CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

CITY OF BONNEY LAKE, JEROME TAYLOR, THE BUTTES LLC, and FUTUREWISE, Petitioners, and CITIES OF ROY AND ORTING Intervener, v. PIERCE COUNTY, Respondent, and SUMMIT WALLER COMMUNTY ASSOCIATION, Intervener.	))	**CPSGMHB Case No. 05-3-0016c** ***(Bonney Lake, et al)*** **ORDER FINDING COMPLIANCE** [CPSGMHB Consolidated Case No. 04-3-0007c] and **FINAL DECISION AND ORDER** [CPSGMHB Consolidated Case No 05-3-0016c]

<u>*SYNOPSIS*</u>

In response to the GMA's 2004 Update requirements, Pierce County adopted Ordinance No. 2004-87s. The Ordinance adopted numerous amendments to the County's Plan. Four petitions for review were filed challenging certain aspects of the County's Plan Update. Amendments 2 [agricultural resource lands], 5 [rural separators and shoreline density exemptions], 10 [population allocation] and 11 [urban growth areas] were challenged. Amendment 2, pertaining to agricultural resource lands, was also adopted in response to a remand order in Orton Farms v. Pierce County. With the consent of the parties, the Board coordinated the compliance proceeding in Orton Farms and the present challenges.

The Board found that the County's revisions to its Agricultural Resource Land Plan Policies and Map [Amendment 2] complied with the relevant provisions of the GMA. The Board entered a Finding of Compliance in the Orton Farms matter and found compliance with the challenged provisions in the present proceeding. The Buttes LLC and Futurewise's Legal Issues were dismissed.

Petitioner Taylor challenged the County's revision to a "Rural Separator" designation [Amendment 5]. The County changed the density requirements for this designation to 1 du/5 acres – an appropriate rural density. The Board found compliance and dismissed Taylor's Legal Issues.

The City of Bonney Lake, joined by Orting and Roy, challenged a provision of the County's evaluation criteria for its urban growth areas that requires the County's 25% market factor (safety factor) to be applied collectively, county-wide, instead of applied to individual satellite city UGAs separately [Amendment 11]. The Board found compliance and dismissed the Cities' Legal Issues.

Futurewise also challenged Amendments 10 and 11, arguing that the County's UGA was oversized. The Board found that Petitioners failed to carry their burden of proof and dismissed Futurewise's Legal Issues. The Board also dismissed a Futurewise challenge asserting that the County had failed to update its Transportation Element.

However, Futurewise's challenge to the County's provisions for Shoreline Density Exceptions, [Amendment 5], was sustained. The Board was not persuaded that all the unincorporated rural area of Pierce County falling within 200 feet of a shoreline was a continuous shoreline LAMIRD, which allowed minimum lots smaller than 5 acres. The Board found this particular provision was not guided by Goals 1 and 2 and did not comply with the rural element requirements. The Board also entered a Determination of Invalidity on this portion of Amendment 5, remanded and established a compliance schedule.

I. BACKGROUND[1]

On November 9, 2004, pursuant to RCW 36.70A.130(1) and (4), Pierce County (the **County**) adopted Ordinance No. 2004-87s, amending the County's GMA Comprehensive Plan and development regulations (**2004 Plan Update**). Notice of adoption was published on December 8, 2004. In January and February 2005, the Board received four timely filed petitions for review (**PFRs**) challenging various aspects of the 2004 Plan Update. Generally, the challenges posed issues related to Urban Growth Areas (**UGAs**), Agricultural Resource Land (**ARL**) designations, rural densities, the transportation element and shoreline development. The PFRs were filed by the City of Bonney Lake, Jerome Taylor, The Buttes LLC and Futurewise. The Board consolidated the petitions,

[1] See Appendix A for the complete procedural history of this matter.

issued a notice of hearing, conducted the prehearing conference and issued its prehearing order (**PHO**) setting forth the schedule and Legal Issues to be decided. The Board granted Intervener status to the cities of Roy and Orting and the Summit-Waller Community Association. There were no dispositive motions filed in this matter; however, the record was supplemented with several items offered by the Petitioner and Intervener cities.

During April and May the Board received timely briefing from all the parties. Hereafter, the opening briefs submitted by Petitioners and Interveners are noted as follows: **Bonney Lake PHB, Orting PHB, Roy PHB, Taylor PHB, Buttes PHB** and **Futurewise PHB**. The response briefs submitted by the Respondent and Intervener are noted as follows: **County Response** and **SWCA Response**. The reply briefs tendered by Petitioners and Interveners are noted as follows: **Taylor Reply, Buttes Reply** and **Futurewise Reply**. None of the cities submitted reply briefs.

On June 2, 2005, the Board held a hearing on the merits (**HOM**) at the Pierce County Environmental Services Building/Tacoma ESB Building, 9850 – 64th Street West, University Place, WA, 98467. Board members Edward G. McGuire, Presiding Officer, Bruce C. Laing and Margaret A. Pageler were present for the Board. Petitioner The Buttes LLC was represented by William T. Lynn and Margaret Y. Archer. The City of Bonney Lake was represented by Kathleen J. Haggard. Petitioner Jerome Taylor attended and was represented by Simi Jain. Petitioner Futurewise was represented by John Zilavy. Intervener City of Orting was represented by George S. Kelly. Intervener City of Roy was represented by Harry R. Boesche. Respondent Pierce County was represented by M. Peter Philley and Alan Rose. Anna Graham was also in attendance for the County. Intervener Summit-Waller Community Association was represented by David Mann[2] and Daniel Haire. Court reporting services were provided by Christy Sheppard of Byers and Anderson LLC. Board Externs Rachael Henrickson, Sabrina Wolfson and Bradley Paul also attended. The Board adhered to the argument schedule set forth in its May 25, 2005 Order. The hearing convened at 9:00 a.m. and adjourned at approximately 4:30 p.m. A transcript of the proceeding was ordered by the Board. (**HOM Transcript**).

On June 9, 2005, the Board received the HOM Transcript.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF and STANDARD OF REVIEW

Petitioners challenge Pierce County's adoption of its 2004 Plan and Development Regulation Update, as adopted by Ordinance No. 2004-87s. Pursuant to RCW

[2] On May 23, 2005 the Board received a "Notice of Appearance" indicating that David Mann would be representing the Summit-Waller Community Association.

36.70A.320(1), Pierce County's Ordinance No. 2004-87s is presumed valid upon adoption.

The burden is on Petitioners, City of Bonney Lake, Jerome Taylor, The Buttes LLC and Futurewise, to demonstrate that the actions taken by Pierce County are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by [Pierce County] 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 Pierce County's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Pursuant to RCW 36.70A.3201 the Board will grant deference to Pierce County in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn 2d 224, 248, 110 P. 3d 1132 (2005). The Quadrant decision affirms prior State Supreme Court rulings that "Local discretion is bounded . . . by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board* (***King County***), 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). Division II of the Court of Appeals further clarified, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent' with the requirements and goals of the GMA." *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn2d 1, 15, 57 P.3rd 1156 (2002) and cited with approval in *Quadrant*, supra, fn. 7.

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review.

III. BOARD JURISDICTION, PREFATORY NOTE, PRELIMINARY MATTERS and ABANDONED ISSUES

A. BOARD JURISDICTION

The Board finds that the PFRs filed by the City of Bonney Lake, Jerome Taylor, The Buttes LLC and Futurewise were timely filed, pursuant to RCW 36.70A.290(2); each of

these Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinance, which amends the County's Comprehensive Plan and development regulations, pursuant to RCW 36.70A.280(1)(a).

B. PREFATORY NOTE

There are four separate PFRs consolidated in this case. Additionally, a portion of this case involves whether Pierce County's adoption of Ordinance 2004-87s, pertaining to ARLs, complies with the GMA as set forth in the Board's August 2, 2004 FDO in the matter of *Orton Farms, et al., v. Pierce County*, CPSGMHB Consolidated Case No. 04-3-0007c. The Buttes LLC and Futurewise were parties to the *Orton Farms* matter as well as to the present matter. Both of these Petitioners challenged the County's new ARL provisions. Consequently, the Board will first address the ARL Legal Issues presented by Futurewise and The Buttes LLC. The Board's discussion and resolution of these issues will relate to the compliance matter in *Orton Farms* as well as to the agricultural issues presented in the new PFRs. All Legal Issues posed in The Buttes LLC PFR and the single Futurewise Legal Issue pertaining to ARLs is addressed in this discussion.

Following the discussion of the ARLs, the Board turns to the Urban Growth Areas (**UGAs**) Legal Issues posed by the Cities and Futurewise. Next, the Board addresses the Legal Issues set forth in the Taylor PFR under the heading of Rural Separator Designation; and finally, the Board deals with the remaining Legal Issues from the Futurewise and Friends of Pierce County PFR – Transportation and Shoreline Densities.

C. PRELIMINARY MATTERS

<u>Oral Rulings at the HOM</u>:

On May 15, 2005 the Board received "Motion of Summit-Waller Community Association to Strike 2005 Map which is not part of the Official GMA Record." The map in question was attached to the Taylor PHB as representing the "Mid-County Communities Plan" area. On June 1, 2005, the Board received "Withdrawal of Motion of the Summit-Waller Community Association to Strike." The Board acknowledged SWCA's **withdrawal** of the motion, the map in question was officially noted as part of the record.

Pursuant to WAC 242-02-660(4), the Board took **official notice** of Appendices A through Q attached to the County's Response Brief. These items were copies of various Ordinances adopted by the County that related to different issues presented in the case. The Board did not assign exhibit numbers to these items; they will be referred to according to the Appendix Number assigned by the County.

D. ABANDONED ISSUES

The Board's Rules of Practice and Procedure provide:

> A petitioner . . . shall submit a brief on each legal issue it expects a board to determine. *Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue*. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

WAC 242-02-570(1), (emphasis supplied).

Additionally, the Board's March 1, 2005 PHO in this matter states: "**Legal issues, or portions of legal issues, not briefed in the Prehearing Brief will be deemed to have been abandoned and cannot be resurrected in Reply Briefs or in oral argument at the Hearing on the Merits**." PHO, at 7 (emphasis in original). *See City of Bremerton, et al., v. Kitsap County*, CPSGMHB Consolidated Case No. 04-3-0009c, Final Decision and Order (Aug. 9, 2004), at 5*; and Tulalip Tribes of Washington v. Snohomish County,*, CPSGMHB Case No. 96-3-0029, Final Decision and Order (Jan. 8, 1997), at 7.

The Futurewise PFR included two Legal Issues challenging the County's adoption of Ordinance No. 2004-128s, amending Ordinance No. 2004-87s to make technical map corrections. The County subsequently repealed Ordinance No. 2004-128s; consequently, Futurewise did not brief these issues since they were moot. For purposes of this proceeding, **Futurewise's Legal Issues 4 and 5** are deemed **abandoned** and will not be addressed in this FDO.

IV. LEGAL ISSUES AND DISCUSSION

A. AGRICULTURAL RESOURCE LANDS - The Buttes LLC and Futurewise

Orton Farms Background

The Board's August 2, 2004 Final Decision and Order in the Orton Farms matter[3] also addressed Agricultural Resource Lands. The *Synopsis* from that FDO states,

> *On November 18, 2003, Pierce County completed its 2003 annual Plan review cycle by adopting Ordinance No. 2003-103s. Two petitions for review (**PFRs**) were filed with the Board challenging different, but related, aspects of this action. Orton Farms, Riverside Estates and Knutson Farms contested agricultural resource land text and map amendments to the County's Plan. Procedurally, Orton Farms challenged*

[3] *See Orton Farms, et al., v. Pierce County* (***Orton Farms***), CPSGMHB Consolidated Case No. 04-3-0007c, (August 2, 2004).

the lack of notice and opportunity for public participation provided by the County when it developed and adopted these agricultural resource land amendments. Substantively, Orton Farms challenged the revised criteria adopted by the County for designating agricultural resource lands of long-term commercial significance, and whether the application of those criteria to approximately 5000 acres complied with the Act.

1000 Friends also challenged several map amendments. The focus of 1000 Friends' challenge was the de-designation of 291 acres from an agricultural resource land classification to a rural designation. 1000 Friends also challenged application of the density provisions in the existing zoning code to the new areas designated as rural. There were numerous interveners on behalf of the County for each of the challenged actions.

The Board found that the County's notice and public participation procedures ***did not comply*** *with the Act. The County never stated in its notices that it was not only considering changing the criteria it used for identifying and designating agricultural resource lands of long-term commercial significance, but that it was also considering the designation of approximately 5000 acres as Rural Farms – an agricultural resource land designation. The Board also found the County had not followed, and* ***did not comply*** *with, the Act's criteria for identifying and designating agricultural resource lands of long-term commercial significance. The County's designation criteria relied primarily on soils data and did not include two of the required components for determining long-term commercial significance – proximity to population areas and possibility of more intensive use. Orton Farms successfully demonstrated that the County had not conducted any analysis that applied the statutory criteria in evaluating the lands it designated. The text and map amendments challenged by Orton Farms were found to be* ***noncompliant*** *with the agricultural resource land provisions of the Act. The Board also entered a* ***determination of invalidity*** *for substantial interference with the public participation goal pertaining to both the text and map amendments.*

Similarly, the Board found that the County's de-designation of 291 acres of agricultural resource land to rural ***did not comply*** *with the goals and requirements of the Act. 1000 Friends successfully demonstrated that the County ignored the statutory criteria for designating agricultural resource lands and erroneously based its decision to de-designate 291 acres on the land owner's intent to no longer farm the land. The Board repeated the holdings of the Redmond Court that land owner intent or current use are not conclusive in the designation process. The Board also entered a*

> ***determination of invalidity*** *pertaining to the properties affected by this map amendment.*
>
> *The Order* ***remands*** *the noncompliant and invalid Amendments, sets forth a compliance schedule, and establishes a compliance hearing date for early 2005.*

Orton Farms FDO, at 1-2.

On August 16, 2004, in the *Orton Farms* matter, the Board issued an "Order on Reconsideration [Rescinding Invalidity on Amendments T-8 and M-12]." These amendments were the text amendments setting forth the designation criteria and the mapping of lands that met those criteria. Invalidity was rescinded since no development regulations had been adopted to implement these amendments.

On March 1, 2005, in the *Orton Farms* matter, the Board issued an "Order Finding Partial Compliance and Rescinding Invalidity [Regarding Amendment M-10]." In short, this Order found compliance with regard to the notice and public participation procedures used by the County and in reinstating prior designations on certain parcels. However, as part of its compliance action, the County adopted Ordinance No. 2004-87s – the subject of this challenge. In lieu of a second compliance hearing, the parties[4] agreed to address the issue in the context of the present case. The outstanding issues in the compliance proceeding, as well as in the present proceeding, relate to the criteria the County adopted for identifying and designating ARLs, and the criteria and procedures adopted for the de-designation of ARLs.

From The Buttes LLC's perspective, the County went too far in designating certain properties ARLs and ignored certain mandated criteria. Futurewise, on the other hand, asserts that the County's criteria are not inclusive enough and excludes lands that should be designated as ARLs.

The Buttes LLC **Legal Issues**

The Board's PHO sets forth The Buttes LLC Legal Issues as follows:

1. *Does the County's designation criteria for agricultural resource land (**ARL**) adopted in Amendment 2 of the Plan Update violate the GMA, including RCW 36.70A.020(8), .030(2) and (10) and .170(1)(a), since the criteria fails to evaluate potential ARL property in the context of the land's location and surroundings and thus omits the GMA required long-term commercial significance analysis? This issue includes the following sub issues:*

[4] The Buttes LLC was an Intervener in *Orton Farms* and Futurewise, then 1000 Friends of Washington, was a Petitioner.

a. *Do the ARL criteria fail to adequately consider the land's proximity to population areas and the possibility of more intense use of the land, since only lands immediately adjacent to ARL lands will be evaluated?*

b. *Do the ARL criteria fail to adequately consider the land's proximity to population areas and the possibility of more intense use of the land, since the analysis regarding pressure to urbanize was deferred until the ARL designation was made and will not be conducted for all lands designated ARL?*

2. *Did the County violate the GMA, including RCW 36.70A.020(8), .030(2) and (10) and .170(1)(a), by adopting Amendment 2 of the Plan Update, and designating as ARLs properties that cannot be managed economically and practically for the long-term commercial production of agricultural products and that are characterized by urban growth?*

3. *Did the County violate the GMA, including RCW 36.70A.020(8), .030(2) and (10) and .170(1)(a), by adopting Amendment 2 of the Plan Update and related map amendment and designating The Buttes property as ARL, since the property does not have long-term commercial significance for agricultural production?*

The first two Legal Issues pertain to the County's ARL designation criteria, the third relates to the application of those criteria to The Buttes LLC property and the alleged non-applicability of the County's de-designation process to the property.

***Futurewise and Friends of Pierce County* Legal Issue**

The Board's PHO sets forth Futurewise's Legal Issue 3 as follows:

3. *Does the adoption of the Plan Update [Amendment 2] fail to comply with RCW 36.70A.020(8), .040, .050, .060, and .170 when it retains and adopts policies, designations, and development regulations that fail to conserve agricultural land that meets GMA criteria for designation as land of long-term commercial significance?*

Futurewise's Legal Issue, like The Buttes LLC's Legal Issue 1 and 2 pertains to the designation criteria for the County's ARLs.

The Challenged Action – Plan Update Amendment 2

Amendment 2, as adopted in Ordinance No. 2004-87s, embodies the County's Agricultural Policies and ARL criteria. Amendment 2 adopts eight Land Use – Agricultural Objectives (**LU-Ag**): LU-Ag Objective 15 through LU-Ag Objective 22.

Amendment 2 also included the adoption of a Map entitled Agricultural Resource Lands[5] – 29, 708 acres of land are designated ARL. The relevant Objectives in this inquiry are LU-Ag Objective 16, 17 and 18, which provide as follows:

LU-Ag Objective 16:[6]

> Designate Agricultural Resource Lands (ARL) based on the Growth Management Act definition and the Minimum Guidelines of WAC 365-190-050.
>
> 1. Agricultural Resource Lands are lands meeting the definition in RCW 36.70A.030(2): "… land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production."
>
> 2. The focus for preservation of agricultural lands must be on lands not already characterized by urban growth, characterized by more intensive rural development, designated Reserve-5 for future urban growth of a city or town, or dedicated to Forest Lands.
>
> a. Only rural lands shall be considered for Agricultural Resource Lands designation.
>
> b. Properties already characterized by urban growth, characterized by more intensive rural development, designated Reserve-5 for future urban growth of a city or town, shall be excluded, and are defined as follows:
>
> (1) Lands designated Rural Activity Center, Rural Neighborhood Center;
>
> (2) Lands rezoned to Rural Activity Center, Rural Neighborhood Center, Limited Area of More Intensive Rural Development (LAMIRD) or Reserve-5 in the adoption of a community plan or associated Comprehensive Plan Amendment;
>
> (3) Lands that are part of a preliminary plat approved prior to February 1, 2005 or a final plat recorded prior to February 1, 2005, including any associated open space or other non-buildable tracts identified on the face of the plat; and
>
> (4) Lands with mobile home parks.

[5] *See* Ordinance No. 2004-87s, Exhibit B, at 55.
[6] These Agricultural provisions are codified in the Pierce County Code as 19A.30.070(B) PCC.

c. Designated Forest Lands shall be excluded.

3. Designation of Agricultural lands of "long-term commercial significance" requires consideration of growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas and the possibility of more intense uses of the land (RCW 36.70A.030(10)). WAC 365-190-050 prescribes the minimum guidelines for identifying agricultural lands of long-term commercial significance and said minimum guidelines shall be considered in designating land as Agricultural Resource Land, including the following:

a. Soils. The key criterion for defining Agricultural Resource Lands is the presence of the County's most productive agricultural soil types and their associated production yield: soils identified as "Prime Farmland" in the NRCS Field Office Technical Guide for Pierce County, Section 2, distributed February 24, 2003, which have a grass/legume production yield of 3.5 tons per acre or greater, as identified by the U.S. Department of Agriculture, Natural Resources Conservation Service soil classification system.

(1) Minimum parcel size. The threshold size used as a basis for the designation of Agricultural Resource Lands is 5 acres or larger in size because soils data is most reliable at this size. Options for including parcels below the 5-acre threshold are provided in community planning processes, see 19A.30.070 C or the Comprehensive Plan Amendment process.

(2) Portion affected. The identified soil types and yield must be found on 50 percent or more of the parcel area, PROVIDED that for properties abutting the Carbon, Puyallup, or White River, the threshold shall be 25 percent or more of the parcel area. The designation would affect the whole parcel, not just the portion containing the soil types and yield. Options for including parcels not meeting this criteria are provided in community planning processes, see 19A.30.070 C, or the Comprehensive Plan Amendment process.

b. Intensity of Nearby Uses. To address the intensity of nearby uses, parcels that are adjacent to lots of record of one acre or less on more than 50 percent of the perimeter of the parcel shall not be designated Agricultural Resource Lands.

c. Pressures to Urbanize. Community planning and joint planning efforts may be used to define and establish an appropriate buffer of Reserve-5 around the urban growth area of a city or town. In

determining whether a Reserve-5 buffer should be established, the following criteria shall be considered:

(1) Proximity to Urban Growth Area. A buffer of a reasonable width of Reserve-5 designation adjacent to the city/town urban growth boundary, following property lines, may be proposed in a community plan or joint planning agreement. Such a proposal must be accompanied by findings that support the designation and width of the buffer consistent with the Growth Management Act, the County-Wide Planning Policies and the Comprehensive Plan. Once established, the buffer shall not be expanded except through the Compliance review required by RCW 36.70A.130. Designation shall be accompanied by implementing regulations which address setbacks and other zoning techniques used to protect adjacent agriculture activities.

(2) Economic Viability and Environmental Impacts of Farming. In the community plan/joint planning evaluation of a potential buffer of Reserve-5 adjacent to a city or town pursuant to (1) above, economic viability and environmental impacts of farming may be considered as additional factors for inclusion of specific parcels in the Reserve-5 buffer. However, economic viability or environmental impacts of farming shall not be the only determining factors for re-designation.

(3) Other Criteria. In establishing a Reserve-5 buffer, and notwithstanding any other provisions of 19A.30.070 B., a community planning board or parties to a joint planning effort shall consider all of the criteria prescribed in WAC 365-190-050 and shall document such consideration in its recommendation to the County Council.

d. Landowner intent. While landowner intent cannot be used as a rationale for de-designation, it can be used as a criterion for inclusion when reflected by the tax status of the land (inclusion in the County's Current Use Assessment program as agriculture).

See Ordinance No. 2004-87s, Exhibit B, at 7-8.

LU-Ag Objective 17:[7]

Use the community planning and joint planning agreement processes to make refinements to Agricultural Resource Lands designation as follows:

1. Joint planning agreements and community plans may recommend re-designation of Agricultural Resource Lands to Reserve-5 for a buffer around a city or town Urban Growth Area, using the criteria specified in 19A.30.070 B.3.c.(1), (2) and (3).
2. Community plans may recommend that parcels not meeting the criteria of 19A.30.070 B. be designated as Agricultural Resource Lands:
    a. when contiguous ownership involves parcels that meet the criteria of 19A.30.070B., except that some parcels are below the threshold size of 5 acres,
    b. when the soil type and yield are present, but the size of the parcel is below the threshold of 5 acres, or
    c. when the soil type and yield are not present, but the property is being used for commercial agriculture and the landowner requests inclusion.
3. Community plans and joint planning agreements may recommend de-designation of Agricultural Resource Lands to correct errors in designation.
4. Community plans can make refinements to the implementing regulations consistent with the provisions of 19A.30.070 E.

See Ordinance No. 2004-87s, Exhibit B, at 9.

LU-Ag Objective 18:[8]

Provide the criteria and process for removing properties from the Agricultural Resource Lands Designation.

1. Removal of properties from the Agricultural Resource Lands designation must be evaluated against the same criteria as designation (see 19A.70.030 B. above).

2. Removal of properties from the Agricultural Resource Lands designation shall be limited to the following processes:
    a. The approval of a Map Amendment to correct technical errors under the timelines and procedures established for regular Comprehensive Plan Amendments.
    b. The adoption of a community plan that includes re-designation of parcels consistent with 19A.30.070 C.

[7] These Agricultural provisions are codified in the Pierce County Code as 19A.30.070(C) PCC.
[8] These Agricultural provisions are codified in the Pierce County Code as 19A.30.070(D) PCC.

c. The approval of a Map Amendment to establish a Reserve-5 buffer for a city or town, following a recommendation of an approved joint planning agreement consistent with the provisions of 19A.30.070 C.1 and 3.
d. De-designation of Agricultural Resource Lands for the purpose of expanding a Reserve-5 buffer for a city or town created pursuant to 19A.30.070 C. shall only be considered during the Compliance review required by RCW 36.70A.130.

3. Agricultural Resource Lands cannot be amended directly into the Urban Growth Area.

See Ordinance No. 2004-87s, Exhibit B, at 9.

Applicable Law

The goals of the GMA, which are to guide the development of comprehensive plans and development regulations, are found at RCW 36.70A.020. The Buttes LLC and Futurewise both allege noncompliance with Goal (8). This GMA goal provides:

> (8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

Futurewise alleges noncompliance with RCW 36.70A.050, which provides in relevant part:

> (1) Subject to the definitions provided in RCW 36.70A.030, the department [CTED] shall adopt guidelines, . . . to guide the classification of: (a) Agricultural lands . . .
> . . .
> (3) The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions, but also shall allow for regional differences that exist in Washington State. The intent of these guidelines is to assist counties and cities in designating the classification of agricultural lands . . . under RCW 36.70A.170.

The Buttes LLC and Futurewise allege noncompliance with RCW 36.70A.170 which provides in relevant part:

> (1) . . . [E]ach county . . . shall designate where appropriate: (a) Agricultural lands that are not already characterized by urban growth and that have long term commercial significance for the commercial production of food or other agricultural products. . .

> (2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050.

The definitions for the GMA are contained in section RCW 36.70A.030. The relevant definitions at issue in this matter are .030(2) and (10):

> (2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.
> . . .
> (10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense use of the land.

The relevant minimum guidelines for the designation of agricultural lands, developed by CTED pursuant to RCW 36.70A.050, is found at WAC 365-190-050, which provides:

> (1) In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service as defined by Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soils surveys. These categories incorporate consideration of the growing capacity, productivity and soil composition of the land. Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:
>
> (a) The availability of public facilities;
> (b) Tax status;
> (c) The availability of public services;
> (d) Relationship or proximity to urban growth areas
> (e) Predominant parcel size;
> (f) Land use settlement patterns and their compatibility with agricultural practices;
> (g) Intensity of nearby land uses;
> (h) History of land development permits issued nearby;
> (i) Land values under alternative uses; and
> (j) Proximity to markets.

(2) In defining categories of agricultural lands of long-term commercial significance for agricultural production, counties and cities should consider using the classification of prime and unique farmland soils mapped by the Soil Conservation Service. If a county or city chooses not to use these categories, the rationale for that decision must be included in the next annual report to [CTED].

Finally, Futurewise alleges noncompliance with RCW 36.70A.060 and .040. In essence, .060 requires that the County adopt development regulations that "assure(s) the conservation of agricultural . . . lands designated under RCW 36.70A.170." Section .040, which identifies the jurisdictions that are required to plan under the GMA, also reiterates their duties, including the duty to identify, designate and preserve natural resource lands.

Discussion

Position of the Parties:

Property owned by The Buttes LLC was designated as ARL in the 2004 Plan Update; however, Petitioner does not believe their property meets the County's designation criteria. The Buttes argues that the County's ARL designation criteria continued to focus on soils factors and failed to consider the long-term commercial significance (**LTCS**) component for designating ARLs. Buttes PHB, at 11. Specifically, The Buttes takes issue with: 1) The County's limited analysis for assessing proximity to population areas and possibility of more intensive use [The County only considers the presence of existing one acre lots immediately adjacent to, and abutting, 50% of the perimeter of a potential ARL; it does not consider other nearby development; and 2) The County does not consider economic viability as a factor for designating ARLs. *Id*. at 11-15. Petitioner also complained that unlike the parcel specific review process used in 2003 [*Orton Farms*], this time the County never considered the specific circumstances of individual parcels. Instead the County simply made broad area-wide ARL designations. HOM Transcript, at 25.

Futurewise takes issue with the County's ARL designation criteria, because, in its view, it is too restrictive and not enough land was designated as ARL. Specifically, Futurewise argues: 1) By excluding lands designated as Reserve - 5 and approved plats from consideration as ARLs, the universe of potential land is inappropriately restricted; 2) All lands containing prime soils were inappropriately restricted because the County used a grass/legume yield of 3.5 ton per acre as an additional factor in determining prime soils; 3) By establishing a minimum parcel size of 5 acres, the County excluded smaller parcels that would otherwise qualify as ARLs; and 4) The ARLs designation, or de-designation, decisions should not be delegated to community groups working at the subarea level. Futurewise PHB, at 24-38.

In response, the County concedes that it did not do a parcel specific analysis in developing and applying Amendment 2. Instead, the County admits that it developed the

criteria and applied them on an area-wide basis in making the ARL designations. To fix any mistakes that might have been made in making the designations through this approach, the County specifically provided de-designation processes [*i.e.* LU-Ag Objective 17 and 18]. County Response, at 98-99; HOM Transcript, at 35. The County also counters that Amendment 2 explicitly adopts ARL designation criteria consistent with the GMA and as directed in *Orton Farms*. The County adds that LU-Ag Objective 16 includes soils criteria and the critical components for determining "long-term commercial significance" [*i.e.* proximity to population and possibility of more intensive use. *Id*. at 62-72. The County argues that it considered the CTED guidelines – WAC 365-190-050 – and that the County has discretion in how they are interpreted and applied. To support the County's reasoning for Amendment 2, the County notes that there are explicit Findings of Fact (**FoF**) made by the County Council, based on the record, that support Amendment 2. *Id. citing* Ordinance No. 2004-87s, Exhibit K, at 3-8. Additionally, the County points to an economic analysis of Pierce County agriculture in the record which was prepared to help the County evaluate the proposed agricultural provisions. *Id*. at 101-102 and 59-61, *citing* Ex. 87 – *The Suitability, Viability, Needs and Economic Future of Pierce County Agriculture* – Phase I Report Responding to Questions Posed by Pierce County Council Resolution R2004-105s (August 31, 2004), prepared by American Farmland Trust (**Phase I Report**).

In specifically addressing The Buttes issues, the County suggested that Petitioner's brief argued why The Buttes property did not meet the County's ARL criteria, not why the County's action did not comply with the GMA or the Board's direction in the *Orton Farms* FDO. *Id*. at 101. The County reminded Futurewise that the product of any subarea planning process affecting ARL designations or de-designations would be a recommendation that would be considered by the entire County Council, which represents the entire County. And it would be the Council, not a subarea advisory group, which makes any decisions about ARLs. *Id*. at 51-54 and 84.

In reply, The Buttes asserts that the County does not argue that the Buttes property does not have long-term commercial significance; instead the County tells The Buttes to work with a subarea planning group or apply for de-designation. Petitioner argues that its property is not within a subarea that could consider de-designation and to apply for de-designation would be futile since the County would apply the same criteria as they did for designation – which led to the property being designated as ARL. Buttes Reply, at 1-6.

Further, The Buttes argues that even if it could apply for de-designation, it should not have to do so, because the property is not economically viable for farming; and application of the proper criteria would preclude it from being designated in the first place.[9] *Id*. at 1-9.

[9] For example, Petitioner notes that there is development *nearby* the property, but not adjacent to it and abutting 50% of the perimeter. HOM Transcript, at 43.

Futurewise's reply essentially reasserts the arguments offered in the Futurewise PHB and asserts that the County's designation criteria are clearly erroneous. Petitioner claims that if the criteria are flawed, then the ARLs map that was developed by applying those criteria must also be clearly erroneous. Futurewise Reply, at 10-20.

Board Discussion:

The Board concurs with the County. Amendment 2's LU-Ag Objective 16(1), *supra*, explicitly states, "Designate Agricultural Resource Lands (ARL) based on the Growth Management Act definition and the Minimum Guidelines of WAC 365-190-050." This Objective then goes on to cite the definitions from the GMA and establish parameters for the agricultural lands it intends to preserve, *excluding*: urban areas, areas characterized by urban growth (*i.e*. defined to include: Reserve – 5 areas, lands part of approved plats, and other areas designated for development in the rural areas) and designated forest lands. LU-Ag Objective 16(2), *supra*. The Board finds no error by the County in taking this approach.

The two objections raised by Futurewise pertaining to this portion of LU-Ag Objective 16(2) are without merit. 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. Likewise, the exclusion of approved plats from the ARL process is appropriate, since these areas are clearly areas characterized by urban growth.[10]

LU-Ag Objective 16(3), *supra*, spells out the GMA factors and WAC 365-190-050 factors to be considered in designating ARLs. These criteria include:

- Soils (prime farmland soils identified by USDA NRCS soil classification system, with a grass/legume production yield of 3.5 tons per acre or greater, minimum 5-acre lot sizes and prime soils on at least 50% of a parcel);
- Intensity of Nearby Uses (excluding parcels that are adjacent to one acre lots of record on 50% of the perimeter);
- Pressure to Urbanize (possible use of a Reserve -5 designation to buffer ARLs after considering proximity to urban growth areas, economic viability and environmental impacts of farming); and
- Landowner Intent (not as a rationale for de-designation, but for inclusion in an ARL *e.g.* current use assessment as agriculture)

[10] *See Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wash. 2d 224, 241, 110 P.3rd 1132 (2005).

The Board finds that these criteria track the GMA's definitions of "Agricultural Land" and "Long-Term Commercial Significance." GMA 36.70A.030(2) and (10). The Board also finds that these criteria are consistent with WAC 365-190-050 and that the County's Amendment 2, FoF, Exhibit K to Ordinance No. 2004-87s, at 3-8, evidences the County's consideration of the CTED guidelines. The Board finds no error by the County in adopting these ARL criteria.

The three objections raised by Futurewise pertaining to this portion of LU-Ag Objective 16(3) are without merit. Neither the Act nor CTED's guidelines require or prohibit inclusion of a yield factor in designating ARLs. Establishing a criterion based upon the grass/legume yield of 3.5 tons per acre limitation is within the County's discretion. Here the County relied upon materials and advice provided by a soil scientist from the USDA NRCS explaining the range of grass/legume yields per ton by different soil type throughout Pierce County. The yields range from 1.5 to 6.0 tons per acre, depending upon soil type in Pierce County. *See* Ex. 166, Table B2, at 1-5; County Response, at 82; and Ordinance No. 2004-87s, Exhibit K, Amendment 2 FoF, at 6-7. The County did not err by selecting a moderate yield component as part of its soils criterion.

Likewise, the County's use of a minimum parcel size of five acres is within its discretion, neither the Act nor the CTED criteria require or prohibit minimum parcel sizes. Futurewise urged the County not to use the five acre minimum parcel sized because in 2002, 527 farms (35.75%) in Pierce County were between 1 and 9 acres, with the average *small size farm* being 4.5 acres. Also, Futurewise contends that the parcel size cut-off excludes farms made up of many small parcels of land or small parcels associated with larger farms. Futurewise PHB, at 35-36, *citing* Exs. 95 and 335. The County shows that the *average farm size* in the County is 39 acres and the *median farm size* is 20 acres and that 88% of the area designated as ARLs are parcels less than 30 acres in size. Ex. 95 and County Response, at 82; and Ordinance No. 2004-87s, Exhibit K, Amendment 2 FoF, at 4. Further, the County's stated rationale for the five acre parcel minimum was that this size correlated well to the accuracy [*i.e.* scale] of the soil maps as explained in the Soil Survey Manual. County Response, at 85; and Ordinance No. 2004-87s, Exhibit K, Amendment 2 FoF, at 7. The County did not err by including a minimum lot size as part of its ARL designation criteria.

Lastly, Futurewise'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. The Board concurs with the County's explanation regarding the role of subarea planning groups. The Board is not at all persuaded or convinced that the County erred in establishing these criteria and procedures for the designation of ARLs.

The Buttes LLC objections pertaining to the County's choice of one acre lots of record adjacent to a parcel on 50% of its perimeter and to the County's alleged lack of consideration of economic viability of farms are also misplaced. The Board finds the 50% development 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. The Board notes that the GMA requires the County to protect ARLs from incompatible adjacent uses and also requires that a notice appear on the face of all plats that are within 500 feet of ARLs to indicate that activities on ARLs may occur that are not compatible with residential development during certain periods. RCW 36.70A.060. If "nearby" were measured with this 500-foot yard stick, the likely effect would be to eliminate more lands from potential ARLs designation, which would run counter to the GMA goal of maintaining and enhancing the agricultural industry and conserving productive agricultural lands. Thus, the Board finds that the County did not err in adopting this ARLs designation criterion.

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 The Buttes contention that "economic viability" is a controlling factor in determining long-term commercial significance. As the Board stated in Orton Farms,

> CTED's general premise is one of the basic tenets of land use planning, and one of the purposes of designating future land uses in a GMA plan – *i.e. to ensure that sufficient suitable land is available for all types of uses, including agriculture.* But once designated, *no land use designation comes with a guarantee*. However, as Petitioners claim, the GMA does not prohibit "commercial viability" from being considered as a factor, but again, it is not conclusive in determining LTCS.

Orton Farms FDO, at 26-27; (emphasis supplied).

The Board notes that LU-Ag Objective 16(3) does include reference to "economic viability" as a component of the "Pressure to Urbanize" criterion in the ARLs designation process. So it cannot be said that the County has ignored economic viability in the ARLs process. However, more significant than this reference in LU-Ag Objective 16(3) is the County's ongoing commitment to understand and address the economic viability of agriculture in Pierce County. Its effort is truly impressive. The Phase I Report (*The Suitability, Viability, Needs and Economic Future of Pierce County Agriculture* – Phase I Report Responding to Questions Posed by Pierce County Council Resolution R2004-105s (August 31, 2004), prepared by American Farmland Trust) provides County specific data and information and offers interesting observations and insights about how agriculture is changing in Pierce County. *See* Ex. 87. The Phase I Report, in conjunction with the

pending additional report, should enable the County to continue to help shape the evolving trend in this important local industry.

Finally, the Board finds that the County has specifically included ARLs de-designation procedures to correct ARLs designation mistakes. LU-Ag Objective 18 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*. Additionally, the subarea or community planning process in LU-Ag Objective 17 offers an additional means to correct ARLs designation errors.[11] Having used the criteria driven, area-wide approach the County used in identifying ARLs necessitates a procedure to correct mistakes that are made in the County-wide designation process. This the County has done. The Board finds no error here in what the County has adopted.

Conclusion

The County's adoption of Amendment 2 in the 2004 Plan Update was not clearly erroneous. The County's adoption of Amendment 2, including LU-Ag Objectives 16, 17 and 18 and the ARLs map, **complies** with definitions, goals and requirements of the Act for identifying, designating and protecting agricultural resource lands – RCW 36.70A.020(8), .030(2) and (10), .040, .050, .060 and .170.

In addition to finding compliance with the GMA's agricultural land provisions in the present proceeding, the Board also finds the County's action complies with the GMA as interpreted and set forth in the *Orton Farms v. Pierce County* proceeding Therefore, to conclude the *Orton Farms* matter, the Board will enter a **Finding of Compliance.**

The Buttes LLC's Legal Issues 1(a) and (b), 2 and 3 are **dismissed**. Futurewise and Friends of Pierce County's Legal Issue 2 and 3 is **dismissed**.

B. URBAN GROWTH AREAS – Bonney Lake and Futurewise

***Bonney Lake* Legal Issues**

The Board's PHO sets forth the Bonney Lake Legal Issues as follows:

1. *Whether in enacting Ordinance No. 2004-87s, the* **Plan Update,** *[specifically, Amendment 11], Pierce County overstepped its authority under the Growth Management Act, RCW 36.70A, by imposing a requirement that a maximum*

[11] The Board notes that at the HOM, the County announced that on April 26, 2005, the County enacted Ordinance No. 2005-8s2. This Ordinance advised the Alderton-McMillin Advisory Commission to change its community plan boundaries. The County suggested that this Ordinance likely placed The Buttes property within the Alderton-McMillan Community Plan area. Neither The Buttes nor the County could confirm the effect of this Ordinance without knowing the legal description of The Buttes property. A copy of Ordinance No. 2005-8s2 was provided to the Board and The Buttes.

safety factor, measured collectively rather than by individual jurisdictions, shall dictate the UGA of individual jurisdictions?

2. *Whether the Plan Update [Amendment 11] violates RCW 36.70A.020(1), (2), (5) and (11) by usurping the authority of individual jurisdictions under RCW 36.70A.040 and .110(2) to project their own growth and determine their own needs for UGA extensions?*

3. *Whether the County violated the intent of the GMA by enacting the Plan Update [Amendment 11], rather than undergoing the more collaborative process envisioned in the Act's Countywide Planning Policy provisions (RCW 36.70A.210-.215?*

4. *Whether the County violated the intent of the GMA and WAC 365-195-335(3)(i) by enacting the Plan Update [Amendment 1], which favors urban growth areas in unincorporated areas by allowing them to build out before cities can expand their UGAs?*

***Futurewise and Friends of Pierce County* Legal Issue**

The Board's PHO sets forth Futurewise's Legal Issue 1 and 2 as follows:

1. *Does the adoption of the Plan Update, updating and revising the County comprehensive plan and development regulations, fail to comply with RCW 36.70A.020(1) and (2) and RCW 36.70A.110, when the record shows that the County's UGA is substantially larger than necessary to accommodate the adopted OFM population forecast? [Petitioner notes Amendment 10 in reference to this issue.]*

2. *Does adoption of the Plan Update [Amendment 2] fail to comply with RCW 36.70A.020(1) and (2), RCW 36.70A.040, .060 and .110 when it allows expansion and/or amendment of the UGA through a sub-area planning process?*

The Challenged Action – Plan Update Amendment 11

Amendment 11, as adopted by Ordinance No. 2004-87s, is entitled "Buildable Lands" and addresses the County's Urban Growth Area Objectives. Amendment 11 includes LU-PR Objective 0, LU-UGA Objective 1 and LU-UGA Objective 6. The relevant Objectives are set forth *infra*:

<u>LU-UGA Objective 1</u>[12]. Ensure that there is sufficient land within the Urban Growth Areas to accommodate the projected population growth for the 20 year planning period.

1. The conclusions from the evaluation of the residential and commercial/industrial development capacity, in compliance with RCW 36.70A.215 – Buildable Lands, should be reviewed every five years.

    a. The evaluation should encompass the capacity of lands within municipal limits and unincorporated urban Pierce County.

    b. Jurisdictions which claim an interest in the overlap areas identified on the Urban Growth Area/Urban Service Areas Map are strongly encouraged to resolve the conflicting designations through a public process which results in agreement with the other jurisdictions, and/or cooperative efforts with the County. In the event that jurisdictional conflicts cannot be resolved by agreement, the County shall designate UGAs and USAs through annual adjustments as deemed necessary by the County.

2. *The land safety factor for Pierce County urban growth areas should not exceed 25 percent and be documented in a report incorporated in the Plan by reference.*

    a. The safety factor and the methodology for its calculation shall be evaluated and adjusted over time, taking into consideration changes in population projections and land supply in both unincorporated Pierce County as well as municipal jurisdictions in the County

    b. *The 25 percent safety factor should be derived from the combined urban growth areas, not individual urban growth areas*.

3. The methodologies used to determine the capacity of the urban growth areas and to calculate the allowable number of dwelling units for individual development proposals shall be consistent with each other.

[12] This Objective is codified as 19A.30.010(B) PCC.

(Emphasis supplied). The emphasized language is the portion of Amendment 11 that the cities of Bonney Lake, Orting and Roy find objectionable.

> **LU-UGA Objective 6**.[13] Provide criteria and priorities for the expansion of urban growth areas.
>
> 1. Expansions of the Comprehensive Urban Growth Area (CUGA) and satellite urban growth areas shall be approved by the County Council through the Comprehensive Plan amendment process as established in Chapter 19C.10 PCC, only if the following criteria are met:
>
> a. Residential land capacity within all urban growth areas is evaluated and the need for additional residential land capacity is clearly demonstrated. The results of the Buildable Lands Report required pursuant to RCW 36.70A.215 should indicate any county-wide urban land deficiency.
>
> b. The supply of land available for employment growth is evaluated and the need for additional commercial /industrial land outside urban growth areas is clearly demonstrated.
>
> c. The observed development densities are consistent with the density assumptions as documented in the most recent published Buildable Lands Report as required by RCW 36.70A.215. If the Buildable Lands Report identifies an inconsistency between the observed and assumed densities, the jurisdiction shall either 1) demonstrate reasonable measures were adopted to rectify the inconsistency. If a jurisdiction adopted reasonable measures, documentation shall be submitted that summarizes the monitoring results of the effectiveness of the measures in rectifying density inconsistencies.
>
> d. Documentation that adequate public facilities and services can be provided within the 20-year planning horizon is provided.
>
> 2. The following priorities for expanding the 20-year CUGA boundary shall be considered during the Plan amendment process:

[13] This Objective is codified as 19A.30.010(G) PCC.

a. All Reserve lands adjoining the CUGA boundary should be amended into the CUGA prior to consideration of Rural Residential lands except when the amended area is being reclassified as an Employment Center.

b. Rural Centers may be amended into the CUGA when adjacent to Reserve lands being amended into the CUGA at the same time.

c. As Reserve lands are amended into the CUGA, the County should consider reclassifying other rural lands as Reserve designations to replenish the supply.

See Ordinance No. 2004-87s, Exhibit B, at 32-33.

Plan Update – Amendment 10

Amendment 10 updated the county-wide population allocations. The County had previously allocated the OFM population forecasts for the initial Plan (1992-2012) and a prior update (1997-2017); the population allocations for Amendment 10 extend from 2002 to 2022. The latest 20-year population forecast by OFM was issued in March 2002. For Pierce County the OFM population ranges were as follows: low = 813,466; medium = 912,711; and high = 1,027,718. *See* Ordinance No. 2004-87s, Exhibit B, at 28 - 29. The Act requires Pierce County to accommodate a future 2022 population within these ranges – no more, no less. However, selecting a target figure within these ranges falls within local discretion.

Selection of the target for 2002 was done in consultation with the Growth Management Coordinating Committee (**GMCC** – a group comprised of staff from Pierce County jurisdictions) and the Pierce County Regional Council (**PCRC** – comprised of elected officials of all Pierce County jurisdictions. After consultation with these representative groups, the County adopted a county-wide population allocation of 912,700 – the OFM midrange forecast. Thus, the target population for Pierce County and its cities to accommodate through 2022 is 912,700 people. *Id*.

The next step in the process is to disaggregate this figure, and allocate population, among the Pierce County jurisdictions. Amendment 10 accomplished this disaggregation and allocation. The population distributions in Amendment 10 were not challenged, nor are they at issue in this matter. These population allocations are not disputed. They are provided here to give some context for the discussion of the Bonney Lake, Orting, Roy and Futurewise Legal Issues.

The following tables illustrate the population allocations for the County, and the three Petitioner cities.

Table 19.20-5
2022 Total Population Allocation for Pierce County

	2000 Census Population Estimate	**2022 Population Allocation**
Municipal Allocation	*386,865*	**522,920**
Unincorporated UGA Allocation	*169,864*	**230,380**
Rural Allocation	*144,082*	159,400
County Total	*700,811*	912,700

See Ordinance No. 2004-87s, Exhibit B, at 29.

Table 19.20-6
2022 Urban Population Allocations for Pierce County
[Municipal (**522,920**) and Unincorporated Pierce County UGA (**230,380**)]

[This Table has been modified to only include information for the cities of Bonney Lake, Orting, Roy and the unincorporated UGA in Pierce County]

	Municipal[14]		**Unincorporated County UGA**	
Municipality	***2000 Census Pop. Est.***	**2022 Pop. Allocation**	***2000 Census Pop. Est.***	**2022 Pop. Allocation**
Bonney Lake	*10,874*	18,830	*860*	3,550
Orting	*3,760*	7,900	*N/A*	N/A[15]
Roy	*707*	1,000	*3*	20
All other cites	-	-	-	-
County UGA	*N/A*	N/A	*70,869*	102,440
Urban Total	*386,865*	**522,920**	*169,864*	**230,380**

[14] The 2000 estimates and 2022 allocation are for the 2002 municipal boundaries. *Id.* at 30.
[15] However, the Alderton-McMillin Subarea, or Community Plan Area, lies just north of Orting and has an estimated 2022 urban population of 2,264. *See* Ordinance No. 2004-87s, Exhibit B, Table 19.20-7, at 31.

See Ordinance No. 2004-87s, Exhibit B, at 30-31.

In short, by 2022, the City of Bonney Lake is to accommodate 18,830 within its existing city limits and 3,550 in its adjacent UGA; Orting must accommodate 7,900 within its existing city limits and Orting does not have an assigned adjacent UGA; Roy must accommodate 1000 within its city limits and an additional 20 in its assigned adjacent UGA. In 2022, of the 230,380 people allocated to the unincorporated Pierce County UGA, approximately 128,000 are allocated to municipal UGAs while 102,440 remain allocated for the unincorporated Pierce County UGA.

Applicable Law

Both Bonney Lake and Futurewise allege noncompliance with Goals 1 and 2 of the Act; Bonney Lake also challenges compliance with Goals 5 and 11. These Goals provide:

> (1) Encourage development in urban areas where adequate facilities and services exist or can be provided in an efficient manner.
>
> (2) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
>
> . . .
>
> (5) Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of the state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
>
> . . .
>
> (11) Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70A.020(1), (2), (5) and (11).

Bonney Lake asserts the County has not complied with the requirements of RCW 36.70.040. The relevant provision of .040(3) provides:

> (c) *[T]he county* shall designate and take other actions related to urban growth areas under RCW 36.70A.110.

RCW 36.70A.040(3)(c), (emphasis supplied).

Bonney Lake and Futurewise challenge the County's compliance with the Act's UGA provisions. [Note that Futurewise's Legal Issue 2 also references RCW 36.70A.060, which is set forth, *supra*.] RCW 36.70A.110, provides in relevant part:

> (2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, . . . An urban growth area determination may include a reasonable land supply market factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating urban growth. [In the early 1990's, Pierce County and its cities consulted on the location of UGAs, and UGAs were adopted as part of the County's 1994 Plan. The County designated the UGAs, as required. If a city objected to a UGA designation that included the city, the County was to justify the designation in writing. Cites were enabled to object to CTED over the designation of a UGA "within which it is located." CTED could then attempt to resolve the dispute via mediation.[16]]
>
> . . .
>
> (4) In general, cities are the units of local government most appropriate to provide urban governmental services. . . .
>
> . . .
>
> (6) Each county shall include designations of urban growth areas in its comprehensive plan.
>
> (7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.[17]

RCW 36.70A.110(2),(4),(6) and (7).

Bonney Lake refers to the County's alleged noncompliance with RCW 36.70A.210, which pertains to the development and adoption of County-wide Planning Policies (**CPP**) for various topical areas. Additionally, in the same Legal Issue [#3], the City alludes to RCW 36.70A.215. This section of the Act required a "buildable lands review and evaluation" and buildable lands report (**BLR**). Part of the BLR program was the adoption of a CPP, by the County, after consultation with its cities, to govern the review and evaluation program. It is undisputed that the County adopted the required CPPs;

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[16] In the matter before the Board, Bonney Lake is **not** objecting to the County's designation of a UGA "within which it is located;" it is objecting to the "collective safety factor." Therefore, this provision of .110 is not germane to the issue before the Board.

[17] There is no evidence in the record in this case indicating that Bonney Lake or Roy's unincorporated UGAs include urban service areas.

therefore, any argument pertaining to these references would be couched in terms of what an individual CPP detailed. Referenced CPPs, if any, will be addressed in the Board's discussion of this Legal Issue.

Bonney Lake Legal Issue 4 references a particular CTED guideline pertaining to UGAs. WAC 365-195-335(3) provides, in relevant part:

> (3) Recommendations for meeting the requirements. The following steps are recommended in developing urban growth areas:
> . . .
> (i) *The county should attempt to define urban growth areas so as to accommodate the growth plans of the cities, while recognizing that physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's potential growth area.* The option of incorporation should be preserved for some unincorporated communities upon the receipt of additional growth.

(Emphasis supplied).

Discussion

Position of the Parties [Cities of Bonney Lake, Orting and Roy[18] and Futurewise]:

The City of Bonney Lake's and the City of Orting's arguments may be summarized as follows: 1) The requirement that a maximum safety [market] factor, measured collectively rather than by individual jurisdictions, shall dictate whether individual jurisdictions can expand their UGAs does not exist in the GMA [Legal Issue 1], Bonney Lake PHB, at 9-10; 2) Amendment 11 usurps the authority of individual jurisdictions to project their own population growth and determine their own needs for UGA expansions, ignores the population projections made by cities, funnels growth from areas with high demand to areas of low demand thereby constraining market forces, and forces rapidly growing cities to exceed acceptable levels of urban density [Legal Issue 2], *Id*. at 10-16; 3) Amendment 11 inappropriately allows UGAs in unincorporated areas to fill in before cities, which are supposed to absorb the majority of growth, can expand [Legal Issue 3], *Id*. at 16-18; *see also*, Orting PHB, at 5; and 4) The County pushed Amendment 11 through as a last minute ordinance over the cities' objections, rather than employing a more collaborative process that gave due respect to the cities' concerns [Legal Issue 4], Bonney Lake PHB, at 18-19; *see also* Orting PHB, at 2-4.

[18] The City of Roy's one page brief offers no argument on any issue, but merely incorporates arguments offered by all other Petitioners.

In response, the County counters that it has not overstepped its authority, but rather has complied with the UGA provisions of the GMA [RCW 36.70A.110 and .215] and has adhered to procedures upheld in prior Board Orders. The County notes that its BLR indicates that Bonney Lake was not meeting density goals and that in lieu of expanding UGAs reasonable measures are required. The County asserts that the use of the "collective" market factor is such a reasonable measure. County Response, at 14-18. The County argues that the cities have not shown how the County has not acted consistently with the goals of the Act. Also the County notes that the County, as well as the cities, has discretion and that the use of the collective measurement of the market factor is within the County's discretion, especially since it allows the County to guide growth in fulfillment of the goals of the Act. *Id*. at 19-25 and 32-33. Regarding collaboration, the County contends that it has worked with the cities in adopting CPPs, designating the UGA and in carrying out the Buildable Lands Program and that Amendment 11 is not inconsistent with any CPP. The County adds that collaboration does not mean that the County is required to do the will of any City. The County argues that it has discretion to comply with the Act and that the cited WAC provisions of CTED are not binding, but merely advisory recommendations. *Id*. at 25-32.

None of the Cities filed a reply brief.

Regarding Futurewise's Legal Issue 1, Futurewise notes that the GMA, and the Boards have outlined three key requirements for sizing UGAs: 1) The UGA must be sized to accommodate projected population within the ranges forecast by OFM; 2) A reasonable market supply factor may be applied in sizing the UGA; the market supply factor is a percentage of land added beyond that needed to accommodate the OFM population forecast – generally, a 25% market supply market factor is reasonable; and 3) In sizing or amending a UGA, a county must explicitly show its work regarding the sizing of the UGA. Futurewise PHB, at 10-11. Futurewise then argues that the County's Buildable Land Report indicates that the County's "total housing capacity exceeds need by over 35%. This exceeds the 25% market factor by over ten percentage points." *Id*. at 11. Futurewise concludes that the UGA is therefore oversized which will not reduce sprawl. Additionally, Futurewise argues that in adopting the "new target the County did not show its work, and did not do an analysis of existing urban growth area capacity." *Id*. at 12.

Regarding Futurewise's Legal Issue 2, Petitioner argues that the County's procedure for allowing community planning advisory groups to recommend the re-designation of ARLs to Reserve-5 will lead to these Reserve-5 lands being included within UGAs, which turns the UGA designation process on its head since UGAs need to be designated by the County, not community advisory groups. *Id*. at 12-13.

The County argues that it has not violated provisions of the GMA by updating its plan with new population projections – new targets. Further these new population targets were the product of substantial collaboration between the cities and the County, through the Growth Management Coordinating Council (**GMCC** – staff group) and Pierce

County Regional Council (**PCRC** – elected officials) and the analysis and rationale for selecting the Amendment 10 population targets is shown. The County acknowledges that its 2002 BLR indicates that "there is a thirty eight percent (38%) excess housing and one hundred and fifty percent (150%) excess employment capacity within the County's UGA." *Id*. at 37. The County further argues that since there is adequate capacity within the UGA to accommodate future growth, .215 supports the proposition that the UGA need not be adjusted, but rather reasonable measures should be the method relied upon to make adjustments, rather than boundary adjustments. *Id*. The County notes that it has a long history of community planning and that each of its community plans is developed in consultation with "advisory groups" that provide recommendations to the Council, and it is the Council that makes the ultimate decision on behalf of the County regarding UGA designations, not the community planning advisory groups. *Id*. at 51-57.

In reply, Futurewise notes that the County does not dispute that its UGA is "oversized;" therefore, the UGA must be adjusted to the "right size" to comply with .110 which is not preempted by .215. Petitioners argue that recognizing errors or problems in GMA planning is not enough to comply with the Act, rather corrective action including revisions, updates and adjustments are clearly anticipated in the GMA, specifically RCW 36.70A.130. Therefore, the County must downsize its UGA. Futurewise Reply, at 4-6. Futurewise continues to contend that the use of subarea or community advisory bodies to make recommendations regarding the de-designation of ARLs to Reserve – 5 and ultimately to UGA is contrary to the sequencing required by the GMA. *Id*. at 6-10.

<u>Board Discussion</u>:

The sole focus of Bonney Lake's (and Orting's) challenge to Amendment 11 is LU-UGA Objective 1.2 related to the "safety factor." Significantly, Bonney Lake does not challenge Amendment 10, which allocates the 2022 population it must accommodate. Further, Bonney Lake fails to cite specific CPPs or make a showing of how the goals cited in the statement of the Legal Issues are violated. The thrust of the briefing by Bonney Lake, Orting and Roy voices more disappointment in the decision made by the County rather than demonstrating how the County's action fails to comply with the goals and requirements of the Act.

In addressing the cities' issues it is significant to note what is **not** at issue. Neither Bonney Lake nor Orting disputes that the GMA charges Pierce County with the responsibility of sizing, locating and designating UGAs. Likewise, neither city disputes that OFM establishes the population forecasts that must be accommodated by the County and its cities; nor do the cities dispute that Pierce County is charged with allocating portions of the OFM population to the incorporated and unincorporated urban areas of the UGA. Neither City challenged Amendment 10, which allocated the 2022 population within the County. Neither city disputes that the GMA authorizes the use of a market [safety] factor in sizing and designating the UGA. Finally, neither city asserts that the County's use of a 25% market or safety factor is unreasonable. What the cities do object

to is the use and consideration of this 25% market factor on a county-wide basis for the entire UGA as a component of determining whether individual city UGAs should be adjusted.

Did the County overstep its authority in evaluating its UGA by considering a 25% safety factor for the entire UGA (collectively) rather than considering each individual UGA? – **No**.

The County, as well as the Cities, has discretion in discharging their GMA duties. Consideration of the market or safety factor on a county-wide basis rather than applying it to specific UGAs designated for specific cities is not unreasonable nor contrary to the GMA. As noted *supra*, the sizing, location and designation of the UGA and the allocation of population is a County function under the GMA. Likewise the County is responsible for preparing a county-side land capacity analysis in support of its UGA designations. Further, the County must involve its cities as well as other interests groups in its discussions, but the County ultimately is held accountable for these decisions. Therefore the County's evaluation of all the urban land within the UGAs of the County, and the application of the 25% safety factor in the collective context, is an appropriate and reasonable decision for the County. The Board notes that RCW 36.70A.115[19] 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.

Did the County usurp the authority of individual jurisdictions to project their own growth and needs for UGA extensions? – **No**.

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 forecast prepared by OFM and allocated by the County that drives and governs GMA planning – not the projections of individual cities. Nonetheless, jurisdictions have the opportunity to participate and provide input into OFM's population forecasting process, and in the County's allocation

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[19] RCW 36.70A.115 provides:

> Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, *taken collectively*, *adoption of amendments* to their comprehensive plans and/or development regulations *provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth*, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management.

(Emphasis supplied).

of the OFM population within the County. It is noteworthy that neither Bonney Lake nor Orting challenged OFM's population forecast[20] or the County's allocation of that population – including Amendment 10. The Board notes that the County's allocation of population not only assigns population to the municipal limits, but also to the "unincorporated" UGA adjacent to cities, especially the "satellite cites." *See* Table 19.20-6, Amendment 10, *supra*. 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 its GMA authority and its action in adopting Amendment 11 was not clearly erroneous.

Did the County collaborate with its cities in adopting Amendment 11? – **Yes**.

It is clear from the record that the City of Bonney Lake opposed Amendment 11 (*See* Ex. 318), and that the GMCC and PCRC recommended denial of this amendment (*See* attachments to Bonney Lake PHB: 9/9/04 GMCC meeting minutes, at 7-8; and 10/21/04 PCRC meeting minutes, at 4; *see also* the Council's Findings of Fact pertaining to Amendment 11, at Ex. K to Ordinance No. 2004-87s, at 14-15.). The fact that the GMCC and PCRC were involved in the deliberations and offered a recommendation to the County evidences a collaborative process where the jurisdictions worked jointly together regarding this question. But the County has discretion, and is not bound by such recommendations; its duty is to comply with the goals and requirements of the GMA. Additionally, the County argues that all Pierce County jurisdictions worked collaboratively in developing the CPPs, delineating the UGAs and undertaking the BLR. Nonetheless, it is the County's decision to make regarding the use of the market or safety factor. Here Petitioners have failed to carry their burden of proof in demonstrating that the County's action did not comply with the goals and requirements of the Act. The Board is not persuaded that the County's adoption of Amendment 11 was clearly erroneous, so Petitioners' challenge must fail.

Did the County violate the intent of the Act or WAC 365-195-335(3)? – **No**.

As the Board has often stated,[21] the CTED guidelines are recommendations and are advisory only, they impose no GMA duty upon a jurisdiction. Additionally, the Board defers to the decision of the County regarding the application of the safety factor – this is clearly within the legislative intent regarding deference found in RCW 36.70A.3021.

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[20] *See* RCW 36.70A.280(1)(b)

[21] *See: Twin Falls, et al., v. Snohomish County*, CPSGMHB Case No. 93-3-0003c, Final Decision and Order, (Sep. 7, 1993), at 21; *Children's Alliance v. City of Bellevue*, CPSGMHB Case No. 95-3-0011, Order Partially Granting Bellevue's Dispositive Motion, (May 17, 1995), at 12; *Cole v. Pierce County*, CPSGMHB Case No. 96-3-0009c, Final Decision and Order, (Jul. 31), at 22; *MBA v. Snohomish County*, CPSGMHB Case No. 01-3-0016, Final Decision and Order, (Dec. 13, 2001), at 7; and *King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Order on Reconsideration and Clarification, (Dec. 15, 2003), at 4.

The County's adoption of Amendment 11, as challenged by Bonney Lake, was not clearly erroneous. Bonney Lake's Legal Issue 1, 2, 3 and 4 are dismissed.

Does the County authorize Community Planning Committees to make the final decisions regarding UGA expansions? – **No**.

Futurewise's Legal Issue 2, pertaining to the use of community planning groups in the GMA planning decisions is unfounded [Amendment 2, again]. The scenario posited by Futurewise is that these groups can make recommendations to the County regarding the de-designation of ARLs to a Reserve -5 designation, and that the Reserve -5 designation indicates land that may be potentially included in UGAs. Thus, Futurewise argues the process is "turned on its head" – apparently meaning that it is not the County Council making UGA decisions from a county-wide perspective; but instead the County adhering to the choices of the representatives of a community plan area.

The Board reminds Futurewise that community or subarea plans are not segmented or insulated from the goals and requirements of the GMA (See RCW 36.70A.080(2)). Also, as the Board stated in its discussion of the role of subarea planning groups in potential ARL de-designations, *supra*:

> [A]ny 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. The Board concurs with the County's explanation regarding the role of subarea planning groups. The Board is not at all persuaded or convinced that the County erred in establishing these criteria and procedures for the designation of ARLs.

The same rationale applies here. 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, as discussed *infra*, by cities – these decisions are made by the County from a county-wide perspective. Again, the County's enlistment of community plan advisors is not clearly erroneous. Futurewise's Legal Issue 2 is dismissed.

Has Futurewise made the case that the County's UGAs are oversized? – **No**.

Futurewise's makes a simple factual argument on Legal Issue 1 in asserting that the County's UGAs are oversized. The sum of Petitioner's argument is that the 2002 BLR indicates that there is excess capacity within the UGA that can accommodate approximately 35% more population growth than is projected by OFM. The County does not dispute that the 2002 BLR acknowledges excess capacity for housing. The 2002 BLR states:

> Summarizing the Tables below [Table 18, 19 and 20 BLR], the Pierce County adjusted housing needs for 2017 total 101,951 units. The estimated housing capacity equals 140,303. This difference identifies an excess of dwelling units at approximately 38 percent.

2002 BLR, Conclusions, at 285.

However, Futurewise does not argue that Ordinance No. 2004-87s adjusted any UGA, by either increasing or decreasing UGAs, nor is it apparent to the Board that any UGA adjustments occurred in the Plan Update. Amendment 11 does not adjust or modify the size the County's UGAs, it merely establishes that the market factor is calculated collectively; nor does Amendment 10 modify any UGAs, this amendment simply incorporates the most recent OFM 2022 population forecast and allocates that population within the County.

While Futurewise has articulated an adequate summary of GMA law for sizing UGAs, Petitioner has failed to link these sizing requirements to either of the two Amendments challenged. It is not clear to the Board if Futurewise is contending that any excess capacity over a market factor of 25% [*i.e.* the additional 10 or 13% to yield the 38%] is unreasonable, or whether the entire excess capacity is objectionable to Petitioner.

Additionally, the 2002 BLR that Futurewise relies upon only addresses the 2017 population allocations; Futurewise fails to relate the 2017 population allocations to the 2022 allocations that are the subject of Amendment 10.[22] Futurewise argues that the County did not "show its work" in doing the population allocations, but does not dispute the County's findings and record in undertaking the population allocations in Amendment 10. It merely contends that the County must "right size" the UGA. Futurewise Reply, at 6.

In one phrase, in one sentence, of its PHB, Futurewise makes the conclusory statement that "[The County] did not do an analysis of the existing urban growth areas capacity." Futurewise PHB, at 12. However, Legal Issue 1 does not allege that the County failed to act as required by RCW 36.70A.130. Consequently, this aspect of the County's action is not an issue before the Board. While there may be merit to some of the convictions Futurewise asserts in relation to UGAs in the Update process, Petitioner has failed to present them in the context of this appeal. Given that the County did not alter any UGAs,[23] the Board must conclude that Petitioner Futurewise failed to carry its burden of

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[22] The Board notes that the total selected OFM 2022 population of 912,700 is less than OFM 2017 selected total population of 924,870; but Petitioner never presents this fact to the Board or develops it into any argument.

[23] The Board declines to respond to the County's argument that the language of RCW 36.70A.215(1)(b) ["(One of the two purposes of the BLR is to) identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter."] directs the County to rely on reasonable measures in lieu of "adjusting" UGAs, *i.e*. increasing or decreasing UGAs.

proof in demonstrating that the County failed to comply with goals 1 and 2 or the requirements of RCW 36.70A.110. Futurewise Legal Issue 1 is dismissed.

Conclusions

The Board finds and concludes that the County's adoption of the "collective safety factor" in Amendment 11 was **not clearly erroneous**. The adoption of the safety factor provisions in Amendment 11 **was guided by** Goals 1, 2, 5 and 11 – RCW 36.70A.020(1), (2), (5) and (11) and **complies** with the requirements of RCW 36.70A.040, .110 and .210 and .215.

The City of Bonney Lake's [as supported by Interveners Orting and Roy] Legal Issues 1, 2, 3 and 4 are **dismissed**.

As decided earlier, the Board finds and concludes that Amendment 2, pertaining to the use of subarea planning advisory bodies in making recommendations regarding county-wide land use designations and adjustments is **not clearly erroneous** and doe not violate RCW 36.70A.020(1) and (2), .040, .060 or .110. Futurewise's Legal Issue 2 is **dismissed**.

Regarding Futurewise's Legal Issue 1, pertaining to Futurewise's assertion that the County's UGA is oversized, the Board finds and concludes that Petitioner Futurewise **failed to carry its burden of proof** in demonstrating that the County failed to comply with goals 1 and 2 or the requirements of RCW 36.70A.110. Futurewise Legal Issue 1 is **dismissed**.

C. RURAL SEPARATOR DESIGNATION – Taylor

***Taylor* Legal Issues**

The Board's PHO sets forth the Taylor Legal Issues as follows:

1. *Does adoption of Amendment 5 of the Plan Update, establishing a new Rural Separator zoning classification, fail to comply with RCW 36.70A.020(2) and RCW 36.70A.070(5) when the majority of pre-existing Rural Separator designated lands contains lots consisting of 1 acre and are surrounded on all sides by urban areas?*

2. *Does the adoption of Amendment 5 of the Plan Update fail to comply with RCW 36.70A.020(2), RCW 36.70A.070(5) and RCW 36.70A.110(1) when the exceptions of Amendment 5 allowed under [Pierce County Code – PCC] 18A.33.290 and 18A.35.020 will result in less than 1du/5ac which is the same development allowed under Rural Separator zoning that existed prior to adoption of Amendment 5?*

The Challenged Action – Plan Update Amendment 5

Amendment 5, as adopted by Ordinance No. 2004-87s, addresses all the rural densities and limited areas of more intensive rural development (**LAMIRDs**) allowed in the rural areas. Rural Objective 2 provides as follows:

> **RUR Objective 2.**[24] Encourage a range of low-intensity rural development to maintain rural character.
>
> A. Residential development in rural areas should be allowed on lands which can physically support it without requiring urban level services.
>
> 1. Provide residential development where physical carrying capacity including septic capability is adequate to support development.
>
> B. Strive to create a development pattern in rural areas that uses land more efficiently than traditional development.
>
> 1. All development densities must be within the physical carrying capacity of the rural area parcels to support development.
>
> 2. Encourage cluster development to achieve some or all of the following benefits:
>
> a. Flexibility in site development that will result in a more efficient and environmentally sound use of land, while harmonizing with adjoining development and preserving the County's rural character.
>
> b. Minimizing the loss of or other adverse impacts on the County's most productive or commercially viable agricultural, forestry, mineral and other important resource lands.
>
> c. Preserving open space and rural character.
>
> d. Reducing development cost of housing in rural areas by reducing site development costs and allowing more intense use of buildable areas.
>
> e. Providing greater compatibility with adjacent development and land uses in rural areas by providing larger buffer strips and open spaces.
>
> f. Providing greater economic opportunity for rural property owners for use of land which has a substantial amount of development-limiting characteristics.
>
> g. In certain instances, preserving more efficient long-term land development options in rural areas.
>
> h. Utilization of open space in cluster development for passive recreation such as walking, biking, horse riding, and picnicking and for agricultural, fisheries, and forestry practices.
>
> i. Utilization of open space in cluster development for active recreation as a golf course.

[24] This Rural Objective is codified by the County at 19A.40.020 PCC.

3. Provide density incentives to encourage open space within the Rural Sensitive Resource, Rural 5 ~~Separator~~, Rural 10, Rural 20 and Rural 40 designations.

4. Tax relief should be made available for property designated as open space.

a. An owner of open space desiring current use classification under Chapter 84.34 RCW may file for such current use classification as provided for in Chapter 2.114 of the Pierce County Code.

5. The allowable number of dwelling units within individual development proposals shall be calculated using gross developable acreage.

C. The Rural area shall consist of ~~12~~ 10 designations:

1. Reserve 5;

~~2. Reserve 10;~~

2~~3~~. Rural Separator;

~~4. Rural 5;~~

3~~5~~. Rural 10;

4~~6~~. Rural 20;

5~~7~~. Rural 40;

6~~8~~. Rural Activity Centers;

7~~9~~. Rural Neighborhood Centers;

8~~10~~. Rural Gateway Communities;

911. Rural Airport; and

10~~12~~. Rural Sensitive Resource.

D. Rural Residential densities are as follows:

1. The Reserve 5 designation allows a density of 1 unit per 5 acres with maximum lot sizes for new lots not exceeding 12,500 square feet except that new lots may be increased to 21,780 square feet when residential densities are reduced to one unit per ten acres. The Reserve policies in this Element should be referenced for further clarification on development densities within the Reserve 5 designation.

~~2. The Reserve 10 designation allows a density of 1 unit per 10 acres with maximum lot sizes for new lots not exceeding 12,500 square feet. The Reserve policies in this Element should be referenced for further clarification on development densities within the Reserve 10 designation.~~

2~~3~~. The Rural Separator designation allows a density of 1 dwelling unit per ~~2.5~~ 5 acres. However, density incentives shall be provided when 50 percent or more of the property is designated as open space. The maximum density would be double the base density. Clustering of dwelling units is encouraged to maximize buffers and open space.

~~4. The Rural 5 designation allows a basic density of 1 dwelling unit per 5 acres.~~

~~However, density incentives should be provided when 50 percent or more of the~~
~~property is designated as open space. The maximum density incentive would be~~
~~double the basic density. Clustering of dwelling units is required to maximize buffer and open space.~~

~~5~~3. The Rural 10 designation allows a basic density of 1 dwelling unit per 10 acres. However, density incentives shall be provided. If 50 percent or more of the property is designated as open space, a density of 2 dwelling units per 10 acres is allowed. ~~If 75 percent or more of the property is designated as open space, a density of 2.5 dwelling units per 10 acres is allowed.~~ However, the minimum lot size for any new lots created shall be one acre. (This would allow a maximum of ~~ten~~ eight dwelling units on a 40-acre parcel.) Clustering of dwelling units is encouraged to maximize buffers and open space.

~~a. Rural 10 lands shall not be redesignated as Rural 5 lands unless the amendment area:~~

~~(1) is located within 3 miles of an urban growth area boundary; and~~

~~(2) abuts or is across a road right-of-way from Reserve 5, Reserve 10 or other Rural 5 lands; and~~

~~b. Rural 10 lands may be designated as Rural 20 or Rural 40 if deemed necessary to protect the natural environment or forest or agricultural resources.~~

~~6~~4. The Rural 20 designation allows a basic density of 1 dwelling unit per 20 acres. However, density incentives shall be provided. If 50 percent or more of the property is designated as open space, a density of ~~4~~2 dwelling units per 20 acres is allowed. ~~If 75 percent or more of the property is designated as open space, a density of 5 dwelling units per 20 acres is allowed.~~ However, the minimum lot size for any new lots created shall be one acre. (This would allow a maximum of ~~10~~ four dwelling units on a 40-acre parcel.) Clustering of dwelling units is encouraged to maximize buffers and open space. Open Space shall be located in the area adjacent to Designated Forest Land.

~~7~~5. The Rural 40 designation allows a basic density of 1 dwelling unit per 40 acres. However, density incentives shall be provided. If 50 percent of the property is designated as open space, a density of 2 dwelling units per 40 acres is allowed. If 75 percent or more of the property is designated as open space, a density of 2.5 dwelling units per 40 acres is allowed. However, the minimum lot size for any new lots created shall be one acre. (This would allow a maximum of 2.5 dwelling units on a 40-acre parcel.) Clustering of dwelling units is encouraged to maximize buffers and open space.

~~8~~6. The Rural Sensitive Resource Designation shall allow a density of 1 dwelling unit per 10 acres.

a. Ten-acre minimum lot sizes are encouraged in the Rural Sensitive Resource Designation. Densities may be increased to a maximum of ~~2.5~~ two dwelling units per 10 acres when it can be demonstrated to the satisfaction of Pierce County that the increase in density will not result in adverse impacts to the resources being protected.

b. An increase in density above basic density shall be allowed only when at least 75 percent of the gross acreage is dedicated in perpetuity as open space through deed restriction and other appropriate mechanisms. The open space tract shall be located so as to provide the greatest protection for fish and wildlife habitat and water quality protection. This open space area shall be located in a tract that is separate from any newly created lots.

c. Bonus densities shall not be permitted in the RSR designation unless it can be shown that the clustered residential development will not impact the integrity of the open space tract.

~~9~~7. Shoreline Density Exception. For the creation of new lots abutting a marine or lake shoreline as described in Title 20 of the Pierce County Code, Shoreline Management Use Regulations, the maximum densities shall be as follows:

a. The density requirements of the zone classification shall not apply to the first 200 feet of land abutting the shoreline. The allowed densities and lot widths for these lands shall be as follows:

(1) **Urban Shoreline Environment.** Lot width shall be no less than 50 feet. Lot size shall be no less than 15,000 square feet.

(2) **Rural Residential Shoreline Environment.** Lot width shall be no less than 75 feet. Lot size shall be no less than 1 acre.

(3) **Rural Shoreline Environment.** Lot width shall be no less than 100 feet. Lot size shall be no less than 2.5 acres.

(4) **Conservancy Shoreline Environment.** Lot width shall be no less than 150 feet. Lot size shall be no less than 5 acres.

b. For that portion of the original lot lying upland from the first 200 feet of land abutting the shoreline, the density requirement shall be that of the applicable zone classification. The area of the first 200 feet of land abutting the shoreline shall not be used when calculating the density in the upland portion of the lot.

c. Shoreline densities shall be reevaluated for consistency with the Growth Management Act through the planned Shoreline Master Program update scheduled to begin no later than June 1, 2006.

> E. Develop regulations which would allow one accessory dwelling unit on a residential lot where an existing single-family dwelling exists.
> 1. Accessory dwelling units shall not be included in the calculation of residential densities.

See Ordinance No. 2004-87s, Exhibit B, at 16-19; underlining denotes new language; ~~strike-through~~ denotes deleted language.

The pertinent change made by this amendment is that it changed the density allowed in a Rural Separator designation from one dwelling unit per two and one-half acres to one dwelling unit per five acres. In effect this change decreased the rural densities to require larger lots. However, the amendment also allowed a doubling of density [2 dus/5 acres] if 50% of the tract was dedicated to open space. The only location where the County employs this designation is for approximately 10,300 acres in the Mid-County community plan area [*aka* Summit-Waller area]. The Mid-county area is bounded on the east by the City of Tacoma; on the north by the City of Fife; and on the east by the City of Puyallup.

Applicable Law

Taylor alleges that the County's action of redefining the Rural Separator designation was not guided by Goal 2 – RCW 36.70A.020(2), which provides:

> Reduce the inappropriate conversion of undeveloped land into sprawling, low density development.

Another portion of the GMA at issue is the requirements for the Rural Element of a GMA Comprehensive Plan – RCW 36.70A.070(5). The pertinent portion at issue in the Taylor appeal provides:

> Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest or mineral resources. The following provisions shall apply to the rural element:
> (a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.
> (b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. *The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed*

to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agriculture, forest and mineral resource lands designated under RCW 36.70A.170. . . .

(Emphasis supplied).

The last provision of the GMA at issue in the Taylor PFR is RCW 36.70A.110(1) pertaining to the designation of urban growth areas. This section of the Act provides in relevant part:

> Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area within which urban growth shall be encouraged and *outside of which growth can occur only if it is not urban in nature*. . . .

(Emphasis supplied).

Discussion

Position of the Parties:

Petitioner Taylor argues that placing a Rural Separator designation in the middle of the County's urban growth area hinders rural residential development in the area. Petitioner argues that the purpose of the rural residential designations is to function as buffers *between urban and resource lands*, yet the Rural Separator [*e.g.* a rural residential

designation] acts as a buffer *between urban* designations. Taylor PHB, at 6-8. Additionally, Taylor contends that the Rural Separator does not reflect rural character since commercial and multi-family development along SR-512[25] is increasing pressure to urbanize the area. Also the designation is inconsistent with the rural objectives of the Comprehensive Plan which encourage densities to be within the physical carrying capacity of the land. Petitioner contends that the existing development pattern in the area reflects a carrying capacity for lots that are 2.5 acres or less, and thereby inconsistent with rural character. *Id*. at 8-11. Finally, Petitioner asserts that the density incentives offered in the Rural Separator designation contribute to rural sprawl, since use of the incentives would permit the equivalent of 1 du/2.5 acres. *Id*. at 12-16.

The County responds that the Rural Separator is a buffer between existing cities but also buffers ARLs along the Puyallup River and mineral resource lands within the area. County Response, at 47. The County acknowledges that a large portion of the area (88%) is already comprised of lots that are 2.5 acres or smaller, but that the Rural Separator designation attempts to end the pre-GMA sprawl pattern. Additionally, the County asserts that the area is not needed for urban development by the cities that surround it. *Id*. at 48-49. The County contends the GMA permits clustering and density incentives in rural areas. *Id*. 49-50.

Intervener Summit-Waller Community Association suggests Petitioner is really "seeking to force Pierce County's Summit-Waller area, along with his own property, into the urban growth area." SWCA Response, at 1. Intervener contends that: 1) the area should not be in a UGA since it is not needed to accommodate urban growth; 2) the Rural Separator does not create a new urban land use pattern; 3) protects existing resource lands and environmentally sensitive lands [especially stream corridors and canyons found in the northern half of the area]: and 4) is not inconsistent with the GMA. *Id*. at 2, 14-33.

In reply, Taylor argues that: 1) the Rural Separator cannot buffer ARLs and mineral resource lands from urban areas if these resource lands are *within* the Rural Separator designation; 2) the Mid-County area is not rural, but it is developed as suburban or urban and without density or sewer services; and 3) the density incentives will perpetuate sprawl.

Board Discussion:

It is undisputed that a significant portion of the Mid-County 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.[26] Much of this area was already platted and developed prior to the GMA. It

[25] SR-512, an east to west roadway, essentially bisects the Mid-County area.

[26] In *Bremerton, et al., v. Kitsap County* (***Bremerton***), CPSGMHB Case No. 95-3-0039c, Final Decision and Order, (Oct. 9, 2995), at 49, the Board stated: "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."

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 at 1 du/2.5 acres. However, as the Board has previously stated:

> 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, et al., and Port Gamble, et al., v. Kitsap County (***Bremerton/Port Gamble***), CPSGMHB Case No. 95-3-0039c coordinated with Case No. 97-3-0024c, Final Decision and Order, (Sep. 8, 1997), at 25.

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. Had the County not acted to correct this situation it would have been clearly erroneous. What is important, as the County argues, is what has been done to alter and change the situation so as to not perpetuate the existing sprawl. What the County has done with Amendment 5 and the Rural Separator designation is the finally establish a base density of 1 du/5 acres – a rural density. What the establishment of this designation does is end the perpetuation of the previously permitted sprawl pattern and protects what is left. It may not affect much land, and it is definitely something that could have been done earlier; nonetheless, now it is done with the effect of reducing continued low-density sprawl in the area.

The GMA explicitly allows cluster development and other innovative techniques such as density bonuses in the rural area. See RCW 36.70A.070(5)(b) and RCW 36.70A.090. Therefore, the County's inclusion of a density incentive program as part of the Rural Separator designation is not clearly erroneous.

The presence of ARLs, mineral resource lands, fish streams, wildlife, undeveloped canyon areas, open space and lack of sewers does give credence to the notion that the area has some vestige of its long gone rural character. However, being surrounded by cities and bisected by a major freeway, with its associated development, does not foster a traditional rural lifestyle. In the decades to come, infill and redevelopment opportunities are likely to present themselves in the Mid-County area as urban services become more accessible and the surrounding urban areas develop and expand. Although this area is not presently needed for the expansion of any urban areas of the surrounding cities, it is an area that should be kept in mind as a future area that could sustain urban expansion.

Conclusion

The Board finds and concludes that the County's adoption of the Rural Separator provisions in Amendment 5 was **not clearly erroneous**. The adoption of the Rural Separator provisions in Amendment 5 **was guided by** Goal 2 – RCW 36.70A.020(2),

complies with the requirements for the rural element in RCW 36.70A.070(5) and direction provided by RCW 36.70A.110(1).

Jerome Taylor's Legal Issues 1 and 2 are **dismissed**.

D. TRANSPORTATION ELEMENT – Futurewise

***Futurewise* Legal Issues**[27]

The Board's PHO sets forth the Futurewise's Legal Issue 6 as follows:

> 6. *Does adoption of the Plan Update fail to comply with RCW 36.70A.020(3) and (12), and RCW 36.70A.070(6) when it failed to adopt a transportation element as required by the deadline of December 1, 2004? [Petitioner notes Amendment 10 in reference to this issue.]*

The Challenged Action – Plan Update Amendments 5 and 10

Amendment No. 14, related to transportation connectivity, amended a portion of the County's GMA Plan's Transportation Element. However, Amendment 14 is not challenged. Instead, Futurewise alleges the County failed to update its Transportation Element when adopting Ordinance No. 2004-87s.

Applicable Law

The challenged GMA planning goals of RCW 36.70A.020, provide:

> (3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
>
> . . . .
>
> (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

[27] Futurewise posed eight Legal Issues, including a request for invalidity. Legal Issue Nos. 1 and 2 are discussed *supra* with the Urban Growth Area Legal Issues; Legal Issue No. 3 is discussed *supra* with the Agricultural Resource Land Legal Issues; Legal Issues 4 and 5 were **abandoned**, *supra*; Legal Issue No. 6 is discussed here; and Legal Issue No. 7 regarding Shoreline Densities; and Legal Issue 8, regarding Invalidity are covered in following sections of this Order, *infra*.

RCW 36.70A.070(6) sets forth the requirements to be included in a jurisdiction's Transportation Element. Futurewise does not argue that components are missing or inadequate, but instead asserts that the County has not updated its Transportation Element.

Discussion

Position of the Parties:

Petitioner's argument on this issue is brief. Futurewise argues that Ordinance No. 2004-87s does not comply with GMA because it fails to update the Comprehensive Plan's Transportation Element (**TE**). Petitioner claims that the 1992 Pierce County Transportation Plan (**PCTP**) was adopted prior to its Comprehensive Plan and, as such, does not take into account goals set forth in the present Comprehensive Plan. Futurewise PHB, at 43. Furthermore, because the PCTP was adopted in 1992 and has not been updated, it does not take into account the significant population growth experienced in Pierce County, nor does it consider 2022 population forecasts. *Id.* at 44.

Pierce County contends that Petitioner oversimplifies the issue and overlooks numerous actions taken after the initial adoption of the Comprehensive Plan which keep the Plan current and compliant. First, the County incorporated its 1992 PCTP, by reference, as the Comprehensive Plan TE in 1994. County Response, at 103. Second, the County updated its TE 1997 when it adopted, by incorporation, its Nonmotorized Transportation Plan (NMTP). *Id.* at 104. Third, the County included the TE Technical Appendix in 1999, which reorganized and updated information and analysis of the TE. *Id.* Finally, the County points to its five Community Plans that have been adopted since 1999; each of these Plans contains current transportation information and analysis for the specific Community Plan area. The County also notes that additional Community Plans and corresponding TE updates will be adopted by early 2006. *Id.* at 105, 109.

Pierce County also refutes Petitioner's argument that its prior transportation planning (and Community Plans) does not take into account the most current population forecasts. The County asserts that the applicable provisions of GMA specify, at most, ten-year forecasting. *Id.* at 112. The fact that the Office of Financial Management population projections for adopting UGAs now extend to 2022 does not invalidate the County's transportation plan, which in some cases extends only to 2017. *Id.*

Petitioner replies that the information used in preparing the TE and population allocations adopted in the Plan Update vary greatly. Specifically, Petitioner claims the Plan Update total population has dropped by more than 7,000 people between the 2017 and 2022 projections. Futurewise Reply, at 20. Futurewise notes that in some instances, individual city allocations have decreased by more than 10,000 residents. *Id.* at 21. Petitioner claims these differences are too significant not to have far-reaching transportation implications that must be addressed in the TE of the Comprehensive Plan. *Id.*

Board Discussion:

First the Board notes that any decrease 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 TE for unincorporated Pierce County. As to the assertion that the County has not updated its TE, the Board finds no merit to Futurewise's claim.

Futurewise implies that the County is relying upon a pre-GMA Transportation Plan to satisfy the requirements of RCW 36.70A.070(6). The record demonstrates otherwise. The Board acknowledges that the County incorporated its 1992 Transportation Plan into its 1994 adoption of the County's GMA Plan and notes that the TE has been amended numerous times since initial adoption. Additionally, individual Community Plans for unincorporated Pierce County have been adopted that address transportation issues specific to each Community Plan area. *See* Appendices A, C, D, E, H, I, K, L, M, N, O, P, and Q. Additionally, the County notes that the financing of transportation projects is included in the County's Capital Facilities Element (**CFE**), not the TE, and the CFE has also been updated regularly. *See e.g.* Appendices H and O. Therefore, there is no merit in Petitioner's assertion that the County has failed to maintain and update its Transportation Element to reflect changes over time. The Board also notes that Futurewise points to no evidence in the record indicating that Petitioner, during the public review process preceding adoption of the Plan Update, suggested to the County that a wholesale revision of the TE was necessary as part of the Plan Update.

The thrust of Petitioner's limited argument is that the County's failure to update the TE makes it impossible to determine whether transportation goals are being met. [Significantly, Petitioners do not even suggest transportation goals are **not** being met.] Petitioner bases that belief on the County's failure to square its population forecasts from the TE, which extend to 2017, with those of the amended Comprehensive Plan, now extending to 2022. Futurewise Reply Brief, at 20. However, the traffic forecasting requirements of RCW 36.70A.070(6)(iii)(E) require "at least ten year" forecasting; and do not mandate that traffic forecasting extend until 2022. The Board notes that the TE Technical Appendix, adopted in 1999 extends to 2017, thereby complying with the forecasting requirements. *See* Appendix D.

RCW 36.70A.020(3) encourages a variety of transportation options coordinated with city and county comprehensive plans. Pierce County's TE contains provisions for its road system, transit services, nonmotorized transportation, air service, port service and ferry service. *See* Appendix M. RCW 36.70A.020(12) requires public facilities and services be adequate to serve development without falling below established levels of service. Pierce County's TE Technical Index contains detailed findings on facility and service needs and the CFE provides for financing of identified needs. *See* Appendices D, H and O.

Does the Plan Update's TE implement the County's Land Use Element, and are they consistent? The County's updated Comprehensive Plan adopts a 2022 population projection of 912,700 residents. *See* Amendment 10. The County's TE is based upon a 2017 population projection of 920,330 residents. *See* Appendix D. This decrease is less than one percent of the entire County forecast population. Petitioner has not demonstrated that this *de minimus* shift has rendered the County's TE out of compliance with the Act, particularly the County's Land Use Element for unincorporated Pierce County. The Board acknowledges the County's Community Planning effort as a means of refining its land use and transportation planning to better address needs in the individual Community Plan areas; and that these Community Plans will be of assistance to neighboring cities as they address their transportation planning issues.

In short, Petitioner has failed to meet its burden of proof in demonstrating that Pierce County's TE does not comply with the Act.

Conclusion

The Board finds and concludes that Futurewise has **failed to carry its burden of proof** in demonstrating that Pierce County does not comply with RCW 36.70A.020(3), RCW 36.70A.020(12) and RCW 36.70A.070(6). Futurewise Legal Issue No. 6 is **dismissed**.

E. SHORELINE DENSITIES

Futurewise Legal Issues

The Board's PHO sets forth Futurewise's Legal Issue 7 as follows:

7. *Does adoption of the Plan Update [Amendment 5] fail to comply with RCW 36.70A.020(1) and (2) and RCW 36.70A.070(5) when it allows shoreline development in rural areas at densities greater than one unit per five acres?*

The Challenged Action – Plan Update Amendment 5

Amendment 5, quoted *supra*, sets forth the density requirements for the rural areas of Pierce County. Rural Objective 2. D.7 (amending PCC 19A.40.020 D.7) establishes the densities that apply to the areas within 200 feet of the shoreline. In essence, the County is relying upon the densities set forth in its Shoreline Management Regulations (adopted pursuant to the SMA – Chapter 90.58 RCW) as the basis for regulating these rural areas adjacent to the shoreline. The relevant provisions of Amendment 5 provide as follows:

> ~~9~~7. Shoreline Density Exception. For the creation of new lots abutting a marine or lake shoreline as described in Title 20 of the Pierce County Code, Shoreline Management Use Regulations, the maximum densities shall be as follows:

a. The density requirements of the zone classification shall not apply to the first 200 feet of land abutting the shoreline. The allowed densities and lot widths for these lands shall be as follows:

(1) **Urban Shoreline Environment.** Lot width shall be no less than 50 feet. Lot size shall be no less than 15,000 square feet.
(2) **Rural Residential Shoreline Environment.** Lot width shall be no less than 75 feet. Lot size shall be no less than 1 acre.
(3) **Rural Shoreline Environment.** Lot width shall be no less than 100 feet. Lot size shall be no less than 2.5 acres.
(4) **Conservancy Shoreline Environment.** Lot width shall be no less than 150 feet. Lot size shall be no less than 5 acres.

b. For that portion of the original lot lying upland from the first 200 feet of land abutting the shoreline, the density requirement shall be that of the applicable zone classification. The area of the first 200 feet of land abutting the shoreline shall not be used when calculating the density in the upland portion of the lot.

c. Shoreline densities shall be reevaluated for consistency with the Growth Management Act through the planned Shoreline Master Program update scheduled to begin no later than June 1, 2006.

Applicable Law

In brief, RCW 36.70A.070(5) outlines the requirements for the Rural Element of a county's Comprehensive Plan. This element governs "lands that are not designated for urban growth, agriculture, forest, or mineral resources." Since 1996, minimum lot sizes of 5 acres or larger are generally accepted as appropriate rural densities. "Any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas." *Sky Valley., et al., v. Snohomish County* (***Sky Valley***), CPSGMHB Case No. 95-3-0068c, Final Decision and Order, (Mar. 12, 1996), at 46; *see also, 1000 Friends of Washington v. Snohomish County*, CPSGMHB Case No. 04-3-0018, Final Decision and Order, (Dec. 13, 2004), at 10. However, the Act does provide for limited areas of more intensive rural development (**LAMIRDs**) to recognize pre-GMA development patterns and where such areas can be delineated by a logical outer boundary and the areas within can be minimized and contained. *See* RCW 36.70A.070(5)(d). Here Petitioner asserts that the provisions of Amendment 5 that allow densities below one dwelling unit per five acres do not comply with the Act.

Discussion

Position of the Parties:

Petitioner's argument on this issue is brief. "[The provisions of Amendment 5 – shoreline density exceptions] allows development within designations of Rural Residential Shoreline Environment and Rural Shoreline Environment of densities as great as one unit per acre and one unit per 2.5 acres respectively. This clearly fails to protect the rural character of the shoreline environments and [fails to comply with the GMA.]" Futurewise PHB, at 46.

In response the County acknowledges that a minimum lot size of 5 acres is generally a minimum acceptable rural density, but the County asserts that the "exception for the Rural Residential and Rural Shoreline Environments only applies to 200 feet of land abutting the shoreline, otherwise the County's normal rural densities apply." County Response, at 113-114. The County also notes that Amendment 5 recognizes that these designations will be reevaluated during 2006 when it will be updating its Shoreline Management Regulations. *Id*. The County then argues that "the vast majority of the County's shorelines have already been developed at urban or suburban densities despite the fact that they are located in the rural area. . . . The vast majority of these residences pre-date the adoption of the GMA; those that were constructed after the GMA was enacted constitute infill at the same level of shoreline density as the pre-existing houses. Therefore, the County considers these rural areas as limited areas of more intensive rural development." *Id*. at 116. "[These] shorelines have pre-existing [*i.e*. pre-GMA] development on them." *Id*. The County argues that the logical outer boundary (**LOB**) for this LAMIRD lies 200 feet landward of the shoreline. *Id.* at 117.

In reply, Futurewise claims that the County has based its LAMIRD designations on lots, rather than the "built environment" that the statute requires. Futurewise Reply, at 23. Second, Petitioner contends that, other than its response brief, the County has not designated these areas as LAMIRDs or established an LOB on its maps and that "a blanket 200 foot boundary countywide cannot comply [with the Act] since it is not based on an actual development pattern of each LAMIRD in 1990 and does not seek to minimize and contain it." *Id*. at 24; and HOM Transcript, at 148. Third, Petitioner argues that the County LAMIRD provisions apply three development intensity standards countywide without regard to the intensity of existing development, meaning development existing at 1990. *Id*.

Board Discussion:

Pierce County's unincorporated shorelines, the areas affected by the challenged amendment, are located primarily on the Key and Gig Harbor peninsulas and include Fox, Ketron and Anderson islands. A review of the County's Future Land Use Map (adopted by Ordinance No. 2004-87s) indicates that the vast majority of these shoreline

areas are designated as Rural 10 – 1 du/10 acres. (*See* FLUM). Likewise, the County's updated zoning maps (also adopted by Ordinance No. 2004-87s) indicate these same areas are zoned as Rural 10 – 1 du/10 acres. (*See* Ordinance 2004-87s, Exhibit J). There is no delineation or other indication on either the FLUM or the zoning maps that a "shoreline LAMIRD" exists in these shoreline areas. There is no indication on any of the maps indicating that the designations shown on the maps are not in effect within 200 feet of the shoreline and that the 1du/10 acres designations do not apply. *Id*.

There are no findings of fact in the Ordinance indicating that the County has adopted logical outer boundaries delineating *existing development* for a shoreline LAMIRD extending to all, or most, of its shorelines within 200 feet of ordinary high water. (*See* Ordinance No. 2004-87s, Exs. K and L[28]). The Board questions whether the County could even make a finding that applying a 200 foot landward boundary from the shorelines would "contain and minimize" development within a LAMIRD. This is especially true when: 1) the amendment allows "new development" without reference to infill development; and 2) such development would be intensified in close proximity to an environmentally sensitive area such as the shoreline.

While the County's brief argues extensively about such a LAMIRD, the 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 shorelines management regulations to govern within 200 feet of the shoreline without regard to its rural land use or zoning designations. In light of this, the fact remains that the County's Amendment 5, Shoreline Density Exceptions, allows densities above what are appropriate rural densities. *i.e.* lots smaller than five acres. As such, the Board finds and concludes that the Shoreline Density Exceptions of Amendment 5 do not comply with requirements for the Rural Element as contained in RCW 36.70A.070(5). In light of this conclusion, the Board also determines that allowing such urban densities in the rural area is not guided by Goals 1 and 2 – RCW 36.70A.020(1) and (2) since such development constitutes urban sprawl in the rural area.

It may well be that some of the areas within the County's rural shorelines would qualify as LAMIRDs. (*e.g.* boat launches and marinas or other compact shoreline developments.) However, the Board cannot accept the County's position that virtually the entire area within 200 feet of the shorelines in unincorporated Pierce County constitutes a LAMIRD. The Board acknowledges that it may well be that portions of the shoreline are already built and developed at urban densities and this development occurred prior to the GMA. However, the County cannot perpetuate such a development pattern. The County saw fit to cease perpetuating such sprawling development patterns

[28] The findings for Amendment 5, Ex. K, at 12, mention LAMIRDs, but make no mention of any shoreline LAMIRDs; likewise, Ex. L, at 22-23, mentions "A shoreline density exception for creating new lots on marine or lake shorelines of the state," but does not indicate where such areas may be located or how much land is potentially affected. Additionally, neither set of findings address the establishment of a 200' logical outer boundary, infill development, or how such areas are to be minimized and contained.

in the Mid-County Plan area [the Taylor challenge – Amendment 5, *supra*]; it should do likewise here. Therefore, the Board will remand Amendment 5, specifically the Shoreline Density Exceptions, to the County with direction to bring them into compliance with the provisions of the Act – RCW 36.70A.070(5).[29]

Conclusion

The Board finds and concludes that the County's adoption of Amendment 5, specifically the Shoreline Density Exceptions, in Ordinance No. 2004-87s, was **clearly erroneous**. The adoption of the Shoreline Density Exception in Amendment 5 **fails to comply** with the rural element requirements of RCW 36.70A.070(5) and was **not guided by** Goals 1 and 2 – RCW 36.70A.020(1) and (2). Therefore, the Board will **remand** this provision of Ordinance No. 2004-87s with direction to the County to take the necessary legislative action to comply with the Act.

F. INVALIDITY

The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18. Nevertheless, two of the four Petitioners, Futurewise and Taylor, have framed the request for invalidity as a Legal Issue:

Futurewise Legal Issue No. 8 requests Invalidity if the County is found noncompliant with any of the allegations made in the Futurewise Legal Issues:

8. *Does the continued validity of the these violations of the GMA substantially interfere with the fulfillment of the goals 1, 2, 8, 10 and 11 of the GMA such that the enactment at issue should be held invalid pursuant to RCW 36.70A.302?*

The Board did find noncompliance in relation to Futurewise's Legal Issue 7, pertaining to the County's Shoreline Density Exception in Amendment 5. Therefore the Board will consider Futurewise's prayer for invalidity.

Taylor's Legal Issue No. 3 requests Invalidity if the County is found noncompliant with any of the allegations made in the Taylor Legal Issues:

3. *Does the County's adoption of Amendment 5 of the Plan Update, as it relates to the Rural Separator zoning designations under the Plan Update, substantially*

[29] The Board reminds the County as it begins consideration of revisions to its Shoreline Master Program that its GMA Plan and its Shoreline Master Plan, an element of the GMA Plan, need to be internally consistent. Likewise, development regulations must implement the Plan.

interfere with RCW 36.70A.020(1) and (2) such that the Hearings Board should hold these actions invalid?

The Board did not find noncompliance in relation to any of the Taylor Legal Issues. Therefore it will not consider Taylor's request for invalidity.

Applicable Law

RCW 36.70A.302 provides:

> (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
>
> (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
>
> (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
>
> (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
>
> (2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or City. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the City or city or to related construction permits for that project.

Findings of Fact and Conclusions of Law

In its discussion of Legal Issue 7, *supra*, the Board found and concluded that the Shoreline Density Exception of Amendment 5 (Ordinance No. 2004-87s) did **not comply** with the rural element requirements of RCW 36.70A.070(5) and its action was **not guided** by Goals 1 and 2 – "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner" and "Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development." The Board is also **remanding** Ordinance No. 2004-87s, Amendment 5 (Shoreline Density Exception) with direction to the County to comply with the requirements of the GMA.

The Shoreline Density Exception included in Amendment 5 of Ordinance No. 2004-87s allows development on lots of less than 5 acres within 200 feet of the County's shorelines

in rural areas. Development at these densities is not an appropriate rural density, especially at the scale permitted by the County. Development at these densities constitutes low-density sprawl. Absent a declaration of invalidity, vesting to these regulations would perpetuate such low-density sprawl. The Board finds and concludes that the continued validity of the Shoreline Density Exceptions of Amendment 5 to Ordinance No. 2004-87s substantially interfere with Goals 1 and 2 – RCW 36.70A.020(1) and (2). Therefore, based upon the Board's discussion and analysis in Legal Issue 7, *supra*, the Board enters a **Determination of Invalidity** with respect to the Shoreline Density Exceptions of Amendment 5 of Ordinance No. 2004-87s.

V. ORDER

Based upon review of the Petition for Review, the GMA, prior Orders of this Board and the other GMHBs, case law, the Board's August 2, 2004 Final Decision and Order in *Orton Farms v. Pierce County*, CPSGMHB Case No. 04-3-0007c, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. Pierce County's adoption of Amendment 2, in Ordinance No. 2004-87s, including LU-AG Objectives 16, 17 and 18 and the Agricultural Resource Lands map, **complies** with the definitions, goals and requirements of the Act for identifying, designating and protecting Agricultural Resource Lands – RCW 36.70A.020(8), .030(2) and (10), .040, .050, .060 and .170 as interpreted and applied in *Orton Farms v. Pierce County*, CPSGMHB Case No. 04-3-0007c, Final Decision and Order, (Aug. 2, 2004). Therefore, the Board enters a **Finding of Compliance** in that matter and **closes** the *Orton Farms* case.

2. Also related to Agricultural Resource Lands, Pierce County's adoption of Amendment 2, in Ordinance No. 2004-87s, including LU-AG Objectives 16, 17 and 18 and the Agricultural Resource Lands map, **was not clearly erroneous**. Amendment 2 **complies** with RCW 36.70A.020(8), .030(2) and (10), .040, .050, .060 and .170. The Buttes LLC's Legal Issue Nos. 1(a) and (b), 2 and 3 are **dismissed**; and Futurewise and Friends of Pierce County Legal Issue Nos. 2 and 3 are **dismissed**.

3. Pierce County's adoption of Amendment 11, in Ordinance No. 2004-87s, pertaining to the "collective safety factor," was **not clearly erroneous**. Amendment 11 **was guided by** Goals 1, 2, 5 and 11 – RCW 36.70A.020(1), (2), (5) and (11) and **complies** with the requirements of RCW 36.70A.040, .110 and .210 and .215. The City of Bonney Lake's [as supported by Interveners Orting and Roy] Legal Issue Nos. 1, 2, 3 and 4 are **dismissed**; Futurewise Legal Issue No. 2 is also **dismissed**.

4. Regarding Futurewise's Legal Issue 1, pertaining to the claim that the County's UGAs are oversized, Futurewise has **failed to carry its burden of proof** in demonstrating that the County's action in adopting Amendments 10 and 11, in Ordinance No. 2004-87s, was not guided by goals 1 and 2 or the Act's UGA requirements – RCW 36.70A.020(1) and (2), and .110. Futurewise's Legal Issue No. 1 is **dismissed**.

5. Pierce County's adoption of Amendment 5, in Ordinance No. 2004-87s, pertaining to the "Rural Separator" was **not clearly erroneous**. This portion of Amendment 5 **was guided by** Goal 2 – RCW 36.70A.020(2), and **complies** with the requirements for the Rural Element in RCW 36.70A.070(5) and direction provided by RCW 36.70A.110(1). Jerome Taylor's Legal Issue Nos. 1 and 2 are **dismissed**.

6. Regarding Futurewise Legal Issue No. 6, pertaining to the claim that the County had failed to update its Transportation Element, Futurewise has **failed to carry its burden of proof** in demonstrating noncompliance with RCW 36.70A.020(3) and (12) and .070(6). Futurewise's Legal Issue No. 6 is **dismissed**.

7. Pierce County's adoption of Amendment 5, in Ordinance No. 2004-87s, specifically the "Shoreline Density Exceptions," [Futurewise's Legal Issue No. 7] was **clearly erroneous**. These provisions of Amendment 5 were **not guided** by goals 1 and 2 and **do not comply** with the rural element requirements – RCW 36.70A.020(1) and (2) and .070(5).

8. Further, the adoption of the "Shoreline Density Exceptions," in Amendment 5 of Ordinance No. 2004-87s substantially interferes with the fulfillment of Goals 1 and 2 – RCW 36.70A.020(1) and (2). Therefore the Board enters a **Determination of Invalidity**, as specified *supra*, with respect to this provision of Amendment 5.

9. The Board **remands** Ordinance No. 2004-87s, Amendment 5, specifically the "Shoreline Density Exceptions" to Pierce County with direction to take appropriate legislative action to amend, modify, repeal or otherwise revise these provisions to comply with goals 1 and 2 and the provisions of RCW 36.70A.070(5), as interpreted by the Board and set forth in this Order. The compliance schedule for the remand period is as follows:

   - By no later than **January 31, 2006**, the County shall take appropriate legislative action to bring its Plan Update into compliance with the goals and requirements of the GMA, as interpreted and set forth in this FDO.

- By no later than **February 13, 2006**, the County shall file with the Board an original and four copies of a Statement of Action Taken to Comply (**SATC**) with the GMA, as interpreted and set forth in this FDO. The SATC shall attach copies of legislation, with attachments, enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on Petitioners. By this same date, the County shall also file a "**Remand Index**," listing the procedures (meetings, hearings, etc.) occurring during the remand period and materials (documents, reports, analysis, testimony, etc.) considered during the remand period in taking the remand action.

- By no later than **February 22, 2006**,[30] Petitioners may file with the Board an original and four copies of Response to the County's SATC. Petitioners shall simultaneously serve a copy of their Response to the County's SATC on the County.

- By no later than **March 1, 2006,** the County may file with the Board an original and four copies of the County's Reply to Petitioners Response, if any. The County shall simultaneously serve a copy of such Reply on Petitioners.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **10:00 a.m. March 16, 2006** at the Board's offices.

If the County takes legislative action to comply with the GMA prior to the January 31, 2006 deadline set forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 4th day of August 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Bruce C. Laing, FAICP
Board Member

[30] February 23, 2006 is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. *See* RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the County's remand actions comply with the Legal Issue addressed and remanded in this FDO.

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

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

APPENDIX A

Procedural Background

A. General

On January 7, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the City of Bonney Lake (**Petitioner I** or **Bonney Lake**). The matter was assigned Case No. 05-3-0002. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioner challenged Pierce County's (**Respondent** or **County**) adoption of Ordinance No. 2004-87s, specifically "Amendment 11," which updates and amends the County's Comprehensive Plan (**Plan Update**). The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On January 26, 2005, the Board received a PFR from Jerome Taylor (**Petitioner II** or **Taylor**). The case was assigned CPSGMHB Case No. 05-3-0009. Edward G. McGuire is also the PO in this matter. Taylor also challenges Pierce County's adoption of Ordinance No. 2004-87s, specifically "Amendment 5," in the Plan Update. Again, the basis for the challenge is noncompliance with various provisions of the GMA.

On January 28, 2005, the Board issued a "Notice of Hearing and Order of Consolidation" in the above-captioned case. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case.

On February 4, 2005, the Board received a PFR from The Buttes LLC (**Petitioner III** or **The Buttes**). The case was assigned CPSGMHB Case No. 05-3-0015. Edward G. McGuire is the PO in this matter. The Buttes, like Bonney Lake and Taylor, challenges Pierce County's adoption of Ordinance No. 2004-87s, including "Amendment 2," in the Plan Update. The basis of the challenge is noncompliance with various provisions of the GMA.

Also on February 4, 2005, the Board received a PFR from Futurewise and Friends of Pierce County (**Petitioner IV** or **Futurewise**). The case was assigned CPSGMHB Case No. 05-3-0016. Edward G. McGuire is the PO in this matter also. Futurewise, like the previous Petitioners, challenges Pierce County's adoption of Ordinance Nos. 2004-87s and 2005-128s, the Plan Update and technical corrections ordinance. The basis of the challenge is noncompliance with various provisions of the GMA.

On February 7, 2005, the Board issued an "Order of Consolidation and Notice of Hearing." This 2/7/05 Order consolidated the four PFRs into one consolidated case – CPSGMHB Consolidated Case No. 05-3-0016c. The PHC date remained the same, only the date for the Final Decision and Order was changed due to the consolidation.

On February 24, 2005, the Board conducted the Prehearing Conference in this matter, and issued the Prehearing Order (**PHO**) on March 1, 2005. The PHO established the final schedule in this matter and set forth the Legal Issues to be decided by the Board.

B. Intervention

On January 28, 2005, the City of Roy filed a "Motion to Intervene" in Bonney Lake's challenge to Pierce County's Plan Update Ordinance. The City of Bonney Lake was served with the motion, but not Pierce County.

On February 24, 2005, the Board held the prehearing conference in the above captioned matter. The City of Roy did not appear. Other than the representative of Bonney Lake, none of the parties had been served with the City of Roy's motion. To expedite the Board's consideration of the motion, following the conference, the Board faxed copies of Roy's motion to all the parties.

On February 25, 2005, the Board received a letter from the City of Roy indicating it has served its motion on the County.

On March 8, 2005, having received no objections to the City of Roy motion, the Board issued an "Order on Intervention," **granting** intervention to the City of Roy in support of the City of Bonney Lake.

On March 4, 2005, the Board received "Summit Waller Community Association's Petition to Intervene in City of Bonney Lake's Petition for Review."

On March 7, 2005, the Board received "City of Orting's Petition to Intervene in the City of Bonney Lake's Petition for Review."

On March 11, 2005, the Board received "Respondent Pierce County's Response to the Summit-Waller Community Association's Petition to Intervene."

On March 14, 2005 the Board received "Motion in Opposition to Summit-Waller Community Association's Petition to Intervene."

On March 15, 2005, the Board received "Summit-Waller Community Association's Response to Petitioner's Opposition to Intervention."

The Board did not receive any responses to the Orting Motion.

On March 17, 2005, the Board issued an "Order on Intervention," **granting** intervener status to both the City of Orting (in support of the City of Bonney Lake) and the Summit-Waller Community Association (in support of Pierce County).

C. Motions to Supplement the Record and Amend the Index

On February 23, 2005 the Board received Pierce County's "GMA Index in Consolidated Case No. 05-3-0016c" (**Index**). The Index contains 24 pages, listing approximately 12 items per page, each with an Index number (indicated as CC#).

On February 24, 2005, the Board received "Pierce County's GMA Index" (**Index**) in this matter.

On March 10, 2005, the Board received "City of Bonney Lake's Motion to Supplement the Record." Bonney Lake attached four proposed exhibits to its motion. Also on March 10, 2005, the Board received "City of Orting's Motion to Supplement the Record." Orting attached one proposed exhibit to its motion. Both motions were timely.

On March 16, 2005, the Board received, as requested, two copies of Ordinance No. 2004-87s – black-lined version with attached maps.

On March 24, 2005, the Board received "Respondent Pierce County's Response to Petitioners' Motions to Supplement the Record." Pierce County did not object to Orting's motion, or to three of the items included in Bonney Lake's motion. However, the County objected to one of the items included in Bonney Lake's motion. The County's response was timely filed.

On March 30, 2005, the Board received "City of Bonney Lake's Reply in support of Motion to Supplement the Record." Bonney Lake's reply was timely filed.

On April 5, 2005, the Board received two copies of the Core Documents requested by the Board – Pierce County's County-wide Planning Policies.

On April 5, 2005, the Board issued its "Order on Motions to Supplement the Record." The Order supplemented the record with Orting's exhibit, and supplemented the record with 3 of the 4 exhibits offered by Bonney Lake. The Order summarized the items comprising the record in this case. **In total four supplemental exhibits were added to the record**.

On May 18, 2005, the Board received Pierce County's "2nd Amended GMA Index – CPSGMHB Consolidated Case No. 05-3-0016c" (**Amended Index**). The 2nd Amended Index contains 27 pages, listing approximately 12 items per page, each with an Index number (indicated as CC#). CC#s 45-50, 113-144, 312, 324, 348 and 461-462 are additions to the original Index.

D. Dispositive Motions

There were no dispositive motions filed in this matter.

E. Briefing and Hearing on the Merits

On April 29, 2005, the Board received "City of Bonney Lake's Prehearing Brief," with five attached exhibits [A-F], (**Bonney Lake PHB**).

On May 2, 2005, the Board received "City of Orting's Prehearing Brief," with one attached exhibit [A], (**Orting PHB**). Also on May 2, 2005, the Board received "Petitioner Taylor's Prehearing Brief," with seven attached exhibits [referenced by Core Documents and Index number], (**Taylor PHB**)

On May 3, 2005, the Board received "City of Roy's Prehearing Brief" (**Roy PHB**). There were no exhibits attached to the one paragraph brief. On this same date, the Board also received: "The Buttes LLC Opening Brief," with 25 attached exhibits [1-25], (**Buttes PHB**); and "Futurewise's and Friends of Pierce County's Prehearing Brief," with eight attached exhibits [referenced by Index number], (**Futurewise PHB**).

On May 23, 2005, the Board received "Respondent Pierce County's Prehearing Brief," with 53 attached exhibits [referenced by Core Document of Index number] (**County Response**). Later that day, the Board received Intervener's "Prehearing Brief of Respondent Summit-Waller Community Association," with seven attached exhibits [A-C and by Index number], (**SWCA Response**).

On May 25, 2005, the Board issued and "Order Setting Location for Hearing on the Merits [Schedule for HOM Argument]."

On May 31, 2005, the Board received electronic versions of: "Petitioner Taylor's Prehearing Reply" (**Taylor Reply**); "The Buttes LLC Reply Brief" (**Buttes Reply**); and "Petitioner Futurewise's & Friends of Pierce County's Reply Brief" (**Futurewise Reply**). No exhibits were received with the electronic filings.[31]

The Board did not receive a reply brief from either Petitioner Bonney Lake or Intervener Orting.

On June 2, 2005, the Board held a hearing on the merits at the Pierce County Environmental Services Building/Tacoma ESB Building, 9850 – 64th Street West, University Place, WA, 98467. Board members Edward G. McGuire, Presiding Officer, Bruce C. Laing and Margaret A. Pageler were present for the Board. Petitioner The Buttes LLC was represented by William T. Lynn and Margaret Y. Archer. The City of Bonney Lake was represented by Kathleen J. Haggard. Petitioner Jerome Taylor attended and was represented by Simi Jain. Petitioner Futurewise was represented by John Zilavy. Intervener City of Orting was represented by George S. Kelly. Intervener

[31] The Futurewise Reply referenced three exhibits and the Taylor Reply referenced one exhibit. These exhibits were attached to the hard copy of the Reply Briefs the Board received on June 1, 2005.

City of Roy was represented by Harry R. Boesche. Respondent Pierce County was represented by M. Peter Philley and Alan Rose. Anna Graham was also in attendance for the County. Intervener Summit-Waller Community Association was represented by David Mann[32] and Daniel Haire. Court reporting services were provided by Christy Sheppard of Byers and Anderson LLC. Board Externs Rachael Henrickson, Sabrina Wolfson and Bradley Paul also attended. The Board adhered to the argument schedule set forth in its May 25, 2005 Order. The hearing convened at 9:00 a.m. and adjourned at approximately 4:30 p.m. A transcript of the proceeding was ordered by the Board. (**HOM Transcript**).

On June 9, 2005, the Board received the HOM Transcript.

[32] On May 23, 2005 the Board received a "Notice of Appearance" indicating that David Mann would be representing the Summit-Waller Community Association.