.]

- ESB 6094's amendments to RCW 36.70A.070(5) explicitly clarifies: the legislature's continuing intent to protect rural areas from low-density sprawl; and that while some accommodation may be made for infill of certain "existing areas" of more intense development in the rural area, that infill has to be "minimized" and "contained" within a "logical outer boundary." *With* such limitations and conditions, more intense rural development in areas where more intense development already exists could constitute permissible compact urban development; *without* such limitations and conditions more intense rural development would constitute an impermissible pattern of urban growth in the rural area. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 24.]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban area portion of the projected twenty years of county-wide population growth. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 42.]
- The GMA requires designation and protection of critical areas and makes no qualifying statement that, for example, urban wetlands are any less important or deserving of protection than rural ones. As a practical matter, past development practices may have eliminated and degraded wetlands in urban areas to a greater degree than rural areas, but the Board rejects the reasoning that this provides a GMA rationale for not protecting what is left. [*Pilchuck II, 5347c,* FDO, at 23.]
- The requirement that critical areas are to be protected in the urban area is not inconsistent with the Act's predilection for compact urban development. [*Pilchuck II, 5347c,* FDO, at 24.]
- The fact that property today is basically undeveloped property that has a "rural" character does not mean that future-planning efforts must maintain that flavor. If that property is within a UGA, it must be planned for future urban development. Generally, designating property within a UGA for industrial uses is consistent with the Act. [*Anderson Creek, 5353c,* FDO, at 21.]
- The Board rejects the theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas and the Act's explicit prohibition of urban growth outside the UGAs. [*Sky Valley, 5368c,* FDO, at 45.]
- The designation of 7,822 acres (approximately twelve square miles) – which permits 2.3-acre lots, creates an impermissible pattern (number, location and configuration of lots) of urban growth in the rural area. (3,400 lots of 2.3 acres, astride the North Fork of the Stillaguamish River, east, west and south of the Darrington UGA.) This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern. [*Sky Valley, 5368c,* 10/2/97 Order, at 13-14.]
- The requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are

desirable in areas where service capacity already exists, i.e., in urban areas – while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." [*Benaroya I, 5372c,* FDO, at 21.]

- The Act does not require a city to designate a specific property for the highest intensity uses simply because infrastructure already may exist that is capable of supporting urban growth. [*Benaroya I, 5372c,* FDO, at 37.]
- In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development, the duty to accommodate the population and employment that is allocated to them by a county, the duty to accommodate a county allocation and reflect it in both a city's comprehensive plan land use designations and capital facility plans, the Act imposes a duty on cities to encourage urban growth within UGAs. [*Benaroya I, 5372c,* 3/13/97 Order, at 8.]
- The GMA imposes an affirmative duty upon cities to give support to, foster, and stimulate (encourage) urban growth throughout the jurisdictions' UGAs within the twenty-year life of their comprehensive plans. [*Benaroya I, 5372c,* 3/13/97 Order, at 8.]
- The duty to encourage urban growth throughout the jurisdictions' UGA does not direct a specific outcome as to all parcels of land within a city. [*Benaroya I, 5372c,* 3/13/97 Order, at 8.]
- That which is urban should be municipal. The corollary is: that which is municipal must be urban, which is to say, must generally have residential densities at 4 du/acre or higher. The Act is clear in providing that urban governmental services are to be available and provided in urban areas. [*Hensley III, 6331,* FDO, at 9.]
- The consequence of including within urban areas a net residential density below 4 du/acre is that the plan will be subject to increased scrutiny for justification. [*Hensley III, 6331,* FDO, at 9.]
- The Act requires that urban services be made available and provided within UGAs. Generally, this means cities will make available and provide those urban services. [*Hensley III, 6331,* FDO, at 10.]
- The Act requires local jurisdictions to plan for and accommodate new growth – that projected by OFM and allocated by the County. There is **no** provision in the GMA to suggest that the Act allows a jurisdiction **not** to accommodate new growth because it has a capital facilities maintenance backlog or has not guaranteed funding to remove any maintenance backlog, or it is postponing indefinitely its duty to accommodate new growth until its maintenance backlog is removed or reduced. To do so would fly in the face of one of the cornerstones of the GMA. [*WSDF IV, 6333,* FDO, at 32.]
- Designation of a UGA adjacent to existing city limits fosters compact urban development and the transformation of local governance. [*Johnson II, 7302,* FDO, at 7.]
- Designation of a traditional UGA generally establishes certainty that: 1) the development of the land within it will be urban in nature; 2) this urban land will ultimately be provided with adequate urban facilities and services within the planning horizon; and 3) the land will ultimately be developed at urban densities and intensities. [*Johnson II, 7302,* FDO, at 10.]

- Some very fundamental issues have been resolved by virtue of the UGA designation: (1) the land use will be urban; (2) the land use designations reflect population and employment allocations made by the County; and (3) urban services provided within the UGA should be primarily provided by cities. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 48.]
- Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl. The Act's lengthy definitions and requirements regarding urban growth areas and natural resource lands also date to 1990. However, the Act's initial description of future rural uses and development patterns was spare. While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. [*Burrow, 9318*, FDO, at 18.]
- LAMIRDs are neither urban growth, nor are they to be the predominant patter of future rural development. [LAMIRDs are not quite urban, but not quite rural.] LAMIRDs are settlements that existed on July 1, 1990 in some land use pattern or form more intensive than what might typically bed found in a rural area. LAMIRDs are "characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." In essence, they are *compact forms of rural development*. [*Burrow, 9318*, FDO, at 18.]
- The Act's definitions (RCW 36.70A.030(17)) expressly state that development within LAMIRDs is not urban. The Act does not put an explicit limit on the absolute residential density permitted in LAMIRDs. The limit is unique to each LAMIRD and is established by the conditions that existed on July 1, 1990. [*Burrow, 9318*, FDO, at 19.]
- A pattern of more intensive rural development, as allowed within a valid LAMIRD, does not constitute "urban" development. [*Burrow, 9318*, FDO, at 24.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, FDO, at 6.]
- The legislature recognized that MPRs are urban growth outside of UGAs. The GMA permits the urban growth of an MPR if the County's regulations do not permit other urban or suburban growth in the vicinity of the MPR. [Urban growth in MPRs is recognized by, not prohibited by the Act.] [*Gain, 9319*, FDO, at 8.]
- RCW 36.70A.030(17) clarifies that "A pattern of more intensive rural development as provided in RCW 36.70A.070(5)(d) *is not urban growth*." This provision acknowledges and specifically authorizes the continuance of, and even the expansion of, the *types* of uses that existed in 1990. (Footnote omitted.) It is over-reaching, however, to suggest that this provision authorizes the inclusion in a LAMIRD of

types of commercial uses that did not exist in 1990. Thus, by definition, the existing pattern of commercial development (*i.e.*, those uses that existed in Clearview in 1990) is not urban growth. However, a *future* pattern that includes urban commercial uses of a type that did not exist in 1990 would constitute urban growth. The Board concludes that such "urban growth" is not permitted in a LAMIRD because of the substantive effect of Goal 1 "to encourage [urban] development in urban areas." [*Hensley V, 03004*, 8/12/02 Order, at 3-4.]

- The existing urban pattern in the Clearview LAMIRD is not considered urban growth by definition. However, the introduction into Clearview of new types (i.e., those that did not exist in 1990) of commercial uses would constitute urban, not rural, development. Such development would be inconsistent with the preservation of rural character of rural lands required for LAMIRDs. (Footnote omitted.) LAMIRDs are *Limited* Areas of More Intensive *Rural Development*. [*Hensley V, 03004*, 8/12/02 Order, at 5.]
- Cities have many important and challenging duties under the Act, including the accommodation of urban development. While the range of certain city choices will be constrained by detailed and directive GMA provisions, comprehensive plans embody many other local choices not subject to such specific GMA provisions. In such instances, the Board will grant broad deference to choices about how growth is to be accommodated within city limits. (Footnotes omitted.) [*WHIP/Moyer, 03306c*, FDO, at 19.]
- In a GMA sense, the "sprawl" that the Act directs local governments to "reduce" is "the inappropriate conversion of undeveloped land into sprawling, low-density development." RCW 36.70A.020(2). Therefore, in a city context, the only way to run afoul of this statutory direction is to designate urban land for "low-density development" without sufficient environmental justification. That is not the case here, and the Board therefore rejects WHIP's arguments on this point. (Footnotes omitted.) [*WHIP/Moyer, 03306c*, FDO, at 20.]
- The question of whether any one property is better suited for a given urban designation than another is one the Board will not answer. As discussed in *WHIP III*, *supra*, if (following notice and the opportunity for public review and comment, and supported by the record) a city chooses a particular type of urban designation permitting certain urban uses within city-limits, the Board will defer to the City's judgment. It is within the discretion of local government under the GMA. [*WHIP/Moyer, 03306c*, FDO, at 35.]
- It is important to note that this case does not involve the size of the Lake Stevens UGA, nor *whether* the area within the Lake Stevens UGA will be urban, nor *whether* it will be provided with adequate urban facilities and services within the planning period (2012), nor *whether* it will be developed at urban intensities and densities. Since the land is within the Lake Stevens UGA, the GMA requires these outcomes to occur within the planning period - by 2012. [*Citizens, 03313*, FDO, at 8.]
- While consistency is an important central organizing concept of the GMA, equally important GMA premises are that urban growth is to be directed to urban areas (RCW 36.70A.020(1) and (2)), that cities are to be the primary location of urban growth by virtue of being the preferred providers of urban governmental services (RCW 36.70A.210), and that cities enjoy broad discretion within their city limits regarding

how to locate, configure and serve the urban growth that is allocated to it. The Board affirms its prior holdings in this latter regard [footnote omitted], and further clarifies that, absent a clear and compelling state interest [footnote omitted], the range of land use choices available to a local legislative body is far broader within urban growth areas than is the case with the natural resource lands and rural lands parts of the GMA landscape. [The Board noted that even within the UGA, local choices are limited by the GMA's requirements regarding concurrency, critical areas and essential public facilities.] [*BridgeportWay, 04303*, FDO, at 17-18.]

- It is clear that density bonuses and cluster development [in the rural area] are permitted under the Act, but they are limited to the extent they "will accommodate *appropriate rural densities* and uses that are *not characterized by urban growth* and that are *consistent with rural character*." RCW 36.70A.070(5)(b). [The Board found that the lack of environmental review and development regulations as well as the ambiguity in the policies themselves did not address whether the rural character would be preserved and urban growth prevented in the rural area.] [*Bremerton II, 04309c*, FDO, at 24-26.]
- [The phrase] "taken collectively" [RCW 36.70A.115] could be read two ways. One meaning could be that a county and its cities, collectively, are to ensure that they accommodate the OFM forecasted growth. . . . Another reading of "taken collectively". . . is that each jurisdiction is direct to consider its Plan and development regulations amendments collectively to ensure that there is sufficient land to accommodate the growth allocated by the County. [Under either reading the County complied.] [*S/K Realtors, 04328*, FDO, at 124-25.]
- [Jurisdictions have an ongoing duty to accommodate forecast and allocated population growth.] The GMA is designed to manage growth, not stop it. The GMA is dynamic, not static. The Act requires OFM to produce periodic population projections and it requires cities and counties to accommodate these new forecasts by reviewing and updating their plans and development regulations accordingly. . . RCW 36.70A.110 imposes a consistent and ongoing duty for all GMA jurisdictions. . . to accommodate the ensuing growth periodically projected by OFM and allocated [by the counties]. Simply put, so long as the state and region continue to grow, counties and cities must continue to plan for, manage, and accommodate the projected and allocated growth. [*Kaleas, 05307c*, FDO, at 11-12.]
- [Jurisdictions] may not close [their] eyes, or borders, to growth just because [they] can accommodate the growth target [they] are assigned. [Jurisdictions] must also foster and stimulate urban growth within [their] borders – in appropriate locations and in a compact urban form. . . . [T]he GMA's explicit goals and requirements establish a broader comprehensive framework within which local governments must plan. [*Kaleas, 05307c*, FDO, at 13.]
- The GMA anticipates development phasing that is linked to the availability of public infrastructure. That linkage may be *spatial*, with development allowed first in the locations already served by public services and then following the extension of those services, [RCW 36.70A.110(3)], or the linkage may be *temporal*, with development timed to match an infrastructure investment plan [RCW 36.70A.070(6) and .020(12)]. The phasing provisions of the GMA allow a jurisdiction to "manage" and guide growth both locationally and temporally. However, such phasing is inextricably

linked to the availability and adequacy of the necessary infrastructure to support that growth. The GMA never contemplates development phasing that is purely random, with one's rights to develop under the adopted Plan designations and zoning dependent on the luck of the draw. [The City's growth phasing lottery is a random system, not based on geographic or spatial linkage or timed with infrastructure availability.] [*Camwest II, 05341*, FDO, at 15 -18.]

- [T]he GMA allows growth phasing to be linked to a Capital Facilities Plan and service availability through the mechanisms of concurrency, level of service standards and impact fees [citations omitted]. This principle was incorporated into the Samammish Comprehensive Plan but then essentially disregarded in enacting the random lottery. [The City provided no evidence of concurrency documentation, capital facility plans or an infrastructure financing plan. Alleged deficiencies in infrastructure are discussed and rejected.] [*Camwest II, 05341*, FDO, at 16-19.]
- The Board finds that, rather than using the growth phasing tools provided by the GMA, the Samammish Growth Phasing Lottery allocates development opportunities on a purely random basis, without reference to infrastructure availability, location, or funding strategy to address specific identified deficits in the interim. The Growth Phasing Lottery simply denies near-term property development which is otherwise allowed by the Comprehensive Plan and zoning code in order to defer build-out in the 20-year planning horizon. [*Camwest II, 05341*, FDO, at 20.]
- In considering Planning Goals 1 and 2, the Board looks to the ruling in *Quadrant*, supra, where the Court indicated that "the primary method for meeting the goals of subsections .020(1) (urban growth) and .020(2) (reduce sprawl) is set forth in RCW 36.70A.110." Citation omitted. [*Camwest II, 05341*, FDO, at 23.]

• Urban Growth Areas – UGAs - Generally

- When a county does designate urban growth areas it must do so accurately, precisely and in detail for the designation to have binding legal effect under the GMA. [*Happy Valley, 3308c,* 10/25/93 Order, at 21.]
- IUGAs must be guided by the planning goals of RCW 36.70A.020. [*Rural Residents, 3310,* Motions, at 2-3.]
- UGAs take direction from the Act's planning goals at RCW 36.70A.020 and from CPPs. UGAs therefore also serve the three purposes of CPPs: (1) to achieve consistency between plans as required by RCW 36.70A.100; (2) to achieve a transformation of local governance within the UGA; and (3) to direct urban development to urban areas and to reduce sprawl. [*Rural Residents, 3310,* FDO, at 14.]
- The regulatory effect of IUGAs ceases upon adoption of the FUGA boundary with regard to annexations, and upon adoption of implementing regulations with regard to prohibiting urban development beyond the boundary. [*Rural Residents, 3310,* FDO, at 15.]
- IUGAs and FUGAs are policy documents. [*Rural Residents, 3310,* FDO, at 16.]
- A major purpose of UGAs is to serve Planning Goal 1 and Planning Goal 2. [*Rural Residents, 3310,* FDO, at 17.]

- Counties will be held to a lesser standard of compliance with the Act's planning goals when adopting IUGAs than when adopting comprehensive plans and implementing development regulations, since IUGAs are only temporary. However, on the spectrum of compliance, with strict compliance required for comprehensive plans and implementing development regulations, and lowest compliance required for interim critical areas and natural resource lands development regulations, IUGAs fall closer to the high end of the range. [*Rural Residents, 3310,* FDO, at 28.]
- The only place urban growth is permitted is within a UGA. [*Rural Residents, 3310,* FDO, at 42.]
- Annexations are prohibited beyond UGAs. RCW 35.13.005 and RCW 35A.14.005. [*Rural Residents, 3310,* FDO, at 42.]
- Cities are the focal points of urban growth, governmental service delivery, and governance within UGAs. [*Rural Residents, 3310,* FDO, at 42.]
- The Act neither mandates nor prohibits temporal phasing of development within a UGA. [*Rural Residents, 3310,* FDO, at 46.]
- Counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act. [*Tacoma, 4301,* FDO, at 10.]
- Comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve compact urban development. [*Tacoma, 4301,* FDO, at 12.]
- If a county elects to utilize tiering within its UGAs, it is best served at the FUGA stage, when the capital facilities plan element of the comprehensive plan has been prepared. It is premature to require tiering at the IUGA level. [*Tacoma, 4301,* FDO, at 35.]
- RCW 36.70A.110(2) implicitly requires the written justification before a legislative action establishing UGAs is taken so that the dissatisfied city can decide whether to formally object to DCTED. [*Tacoma, 4301,* FDO, at 36.]
- The Board finds no absolute prohibition in the Act against the inclusion of land in a UGA that cannot be associated with an existing or potential future city. Nevertheless, the act is clear that the long-term future of urban growth areas is for them to have urban governmental services provided primarily by either existing or potential future cities. [*Tacoma, 4301,* FDO, at 37.]
- A county can delegate the responsibility to negotiate an agreement with each city on the location of UGAs to whomever it decides is bested suited for the task. However, only the legislative body of the county can make the ultimate decision to adopt UGAs as required by the Act. [*Tacoma, 4301,* FDO, at 45-46.]
- The Board can conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such a rural development proposal could

constitute "compact rural development" rather than "urban growth." [*KCRP, 4305,* FDO, at 15.]

- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, at 6.]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, at 9.]
- Land use designations within a UGA must allow for urban development regardless of the rural character a parcel of land may have today. [*Aagaard, 4311c,* FDO, at 17.]
- Although urban growth should be located where there is adequate infrastructure to support it, the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. [*Robison, 4325c,* FDO, at 20-21.]
- Cities are not authorized to and therefore not required to designate urban growth areas in their comprehensive plans. [*Slatten, 4328,* 2/21/95 Order, at 3.]
- Just because unincorporated lands today contain urban growth on them does not necessarily mean that they should be included within a UGA. Instead counties must examine how a UGA designation for such lands would achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services, and will achieve compact urban development. [*Vashon-Maury, 5308c,* FDO, at 27.]

- For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider "such lands" to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity. [*Vashon-Maury, 5308c,* FDO, at 68.]
- Proposed uses that meet the definition of urban growth will be prohibited in rural areas unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility. [*Vashon-Maury, 5308c,* FDO, at 69.]
- Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter. [*Vashon-Maury, 5308c,* FDO, at 77.]
- Any residential pattern of 10 acre lots, or larger, is rural. [*Vashon-Maury, 5308c,* FDO, at 79.]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, at 79.]
- On reconsideration, the Board now concludes that the CPP did not "make the county do it" with respect to the Bear Creek island UGA. Note: the Court of Appeals, Division 1, reversed the Board's reconsideration conclusion on Bear Creek and reinstated the original conclusion. [*Vashon-Maury, 5308c,* 12/1/95 Order, at 8.]
- Whether a county or city elects to include critical areas maps that it has prepared in other documents within its comprehensive plan is left to the jurisdiction's discretion. Counties are not precluded from including designated critical areas within UGAs, so long as they protect them as required by RCW 36.70A.060. [*Gig Harbor, 5316c,* FDO, at 28.]
- Discussion of UGAs in other states – evaluation. [*Gig Harbor, 5316c,* FDO, at 55.]
- The Act creates an ongoing duty for Washington's communities to plan for future growth, including preservation of the flexibility to increase the UGA land supply at a date beyond the immediate twenty-year planning horizon. [*Gig Harbor, 5316c,* FDO, at 56.]
- Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." [*Bremerton, 5339c,* FDO, at 31.]

- Determining size and shape of UGAs – general discussion of prior Board decisions. [*Bremerton, 5339c,* FDO, at 32-42.]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, at 44-48.]
- New urban land uses may be located only within UGAs. [*Bremerton, 5339c,* FDO, at 48.]
- In specifically rejecting the sprawl model for Washington State, the GMA asserts the importance of taking a balanced, long-term view and promoting and serving the broad public interest. When the GMA's substantive requirements for county plans and FUGAs are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community, that, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, at 51-52.]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 42.]
- The fact that property today is basically undeveloped property that has a "rural" character, does not mean that future-planning efforts must maintain that flavor. If that property is within a UGA, it must be planned for future urban development. Generally, designating property within a UGA for industrial uses is consistent with the Act. [*Anderson Creek, 5353c,* FDO, at 21.]
- It is the County's duty to establish UGA boundaries. The City's role in that process is limited to a consultative one. [*AFT, 5356,* FDO, at 10.]
- Where a city has planned for an area not included in its UGA, such planning activities, including land use designations, have no effect. [*AFT, 5356,* FDO, at 20.]
- The Board rejects the theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas and the Act's explicit prohibition of urban growth outside the UGAs. [*Sky Valley, 5368c,* FDO, at 45.]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c,* FDO, at 46.]

- The designation of 7,822 acres (approximately twelve square miles) – which permits 2.3-acre lots, creates an impermissible pattern (number, location and configuration of lots) of urban growth in the rural area. (3,400 lots of 2.3 acres, astride the North Fork of the Stillaguamish River, east, west and south of the Darrington UGA.) This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern. [*Sky Valley, 5368c,* 10/2/97 Order, at 13-14.]
- Although counties cannot be expected to undo past land use practices, they cannot adopt regulations that fail to place appropriate conditions on growth outside UGAs to limit it to achieve conformance with requirements of RCW 36.70A.110. [*PNA II, 5371,* FDO, at 13.]
- A city is without authority to make any agricultural designations within a UGA prior to the enactment of a program authorizing a transfer or purchase of development rights pursuant to RCW 36.70A.060(4). Unless and until it adopts such a program, it is obliged to designate such properties for non-agricultural urban uses. [*Benaroya I, 5372c,* FDO, at 11-12.]
- The discretion of cities, as recognized by the Board in *Aagaard*, also applies to counties; counties enjoy the same broad discretion to make many specific choices about how growth is to be accommodated within UGAs. [*Cole, 6309c,* FDO, at 15.]
- The Bear Creek MPDs are within the County's "island" UGA. The Superior Court included the Bear Creek properties in the UGA. Therefore, in this unique situation, to respond to the Board's Order, the County need not have resorted to using the FCC designation process, as set forth in RCW 36.70A.350, to address the Bear Creek MPDs inclusion in the UGA. [*Buckles, 6322c,* FDO, at 30.]
- While a city may propose a UGA and consult on its designation, a city has no authority to designate UGAs under the Act. [*Hensley III, 6331,* FDO, at 5.]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban portion of the twenty years of county-wide population growth. The county, as to the unincorporated portion of the UGA, and the cities, as to their respective portions of the UGA, have a duty to adopt comprehensive plans that accommodate that allocated growth over the twenty-year life of their plans, including provision of public facilities and services. [*Hensley III, 6331,* FDO, at 8.]
- Designation of a UGA adjacent to existing city limits fosters compact urban development and the transformation of local governance. [*Johnson II, 7302,* FDO, at 7.]
- Designation of a traditional UGA generally establishes certainty that: 1) the development of the land within it will be urban in nature; 2) this urban land will ultimately be provided with adequate urban facilities and services within the planning horizon; and 3) the land will ultimately be developed at urban densities and intensities. [*Johnson II, 7302,* FDO, at 10.]
- Annexation, although encouraged by the GMA, is not a condition precedent to urban development in a UGA. [*Johnson II, 7302,* FDO, at 10.]
- In unique and limited circumstances and situations, the designation of a non-traditional UGA may be in compliance with the GMA, if the regulations or agreement

implementing the UGA designation contains adequate restraints to curb abuse while thwarting sprawl and inefficient, unplanned growth. [*Johnson II, 7302,* FDO, at 12.]

- Any acreage designated by a county as a non-traditional UGA must be justified and accounted for in its plan. [*Johnson II, 7302,* FDO, at 12.]
- Although an Interlocal Agreement may address the timing of, and allocation of responsibility for, infrastructure planning in a UGA, the requirements of the GMA govern infrastructure planning within a UGA. [*Johnson II, 7302,* FDO, at 19-20.]
- Counties may choose to designate future urban reserves outside of the UGAs. When such a tool is utilized, the Board has cautioned that care must be taken to protect the long-term flexibility to expand UGAs. [*Bremerton/Alpine, 5339c/ 8332c,* FDO, at 44.]
- [Regarding when conversion of] Urban Reserve lands to UGA, the Board finds no requirement in the Act obligating the County to set forth a phasing schedule, *per se*. [However, RCW 36.70A.215] obligates the County to monitor the rate at which lands within the UGA are being utilized and to take appropriate action, which could include expansion of the UGA, if circumstances so warrant. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 44-45.]
- [U]nequivocal and directive language that, on its face, imposes conditions precedent to city annexations in urban growth areas . . . fail to comply with RCW 36.70A.110. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 48.]
- Some very fundamental issues have been resolved by virtue of the UGA designation: (1) the land use will be urban; (2) the land use designations reflect population and employment allocations made by the County; and (3) urban services provided within the UGA should be primarily provided by cities. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 48.]
- Once a UGA has been designated, the provisions of a county plan may not condition or limit the exercise of a city's annexation land use power. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 48.]
- The fact that an area is urbanized [does not] compel the County to designate it as a UGA. The Board affirms its prior holding to that effect. Likewise, the mere fact that a [prior version or draft plan] designated [an area] as UGA . . . does not mandate the same outcome in [a subsequent] plan. [*Bremerton/Alpine, 5339c/ 8332c,* FDO, at 58.]
- [The fact that an area is adjacent to a UGA does not compel its designation as a UGA.] [*Bremerton/Alpine, 5339c/8332c,* FDO, at 59.]
- [The fact that an area was designated within a UGA and designated industrial in a prior version or draft plan, does not mandate the same outcome in a subsequent plan.] [*Bremerton/Alpine, 5339c/8332c,* FDO, at 65-66.]

The County's decision to attempt to comply with the FDO and address the land use of the [property] in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy. The time and effort expended on the present process illustrate the difficulty and complexity of developing an optional Lake Stevens UGA subarea plan. The Board does not want to dissuade the County from subarea planning and notes that neither the substance or the Lake Stevens subarea plan nor the appropriateness of that public process is presently before the Board. Unfortunately, the action needed for the County to address the Board's finding that the notice was

defective for the County's amendment to 33.7 acres in Ordinance No. 96-074 had been needlessly enmeshed in the subarea planning process. The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan. Further, the County's Lake Stevens UGA subarea plan process had interjected broader GMA and subarea planning issues into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance No. 96-074. [The Board directed the County to repeal those portions of Ordinance 96-074 that were invalidated due to defective notice.] [*Kelly, 7312c*, 3/31/99 Order, at 6-7.]

- [A]ll UGAs need not contain a city, but lands to be included in such UGAs must be lands that are: (1) already characterized by urban growth; (2) adjacent to lands already characterized by urban growth; or (3) designated as a new FCC pursuant to the requirements of RCW 36.70A.350. [*Bear Creek, 5803c*, 6/15/00 Order, at 9.]
- [The Act's definitions of "urban growth' and "characterized by urban growth'] used in the context of designating urban growth areas, pursuant to the locational criteria [of RCW 36.70A.110(1)], do not contemplate prospective urban development. [*Bear Creek, 5803c*, 6/15/00 Order, at 10.]
- If the county approves an FCC proposal pursuant to RCW 36.70A.350(2), the approved FCC becomes a UGA by operation of law. Therefore, all the "containment" protections associated with UGAs attach. These include, for example, rural zoning, prohibition of urban growth outside the UGA, limitations on extending urban governmental facilities and services, and in King County the four-to-one program. [*Bear Creek, 5803c*, 6/15/00 Order, at 22.]
- The Supreme Court stated, "Upon a determination that the [UGA] provision violates the GMA, it should be stricken from both the comprehensive plan <u>and the CPPs</u>. The Board has determined that the County's UGA provision for Bear Creek violates the GMA. Therefore, by operation of law, the urban designation has effectively been stricken from both the plan and CPP. A CPP that directs an unlawful outcome is inoperative. [*Bear Creek, 3508c*, 11/3/00 Order, at 11-12.]
- Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl. The Act's lengthy definitions and requirements regarding urban growth areas and natural resource lands also date to 1990. However, the Act's initial description of future rural uses and development patterns was spare. While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. [*Burrow, 9318*, FDO, at 18.]
- Designation of UGAs pursuant to RCW36.70A.110 is a legislative act. The County designated UGAs when it adopted its Plan in 1994. Among the UGAs designated by the County was the Comprehensive Urban Growth Area (CUGA). It was a legislative act to designate the UGAs, including the CUGA. Cascadia [FCC] is

located within a UGA; specifically, it is located within the County's CUGA. Any subsequent project specific decision cannot alter the Plan designation of this area as a UGA. [*Gain, 9319*, 1/28/00 Order, at 7-8.]

- Because the proposed Cascadia [FCC] development is located within a designated UGA, the CUGA, the provisions of RCW 36.70A.350 do not apply. [RCW 36.70A.350 applies to FCCs located outside of the initially designated urban growth areas.] [*Gain, 9319*, 1/28/00 Order, at 8.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, FDO, at 6.]
- The legislature recognized that MPRs are urban growth outside of UGAs. The GMA permits the urban growth of an MPR if the County's regulations do not permit other urban or suburban growth in the vicinity of the MPR. [Urban growth in MPRs is recognized by, not prohibited by the Act.] [*Gain, 9319*, FDO, at 8.]
- The County's argument about the propriety of its RAID designation evidence several fundamental misapprehensions. What the Act contemplates is flexibility for counties, in certain circumstances and subject to careful restrictions, to "round off" with logical outer boundaries "limited areas of more intensive rural development" [LAMIRDs]. However, simply because an unincorporated parcel was urbanized as of July 1, 1990, does not mean that it is appropriate to designated it as a LAMIRD. The County's spacing criteria for rural activity centers (RACs) and rural neighborhood centers (RNCs) indicates that it grasps the concept of a "central place," the idea that a commercial center serves a surrounding hinterland. The placement of its RAID less than 400 feet from the UGA flies in the face of this "central place" theory. The location of the [property] immediately adjacent to the UGA makes it a candidate not for LAMIRD designation, but potentially for UGA expansion. [*Tacoma II, 9323c*, FDO, at 7.]
- The County's hierarchy of rural centers provides that RACs be located no closer than five miles from a UGA; and that RNCs be located no closer than two miles from a UGA. Without explanation as to UGA proximity requirements, this RAID [LAMIRD] is located within 360 feet of the UGA, which is the present city limits for the City of Tacoma. Designation of a RAID [LAMIRD in this location fosters the low-density sprawl that RAIDS [LAMIRDs] are required to avoid. Proximity to the UGA alone suggests to the Board that if the area were to be urban, adjustments to the UGA would be a more appropriate means of accomplishing this objective. [*Tacoma II, 9323c*, FDO, at 8.]
- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c*, FDO, at 10.]

- [The Board has jurisdiction to review actions of the legislative bodies of cities and counties within the central Puget Sound region. The Snohomish County Council has not acted. The challenged action] has been taken by Snohomish County Tomorrow, (SCT) an informal planning body with no governmental authority. [SCT's adoption of a Metropolitan urban growth area (MUGA) review process is not within the Board's jurisdiction to review.] [*Shoreline, 0310*, 9/5/00 Order, at 3-4.]
- [There is] interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. The Growth Boards have jurisdiction to determine compliance with the GMA, including UGA designations. UGA designation enables city annexations, since cities are prohibited from annexing areas beyond designated UGAs. Boundary Review Board decisions must be consistent with provisions of the GMA, including the UGA provisions. This system is consistent and coordinated and yields certainty in situations where UGAs have been found by the Board to comply with the Act, or where UGA designations have not been challenged. However, this system yields uncertainty where the UGA designation has been challenged, but not resolved as the annexation process proceeds. It is a situation that the Legislature has not, to date, addressed. [This uncertainty is prevalent in this case. In this case, the Board cannot, and will not, address the effect of the annexation, nor will it speculate on the outcome of pending litigation. However, the Board must carry out its mandated responsibilities.] Determining compliance with the goals and requirements of the GMA is the primary responsibility of the Board; it cannot shirk this duty. The Board must determine whether the challenged UGA designation complies with the goals and requirements of the Act. [*Kitsap Citizens, 0319c*, 2/16/01 Order, at 9-11.]
- The UGA amendment in this case is essentially the same situation as posed in *Kitsap Citizens* [*0319c*, 2/16/01 Order]. Snohomish County's action of amending its previous UGA designation also precipitated two courses of action. One course led to the City of Arlington's annexation of the area; the other course led to a PFR before this Board challenging the Ordinance that enabled the annexation to occur. Consequently, as in *Kitsap Citizens*, here the Board will proceed to carry out its GMA mandated duty to review the challenged actions for compliance with the goals and requirements of the Act. [*McVittie V, 0316*, FDO, at 11.]
- [Pursuant to RCW 36.70A.215, the County adopted a CPP to govern UGA expansions. To maintain consistency with the UGA expansion CPP, the County also adopted an identical Plan policy. The CPP and Plan policy include review and analysis requirements for the expansion of UGAs for residential, commercial and industrial lands. The (Maltby) UGA expansion, designation and rezone indicate commercial designations. However, a concomitant agreement limited the area in dispute for use as a church, thereby allegedly precluding other commercial uses. Consequently, the issue for the Board was whether the existence of the concomitant agreement made the UGA review and analysis required by CPP and Plan policy necessary. The Board determined the County CPP and Plan policy both apply and govern the expansion of the UGA.] [*Hensley IV, 1304c*, FDO, at 29.]
- Full compliance with [the provisions of] RCW 36.70A.215 is not required to be completed until September 1, 2002. However, portions of the County's "buildable lands" process have been completed, adopted and are effective, including the guiding

principle of [the CPP and Plan policy, which state:] "Expansion of the boundary of an individual UGA to include additional residential, commercial and industrial land shall not be permitted unless it complies with the [GMA] and one of the following four conditions are met." If the conditions have not yet been fully defined, by necessity, the [CPPs and Plan policy's] prohibition on UGA expansion is operative until such time as they have are established and applied. [*Hensley IV, 1304c*, FDO, at 33.]

- [The requirements of RCW 36.70A.070(preamble), .070(1) and .110(3)] apply to comprehensive plans and UGA designations; they do not apply to development regulations – *i.e.* rezones. [The Board dismissed these issues *sua sponte*.] [*Forster Woods, 1308c*, FDO, at 29.]
- *See also:* **Fully Contained Communities** [*FOTL VI, 1310*]
- [The petition for review as reflected in the prehearing order challenged Woodway's compliance with the GMA "when it designated (an area) as a UGA." The adoption of UGAs is solely a county duty and requirement under the Act, not a duty or requirement for cities. Notwithstanding Woodway's choice of GMA jargon [PAAs or UGAs], it has no duty or authority to adopt UGAs. [*Shoreline II, 1313*, 8/9/01 Order, at 5-6.]
- [The Board quoted extensively from the Superior Court Order regarding the inappropriate use of concomitant agreements to expand the UGA.] [*Maltby UGA Remand*, 12/19/02 Order, at 7-8.]
- Land within an UGA, whether within city limits, or part of the unincorporated county, is *urban land*. [*MBA/Brink, 02310*, FDO, at 11.]
- Land within an UGA, [including subarea planning areas], reflects the jurisdiction's commitment and assurance that it will develop with urban uses, at urban densities and intensities, and it will ultimately be provided with urban facilities and services. [*MBA/Brink, 02310*, FDO, at 11.]
- The duty of a County as a local government to accommodate growth within its UGA is the same as the duty of a City to accommodate growth within its city limits (Footnotes omitted). Therefore, any opportunity to *perpetuate* an "historic low-density residential" development pattern, [in the subarea], ended in 1994 when the County included the area within the UGA. Consequently, [the subarea plan and implementing regulations] must provide for appropriate urban densities. [*MBA/Brink, 02310*, FDO, at 11-12.]
- Accepting the general premise that public and institutional uses do have a propensity to generate growth within the local environs of such uses, it is therefore appropriate that such facilities be encouraged in *urban areas within the UGA* where adequate public facilities and services must be provided to support them. Such uses in the rural areas do have the potential to proliferate sprawl and leapfrog development. However, this is not the case here. The County has developed a process for including public and institutional uses within the UGA that is consistent with the goals and requirements of the Act. [*Hensley VI, 03309c*, FDO, at 10.]
- [*A*]*ll* potential UGA expansions, regardless of the type of uses to be included, must comply with the goals and requirements of the Act. . . . Policies that encourage including institutional uses, such as schools and churches, within urban areas further the goal of compact urban development that Petitioners are so concerned about. [*Hensley VI, 03309c*, FDO, at 16.]

- The County has an obligation to work with school districts in the siting of schools; it also has an obligation to facilitate the siting of schools within urban areas while discouraging them outside of UGAs - which the County has done. The Board concludes that the FLUM and zoning designations the County has in place does facilitate the location of schools within the UGA and appropriately discourage middle and high schools outside the UGA. The County need not prohibit schools throughout the rural area. The County already discourages schools in the rural area by limiting the number of zoning districts that permit schools. Further, the conditional use permit process provides a mechanism to ensure that any proposed school on the site is designed and configured to be compatible with the rural character or the rural area. [*Hensley VI*, *03309c*, FDO, at 22.]
- [T]he provisions of RCW 36.70A.110(3) are applicable *within* UGAs, and do not apply to the present UGA expansion. . . .[T]he GMA does not preclude a jurisdiction from reviewing and revising, if necessary, its UGA boundaries outside the 10-year review provisions of RCW 36.70A.130. RCW 36.70A.130(3) says, "Each county that designates urban growth areas under RCW 36.70A.110 shall review, *at least every ten years*, its designated urban growth area or areas. . ." [*Hensley VI*, *03309c*, FDO, at 26.]
- The Board notes that adding 5.8 acres for residential housing to the Arlington UGA, given the site constraints and its proximity to existing facilities and services is not counter to good growth management. The language of the GMA itself does not prohibit what the Board might agree is a logical or sensible solution. However, the GMA does require *local actions to be consistent with locally adopted CPPs and Plans*. The County's own CPPs and own Policies provide ways for this change to be accomplished, individually or in the context of its pending 2004 UGA review. However, given that the County chose to ignore implementing its own stated policies, processes and procedures, which the GMA requires, and the Board is compelled to find that the County is not in compliance with the noted provisions of the Act. [*Hensley VI*, *03309c*, FDO, at 28.]
- RCW 36.70A.110 establishes the framework for sizing and locating the boundaries of UGAs and locating urban growth areas within UGAs. As the County suggests, this provision may not directly apply to the concerns raised by Petitioners at this point in time. Also, the County and Intervenor correctly point out that the amendment to LU 1.A.9 does not expand any UGA. The Policy itself sets the parameters and conditions for possible UGA expansions for commercial, industrial and residential uses, but exempts churches and schools from these additional self imposed requirements. Neither the County nor the School Districts dispute that even if UGA expansions for churches and schools occur, they must comply with the goals and requirements of the Act. In the Central Puget Sound Region, RCW 36.70A.215 provides additional direction regarding UGA expansions. [*Hensley IV*, *03309c*, 10/21/03 Order, at 6, footnote 2.]
- The Lake Stevens UGA Plan includes a Capital Facilities Element. Within this element, the County states, "The following are key findings of the capital facilities plan *for the Lake Stevens UGA*: *There is a gap between the capital facility needs and the public funding available for surface water and transportation*." When a "gap" or "revenue shortfall" between needed facilities and ability to finance them occurs, the

GMA requires the jurisdiction to "reassess the land use element" to respond to such revenue shortfalls. *See* RCW 36.70A.070(3)(e). Reduction of the size of the UGA is one obvious response to address a revenue shortfall. However, in lieu of reducing the size of the UGA, there are several other accepted options available as part of the reassessment process. These options are recognized and set forth in the LSUGA Plan. The LSUGA Plan's key findings continue: [This Plan] describes a number of options as a *response to the revenue shortfall*, including:

- Reducing the LOS [level of service standards].
- Increasing the revenues available to pay for the necessary facilities.
- Reducing the average cost of facilities.
- *Reducing demand by timing development* or redistributing growth to other areas.
- Reducing demand for services through conservation programs

Thus, one means of addressing a revenue shortfall is to time or phase development to reduce demand. This is the approach Snohomish County undertook in relation to the Lake Stevens UGA in relation to its revenue shortfall for transportation and surface water. [The County used a Development Phasing Overlay (DPO) in the unincorporated Lake Stevens UGA to phase development. "Green" areas had adequate transportation and surface water facilities and could develop; "Red" areas did not have adequate facilities and development was deferred until financing of the needed facilities was assured.] [*Citizens, 03313*, FDO, at 7-8.]

- It is important to note that this case does not involve the size of the Lake Stevens UGA, nor *whether* the area within the Lake Stevens UGA will be urban, nor *whether* it will be provided with adequate urban facilities and services within the planning period (2012), nor *whether* it will be developed at urban intensities and densities. Since the land is within the Lake Stevens UGA, the GMA requires these outcomes to occur within the planning period - by 2012. [*Citizens, 03313*, FDO, at 8.]
- The Board notes that RCW 36.70A.110(3) does not impose a mandatory requirement on planning jurisdictions, it provides that urban growth *should*, not *shall*, be located . . .. RCW 36.70A.110(3) urges local jurisdictions to locate urban growth within the UGA in a rational, efficient and fiscally responsible manner. However, no matter how well advised such an approach might be, this section of the Act does not compel the inclusion of a development phasing or timing mechanism in UGAs or comprehensive plans. Adoption of such a mechanism is certainly an option – an option that the County took. [RCW 36.70A.110(3) is not directly applicable to development regulations; it directly applies to UGA designations and comprehensive plans, which are not at issue in this case.] [*Citizens, 03313*, FDO, at 11.]
- Notwithstanding the "development within the UGA will occur only when adequate public facilities are *in place*" statement from the two FEIS Addenda, the GMA and the LSUGA Plan provide otherwise. The GMA allows a six-year window to provide capital and transportation facilities. The GMA requires a six-year financing plan for capital facilities and a multi-year financing plan for transportation improvements. [*Citizens, 03313*, FDO, at 31.]
- [The Board has held, and the Supreme Court has affirmed, that CPPs have a binding and substantive effect on local government's comprehensive plans. Also, CPPs must

comply with the requirements of RCW 36.70A.210 and .215. CPPs designed to implement orderly development and urban growth areas must comply with the requirements of RCW 36.70A.110, because implementation of .110 is specifically referenced in .210(3)(a).] [*CTED, 03317*, FDO, at 13-14.]

- [A]ny actual UGA extensions for [institutional facilities] should be **limited** and **rare**, for the following reasons. First, RCW 36.70A.150 requires cities and counties to identify lands useful for public purposes, specifically enumerating schools; so the need and location for potential school sites should come as no surprise to any jurisdiction. Secondly, and potentially complementing .150, the submittal of a school district capital facility plan is a condition precedent to the imposition and collection of school impact fees; therefore, ongoing coordination and communication between school districts and jurisdictions about the number and location of needed facilities should be known. Third, as both the Sultan and Snohomish School Districts Capital Facilities Plans indicate, typical school site requirements for schools ranging from elementary to high schools require approximately 10 to 40 acres per school, respectively. (*Citation* omitted.) Accommodating such limited site needs within existing UGAs should be a priority and a reasonable measure to take in lieu of expanding a UGA. Finally, notwithstanding the Board's decision in this case, any actual UGA expansion involving a church or a school must comply with the goals and requirements of the Act and could be the subject of challenge before the Board. (Footnote omitted.) [*CTED, 03317*, FDO, at 28-29.]
- The Board notes that RCW 36.70A.060 does not prohibit agricultural resource lands from being included within a UGA. However, RCW 36.70A.060(4) requires a program authorizing the transfer or purchase of development rights as a condition precedent to such inclusion in the UGA. In this case, none of the parties argued or offered any evidence pertaining to whether such a program exists to allow agricultural land within the UGA. [*1000 Friends, 03319c*, FDO, at 36, footnote 11.]
- [To meet the UGA locational criterion of RCW 36.70A.110, reliance upon road rights-of-way to contact city limits does no constitute "adjacent to land characterized by urban growth." [*1000 Friends, 03319c*, FDO, at 36.]
- [The UGA sizing criterion of RCW 36.70A.110 a land capacity analysis must be done.] Neither the County nor Intervenor indicates that a revised land capacity analysis supporting the need for a commercial/industrial UGA expansion has been conducted. Intervenor even acknowledges that the existing land capacity analysis may not have supported expansion. CTED correctly argues that there is nothing in the County's recent Buildable Lands Report that supports the expansion of the Arlington UGA for commercial or industrial uses to include the Island Crossing area. The County does not dispute this assertion. [*1000 Friends, 03319c*, FDO, at 36.]
- Here, the City is requiring annexation as a condition of providing sewer service within the UGA. The City is responsible for providing urban services to development within the UGA at the time such development is available for use and occupancy and within the twenty year horizon of the City's Plan for the UGA. The approach the City has chosen in managing growth, specifically the provision of sewer service, is a valid option which the City may choose in order to transform governance and phase development within the UGA. As such, the premise upon which [Petitioner] builds its case – the amendment [requiring annexation as a condition of sewer service] is a

denial of services and a moratorium – is false. In fact, such provision is consistent with, and complies with, the GMA as the Board has interpreted it. [*MBA/Larson, 04301*, FDO, at 11.]

- The sizing requirement and locational criteria in RCW 36.70A.110 apply to UGA expansion as well as to the initial UGA designation. RCW 36.70A.110(1) specifically contemplates that UGA boundaries may expand over time to allow for additional urban development, and it specifies the locational criteria that limit that expansion. A UGA may include an area that is not a city only if that area already is characterized by urban growth, is adjacent to an area characterized by urban growth, or is a designated fully-contained community. (Citations omitted.) [*Bremerton II, 04309c*, FDO, at 34.]
- A UGA must provide for sufficient area and densities to accommodate the urban growth that is projected for the succeeding 20-year period. RCW 36.70A.110(2). This subsection specifically contemplates that UGA boundaries may expand over time as necessary to meet population projections, imposing another limitation on their expansion. Counties must review, and if necessary, revise their UGAs at least every ten years to accommodate urban growth projected for the succeeding 20-years. RCW 36.70A.130(3). A *county-wide* land capacity analysis must accompany these statutorily mandated periodic revisions of UGAs. (Citations omitted.) [*Bremerton II, 04309c*, FDO, at 34.]
- An expansion of a UGA is essentially a redesignation, which must be consistent with the requirements of RCW 36.70A.110. The Board has made clear that changes in the size of UGAs must be supported by land use capacity analysis and the County must "show its work." (Citations omitted.) [*Bremerton II, 04309c*, FDO, at 34-35.]
- The land capacity analysis required by RCW 36.70A.110(1) and (2), now underscored by the buildable lands reports required by RCW 36.70A.215, is a vital component of the work that must be shown. (Citations omitted.) [*Bremerton II, 04309c*, FDO, at 35.]
- The Board rejects the County's argument that RCW 36.70A.110 only applies to initial UGA designations [not UGA expansions]. [*Bremerton II, 04309c*, FDO, at 45.]
- [City urban designations for lands removed from the UGA (i.e., now rural lands) are noncompliant with .110 and must be removed.] [*Jensen, 04310*, FDO, at 11.]
- The County acknowledges that the challenged Ordinance is not the ten-year [UGA] review contemplated by RCW 36.70A.130 but asserts that the December 1, 2004 deadline for action does not apply [to Kitsap County. The County asserts that its UGA review is not due until 2008. The Board disagreed, granted the motion for reconsideration and reinstated Petitioner for purposes of the failure to act challenge.] [*1000 Friends/KCRP, 04331c*, 3/31/05 Order, at 4.]
- If the legal sufficiency of a BLR is challenged, the Board's scrutiny will focus on whether the resulting BLR fulfills the *purposes* of the program and whether the BLR contains the key evaluation components – *i.e.* compliance with RCW 36.70A.215(1) and (3). Simply put, based upon the review and evaluation contained in a BLR, have the jurisdictions been able to determine whether they are achieving urban densities within the UGAs and are reasonable measures needed to avoid adjusting the UGA? Thus, if a county and its cities agree upon an evaluation methodology that satisfy the minimum evaluation components of RCW 36.70A.215(3) [BLR], and the results of

that review and evaluation meet the purposes [achieving urban densities within UGAs and are reasonable measures needed to avoid adjusting UGAs] of RCW 36.70A.215(1), the Board will find compliance. [*S/K Realtors, 04328*, FDO, at 15.]

- General Discussion – Review of the legislative history of the GMA regarding UGAs and the ten-year review requirement. [*1000 Friends/KCRP, 05331c*, FDO, at 31-35.]
- The Board finds that in the course of almost-annual amendments to the GMA from 1990 to 2005, there has been no change in the timetable for UGA reviews. Central Puget Sound counties and their cities were required to adopt their county-wide planning policies, comprehensive plans, and development regulations and establish their urban growth areas by July 1994 and review their UGAs comprehensively "at least every ten years" thereafter. The Board further finds that the legislature has amended GMA deadlines from time to time, expressly allowing CTED to grant certain specific extensions, in recognition of the complexity of analysis and public process that may be involved, but there has been no such statutory extension or authority granted to CTED concerning the required UGA review. Therefore, the Board concludes that the Act required Kitsap County to conduct its .130(3) UGA review by no later than December 1, 2004. [*1000 Friends/KCRP, 05331c*, FDO, at 35.]
- There are important policy reasons for a consistent timeline for UGA review. Cities and counties need to coordinate their planning for urban growth, and allowing the dates for review cycles to begin when plans are brought into GMA compliance would quickly result in the kind of "uncoordinated and unplanned" land use that GMA was enacted to prevent. [Quoting RCW 36.70A.010.] Allowing tardy or non-compliant plans to "reset the clock" undermines that coordination. [*1000 Friends/KCRP, 05331c*, FDO, at 35.]
- The UGA review cycle also fits well with the OFM population forecasts and the buildable lands review cycle. The population forecasts are based on the census data available early each decade. The buildable lands review and evaluation program is on a five-year cycle, beginning in 2002 and every five years thereafter, to assess actual development trends in a county and its cities. RCW 36.70A.215(2)(b). This leads logically into an assessment of the appropriate sizing of the Urban Growth Area. Urban Growth Area review "may be combined with" the buildable lands review. RCW 36.70A.130(3). [*1000 Friends/KCRP, 05331c*, FDO, at 35-36.]
- The cities object to the use and consideration of [a] 25% market [safety] factor [applied] on a county-wide basis for the entire UGA as a component of determining whether individual city UGAs should be adjusted. . . . The County's evaluation of all the urban land within the UGAs of the County, and the application of a 25% safety factor in the collective context, is an appropriate and reasonable decision by the County. RCW 36.70A.115 appears to support a collective county-wide assessment of UGA capacity since it suggests that the duty to provide sufficient land to accommodate the projected growth is one shared by all jurisdictions. The County has not overstepped its authority and the County's use of a 25% safety factor, applied collectively to all urban areas, was not clearly erroneous. [*Bonney Lake, 05316c*, FDO, at 32.]
- [The cities argued the County did not collaborate with them in applying the 25% market factor county-wide. In fact they objected to its application on a county-wide

basis. The County contends it worked collaboratively with its cities in developing the CPPs, designating the UGAs and undertaking the Buildable Lands program which all involved aspects of UGA sizing. The Board concluded,] Nonetheless, it is the County's decision to make regarding the use of the market or safety factor. [*Bonney Lake, 05316c*, FDO, at 33.]

- [County's decision regarding application of the market/safety factor is clearly within the County's discretion to make and within the legislative intent regarding deference found in RCW 36.70A.3021. [*Bonney Lake, 05316c*, FDO, at 33.]
- An adjustment to UGAs must be done by the County through the County Council, supported by a county-wide land capacity analysis. UGA expansions cannot be unilaterally done by community advisory groups, nor . . . by cities – these decisions are made by the County from a county-wide perspective. [*Bonney Lake, 05316c*, FDO, at 34.]
- Expanding an isolated UGA to accommodate a portion of a new target population, before determining where and how much population other urban areas in the county can reasonably absorb, is inconsistent with the goals of the Act. [*KCRP VI, 06307*, FDO, at 11-12.]

- **UGAs – Location**

- Only after the actual capacity of cities to take this growth is definitively known, and it is determined how much of the forecasted growth could not be accommodated by cities, would it then be appropriate for the FUGA to include unincorporated lands that now have urban growth on them. Urban growth may be allocated to unincorporated areas that are not now characterized by urban growth only as a third rank order choice and only in unusual circumstances. [*Rural Residents, 3310,* FDO, at 15.]
- Counties do not have cart blanche permission to include nonurban areas in UGAs. In those rare cases when exceptional circumstances so warrant, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled. [*Rural Residents, 3310,* FDO, at 45.]
- The Act does provide six exceptions to the general rule governing locations where UGAs can be extended beyond existing city limits.
    1. UGAs can be located outside existing city limits if the detailed requirements for a new fully contained community are met. RCW 36.70A.350.
    2. UGAs can be located outside existing city limits if the detailed requirements for master planned resorts are met. RCW 36.70A.360.
    3. UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is already "land having urban growth located on it." RCW 36.70A.110(1); or
    4. UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is already "land located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1); or
    5. UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is adjacent to territory already "... having urban growth located on it." RCW 36.70A.110(1); or

6. UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is adjacent to territory already "... located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1).

[*Rural Residents, 3310,* FDO, at 48.]

- A necessary implication of the Act is that UGAs must be distinguishable among cities. This implied requirement arises from RCW 36.70A.110(2) which provides that "each city shall propose the location of an UGA," and the necessity for a county to know, for each portion of the lands covered by the county's comprehensive plan, which city's comprehensive plan must be addressed to meet the consistency requirements of RCW 36.70A.100 and the joint planning requirements of RCW 36.70A.210(3)(f). [*Tacoma, 4301,* FDO, at 12-13.]
- Generally, UGAs should be limited to existing municipal boundaries and can be extended beyond city limits only in particular circumstances. [*Tacoma, 4301,* FDO, at 49.]
- The Board expects counties to initially draw UGAs at existing city boundaries and proceed beyond city limits only with sufficient justification to permit such expansion. [*Tacoma, 4301,* FDO, at 49.]
- The Board concludes that the six exceptions to the general rule that counties cannot designate UGAs beyond city limits, as set forth in *Rural Residents, at 44,* were not changed by the 1995 legislative amendments. However, a new holding is in order, as follows:

  > Regardless of whether a satisfactory showing has been made that existing cities can accommodate the projected population growth, counties will be permitted to designate FUGAs beyond existing incorporated areas on lands covered by the third exception. However, this does not give counties the carte blanche permission to designate as UGAs *all* urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both UGAs and CPPs must serve: to achieve the *transformation of local governance* within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve *compact urban development. See Tacoma,* at 12. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical to now blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted. *Amending Bremerton,* at 39-40.

  [*Vashon-Maury, 5308c,* FDO, at 26.]
- Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter. [*Vashon-Maury, 5308c,* FDO, at 77.]
- Determining size and shape of UGAs – general discussion of prior Board decisions. [*Bremerton, 5339c,* FDO, at 32-42.]

- The future land use map must depict UGAs and reference the location of maps of appropriate scale to discern the actual location of the UGA boundaries. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 17.]
- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 41.]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 42.]
- It is the County's duty to establish UGA boundaries. The City's role in that process is limited to a consultative one. [*AFT, 5356,* FDO, at 10.]
- Where a city has planned for an area not included in its UGA, such planning activities, including land use designations, have no effect. [*AFT, 5356,* FDO, at 20.]
- The Bear Creek MPDs are within the County's "island" UGA. The Superior Court included the Bear Creek properties in the UGA. Therefore, in this unique situation, to respond to the Board's Order, the County need not have resorted to using the FCC designation process, as set forth in RCW 36.70A.350, to address the Bear Creek MPDs inclusion in the UGA. [*Buckles, 6322c,* FDO, at 30.]
- While a city may propose a UGA and consult on its designation, a city has no authority to designate UGAs under the Act. [*Hensley III, 6331,* FDO, at 5.]
- Designation of a UGA adjacent to existing city limits fosters compact urban development and the transformation of local governance. [*Johnson II, 7302,* FDO, at 7.]
- Counties may choose to designate future urban reserves outside of the UGAs. When such a tool is utilized, the Board has cautioned that care must be taken to protect the long-term flexibility to expand UGAs. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 44.]
- [The fact that an area is adjacent to a UGA does not compel its designation as a UGA.] [*Bremerton/Alpine, 5339c/8332c,* FDO, at 59.]
- The Board rejects [the] unsupported assertion that Island Crossing is "clearly" an entryway to Arlington. Area A of the Island Crossing area is an isolated, small-scale freeway service node, and all of the Island Crossing area is on the flat bottom land of a river valley. In addition to being a mile away, Arlington is neither physically nor visually connected to Island Crossing and is situated above the valley floor. [*Sky Valley,* 5368c, 4/22/99 Order, at 10.]
- [The Bear Creek island is not characterized by urban growth nor adjacent to lands characterized by urban growth, it therefore does not meet the locational criteria of RCW 36.70A.110(1)]. [*Bear Creek, 5803c,* 6/15/00 Order, at 11.]
- RCW 36.70A.110 cross references RCW 36.70A.350. Read together, RCW 36.70A.110 and RCW 36.70A.350 provide that lands that do not have urban growth

on them, that are not characterized by urban growth, and that are not adjacent to lands characterized by urban growth may become UGAs if the satisfy the FCC requirements of .350. [*Bear Creek, 5803c*, 6/15/00 Order, at 12.]

- The Bear Creek island is *located outside of the initially designated urban growth area*. Consequently, it is eligible for consideration as an FCC pursuant to .350. [*Bear Creek, 5803c*, 6/15/00 Order, at 15.]
- If the county approves an FCC proposal pursuant to RCW 36.70A.350(2), the approved FCC becomes a UGA by operation of law. Therefore, all the "containment" protections associated with UGAs attach. These include, for example, rural zoning, prohibition of urban growth outside the UGA, limitations on extending urban governmental facilities and services, and in King County the four-to-one program. [*Bear Creek, 5803c*, 6/15/00 Order, at 22.]
- RCW 36.70A.110 provides a statutory *exception* for FCCs from the UGA locational criteria contained in .110. . . . [T]he locational criteria contained in .110 of the Act do not apply to the identification and designation of potential FCC areas. . . . [T]he Act does not contain any explicit locational requirements for FCCs, other than those factors enumerated in .350(1), including .350(1)(g) "containment" which could affect location. . . . [A] jurisdiction has discretion to adopt its own locational criteria or constraints for identifying and designating potential FCC areas. [*Bear Creek, 5803c*, 6/15/00 Order, at 24.]
- [The locational criteria adopted by the County apply specifically to UGAs, not FCC designations. The County's Policy on locational criteria include the .110 FCC "exception."] . . . Since the Legislature, not the County, created the FCC "exception" in RCW 36.70A.110, it is not necessary for the County to justify, explain, or provide a rationale for, why the FCC "exception" is included in its Plan Policies. [*Bear Creek, 5803c*, 6/15/00 Order, at 26-27.]
- The County's argument about the propriety of its RAID designation evidence several fundamental misapprehensions. What the Act contemplates is flexibility for counties, in certain circumstances and subject to careful restrictions, to "round off" with logical outer boundaries "limited areas of more intensive rural development" [LAMIRDs]. However, simply because an unincorporated parcel was urbanized as of July 1, 1990, does not mean that it is appropriate to designated it as a LAMIRD. The County's spacing criteria for rural activity centers (RACs) and rural neighborhood centers (RNCs) indicates that it grasps the concept of a "central place," the idea that a commercial center serves a surrounding hinterland. The placement of its RAID less than 400 feet from the UGA flies in the face of this "central place" theory. The location of the [property] immediately adjacent to the UGA makes it a candidate not for LAMIRD designation, but potentially for UGA expansion. [*Tacoma II, 9323c*, FDO, at 7.]
- RCW 36.70A.110 establishes the framework for sizing and locating the boundaries of UGAs and locating urban growth areas within UGAs. As the County suggests, this provision may not directly apply to the concerns raised by Petitioners at this point in time. Also, the County and Intervenor correctly point out that the amendment to LU 1.A.9 does not expand any UGA. The Policy itself sets the parameters and conditions for possible UGA expansions for commercial, industrial and residential uses, but exempts churches and schools from these additional self imposed requirements.

Neither the County nor the School Districts dispute that even if UGA expansions for churches and schools occur, they must comply with the goals and requirements of the Act. In the Central Puget Sound Region, RCW 36.70A.215 provides additional direction regarding UGA expansions. [*Hensley IV, 03309c*, 10/21/03 Order, at 6, footnote 2.]

- [The County's CPP, allowing an individual UGA to be potentially expanded to reach adjacent land containing significant cultural or natural features for the purpose of protecting it as open space is permissible if a need for additional residential, commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken. (Note: The Board remanded this CPP to the County to clarify that the open space to be preserved would be outside the UGA, as the County intended.) A potential UGA expansion pursuant to this CPP] would seem to restrain the County's discretion by directing the County to pursue such a needed and documented UGA expansion in a location so as to maximize its ability to preserve the significant natural and cultural features as open space. This is more of a UGA *locational constraint*, rather than a UGA *sizing constraint*. Nonetheless, if the County chooses to constrain its discretion in this manner, it is free to do so. [*CTED, 03317*, FDO, at 31-32.]
- [To meet the UGA locational criterion of RCW 36.70A.110, reliance upon road rights-of-way to contact city limits does no constitute "adjacent to land characterized by urban growth." [*1000 Friends, 03319c*, FDO, at 36.]
- [A new analysis regarding large lots cured an inconsistency with one of the County's CPPs regarding UGA expansion.] However, achieving consistency between [the new ordinance designation and the CPP], does not cure the County's noncompliance with RCW 36.70A.110 because it does not address the "UGA location" deficiencies identified in the FDO. . . .No new facts or reasoning are presented to disturb the Board's conclusions that Island Crossing continues to have agricultural lands of long-term commercial significance, that the presence of a sewer line is irrelevant, particularly given its limitations, that the freeway service uses do not rise to the status of "urban growth," and that Island Crossing is not "adjacent" to the Arlington UGA or a residential "population" of any sort. In fact, the private lands within this proposed UGA expansion would be connected to the Arlington UGA only by means of a 700 foot long "cherry stem" consisting of nothing but public right-of-way. While such dramatically irregular boundaries were common in the pre-GMA era, the meaning of "adjacency" under the GMA precludes such behavior. [*1000 Friends I, 03319c*, 6/24/04 Order, at 22-23.]
- The Supreme Court has held that a CPP that "mandates" the inclusion of specific lands within a UGA cannot trump the statutory requirements of RCW 36.70A.110. (Citation omitted.) [*1000 Friends I, 03319c*, 6/24/04 Order, at 23.]
- [Adoption of the challenged ordinance] represents Snohomish County's **third** attempt under the GMA (and second attempt within the past nine months) to convert Island Crossing from a part of the designated agricultural resource lands of the Stillaquamish River Valley into Arlington's UGA. It has done so notwithstanding consistent contrary readings of the Growth Management Act by the Snohomish County SEPA Responsible Official, Snohomish County Executive, the Growth Management Hearings Board, Snohomish County Superior Court, the First Division of the

Washington State Court of Appeals and the Governor of the State of Washington. [The Board recommended the imposition of financial sanctions as authorized by RCW 36.70A.340.] [*1000 Friends I, 03319c*, 6/24/04 Order, at 24.]

- The sizing requirement and locational criteria in RCW 36.70A.110 apply to UGA expansion as well as to the initial UGA designation. RCW 36.70A.110(1) specifically contemplates that UGA boundaries may expand over time to allow for additional urban development, and it specifies the locational criteria that limit that expansion. A UGA may include an area that is not a city only if that area already is characterized by urban growth, is adjacent to an area characterized by urban growth, or is a designated fully-contained community. (Citations omitted.) [*Bremerton II, 04309c*, FDO, at 34.]

- **UGAs – Size**

- Counties must specify how many acres (or some other common measurement of land) are within a UGA so that, in the event of an appeal, the Board can determine whether the selected UGA is indeed sufficient. Counties have a great deal of discretion in how they achieve this requirement. The Board only demands that counties "show their work." [*Rural Residents, 3310*, FDO, at 35.]
- A county must base its UGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and specify the methods and assumptions used to support the IUGA designation. In essence, a county must "show its work" so that anyone reviewing a UGAs ordinance, can ascertain precisely how the county developed the regulations it adopted. [*Tacoma, 4301*, FDO, at 19.]
- Although a county has discretion in determining the physical size of a UGA, it does not have discretion in how much population it should plan for. OFM's twenty-year population projection is the exclusive number to use when designating UGAs. [*Tacoma, 4301*, FDO, at 25.]
- A county may, as an optional and supplementary feature of its comprehensive plan, include a population projection for any year subsequent to 2012, provided that such supplementary projection is unrelated to the process of designating UGAs. It may be wise to look beyond the GMA-mandated twenty-year time horizon, in view of the fact that major capital investments, i.e., sewage treatment plants and transportation facilities such as roads, airports and rail lines, have well beyond a twenty-year life and the results of certain public policy decisions will likewise endure beyond twenty years. However, the land supply and density decisions that must be made in designating UGAs must accommodate only the demands of twenty years of growth. [*Kitsap/OFM, 4314*, FDO, at 23.]
- Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter. [*Vashon-Maury, 5308c*, FDO, at 77.]

- The fact that a UGA can accommodate more residents than OFM projects for the next 20 years does not automatically mean that the UGA is invalid. [*Gig Harbor, 5316c,* FDO, at 41.]
- The Act creates an ongoing duty for Washington's communities to plan for future growth, including preservation of the flexibility to increase the UGA land supply at a date beyond the immediate twenty-year planning horizon. [*Gig Harbor, 5316c,* FDO, at 56.]
- Determining size and shape of UGAs – general discussion of prior Board decisions. [*Bremerton, 5339c,* FDO, at 32-42.]
- Where counties adopt a land supply market factor between 1 and 1.25 (i.e., of 25 percent), the Board will presume that the factor is reasonable. In evaluating allegations that a county has used an unreasonable land supply market factor, the Board will give increased scrutiny to those cases where the factor exceeds the 25 percent bright line. In determining whether the county's choice was reasonable, the Board shall consider three general questions: (1) What is the magnitude of the "land supply market factor" beyond the 25 percent bright line? (2) Is there other evidence to suggest that the land supply market factor is not reasonable? (3) Has the county also availed itself of other approaches, such as continuously monitoring land supply and making necessary adjustments over the life of the plans for the county and its cities? [*Bremerton, 5339c,* FDO, at 42-44.]
- For a county to calculate the amount of unincorporated UGA land necessary to accommodate its allocated population growth, the county must utilize a population density assumption that reflects development densities anticipated by the county plan. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 16.]
- For sizing UGAs, the density assumption used cannot be based upon historic patterns that perpetuated low density sprawl, and must reflect the planned for urban densities. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 16.]
- The land capacity analysis should be related to the CTED models, other accepted models, or the methodology, if any, established in the CPPs. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 17.]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban area portion of the projected twenty years of county-wide population growth. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 42.]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 42.]
- A city must comply with its county's population allocation and cannot unilaterally modify the persons-per-household assumptions upon which it was based. [*Benaroya I, 5372c,* FDO, at 17.]
- "Show your work" has been applied to the documentation of factors and data used in the accounting exercise of counties in sizing UGAs as required by RCW 36.70A.110;

it does not apply to the mandatory plan elements of RCW 36.70A.070. [*Litowitz, 6305,* FDO, at 17.]

- The GMA does not require counties to re-size its UGAs each time an assumption changes or more accurate information becomes available; however, the GMA does not allow counties to ignore changed circumstances or more accurate data. UGA review is required at least every ten years. [*Kelly, 7312c,* FDO, at 16.]
- [A land capacity analysis that deducts for redevelopment and unavailable land factors cumulatively, and for roads, public facilities and critical areas sequentially (from the same gross total) avoids double counting.] [*Bremerton/Alpine, 5339c/8332c,* FDO, at 20.]
- The sizing of the UGA must be supported by analytical rigor and an explicit accounting, yet [the sizing of UGAs] is an inexact science. The specificity and precision important to the accounting are tempered by the imprecise nature of long-range population projections, and indeed comprehensive planning itself. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 37.]
- [T]he County reserved a portion of the twenty-year population projection and offset the UGA accordingly [as required by .350]. [*Bear Creek, 5803c*, 6/15/00 Order, at 16.]
- [Show your work applies to sizing UGAs, it has not been required to demonstrate compliance with the mandatory elements requirements of the Act.] [*MacAngus, 9317,* FDO, at 11.]
- The UGA-sizing requirements of RCW 36.70A.110 rely to a great extent on mathematical calculations (allocation of population growth, assumptions regarding numbers of persons per dwelling, land needs based on planned densities and market factors, etc.) Without a clear showing in the record of the mathematical calculations and assumptions, interested persons have no criteria against which to judge a county's UGA delineation. Such is not the case here. [Petitioner] disagrees with the land use designation of its property and wants the County to show or explain why it did not change the [agricultural] designation. This is not required since the record clearly shows the basis for the County's [designation. The county relied upon Soil Conservation Service Prime Farmland List for the County.] [*MacAngus, 9317,* FDO, at 11.]
- Actions of local governments are presumed valid; however, when [UGA designations or expansions are] challenged the record must provide support for the actions the jurisdiction has taken; otherwise the action may be determined to have been taken in error – clearly erroneous. The Board will continue to adhere to the requirement that counties must "show their work" when designating UGAs and affirms its prior decisions on this question. [*Kitsap Citizens, 0319c*, FDO, at 13.]
- Its review of challenges to initial UGA designations caused this Board to articulate a "show your work" requirement that compelled Counties to demonstrate the analytical rigor and accounting that supported the sizing and designations of UGAs. The "show your work" provision for sizing and designating UGAs has been applied to the four Puget Sound counties within this Board's geographic jurisdiction. Thus far, this Board has limited the application of the "show your work" requirement to the sizing of UGAs. (Citations omitted.) [*Master Builders Association, 1316,* FDO, at 8.]

- Based upon the arguments presented, the Board construes the crux of the dispute in this [issue] to be a question of: whether the County had a GMA duty to update its [UGA capacity analysis] (a new showing of work) when it adopted the amendments to the PRD regulations. In reviewing the question, the Board agrees with the County and affirms its prior holding in *Kelly* [*7312*, FDO] that the GMA creates no duty to continuously update UGA land capacity analysis every time development regulations are amended. [*Master Builders Association, 1316*, FDO, at 10.]
- The Board notes that RCW 36.70A.130(3) was amended in 1997 to provide: "The review required by this subsection *may be combined* with the review and evaluation required by RCW 36.70A.215." (Emphasis supplied.) RCW 36.70A.215 further supports the principle that *periodic* review and evaluation for UGA sizing and designation, *not continuous updates*. [*Master Builders Association, 1316*, FDO, at 10.]
- The GMA provides protections against the scenario painted by Petitioners [Once UGAs are set, densities can be increased or decreased without demonstrating consistency with the GMA until the five-year review are due. Thus yielding a five-year period where no rules are in effect.] If UGAs are altered and challenged, which is not the case here, this Board requires an accounting to support the alteration. (Citation omitted.) Additionally, the Act itself provides specific requirements that development regulations, and amendments thereto, be consistent and implement the Plan, including the UGAs. (Citations omitted.) Thus, any changes, *at any time*, to development regulations that increase or decrease densities within a UGA are required to be "consistent with and implement the Plan." Interested persons or groups would be free to challenge such amendments to development regulations as they occurred, within the GMA appeal period. . . .Absent an alteration to a UGA boundary, the GMA specifically requires periodic review and evaluation for UGAs (Citations omitted.) [*Master Builders Association, 1316*, FDO, at 12.]
- [The Board's conclusion that only periodic reviews, not continuous update, are required by the GMA] does not insulate the County from a UGA challenge based upon whether development regulations implement the Plan and are consistent with the Plan and Goals of the Act. [*Master Builders Association, 1316*, FDO, at 13.]
- The review and evaluation mandate [of RCW 36.70A.215] focuses on the following components: 1) whether there is sufficient suitable land to accommodate the county-wide population projection; 2) the actual density of *housing* that has been constructed and the actual amount of land developed for *commercial and industrial uses* within the urban growth area; and 3) evaluation of the *commercial, industrial and housing* needs by type and density range to determine the amount of land needed for *commercial, industrial and housing* for the remaining portion of the twenty-year planning period. [*Hensley VI, 03309c*, FDO, at 15.]
- The review and evaluation program [of RCW 36.70A.215] is designed to require the assessment of at least the three most significant consumers of urban land – residential, commercial and industrial uses. These three use types provide the core of urban development and the basis for the possible expansion of UGAs. [*Hensley VI, 03309c*, FDO, at 16.]
- RCW 36.70A.110 establishes the framework for sizing and locating the boundaries of UGAs and locating urban growth areas within UGAs. As the County suggests, this

provision may not directly apply to the concerns raised by Petitioners at this point in time. Also, the County and Intervenor correctly point out that the amendment to LU 1.A.9 does not expand any UGA. The Policy itself sets the parameters and conditions for possible UGA expansions for commercial, industrial and residential uses, but exempts churches and schools from these additional self imposed requirements. Neither the County nor the School Districts dispute that even if UGA expansions for churches and schools occur, they must comply with the goals and requirements of the Act. In the Central Puget Sound Region, RCW 36.70A.215 provides additional direction regarding UGA expansions. [*Hensley IV, 03309c*, 10/21/03 Order, at 6, footnote 2.]

- It is important to note that this case does not involve the size of the Lake Stevens UGA, nor *whether* the area within the Lake Stevens UGA will be urban, nor *whether* it will be provided with adequate urban facilities and services within the planning period (2012), nor *whether* it will be developed at urban intensities and densities. Since the land is within the Lake Stevens UGA, the GMA requires these outcomes to occur within the planning period - by 2012. [*Citizens, 03313*, FDO, at 8.]
- General Discussion of the relationship between land capacity analyses and the buildable lands review and evaluations required by the Act – RCW 36.70A.110 and .215. [*CTED, 03317*, FDO, at 20-22.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land to include a church or a school property, with restrictions, is permissible without conducting a land capacity analysis as required by RCW 36.70A.110 or evaluation per .215.] [*CTED, 03317*, FDO, at 26-28.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to reach adjacent land containing significant cultural or natural features for the purpose of protecting it as open space is permissible if a need for additional residential, commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken. (Note: The Board remanded this CPP to the County to clarify that the open space to be preserved would be outside the UGA, as the County intended.) A potential UGA expansion pursuant to this CPP] would seem to restrain the County's discretion by directing the County to pursue such a needed and documented UGA expansion in a location so as to maximize its ability to preserve the significant natural and cultural features as open space. This is more of a UGA *locational constraint*, rather than a UGA *sizing constraint*. Nonetheless, if the County chooses to constrain its discretion in this manner, it is free to do so. [*CTED, 03317*, FDO, at 31-32.]
- [The County's CPP, allowing an individual UGA to be potentially expanded to adjacent land for an affordable housing crisis did not comply with the Act – RCW 36.70A.215. (Note: A CPP, allowing an individual UGA to be potentially expanded for additional residential land is permissible if a need for additional residential land is demonstrated in a land capacity and reasonable measures have been taken. The challenged CPP bypassed .215's reasonable measures requirement.) The Board also commented that a land capacity analysis for residential *land* is off point in relation to a potential expansion of a UGA pursuant to an "affordable housing crisis," which is the basis for this potential UGA expansion.] Whether the existing and projected housing stock is affordable falls within the parameters of RCW 36.70A.070(2) – the

Housing Element. A GMA Plan's Housing Element is required to *identify sufficient land for housing, including government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities*. RCW 36.70A.070(2)(c). Also the Housing Element requires jurisdictions have adequate provision for existing and projected housing needs for *all economic segments of the community*. RCW 36.70A.070(2)(d). Therefore, reliance upon just a land capacity analysis without supporting documentation in the County's Housing Element would be inadequate to implement [a UGA expansion pursuant to this CPP. The Board found this CPP noncompliant.] [*CTED, 03317*, FDO, at 35-36.]

- [The County's CPP, allowing an individual UGA to be potentially expanded for economic development purposes to adjacent land that had previously been designated as resource lands, is permissible if a need for additional commercial or industrial land within the UGA is demonstrated in a land capacity analysis and if reasonable measures have been taken.] [*CTED, 03317*, FDO, at 39.]
- [The UGA sizing criterion of RCW 36.70A.110 a land capacity analysis must be done.] Neither the County nor Intervenor indicates that a revised land capacity analysis supporting the need for a commercial/industrial UGA expansion has been conducted. Intervenor even acknowledges that the existing land capacity analysis may not have supported expansion. CTED correctly argues that there is nothing in the County's recent Buildable Lands Report that supports the expansion of the Arlington UGA for commercial or industrial uses to include the Island Crossing area. The County does not dispute this assertion. [*1000 Friends, 03319c*, FDO, at 36.]
- The sizing requirement and locational criteria in RCW 36.70A.110 apply to UGA expansion as well as to the initial UGA designation. RCW 36.70A.110(1) specifically contemplates that UGA boundaries may expand over time to allow for additional urban development, and it specifies the locational criteria that limit that expansion. A UGA may include an area that is not a city only if that area already is characterized by urban growth, is adjacent to an area characterized by urban growth, or is a designated fully-contained community. (Citations omitted.) [*Bremerton II, 04309c*, FDO, at 34.]
- A UGA must provide for sufficient area and densities to accommodate the urban growth that is projected for the succeeding 20-year period. RCW 36.70A.110(2). This subsection specifically contemplates that UGA boundaries may expand over time as necessary to meet population projections, imposing another limitation on their expansion. Counties must review, and if necessary, revise their UGAs at least every ten years to accommodate urban growth projected for the succeeding 20-years. RCW 36.70A.130(3). A *county-wide* land capacity analysis must accompany these statutorily mandated periodic revisions of UGAs. (Citations omitted.) [*Bremerton II, 04309c*, FDO, at 34.]
- An expansion of a UGA is essentially a redesignation, which must be consistent with the requirements of RCW 36.70A.110. The Board has made clear that changes in the size of UGAs must be supported by land use capacity analysis and the County must "show its work." (Citations omitted.) [*Bremerton II, 04309c*, FDO, at 34-35.]
- The land capacity analysis required by RCW 36.70A.110(1) and (2), now underscored by the buildable lands reports required by RCW 36.70A.215, is a vital

component of the work that must be shown. (Citations omitted.) [*Bremerton II, 04309c*, FDO, at 35.]

- The Board rejects the County's argument that RCW 36.70A.110 only applies to initial UGA designations [not UGA expansions]. [*Bremerton II, 04309c*, FDO, at 45.]
- The Board rejects Petitioners' theory that *county-wide* land capacity analysis is required in these instances [UGA expansions in the context of subarea plan adoptions]. However, a *county-wide* land capacity analysis is required for periodic reviews. The next periodic review, per RCW 36.70A.130, is required for Kitsap County by December 1, 2004. The Board reads RCW 36.70A.130 to require that on or before December 1, 2004 (.130(4)(a)), Kitsap County's planning cycle must be brought into the GMA sequence, using OFM's most recent ten-year population forecast (.130(1)(a)), evaluating its UGA boundaries and densities (.130(3) and .215). [*Bremerton II, 04309c*, 9/16/04 Order, at 8.]
- The Board concurs with Petitioners that the Kingston Sub-Area Plan . . . is a recipe for the kind of leap-frog development that the Legislature hoped to forestall when it enacted the GMA. While deferring the capital facilities needed to support buildout of the existing UGA at urban densities, Kitsap County has expanded the UGA to incorporate a large subdivision with an eager proponent. Undoubtedly the . . . proposal has many commendable features for an expanded urban area, but without infill in the *existing* UGA, sprawl is perpetuated, contrary to Goal (2), and the provision of urban services becomes inefficient and more costly, contrary to Goals (1) and (12). [*KCRP VI, 06307*, FDO, at 28.]
- Just as RCW 36.70A.110 requires a land capacity analysis for counties in designating UGAs, it compels a land capacity analysis for cities [cities with and without unincorporated urban areas adjacent to their city limits] to ensure they can accommodate newly projected growth allocations. The required land capacity analysis in .110 is also reflected in .130, for Plan Updates, again, to assure that the latest projected growth can be accommodated. This supporting documentation is required to enable cities and counties to discharge their respective duties to accommodate projected growth. There is a sound and logical link between the BLR's assessment of past activities, or periodic "check-in" and the land capacity analysis evaluation of accommodating growth. The information derived from the BLR should provide the basis for modifying planning assumptions, policies and designations and testing them against future land capacity analysis to determine whether jurisdictions have the capacity to accommodate newly assigned growth within their jurisdictions. [*Strahm, 05342*, FDO, at 11.]
- RCW 36.70A.110(2) and .130(3) contain two compatible and major directives. The first is that the State Office of Financial Management (OFM) must project population ranges for each GMA county. These are the *population drivers*, the urban growth, which the county, in conjunction with its cities must accommodate. Second, this section of the Act directs the county and its cities to include areas and densities *sufficient to permit the urban growth* that is projected to occur. In order to comply with these directives, jurisdictions must undertake some form of land capacity analysis to determine whether their *areas and permitted densities* for the lands within their jurisdiction can accommodate the projected and allocated growth. Both of these

GMA requirements speak in terms of providing *densities* to accommodate growth – compact urban development. [*Strahm, 05342*, FDO, at 12.]

- The Board finds and concludes that a CPS jurisdiction may not simply rely upon FLUM designations, absent a supporting and corroborative land capacity analysis, to discharge its .110 duty to include areas and densities sufficient to permit the urban growth that is projected to occur in the city for the succeeding twenty-year period. This is especially true in light of the GMA's BLR and Plan Update review and evaluation requirements. [*Strahm, 05342*, FDO, at 17.]
- While the GMA requires compact urban development through higher densities, it does not compel increases in FLUM designations as the only means of achieving higher density, as Petitioner suggests. Here, the Board agrees with the City that there is evidence in the record to support the City of Everett's Housing Strategy Areas approach as one that will likely increase density, not decrease it. However, the City has failed to quantify this contribution and demonstrate that it has not breached its GMA duty to accommodate projected growth. By failing to do so, the City has not rebutted the *prima facia* case made by Petitioner. [*Strahm, 05342*, FDO, at 24.]
- Providing sufficient land capacity to accommodate projected growth is a jurisdiction's duty under the GMA, it is an obligation and duty that the jurisdiction must discharge. RCW 36.70A.110. However, the Board observes that: if a jurisdiction's land capacity analysis quantifies and documents that there clearly is sufficient land suitable to accommodate the projected growth within the jurisdiction's city limits *and* its unincorporated planning area; and if there is consistency and congruency between a city and county as to the planning area and population to be accommodated [i.e. no dispute or inconsistent populations or areas]; then there is no need to differentiate between the incorporated and unincorporated areas. However, that is not the situation in the present matter. [*Strahm, 05342*, FDO, at 25.]
- There is a sound and logical link between the BLR's assessment of past activities and the land capacity analysis' evaluation of accommodating future growth. The information derived from the BLR should provide data better than theoretical densities and serve as a basis for modifying planning assumptions, policies and designations and testing them with a future land capacity analysis to determine whether jurisdictions have planned for the capacity to accommodate newly assigned growth. [*Pilchuck VI, 06315c*, FDO, at 17.]
- The SCT 1993 LCM [Snohomish County Tomorrow 1993 Land Capacity Methodology] is a basic, and dated, tool for Snohomish County jurisdictions to use in calculating holding capacity as part of discharging their .110 and .130 duties. The County has shown that the basic steps outlined in the SCT 1993 LCM are contained in the County's 2005 LCA [2005 Land Capacity Analysis], at a more sophisticated, less theoretical, and refined level of detail. The Board also notes that the SCT 1993 LCM process leads to a rough "theoretical capacity" [*i.e.* multiplying acres by *maximum* zoning yield], while the more advanced 2005 LCA conducted by the County relies on more accurate mapping and builds on experience gained from its Buildable Lands Report (**BLR**) and looks at the development history and densities derived from parcel specific analysis in the BLR, rather than theoretical maximum densities included in the SCT version. Consequently, the Board concludes that the

County's methodology does not run afoul of UG-13, regarding adhering to an SCT methodology. [*Pilchuck VI, 06315c*, FDO, at 18.]

- From the Board's point of view, Petitioner has omitted a critical part of the analysis to carry his burden of proof – taking his acreage figure and comparing it to projected population. This involves calculating persons per unit to determine number of units needed, then evaluating various density configurations [existing or proposed] to determine whether the given amount of land is sufficient to accommodate the projected population. The County, unlike Petitioner, did not omit this step in its 2005 LCA. [*Pilchuck VI, 06315c*, FDO, at 19.]
- The Board agrees that given an observed and achieved density (*i.e*. X number of units achieved on Y gross acres), use of either calculation yields the same result. The Board notes that compared to a "net density" statistic, the "buildable density" statistic will show a *higher* "buildable acreage" figure and will yield a *lower* density (dwelling units per acre), because in the buildable density statistic accommodation is made for roads and detention ponds – land that is "developed," but not in housing. If roads and detention ponds were also deducted from the same site, with the same number of dwelling units (*i.e*. net acreage); then the result is that the acreage is *less*, but the density is *higher*. Using either calculation, the actual acreage and dwelling unit count is the same. Likewise, applying an observed density assumption derived by either methodology to vacant or partially developed lands should produce substantially the same dwelling unit count for the parcel(s) being analyzed. [*Pilchuck VI, 06315c*, FDO, at 21.]
- The Board notes that at the HOM, the County conceded that its explanation of how the calculations were made could be clearer; and, that a better explanation of how the Tables should be read could have been provided, but neither of those shortcomings merits a finding of noncompliance. The Board agrees on both points. The Board does not find the calculation used by the County to be in error or meriting a finding of noncompliance; however, a clear explanation of exactly what the Tables show, how they were derived, and how they should be read would go a long way towards clearing the fog that Petitioner pointed out. [*Pilchuck VI, 06315c*, FDO, at 22.]
- [T]he Board acknowledges the difficulties inherent in multi-jurisdictional planning and commends the County for putting a reconciliation process in place in anticipation of potential discrepancies. Although the reconciliation was apparently not completed in October of 2005 prior to the County's adoption of its Plan Update, the delay is not a fatal flaw or a clear error. However, the County should proceed expeditiously to reconcile any discrepancies that have become apparent now that Plans have been adopted by the cities. [*Pilchuck VI, 06315c*, FDO, at 24.]

- ## Urban Services

- County-wide planning policies are policy documents that have both a procedural and a substantive effect on the comprehensive plans of cities and the county. The immediate purpose of the CPPs is to achieve consistency between and among the plans of cities and the county on regional matters. A long-term purpose of the CPPs is to facilitate the transformation of local governance in urban growth areas so that

cities become the primary providers of urban governmental services and counties become the providers of regional and rural services and the makers of regional policies. [*Poulsbo, 2309c,* FDO, at 23.]

- The eventual and logical culmination of 'cities as the primary providers of urban services requires that annexation and incorporation occur rather than service agreements sufficing as more than a transitional device. [*Poulsbo, 2309c,* FDO, at 26.]
- Cities are the focal points of urban growth, governmental service delivery, and governance within UGAs. [*Rural Residents, 3310,* FDO, at 42.]
- The Board finds no absolute prohibition in the Act against the inclusion of land in a UGA that cannot be associated with an existing or potential future city. Nevertheless, the act is clear that the long-term future of urban growth areas is for them to have urban governmental services provided primarily by either existing or potential future cities. [*Tacoma, 4301,* FDO, at 37.]
- Just because unincorporated lands today contain urban growth on them does not necessarily mean that they should be included within a UGA. Instead counties must examine how a UGA designation for such lands would achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services, and will achieve compact urban development. [*Vashon-Maury, 5308c,* FDO, at 27.]
- Determining how to distribute projected population growth among existing cities falls within the ultimate discretion of counties, subject to the requirements of RCW 36.70A.110(2) to attempt to reach agreement with cities. The Act does not require proportionate distributions. [*Vashon-Maury, 5308c,* FDO, at 34.]
- The Four-to-One program is the type of innovative land use management technique that the Act encourages. [*Vashon-Maury, 5308c,* FDO, at 46.]
- Regarding RCW 36.70A(3)(c-d), if a county does not own or operate a facility, it should not be required to include the locational or financing information in its CFE since these decisions are beyond its authority. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 39.]
- When a jurisdiction that owns and/or operates a specified capital facility cooperates with the county and discloses information pertaining to location or financing (RCW 36.70A.070(3)(c-d), the county may include such information in its CFE. Indeed, aside from being sound growth management and public policy, it may be a necessary prerequisite to access a new funding source – *e.g.* impact fees. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 39.]
- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 41.]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained

that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at 42.]

- In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development, the duty to accommodate the population and employment that is allocated to them by a county, the duty to accommodate a county allocation and reflect it in both a city's comprehensive plan land use designations and capital facility plans, the Act imposes a duty on cities to encourage urban growth within UGAs. [*Benaroya I, 5372c,* 3/13/97 Order, at 8.]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban portion of the twenty years of county-wide population growth. The county, as to the unincorporated portion of the UGA, and the cities, as to their respective portions of the UGA, have a duty to adopt comprehensive plans that accommodate that allocated growth over the twenty-year life of their plans, including provision of public facilities and services. [*Hensley III, 6331,* FDO, at 8.]
- That which is urban should be municipal. The corollary is: that which is municipal must be urban, which is to say, must generally have residential densities at 4 du/acre or higher. The Act is clear in providing that urban governmental services are to be available and provided in urban areas. [*Hensley III, 6331,* FDO, at 9.]
- The Act requires that urban services be made available and provided within UGAs. Generally, this means cities will make available and provide those urban services. [*Hensley III, 6331,* FDO, at 10.]
- Designation of a traditional UGA generally establishes certainty that: 1) the development of the land within it will be urban in nature; 2) this urban land will ultimately be provided with adequate urban facilities and services within the planning horizon; and 3) the land will ultimately be developed at urban densities and intensities. [*Johnson II, 7302,* FDO, at 10.]
- A county may take precautions (i.e., requiring interlocal agreements) regarding the allocation of responsibility for services, and the process of transfer of jurisdiction, especially where the potential annexing city lies outside that county. [*Kelly, 7312c,* FDO, at 12 -13.]
- Some very fundamental issues have been resolved by virtue of the UGA designation: (1) the land use will be urban; (2) the land use designations reflect population and employment allocations made by the County; and (3) urban services provided within the UGA should be primarily provided by cities. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 48.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319,* FDO, at 6.]

- The Act [RCW 36.70A.110(4)] is clear, extension of sewer into the rural area is inappropriate *except* when a sewer extension *is necessary to protect the public health, safety or environment* and the sewer extension is financially supportable at rural densities and will not permit urban growth. (*Citation* omitted.) . . . [The language in the first part of the challenged CPP] captures the only statutorily recognized exception (footnote omitted) of extending sewers into the rural area - when they are necessary to protect the public health, safety and environment. It also recognizes that such extensions must be financially supportable and not allow urban development. [*CTED, 03317*, FDO, at 18-19.]
- [T]he remaining language of this CPP goes beyond the single statutory exception. It allows the extension of sewers to churches in a rural area that abut a UGA. Under this CPP, to extend a sewer line to a church outside the boundaries of the UGA, there need not be a showing that the extension is necessary to protect the public health, safety or environment, which is the only exception .110(4) recognizes. . . .The amendment to [the challenged CPP] creates an entirely new exception for churches that goes beyond the limited exception stated in RCW 36.70A.110(4). [The CPP does not comply with the Act.] [*CTED, 03317*, FDO, at 19.]
- Schools, as well as churches, are unique in that they are institutional facilities that *serve* the population. Although they do consume land, they are needed to support and serve existing and projected population and development. They are also unique in that both uses are needed to serve both the urban and rural population. Therefore these uses are allowed and may be located in many urban or rural areas. [*CTED, 03317*, FDO, at 28.]
- The Board can conceive of appropriate urban densities below 4 du/acre where a city is balancing its GMA duties to provide adequate urban services and facilities with its duty to provide urban densities. Thus, it is conceivable that if a city has an explicit phasing program that sequences and times the provision of urban services and facilities to coincide with the jurisdiction's capital facilities and transportation financing plans and programs, lower densities in some areas may be appropriate for an established time horizon, particularly if offset by much higher densities where capital facilities are already in place. [*Kaleas, 05307c*, FDO, at 20.]
- In this case the City is not the provider of sewer service and the sewer district has not established a time certain for the provision of sewer service. The City may be able to influence the sewer districts timing policies but it cannot mandate them. The City has the latitude under the existing land use designations to change the zoning to a higher density residential district, but no policy commitment to do so. If the City were to change the zoning district to one that permitted 4 du/acre it would be an incentive for the sewer district to establish a time certain for extension of sewer service to the subdivision. The higher density zoning together with a time certain for sewer service would support the redevelopment of this area at appropriate urban densities. [*1000 Friends VII, 05306*, FDO, at 28-29.]

- ## Utilities Element

- In order to describe the general locations of utilities as required by RCW 36.70A.070(4), a city or county must compile an inventory of the utilities that exist

within its boundaries and the location of known proposals for future utilities. Additionally, a jurisdiction must note the capacity of these existing and proposed utilities. [*Sky Valley, 5368c,* 4/15/96 Order, at 6.]

- For purposes of RCW 36.70A.070(4) railroads are not utilities. Given the nature and size of railroads and their potential impact on land use planning, sound policy dictates that railroads be considered under the transportation element rather than the utilities element of a comprehensive plan. [*Hapsmith I, 5375c,* FDO, at 49.]

• Water

- A jurisdiction is not required to tabulate "certificates of water availability" in order to measure water supply. [*Vashon-Maury, 5308c,* FDO, at 48.]
- The City adopted the Water Plan based upon population figures contrary to its allocated population and with a service area that apparently does not correspond to the UGA adopted by the County for the City. The Board notes that RCW 43.20.260 provides that water system service under a plan submitted for Department of Health review must be "consistent with the requirements of any comprehensive plan or development regulation adopted under chapter 36.70A RCW." The Board does not have jurisdiction to determine whether the Sultan Water Plan complies with chapter 43.20 RCW, or with the Department of Health regulations, as the Board's review is limited to determining consistency with GMA plans and regulations; however, the Board notes that the importance of the GMA's coordinated planning mandate is acknowledged in the related statute, which requires conformity with the Comp Plan. [The City acknowledged at the HOM that its population projections and service area were inconsistent with those adopted by the County for the City.] [*Fallgatter V, 06303*, FDO, at 14-15.]

• Wetlands

- *See also:* **Critical Areas**
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c,* FDO, at 20.]
- It is the structure, value and functions of critical areas that are inviolate, not the critical areas themselves. The "protect critical areas" mandate does not equate to "do not alter or negatively impact critical areas in any way." While the preservation of the structure, value and functions of wetlands, for example, is of paramount importance, the Act does not flatly prohibit any alteration of or negative impacts to such critical areas. [*Pilchuck II, 5347c,* FDO, at 20.]
- The Act's requirement to protect critical areas means that the structure, value and functions of such natural systems are inviolate. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in a net loss of the structure, value and

functions of such natural systems within a watershed or other functional catchment area. [*Pilchuck II, 5347c,* FDO, at 21.]

- The GMA requires designation and protection of critical areas and makes no qualifying statement that, for example, urban wetlands are any less important or deserving of protection than rural ones. As a practical matter, past development practices may have eliminated and degraded wetlands in urban areas to a greater degree than rural areas, but the Board rejects the reasoning that this provides a GMA rationale for not protecting what is left. [*Pilchuck II, 5347c,* FDO, at 23.]
- The Act's mandate for protection requires either a buffer, or a functionally equivalent protection for all wetlands, including category 4 wetlands. It may well be that some or even most category 4 wetlands can be protected by means other than a buffer. However, . . . some mechanism is needed to protect these areas. [*Pilchuck II, 5347c,* FDO, at 35.]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, at 41-42.]
- The Act's requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the ~~structure,~~ values and functions of such ~~natural~~ ecosystems ~~are inviolate~~ must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ ecosystems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, at. 11, amending a holding in *Pilchuck II,* FDO *5347,* pursuant to a Superior Court remand]
- Local governments have the flexibility to adopt critical area development regulations that would permit the reduction of the geographic extent of, for example, a wetland. This could result in the loss of all or a portion of an individual site-specific critical area, so long as the values and functions of the ecosystem in which the critical area is located is not diminished. [*Tulalip, 6329,* FDO, at 11.]
- Certain critical areas, such as wetlands and fish and wildlife habitat areas, constitute ecosystems that transcend the boundaries of individual properties and jurisdictions, and that it is therefore necessary to address certain critical area issues on a watershed level. [*Tulalip, 6329,* FDO, at 11-12.]
- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 31.]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c,* FDO, at 32.]
- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow

more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c*, FDO, at 32.]

- The large scale environmentally sensitive hydrologic system that provided the context for the Board's analysis in the FDO is the Clover Creek drainage. As noted in the MBA's quote from the Board's FDO, the 729 acres zoned RR in Area 1 contains "isolated, sporadic and scattered occurrences of flooding, wetlands or priority habitat that can be appropriately addressed through existing critical areas regulation." In essence, the Board concluded that Area 1 was not an integral and significant part of the large scale environmentally sensitive system at issue – Clover Creek. Nothing has changed. [*MBA/Brink, 02310*, 9/4/03 Order, at 7.]
- [Petitioner challenged the low density designation of an area containing wetlands, but the site of a proposed roadway expansion – the Bothell Connector. Petitioner sought a higher density and more intense designation for the area.] It is obvious to the Board that Petitioner would have preferred a different designation; and Petitioner had the opportunity to persuade the Council to do so. However, the City chose to do otherwise; and as the Board discussed, supra, the R-40,000 designation in the Fitzgerald Subarea was not clearly erroneous and complied with the GMA. The fact that the road may, or even will, go through a critical area and connect two Regional Activity Centers, does no negate the validity of the R-40,000 designation, especially between two higher intensity areas. The Board acknowledges that such a project, if it does materialize, will be subject to the provisions of [SEPA]. Any probable adverse environmental impacts would be identified and mitigated through that process. [*Fuhriman II, 05325c*, FDO, at 58.]
- Although Mukilteo argues that the best available science was "included" in providing the basis for the 40% buffer reduction provision from DOE Buffer Alternative 3 methodology, nothing in the record shows that best available science was even considered in making the decision. The 50% reduction that appeared very early in the City's revision process was not informed by best available science, as discussed supra, and nothing in the record indicates a reduction of more than 25% is an appropriate deviation from DOE Buffer Alternative 3 methodology. The City's argument that changes can be made from best available science recommendations without any justification for the changes would eliminate the stated purpose of the best available science requirement – protection of the function and values of critical areas. A jurisdiction must provide some rationale for departing from science based regulations. (Citation and quote from Court of Appeals Division I decision in *WEAN v. Island County*). [*Pilchuck V, 05329*, FDO, at 10-11.]
- In designating critical areas, cities and counties "shall consider" the minimum guidelines promulgated by CTED in consultation with DOE pursuant to RCW 36.70A.050(1) and (3); .170(2). In particular, wetlands "shall be delineated" pursuant to the DOE manual. RCW 36.70A.175. [*DOE/CTED*, 05334, FDO, at 10.]
- Wetlands are defined in Section .030(21) and are required to be delineated according to Ecology's manual. RCW 36.70A.175. WAC 365-190-080(1) states that city and county designation of wetlands "shall use the definition" in Section .030(21). Expanding the statutory exemption results in a failure of accurate designation and, thus, a failure to protect the functions and values of these critical areas, as required by RCW 36.70A.172(1). [*DOE/CTED, 05334*, FDO, at 26.]

- Identifying and designating wetlands in order to protect their functions and values is a requirement of the GMA. Jurisdictions are not free to rewrite the statutory definition where its terms are explicit, as they are with respect to the exemption for accidentally-created wetlands. [*DOE/CTED, 05334*, FDO, at 27.]
- The GMA imposes a requirement to protect critical area functions and values based on best available science. Wetland classification schemes are not necessary, but if used, they must be based on BAS in order to ensure that the related buffer requirements provide the needed protections. [*DOE/CTED, 05334*, FDO, at 31]
- [T]he Petitioners have met their burden of proof by demonstrating that the City's record lacks a current scientific basis for its wetlands rating system and that the three-tier system is designed "with specific and narrow functions in mind," rather than protecting "the entirety of functions" of the City's wetlands. The Board does not find in the City's record any current science supporting the truncated wetland rating system or indicating how wetland functions will be identified and protected with this system. [*DOE/CTED, 05334*, FDO, at 33.]
- In reenacting its three-tier wetlands ranking system, Kent failed to account for the full range of wetland functions and therefore failed in its GMA obligation to protect critical area functions and values. [As clarified in the following section, protection of functions could possibly have been provided, even under a three-tier system, with wider required buffers and other adjustments.] Retaining this outdated system ignores the advances of science and understanding of wetland functions and values that have occurred over the last decade. Retention of an obsolete, albeit "comfortable" system makes a mockery of, and totally ignores, the requirement of RCW 36.70A.130(1) that local cities and counties must update CAOs based upon BAS, which is continually being refined. [*DOE/CTED, 05334*, FDO, at 34.]
- [The County exempted from regulation very small, truly isolated and poorly functioning wetlands. The County was advised by state agencies that such exemptions were not supported by BAS. The Board reviewed the case of *Clallam County v. Western Washington Growth Management Hearings Board*, 130 Wash. App. 127, 140, 121 P.3d 764 (2005), pertaining to the limitations on exemptions from critical areas regulations.] The Board reads the Court's opinion to require CAO exemptions to be supported by some analysis of cumulative impacts and corresponding mitigation or adaptive management. Here, Kitsap County has not expanded its small wetlands exemption; in fact the exemption has been somewhat narrowed. But there is no evidence in the record of the likely number of exempt wetlands, no cumulative impacts assessment or adaptive management, and no monitoring program to assure no net loss. In light of the Court's guidance in Clallam County, which the Board finds controlling, the Board is persuaded that a mistake has been made; Kitsap's wetland exemption is clearly erroneous. [*Hood Canal, 06312c*, FDO, at 19-20.]
- In Category IV wetlands (the most degraded) of less than 1000 square feet, the City allows development impacts if they are mitigated by on-site replacement, bioswales, revegetation, or roof gardens. SMC 25.09.160.C.3. However, no buffers are required. In *Hood Canal*, the Board acknowledged the potential disproportionality of requiring buffers as the means of protecting functions of the smallest, most degraded wetlands. *Hood Canal*, at 19, fn. 23. The Board noted that other mitigating strategies, such as

best management practices or compensatory on-site or off-site mitigation might be scientifically supported. *Id*. Here, Seattle has opted for alternative protection mechanisms for these limited cases of small, isolated, low-functioning wetlands. The Petitioners have not carried their burden of proving that the City's regulations for small Category IV wetlands are clearly erroneous. [*Seattle Audubon, 06324*, FDO, at 24.]

- [Seattle's CAO exempts hydrologically isolated wetlands of less than 100 square feet relying on science that states that wetlands down to 200 square feet may provide habitat for amphibians but that BAS cannot yet assess ecological functions os very small wetlands.] Nevertheless, Seattle has undertaken a study to map wetlands in Seattle, in collaboration with the U.S. Fish and Wildlife Service. Doc. 3h, at 7. Preliminary findings of the survey identified 733 possible wetlands in the City, of which 197 were estimated to be smaller than 1,000 square feet. *Id.* at 9. Wetlands smaller than 100 square feet – and hydrologically isolated - would necessarily be a smaller subset of the 197. To require the City to address specific harm from possible loss of this subset of very small isolated wetlands, when best available science cannot assess their ecological functions, would stretch the Board's authority. A fee-in-lieu compensatory mitigation program would of course be preferable, as it would enable the City to mitigate any cumulative impacts that future scientific understandings might bring to light. However, in the context of a narrowly-tailored exemption based on science, the Board is not persuaded that the GMA requires more. [*Seattle Audubon, 06324*, FDO, at 26.]

- **Zoning – *See:* Development Regulations**

- [The assertion that rural zoning designations in areas adjacent to an FCC would not contain the FCC – rural zoning does not hold – is unsubstantiated.] [*Bear Creek, 5803c*, 6/15/00 Order, at 20.]
- If the county approves an FCC proposal pursuant to RCW 36.70A.350(2), the approved FCC becomes a UGA by operation of law. Therefore, all the "containment" protections associated with UGAs attach. These include, for example, rural zoning, prohibition of urban growth outside the UGA, limitations on extending urban governmental facilities and services, and in King County the four-to-one program. [*Bear Creek, 5803c*, 6/15/00 Order, at 22.]
- [The legend on the zoning map indicating urban densities, contradicts the "compliant" text of the zoning code making the area rural. The legend discrepancy, whether or not inadvertent, means the legend designation is non-compliant with the GMA. [*Bear Creek, 3508c*, 11/3/00 Order, at 12.]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and

undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]

- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]
- [An interim ordinance may not continue in force and effect in perpetuity.] By the explicit terms of RCW 36.70A.390, "a legislative enactment 'adopted under this section' may be effective for not longer than six months. . ." [*Bear Creek, 3508c*, 11/3/00 Order, at 11.]
- [Where a Plan designation is not changed from the original designation, but merely continued, a petitioner cannot show injury in fact due to the original designation. A change in the zoning, that implements the Plan designation, but eliminates certain previously permitted uses (such as churches, county clubs, day care facilities, group homes, hospitals, libraries and schools), does not constitute injury in fact.] [*MacAngus, 9317*, FDO, at 6.]
- RCW 36.70A.070 does not apply to development regulations. [*MacAngus, 9317*, FDO, at 9.]
- [If more than one zoning designation implements a plan designation, a change from one implementing zoning designation to another does not create an inconsistency with the plan.] [*MacAngus, 9317*, FDO, at 10.]
- [The Board agreed with DOC that the M-3 district had limited access to needed resources for work release facilities, and available land for such facilities in the M-3 district was limited.] Limiting work release facilities to the M-3 zoning designation where the availability of non-developed, non-contaminated sites is problematic precludes the siting of work release facilities from being located within the City of Tacoma. [*DOC/DSHS, 0307*, FDO, at 8-9.]
- Regarding Tacoma's "grand-fathering" of [existing] work release facilities, the Board notes that prior to [adoption of] the present Ordinance, work release facilities were allowed in various zones, but under the Ordinance they are prohibited from *all zones* except the M-3 district. But for the new prohibitions of the Ordinance, the "grand-fathering" of existing work release facilities within their present zoning districts would not be necessary. The City should be aware that RCW 36.70A.200 prohibits the City from not allowing the expansion of existing essential public facilities as well as precluding new essential public facilities. [*DOC/DSHS, 0307*, FDO, at 9.]
- *See also:* **Affordable Housing** [*LIHI I, 0317*]
- [Pursuant to RCW 36.70A.215, the County adopted a CPP to govern UGA expansions. To maintain consistency with the UGA expansion CPP, the County also adopted an identical Plan policy. The CPP and Plan policy include review and analysis requirements for the expansion of UGAs for residential, commercial and industrial lands. The (Maltby) UGA expansion, designation and rezone indicate

commercial designations. However, a concomitant agreement limited the area in dispute for use as a church, thereby allegedly precluding other commercial uses. Consequently, the issue for the Board was whether the existence of the concomitant agreement made the UGA review and analysis required by CPP and Plan policy necessary. The Board determined the County CPP and Plan policy both apply and govern the expansion of the UGA.] [*Hensley IV, 1304c*, FDO, at 29.]

- The Board acknowledges concomitant agreements have a long history in this state and have been upheld by our Courts in the pre-GMA *zoning* context (Footnote omitted); however, concomitant agreements do not readily transfer to the GMA context. GMA planning contains numerous requirements not found in pre-GMA planning. These requirements include, for example: ongoing and extensive public participation, designated and documented UGAs, state articulated goals provide guidance to plans and implementing regulations, required (not optional) comprehensive planning, plans must contain certain elements, plan elements must be consistent, and development regulations must be implemented consistently with the plans – through regulations (*i.e.* zoning) and capital investments. UGA expansion and amendment to a plan [future land use map – FLUM] designation involve broader issues of public concern and interest than the use of an individual parcel of property. Concomitant "zoning" agreements for a parcel of property cannot be the controlling factor in issues of UGA expansion or comprehensive plan [FLUM] designation. [*Hensley IV, 1304c*, FDO, at 32.]
- There is no language in [the CPP or Plan policy] that indicates that "commercial land" means anything other than what is designated on the FLUM or Zoning maps. The concomitant agreement does not alter this fact. Therefore, the inescapable conclusion is that expanding the [UGA to include the area as] "urban commercial" is commercial land falling within the purview of [the controlling CPP and Plan policy.] [*Hensley IV, 1304c*, FDO, at 33.]
- The Board does not disagree with the County that this church use is more appropriate in the urban area, but the issue here is whether the UGA was expanded consistently with the County's own policies. [It was not.] [*Hensley IV, 1304c*, FDO, at 33.]
- [The rural property involved was rezoned from one unit per ten acres to one unit per five acres. A Plan policy provided "A residential density of one home per ten acres shall be applied in the rural area where the predominant lot size is ten acres or larger. . ." After review of the information on [a map exhibit], the Board concludes that the most conspicuous and prevalent lot sizes 'in the rural area" are more than ten acres in size. Some five-acre lots exist within this area; however, the predominant lot size is more than ten acres (20 and 40 acre lots). [*Forster Woods, 1308c*, FDO, at 27.]
- [A 53 acre property within the County's UGA was rezoned from four units per acre to one unit per acre.] It is undisputed that four dwelling units per acre constitutes compact urban growth. Over the last decade, as the GMA has evolved and been interpreted, it has generally been accepted that this density is an appropriate urban density. . . .However, densities of less than four dwelling units per acre have been challenged before this Board and found to be appropriate urban densities in limited circumstances. The Board has stated, "The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide

adequate justification for residential densities under 4 du/acre within a UGA. (Citation omitted.) [*Forster Woods, 1308c*, FDO, at 31.]

- Just as the future land use map must permit appropriate urban densities in the UGA, so too must the implementing zoning designations. Also, the duty of a city to provide for appropriate urban densities within a UGA, likewise applies to a county. Counties must provide for appropriate urban densities within unincorporated UGAs. [*Forster Woods, 1308c*, FDO, at 32.]
- [The Board found no environmental constraints to support the County's action.] The County's contention that the rezoning is appropriate because it is within the 'range of urban densities' the County permits, is unpersuasive. The 'range of urban densities' may dip below typical urban densities when environmental constraints support such and outcome. That is not the case here. [*Forster Woods, 1308c*, FDO, at 32.]
- The focus of this appeal is Snohomish County's recent amendments to its Planned Residential Development (**PRD**) regulations. Basically, PRDs allow higher residential densities than the underlying zoning classifications would otherwise permit. In Snohomish County, the PRD regulations set the maximum number of dwelling units permitted in the urban single family zones at 120 percent of the maximum number of units permitted under the underlying zoning classification. In essence, a 20% density bonus is permitted for using the PRD approach. The crux of this challenge involves changes in the basis and methodology in calculating the unit yield and bonus, including a limitation on the maximum number of dwelling units allowed and a limitation on the minimum lot size to which the PRD regulations can be applied. The challenged Ordinance changed the basis of the calculations from a gross acreage to a net acreage, modified factors to be included in calculating the developable area, established a maximum density in certain zones and limited the application of PRDs to lots over a certain size. [The Board upheld these amendments.] [*Master Builders Association, 1316*, FDO, at 6.]
- The MBA contends that the undisputed cumulative impact of these changes is a reduction in the *quantity* of dwelling units that had previously been allowed in certain zones under the PRD approach. This reduction in *quantity* of dwelling units [*i.e.* density] permitted by the new PRD regulations forms the foundation of the MBA challenge. However, the County seeks to justify these changes as being the product of debate and compromise that ultimately seeks to encourage quality construction of higher density development in the urban area while protecting open space, recreation and critical areas. Additionally, the County contends that these changes to the PRD regulations are not a violation of any of the challenged provisions of the GMA. [The Board agreed with the County.] [*Master Builders Association, 1316*, FDO, at 6.]
- It is undisputed that the County's amendments to the PRD regulations have the effect of reducing the allowable density within [challenged urban single family residential] zoning designations. . . .[A County Plan policy] states, "development regulations shall be adopted which will require that new residential subdivisions achieve a minimum net density of 4-6 dwelling units per acre in all unincorporated UGAs." The Snohomish County Code requires "A minimum density of four dwelling units per net acre shall be required in all UGAs (noting exceptions not relevant here)." (Citations omitted.) The County's zoning designations [for the challenged urban single family residential zones], coupled with the PRD regulations and [the Code provision], allow

for between 4 and 7 dwelling units per net acre. These densities are consistent with the Plan policies and fall within the bounds of appropriate urban densities. [*Master Builders Association, 1316*, FDO, at 18-19.]

- The MBA assertion that the County's development pattern within the unincorporated UGA only permits 3.71 du/*gross* acre is unpersuasive. Snohomish County Code specifically requires a minimum density of 4 dwelling units per *net* acre within the unincorporated UGA. The County's 2000 Growth Monitoring Report indicates *net* residential densities of 7.11 du/net acre in the unincorporated UGA. The Board finds that this density is an appropriate urban density for unincorporated UGAs in Snohomish County. [*Master Builders Association, 1316*, FDO, at 19.]
- [The MBA exhibit] illustrates the benefits of housing affordability that accrue from use of the PRD approach compared to not having the benefits of the PRD regulations (or average lot sizing). However, MBA's concern about the impact on affordable housing is one of degree. While the housing affordability statistics are likely to be different under the new PRD regulations than they were under the prior PRD regulations, those statistics will still be better under the new PRD regulations than under a development scheme with no PRD option. This difference in degree of benefit is not sufficient to find the County's action was in error. [*Master Builders Association, 1316*, FDO, at 22-23.]
- The purpose statements of the PRD regulations evidence the versatility the PRD regulations are trying to serve. Achieving density is not the sole purpose of the PRD process (nor the GMA). Instead, as the County states, the PRD regulations "seek to encourage the construction of *quality*, high-density development while protecting open space, recreation areas and natural site amenities." The Board agrees. [*Master Builders Association, 1316*, FDO, at 23.]
- [This is a case of first impression for the Board.] The City of Edgewood, a newly incorporated city, is challenging a Plan amendment and zoning change to a geographic area that lies *entirely within the city limits of the City of Sumner*, but adjacent to Edgewood's city limits. [*Edgewood, 1318*, FDO, at 4.]
- To discern the consistency of the uses permitted by the [Clearview LAMIRD commercial zone] with [specified] County [Plan] policy statements and the statute itself, the Board must answer a simple question: Are the commercial uses permitted in the [Clearview commercial] zone either (1) based on existing uses or [per statute] (2) limited to those small-scale uses that will serve the needs of the surrounding rural area [per Plan policy]? The Board answers in the negative. [The uses permitted were extensive and numerous urban uses, drawn from prior urban zoning for the area.] [*Hensley IV* and *V*, *1304c/2304*, 6/17/02 Order, at 29-32.]
- It is generally accepted, and not disputed here, that 4 dwelling units per acre is an appropriate urban density. However, the Board has stated that, in certain circumstances, urban densities of less than 4 dwelling units per acre can be an appropriate urban density, and therefore comply with Goals 1 and 2. "Whenever environmentally sensitive systems are large in scope (e.g., watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre." *Litowitz v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order, (Jul. 22, 1997), at 12.

The *Litowitz* test, although originally used to assess a land use plan designation, is also the appropriate test to apply here in relation to the challenged zoning designations. [*MBA/Brink, 02310*, FDO, at 15.]

- The County makes no pretense or effort to explain the [2-4 du/acre zone designation] by suggesting it is necessary to preserve large scale, complex and high value critical areas, as it did for the [1-3 du/acre zone designation]. Therefore the foundation for any lower density designations [below 4 du/acre], is absolutely absent. [Therefore, the designation does not comply with Goals 1 and 2.] [*MBA/Brink, 02310*, FDO, at 20.]
- [CPPs provide substantive direction to Plans, not zoning.] [*MBA/Brink, 02310*, FDO, at 27.]
- The crux of the matter before the Board here is whether all retail uses are of the same type regardless of their scale or size. If the answer is yes, then the [uses permitted] comply with RCW 36.70A.070(5). If the answer is no, then a retail use of an unlimited scale or size would constitute a use type that did not exist in Clearview in 1990 and therefore not be permitted in this LAMIRD. [*Hensley V, 02304c*, 3/28/03 Order, at 7.]
- "Big Box" uses are a fundamentally different use type than small-scale retail uses typically found in rural areas such as those found in 1990 in Clearview. . . . Because no "big box" retail uses existed in Clearview in 1990, a LAMIRD regulation that would permit this use type does not comply with RCW 36.70A.070(5) or .020(1) and (2). This reading of "big box" retail as a distinct use type is necessary to give effect to the letter and intent of RCW 36.70A.070(5) and RCW 36.70A.020(1) and (2). To do otherwise suggests that very modest, small-scale, rural oriented retail uses that existed in the 1990's could be used to bootstrap inappropriate urban scale development in LAMIRDs. [*Hensley V, 02304c*, 3/28/03 Order, at 7.]
- The County's [LAMIRD use designations allow] retail uses of any scale or size, and thereby allow retail uses of a type that did not exist in 1990. [*Hensley V, 02304c*, 3/28/03 Order, at 8.]
- On its face, the zoning provisions for the SF zone in the PSMCP area allow more than four dwelling units per acre – average lot sizes of 6,000 square feet yield over 7 lots per acre. Not only does this exceed the 4 units per acre threshold that the parties to this case agree is an appropriate urban density, it can exceed the density threshold that the Board has previously acknowledged supports transit objectives. The 6000 square foot average lot size can yield an excellent urban density. [*MBA/Brink, 02310*, 9/4/03 Order, at 9.]
- Petitioners seem to assert that <u>every parcel or property</u> within the city-limits and within an unincorporated UGA must ultimately be developed at at least 4 du/acre. The GMA does not require this, nor has the Board ever said this. In reviewing the Future Land Use Map in the *Litowitz* and *LMI/Chevron* cases, the Board focused on the question of appropriate land use designations in an area-wide context, not a parcel-specific one. When translating densities from an area-wide FLUM to a localized parcel-specific zoning map it is expected that *de minimus* variations will occur. However, even in these limited situations jurisdictions can, and are encouraged to, attain urban densities through site design, cluster development, lot

averaging, zero lot line zoning, and other local innovative techniques. [*MBA/Brink, 02310*, 9/4/03 Order, at 10.]

- The Board holds that any action to amend either the text or map of a comprehensive plan or the text of a development regulation is a legislative action subject to the goals and requirements of RCW 36.70A, including the subject matter jurisdiction provisions of RCW 36.70A.280. Any amendment to the official zoning map that is proposed and processed concurrently with enabling plan map or text amendments or development regulation text amendments is necessarily a legislative action subject to the goals and requirements of the GMA. [*BridgeportWay, 04303*, FDO, at 8.]
- Comprehensive plans have long used overlay zones, subarea plans, and similar underlying zoning or classification may remain the same. (Citation omitted.). . . mechanisms to tailor regulations to particular situations. . . the Board finds that different and more restrictive dock regulations for Blakely Harbor are consistent with the Comprehensive Plan and Bainbridge SMP policies and compliant with the consistency requirements of the RCW 36.70A.070 and .040. [*Samson, 04313*, FDO, at 22-23.]
- An area designated as an Agricultural Production District on the County's Agriculture and Forest Lands Map that is also designated as Rural Residential on the County's FLUM is internally inconsistent. Dual designations do not comply with the GMA provisions that rural areas not include agricultural resource lands of long term commercial significance.] [*Keesling III, 04324*, FDO, at 35-36.]
- [BAS is required in developing measures to protect the function and value of critical areas. BAS is not a prerequisite for a rezone.] If Petitioners believed that the City's identification, designation and protection of geologically hazardous areas along the western edge of the City was clearly erroneous, Petitioner's could have challenged the City's adoption of its critical areas regulations, the City's identification and designation of geologically hazardous areas, or the Comprehensive Plan's land use designations for the area. Petitioner did none of the above, and it is untimely to challenge any of those actions at this time. To now challenge the zoning designations that implement the unchallenged Plan designations, which are admittedly based upon BAS, is without merit. Both parties have demonstrated that BAS, as reflected in adopted documents, was part of the record in this rezoning action. [*Abbey Road*, 05348, FDO, at 11.]

APPENDIX A - GLOSSARY OF ACRONYMS

ADU	Accessory Dwelling Units
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
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. Fisheries & Wildlife Priority Species & 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	Traffic Management Zone
UGA	Urban Growth Area

APPENDIX B – GMA LEGISLATIVE HISTORY

1990
Laws of 1990, 1st Ex. Sess., ch. 17

1991
Laws of 1991, ch. 322
Laws of 1991, Sp. Sess., ch. 32

1992
Laws of 1992, ch. 207
Laws of 1992, ch. 227

1993
Laws of 1993, Sp. Sess., ch. 6
Laws of 1993. ch. 478

1994
Laws of 1994, ch. 249
Laws of 1994, ch. 257
Laws of 1994, ch. 258
Laws of 1994, ch. 273
Laws of 1994, ch. 307

1995
Laws of 1995, ch. 49
Laws of 1995, ch. 190
Laws of 1995, ch. 347
Laws of 1995, ch. 377
Laws of 1995, ch. 378
Laws of 1995, ch. 382
Laws of 1995, ch. 399
Laws of 1995, ch. 400

1996
Laws of 1996, ch. 167
Laws of 1996, ch. 239
Laws of 1996, ch. 325

1997
Laws of 1997, ch. 382
Laws of 1997, ch. 402
Laws of 1997, ch. 429

1998
Laws of 1998, ch. 112
Laws of 1998, ch. 171
Laws of 1998, ch. 249
Laws of 1998, ch. 286
Laws of 1998, ch. 289

1999
Laws of 1999, ch. 315

2000
Laws of 2000, ch. 36
Laws of 2000, ch. 196

2001
Laws of 2001, 2nd Sp. Sess. ch. 12
Laws of 2001, ch. 326

2002
Laws of 2002, ch. 68
Laws of 2002, ch. 154
Laws of 2002, ch. 212
Laws of 2002, ch. 306

2003
Laws of 2003, ch. 39
Laws of 2003, ch. 88
Laws of 2003, ch. 286
Laws of 2003, ch. 321
Laws of 2003, ch. 332
Laws of 2003, ch. 333

2004
Laws of 2004, ch. 28
Laws of 2004, ch. 196
Laws of 2004, ch. 197
Laws of 2004, ch. 206
Laws of 2004, ch. 207
Laws of 2004, ch. 208

2005
Laws of 2005, ch. 294
Laws of 2005, ch. 328
Laws of 2005, ch. 360
Laws of 2005, ch. 423
Laws of 2005, ch. 477

2006
Laws of 2006, ch. 147
Laws of 2006, ch. 149
Laws of 2006, ch. 285

APPENDIX C - COURT DECISIONS

2006

1000 Friends of Washington v. McFarland, SUPREME COURT OF WASHINGTON, 149 P.3d 616 (2006).

Interlake Sporting Association Inc. v. Washington State Boundary Review Board for King County, SUPREME COURT OF WASHINGTON, 158 Wn. 2d 545, 146 P.3d 904 (2006)

Alexanderson v. Board of Clark County Commissioners, COURT OF APPEALS, DIVISION TWO, 135 Wash. App. 541, 144 P.3d 1219 (2006).

City of Burlington v. Skagit County, COURT OF APPEALS, DIVISION ONE, 134 Wash. App. 1047 (2006).

Diehl v. Western Washington Growth Management Hearings Board, COURT OF APPEALS, DIVISION TWO, 134 Wash. App. 1035 (2006).

Lewis County v. Western Washington Growth Management Hearings Board, SUPREME COURT OF WASHINGTON, 157 Wn. 2d 488, 139 P.3d 1096 (2006).

Snohomish County v. Hensley, COURT OF APPEALS, DIVISION ONE, 134 Wash. App. 1015 (2006).

Preserve Our Island v. Shorelines Hearings Board, COURT OF APPEALS, DIVISION ONE, 133 Wash App. 503, 137 P.3d 31 (2006).

Peste v. Mason County, COURT OF APPEALS, DIVISION TWO, 133 Wash App. 456, 136 P.3d 140 (2006).

City of Olympia v. Drebick, SUPREME COURT OF WASHINGTON, 156 Wn. 2d 289, 126 P.3d 802 (2006).

2005

Viking Properties v. Holm, SUPREME COURT OF WASHINGTON, 155 Wn. 2d 112, 118 P. 3d 322 (2005), 2005 Wash Lexis 674.

James v. Kitsap County, SUPREME COURT OF WASHINGTON, 154 Wn. 2d 574, 115 P. 3d 286 (2005), 2005 Wash Lexis 553.

The Quadrant Corporation v. Growth Management Hearings Board, SUPREME COURT OF WASHINGTON, 154 Wn. 2d 224, 110 P. 3d 1132 (2005), 2005 Wash Lexis 371.

*Tahoma Audubon Society v. Park Junction Par*tners, COURT OF APPEALS, DIVISION TWO, 128 Wn. App 671, 116 P. 3d 1046 (2005), 2005 Wash App Lexis 1919.

2004

Biggers v. City of Bainbridge Island, COURT OF APPEALS, DIVISION TWO, 124 Wn. App 858, 103 P. 3d 244 (2004), 2004 Wash App Lexis 862.

City of Olympia v. Drebick, No. 29018-9-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 119 Wn. App. 774; 83 P.3d 443, January 22, 2004, Filed. As Amended February 18, 2004.

Ferry County v. Concerned Friends of Ferry County and Eastern Washington Growth Management Hearings Board, No. 29351-0-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 121 Wn. App. 1004; 90 P.3d 698, April 13, 2004, Filed

City of North Bend v. Central Puget Sound Growth Management Hearings Board, No. 51111-4-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 121 Wn. App. 1026; 2004 WL 938566, May 3, 2004, Filed (UNPUBLISHED OPINION).

City of Seattle v. Yes for Seattle, No. 53662-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 93 P.3d 176, June 1, 2004, Filed, UNPUBLISHED OPINION at 121 Wn. App. 1070; 2004 WL 1205785.

Chevron U.S.A., Inc. v. Central Puget Sound Growth Management Hearings Board, Nos. 52196-9-I, 52367-8-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 93 P.3d 880, June 1, 2004, Filed, UNPUBLISHED OPINION at 121 Wn. App. 1064; 2004 WL 1199156.

Whidbey Environmental Action Network v. Island County and Western Washington Growth Management Hearings Board, No. 50736-2-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 93 P.3d 885, June 7, 2004, Filed; Reconsideration Denied July 12, 2004.

Yanisch v. Western Washington Growth Management Hearings Board., No. 29772-8-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 2004 Wash. App. LEXIS 294, March 2, 2004, Filed (UNPUBLISHED OPINION)

2003

The Quadrant Corp. v. State Growth Management Hearings Board, No. 50043-1-I (CONSOLIDATED WITH Nos. 50144-5-I, 50145-3-I), COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 119 Wn. App. 562; 81 P.3d 918; 2003 Wash. App. LEXIS 3062, December 29, 2003, Filed

City of Bellevue v. East Bellevue Community Municipal Corporation, No. 49852-5-I, CONSOLIDATED WITH No. 50624-2-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 119 Wn. App. 405; 81 P.3d 148; 2003 Wash. App. LEXIS 2912, December 15, 2003, Filed

Whidbey Environmental Action Network v. Island County and Western Washington Growth Management Hearings Board, No. 50736-2-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 118 Wn. App. 567; 76 P.3d 1215; 2003 Wash. App. LEXIS 2238, September 29, 2003, Filed

Low Income Housing Institute v. City of Lakewood, Central Puget Sound Growth Management Hearings Board, No. 28313-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 119 Wn. App. 110; 77 P.3d 653; 2003 Wash. App. LEXIS 1937, September 9, 2003, Filed

John E. Diehl v. Western Washington Growth Management Hearings Board, No. 29101-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 118 Wn. App. 212; 75 P.3d 975; 2003 Wash. App. LEXIS 1878, September 2, 2003, Filed

City of Redmond, v. Central Puget Sound Growth Management Hearings Board, No. 48814-7-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 116 Wn. App. 48; 65 P.3d 337; 2003 Wash. App. LEXIS 310, March 3, 2003, Filed, Review denied by City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 2003 Wash. LEXIS 701 (Wash., Sept. 30, 2003)

2002

Thurston County v. Cooper Point Ass'n, No. 71746-0 , SUPREME COURT OF WASHINGTON , 148 Wn.2d 1; 57 P.3d 1156; 2002 Wash. LEXIS 719, November 21, 2002, Filed

Garrett v. Western Washington Growth Management Hearings Board, No. 47418-9-I., COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 110 Wn. App. 1070; 2002 Wash. App. LEXIS 1301, March 25, 2002, Decided, DECISION WITHOUT PUBLISHED OPINION, Reported in Full-Text Format at: 2002 Wash. App. LEXIS 491.

Montlake Community Club v. Central Puget Sound Growth Management Hearings Board., 110 Wn.App. 731, 43 P.3d 57, 2002 Wash. App. LEXIS 535, April 1, 2002, Filed, Order Denying Motion for Reconsideration July 17, 2002, Reported at:2002 Wash App. Lexis 1731.

Manke Lumber Co., Inc. v. Central Puget Sound Growth Management Hearings Board, No. 26580-0-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO , 113 Wn. App. 615; 53 P.3d 1011; 2002 Wash. App. LEXIS 1161, May 17, 2002, Filed, The Publication Status of this Document has been Changed by the Court from Unpublished to Published June 20, 2002. As Modified June 20, 2002. Motion for Reconsideration Denied

June 20, 2002. Review denied by Manke Lumber Co. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 2003 Wash. LEXIS 186 (Wash., Mar. 4, 2003)

Isle Verde International Holdings, Inc. v. City of Camas, 146 Wn.2d 740, 49 P.3d 867, 2002 Wash. LEXIS 468, July 11, 2002, Filed

Lewis County, v. Western Washington Growth Management Hearings Board, No. 26861-2-II consolidated with 26868-0-II , COURT OF APPEALS OF WASHINGTON, DIVISION TWO , 113 Wn. App. 142; 53 P.3d 44; 2002 Wash. App. LEXIS 1962, August 23, 2002, Filed

City of Burien v. Central Puget Sound Growth Management Hearings Board, No. 27560-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 113 Wn. App. 375; 53 P.3d 1028; 2002 Wash. App. LEXIS 2218, September 13, 2002, Filed

2001

North Kitsap Coordinating Council v. Kitsap County, No. 46624-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 2001 WL 1155774, 2001 Wash. App. LEXIS 2232; October 1, 2001, Filed; UNPUBLISHED OPINION.

Cooper Point Association v. Thurston County, No. 26425-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 108 Wn. App. 429, 31 P.3d 28; September 14, 2001, Filed.

Sammamish Community Council v. City of Bellevue, Nos. 47252-6-I, 47786-2-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 108 Wn. App. 46, 29 P.3d 728; August 20, 2001, Filed.

Abercrombie v. Chelan County, No. 19641-1-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, 2001 WL 772495, 2001 Wash. App. LEXIS 1487; July 10, 2001, Filed; UNPUBLISHED OPINION; September 11, 2001, Order Granting Motion for Extension and Order Denying Motion for Reconsideration.

Somers v. Snohomish County, No. 41710-0-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 105 Wn. App. 937, 21 P.3d 1165; April 23, 2001, Filed; Reconsideration Denied June 5, 2001.

Citizens for Responsible and Organized Planning v. Chelan County, No. 17795-5-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, 105 Wn. App. 753, 21 P.3d 304; April 10, 2001, Filed.

Moab Irrigation District v. Washington State Boundary Review Board for Spokane County, No. 19186-9-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, 2001 WL 293137, 2001 Wash. App. LEXIS 492; March 27, 2001, Filed; UNPUBLISHED OPINION.

Lane v. Central Puget Sound Growth Management Hearings Board, No. 46773-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 2001 WL 244384, 2001 Wash. App. LEXIS 425; March 12, 2001, Filed; UNPUBLISHED OPINION.

Moore v. Whitman County, No. 69053-7, SUPREME COURT OF WASHINGTON, 143 Wn.2d 96; 18 P.3d 566; 2001 Wash. LEXIS 140, September 26, 2000, Argued, February 22, 2001, Filed, As Corrected February 26, 2001.

2000

Scott v. City of Seattle, No. 44704-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 103 Wn. App. 1059; 2000 Wash. App. LEXIS 2559, December 26, 2000, Filed.

King County v. Central Puget Sound Growth Management Hearings Board, (Green Valley), No. 68284-4, SUPREME COURT OF WASHINGTON, 142 Wn.2d 543; 14 P.3d 133; 2000 Wash. LEXIS 834, May 31, 2000, Oral Argument, December 14, 2000, Filed

Faben Point Neighbors v. City of Mercer Island, No. 44847-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 102 Wn. App. 775; 11 P.3d 322; 2000 Wash. App. LEXIS 1602, August 28, 2000, Filed.

Stewart v. Review Bd., No. 42041-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 100 Wn. App. 165; 996 P.2d 1087; 2000 Wash. App. LEXIS 1382, August 3, 2000, Filed

Wenatchee Sportsmen Association v. Chelan County, NO. 67785-9, SUPREME COURT OF WASHINGTON, 141 Wn.2d 169; 4 P.3d 123; 2000 Wash. LEXIS 472, November 18, 1999, Oral Argument, July 20, 2000, Filed

Association of Rural Residents v. Kitsap County, NO. 68027-2, SUPREME COURT OF WASHINGTON, 141 Wn.2d 185; 4 P.3d 115; 2000 Wash. LEXIS 473, November 18, 1999, Oral Argument, July 20, 2000, Filed

Wells v. Western Washington Growth Management Hearings Board, No. 43028-9-I linked with: No. 43397-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 100 Wn. App. 657; 997 P.2d 405; 2000 Wash. App. LEXIS 583, April 10, 2000, Filed.

Manke Lumber Co. v. Central Puget Sound Growth Management Hearings Board, No. 23599-4-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 2000 Wash. App. LEXIS 356, March 3, 2000, Filed. (Unpublished Opinion at, 99 Wn. App. 1050)

Caswell v. Pierce County, No. 41882-3-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 99 Wn. App. 194; 992 P.2d 534; 2000 Wash. App. LEXIS 163, January 31, 2000, Filed.

1999

New Castle Investments v. City of LaCenter, No. 23954-0-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 98 Wn. App. 224; 989 P.2d 569; 1999 Wash. App. LEXIS 064, December 10, 1999, Filed

City of Des Moines v. Puget Sound Regional Council, No. 43100-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 98 Wn. App. 23; 988 P.2d 27; 1999 Wash. App. LEXIS 1940, November 15, 1999, Filed

City of Des Moines v. Puget Sound Regional Council, No. 42306-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 97 Wn. App. 920; 988 P.2d 993; 1999 Wash. App. LEXIS 1943, November 15, 1999, Filed

Clark County Citizens United, Inc. v. Clark County Natural Resources Council, NO. 68105-8, SUPREME COURT OF WASHINGTON, 139 Wn.2d 1002; 989 P.2d 1136; 1999 Wash. LEXIS 782, November 2, 1999, Decided

King County v. Central Puget Sound Growth Management Hearings Board, (Bear Creek) No. 66904-0, SUPREME COURT OF WASHINGTON, 138 Wn.2d 161; 979 P.2d 374; 1999 Wash. LEXIS 434, January 14, 1999, Oral Argument, June 10, 1999, Filed, As Amended by Order of the Supreme Court September 22, 1999, Reported at: 1999 Wash. LEXIS 636. Reconsideration Granted September 22, 1999.

Buckles v. King County, No. 98-35270, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 191 F.3d 1127; 1999 U.S. App. LEXIS 21612; 99 Cal. Daily Op. Service 7504, July 15, 1999, Argued and Submitted, Seattle, Washington, September 10, 1999, Filed

City of Bellevue v. East Bellevue Community Council, No. 67157-5, SUPREME COURT OF WASHINGTON, 138 Wn.2d 937; 983 P.2d 602; 1999 Wash. LEXIS 625, May 20, 1999, Oral Argument Date, September 9, 1999, File.

Honesty in Environmental Analysis & Legislation v. CPSGMHB, No. 40939-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 96 Wn. App. 522; 979 P.2d 864; 1999 Wash. App. LEXIS 1112, June 21, 1999, Filed

Duwamish Valley Neighborhood Preservation Coalition v. CPSGMHB, No. 41523-9-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 97 Wn. App. 98; 982 P.2d 668; 1999 Wash. App. LEXIS 1545, August 23, 1999, Filed, PUBLISHED IN PART

Diehl v Mason County, No. 22540-9-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 94 Wn. App. 645; 972 P.2d 543; 1999 Wash. App. LEXIS 429, March 5, 1999, Filed

Glenrose Community Ass'n v. City of Spokane, No. 16822-1-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, PANEL EIGHT, 93 Wn. App. 839; 971 P.2d 82; 1999 Wash. App. LEXIS 472, February 4, 1999, Filed, As Amended by Order of the Appellate Court February 26, 1999; Reported at: 971 P. 2d 82; 1999 Wash. App. LEXIS 436.

1998

Gastineau v. City of Bothell, No. 42979-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 1998 Wash. App. LEXIS 1785, December 28, 1998, Filed. (Decision without Published Opinion at, 93 Wn. App. 1045; 1998 Wash. App. LEXIS 2102)

King County v. CPSGMHB, No. 66904-0, SUPREME COURT OF WASHINGTON, 136 Wn.2d 1020; 969 P.2d 1063; 1998 Wash. LEXIS 896, November 12, 1998, Filed, DECISION WITHOUT PUBLISHED OPINION

Litowitz v. Central Puget Sound Growth Management Hearings Board, No. 40399-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 93 Wn. App. 66; 966 P.2d 422; 1998 Wash. App. LEXIS 1567, November 9, 1998, Filed

Project For Informed Citizens v. Columbia County, No. 21054-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 92 Wn. App. 290; 966 P.2d 338; 1998 Wash. App. LEXIS 1295, September 4, 1998, Filed,

King County v. Central Puget Sound Growth Management Hearings Board, No. 39333-2-I, NO. 39914-4-I, No. 40310-9-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 91 Wn. App. 1; 951 P.2d 1151; 1998 Wash. App. LEXIS 344, March 2, 1998, Filed, As Modified August 6, 1998.

City of Redmond v. Central Puget Sound Growth Management Hearings Board, No. 65863-3, SUPREME COURT OF WASHINGTON, 136 Wn.2d 38; 959 P.2d 1091; 1998 Wash. LEXIS 575, August 6, 1998, Filed

Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, No. 64798-4, SUPREME COURT OF WASHINGTON, 135 Wn.2d 542; 958 P.2d 962; 1998 Wash. LEXIS 473, June 25, 1998, Filed

1997

Citizens for Mount Vernon v. City of Mount Vernon, No. 63823-3, SUPREME COURT OF WASHINGTON, 133 Wn.2d 861; 947 P.2d 1208; 1997 Wash. LEXIS 814, May 20, 1997, Oral Argument, December 18, 1997, Filed

Hale v. Island County, No. 39223-9-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 88 Wn. App. 764; 946 P.2d 1192; 1997 Wash. App. LEXIS 1897, November 17, 1997, Filed

Clean v. City of Spokane, 65262-7, SUPREME COURT OF WASHINGTON, 133 Wn.2d 455; 947 P.2d 1169; 1997 Wash. LEXIS 736, June 18, 1997, Oral Argument, November 13, 1997, Filed

Children's Alliance v. City of Bellevue, No. C95-905Z, UNITED STATES DISTRICT COURT FORTHE WESTERN DISTRICT OF WASHINGTON, SEATTLE DIVISION, 950 F. Supp. 1491; 1997 U.S. Dist. LEXIS 287, January 8, 1997, Decided, January 8, 1997, FILED, ENTERED

1996

Postema v. Snohomish County, No. 37389-7-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 83 Wn. App. 574; 922 P.2d 176; 1996 Wash. App. LEXIS 356, September 9, 1996, FILED, Petition for Review Denied April 4, 1997, Reported at: 1997 Wash. LEXIS 176.

1995

Matson v. Clark County Board of Commissioners, No. 17452-9-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 79 Wn. App. 641; 904 P.2d 317; 1995 Wash. App. LEXIS 451, November 1, 1995, Filed

Vashon Island Comm. For Self-Government v. Washington State Boundary Review Board, No. 62306-6, SUPREME COURT OF WASHINGTON, 127 Wn.2d 759; 903 P.2d 953; 1995 Wash. LEXIS 218, June 20, 1995, Oral Argument, October 12, 1995, Filed

1994

Whatcom County v. Brisbane, No. 60655-2, SUPREME COURT OF WASHINGTON, 125 Wn.2d 345; 884 P.2d 1326; 1994 Wash. LEXIS 704, December 8, 1994, Filed

Snohomish County Property Rights Alliance v. Snohomish County, No. 33287-2-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 76 Wn. App. 44; 882 P.2d 807; 1994 Wash. App. LEXIS 432, September 19, 1994, Filed, Order Granting Publication October 24, 1994. Order Changing Opinion October 28, 1994, Reported at: 1994 Wash. App. LEXIS 440. As Corrected.

Save Our State Park v. Board of Clallam County Commissioners, No. 15853-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 74 Wn. App. 637; 875 P.2d 673; 1994 Wash. App. LEXIS 275, June 24, 1994, Filed, As Amended July 15, 1994.

Jones v. King County, No. 33150-7-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 74 Wn. App. 467; 874 P.2d 853; 1994 Wash. App. LEXIS 255, April 18, 1994, Filed, Ordered Published June 6, 1994.

Snohomish County v. Anderson, No. 60672-2, SUPREME COURT OF WASHINGTON, 123 Wn.2d 151; 868 P.2d 116; 1994 Wash. LEXIS 62, January 27, 1994, Decided, January 27, 1994, Filed

1993

King County v. Washington State Boundary Review Board, No. 59249-7, SUPREME COURT OF WASHINGTON, 122 Wn.2d 648; 860 P.2d 1024; 1993 Wash. LEXIS 315, November 4, 1993, Decided, November 4, 1993, Filed