

# CENTRAL PUGET SOUND

## GROWTH PLANNING HEARINGS BOARD

### STATE OF WASHINGTON

CITY OF SNOQUALMIE,)CASE NO. 92-3-0004

)

Petitioner,)FINAL DECISION AND ORDER

)

v.)

)

KING COUNTY,)

)

Respondent.)

)

)

### A. PROCEDURAL HISTORY OF THE CASE

On July 6, 1992, the King County Council enacted Ordinance No. 10450 (the Ordinance) {Exhibit 1}. The Ordinance adopted county-wide planning policies (CPPs) for King County. The City of Snoqualmie (Snoqualmie) filed a Petition for Review with the Central Puget Sound Growth Planning Hearings Board (the Board) on September 1, 1992. The petition challenged the CPPs for failing to comply with the Growth Management Act (GMA or the Act). On September 4, 1992, the City of Issaquah (Issaquah) filed a Petition for Review with the Board, also challenging the CPPs. That matter was assigned Board Case No. 92-3-0005. On the same day, Snoqualmie filed an Amended Petition for Review. On September 8, 1992, the Board's presiding officer in this case, M. Peter Philley, sent a letter notifying the parties that the hearing on the Petition for Review would be held on November 30, 1992.

The Board held a prehearing conference in this matter on October 19, 1992. The attorneys for King County and Snoqualmie orally stipulated that the Issaquah and Snoqualmie cases should be consolidated. Issaquah's attorney, who was present at the prehearing in this case, agreed. An Order of Consolidation (combining the Issaquah and Snoqualmie cases) and Prehearing Order was entered on October 21, 1992. At the parties' request, and because of the consolidation, the Board changed the hearing date to January 13, 1993.

On October 26, 1992, King County filed an Index of Record pursuant to WAC 242-02-520. On October 30, 1992, Issaquah filed a Motion for Continuance Beyond 180-Day Limit; King County filed its Motion for Continuance Beyond 180-Day Limit on November 2, 1992. Both parties asked the Board to waive the 180-day requirement of RCW 36.70A.300 for the Board to

enter a final decision and order. On November 4, 1992, the Board entered an Order Denying Motion for Continuance Beyond 180-Day Limit.

On November 20, 1992, Snoqualmie and King County each filed Preliminary Exhibit Lists and Preliminary Witness Lists.

On November 24, 1992, Snoqualmie filed a Motion for Leave to Amend Petition [for Review] with the Board, requesting permission to incorporate Issaquah's legal issues about fiscal impact analysis as its own. The motion also alerted the Board to the possibility that Issaquah would be withdrawing from the case. On November 30, 1992, all three parties filed a proposed Agreed Order of Dismissal without Prejudice with the Board, stipulating that Issaquah's claims in the case could be dismissed without prejudice. The Board entered the Order of Dismissal without Prejudice removing Issaquah from the case on December 1, 1992.

As a result of Issaquah being dismissed from the case, all of its legal issues, including one relating to the adequacy of the environmental impact statement prepared for the CPPs, were automatically withdrawn. Consequently, the Board-raised legal issue regarding the Board's SEPA jurisdiction was also withdrawn.

On November 30, 1992, King County filed a Motion to Supplement Record to Allow Testimony of Witnesses. On the same day, Snoqualmie re-submitted a Preliminary Exhibit List and Preliminary Witness List and a Motion to Supplement Record. In response to these motions, the Board entered an Order to Supplement the Record on December 1, 1992. The order authorized King County to call two designated witnesses and specified which of the supplemental documents listed by Snoqualmie would be admitted, allowed to be offered or not admitted. King County filed its Response to [Snoqualmie's] Motion for Leave to Amend [Petition for Review] on December 4, 1992. The County objected to Snoqualmie's motion to add an issue to this case about fiscal impact analysis that had originally been raised by Issaquah. The City's Rebuttal to County's Response to Motion to Amend was filed on December 9, 1992. A hearing on the motion was held by telephone conference call on December 15, 1992. The Board entered an Order Granting City of Snoqualmie's Motion to Amend Its Petition for Review and an Order Amending Prehearing Order on December 16, 1992, that added Issue No. 7 to the case.

Subsequently, on December 17, 1992, Snoqualmie filed a Second Amended Petition for Review to incorporate the fiscal impact analysis legal issue.

King County and Snoqualmie filed Final Exhibit Lists on December 10, 1992. Snoqualmie filed an Amended Final Exhibit List on December 11, 1992, as did King County on January 8, 1993. Also on January 8, 1993, the parties filed a Stipulation as to Exhibits, stipulating to all exhibits before the Board and transmitting copies of the documents. It is the controlling exhibit list in this case; all references to exhibits in this document are bracketed { } and refer to exhibit numbers as designated by the Stipulation as to Exhibits.

Snoqualmie filed the Petitioner's Opening Brief on December 18, 1992; the Brief of Respondent King County was filed on January 8, 1993; and the Petitioner's Reply Brief was filed with the Board on January 11, 1993.

The hearing on the merits of the Second Amended Petition for Review was held on January 13,

1993, in the Issaquah City Council Chambers. Court reporting services were provided by Janet Neer of Robert H. Lewis & Associates. Present were the Board's three members: Joe Tovar, Chris Smith Towne, and M. Peter Philley, presiding officer. Patrick B. Anderson, Snoqualmie City Attorney, represented Snoqualmie. King County was represented by Charles E. Maduell, Senior Deputy Prosecuting Attorney. Snoqualmie called no witnesses to testify; King County called one witness, Craig Larsen, Deputy Director of the King County Parks, Planning and Resources Department.

As a preliminary matter at the hearing, Exhibit Nos. 3, 9 and 11 (as designated in the Stipulation as to Exhibits) were admitted; Exhibit No. 10 (as designated in the Stipulation as to Exhibits) was not admitted (reference to that exhibit, designated as Exhibit No. S-7 in the Petitioner's Opening Brief at page 18, was struck). In addition, Mr. Anderson requested permission to re-submit Petitioner's Opening Brief with up-dated citations to exhibit numbers as designated in the Stipulation as to Exhibits. The presiding officer granted the request, and a Petitioner's Opening Brief (Corrected) was filed with the Board on January 26, 1993. Finally, Mr. Maduell orally corrected the reference on page 10, line 17 of the Brief of Respondent King County to refer to Exhibit 14 rather than 16. Mr. Anderson corrected the reference in his brief on pages 15 and 16 to indicate "three" years instead of "two".

On January 25, 1993, King County's Post-Hearing Brief was filed with the Board and Snoqualmie filed Petitioner's Post-Hearing Brief and Motion to Supplement Record with two additional exhibits. King County filed a Response to Motion to Allow Supplemental Evidence, opposing the motion, on February 5, 1993. The presiding officer gave the parties the option of waiving oral argument on the motion; each party did so. On February 9, 1993, the Board issued an Order Denying Motion to Allow Supplemental Evidence.

On February 9, 1993, both parties filed a Proposed Final Decision and Order.

## **B.FINDINGS OF FACT**

1. On October 16, 1991, King County prepared an "Agreement among King County, the City of Seattle, and Suburban Cities and Towns in King County for the Growth Management Planning Council of King County" {Exhibit 2}. The Interlocal Agreement created the Growth Management Planning Council (GMPC). Pursuant to Section 2a, five members of the GMPC are from the King County Council. {Exhibits 2 and 12; see also Exhibit 1}.

2. On December 9, 1991, the Snoqualmie City Council authorized Jeanne Hansen, the Mayor of Snoqualmie, to sign the Interlocal Agreement {Exhibit 2}. Besides Snoqualmie, the record reveals several other jurisdictions entering into the same Interlocal Agreement in early December, 1991. Only the town of Skykomish signed the agreement before December 1, 1991. {see Exhibit 12}.

3. On December 16, 1992, Jeanne Hansen, the Mayor of Snoqualmie, sent a letter to Tim Hill, the King County Executive, notifying him that Snoqualmie had signed the Interlocal Agreement. {Exhibit 2}.

4. On December 21, 1991, King County prepared a modified "Agreement among King County,

- the City of Seattle, and Suburban Cities and Towns in King County for the Growth Management Planning Council of King County".(Interlocal Agreement No. 2) {Exhibit 13}.
- 5.Snoqualmie did not enter into Interlocal Agreement No. 2.
  - 6.Nesbitt Planning and Management, Inc. prepared a paper entitled "Economic Foundations for Growth Management", dated March 23, 1992.The paper summarized interviews conducted with "six key people" and included a literature review.{Exhibit 18}.
  - 7.A "Literature Review Summary - Fiscal/Economic Impacts Framing Study", dated April 15, 1993, was prepared for the GMPC by Nesbitt Planning and Management, Inc. {Exhibit 19}.
  - 8.On April 22, 1992, the GMPC issued a draft version of the CPPs.{see Exhibit 3 and Exhibit 15}.
  - 9.On May 14, 1992, the GMPC held a meeting in Seattle to review the CPPs.{Exhibit 16}.A "Draft" Fiscal Analysis, dated May 12, 1992 {Exhibit 15} and prepared by King County staff member Carol Gagnet, was submitted to and discussed by the GMPC.It was subsequently a part of the record before the King County Council and was available during its deliberation. {Testimony of Craig Larsen, Deputy Director of the King County Department of Parks, Planning and Resources}.
  - 10.On May 27, 1992, King County prepared a third version of an "Agreement among King County, the City of Seattle, and Suburban Cities and Towns in King County for the Growth Management Planning Council of King County". (Interlocal Agreement No. 3) {Exhibit 14}
  - 11.Snoqualmie did not enter into Interlocal Agreement No. 3.
  - 12.On June 3, 1992, the GMPC prepared a "Recommendation to the King County Council" regarding the CPPs.{Exhibit 1}.
  - 13.On June 8, 1992, the Ordinance was introduced and read for the first time before the King County Council.{Exhibit 1}.
  - 14.On June 19, 1992, the Snoqualmie City Attorney, Patrick B. Anderson, wrote a letter to Audrey Gruger, Chair of the King County Council.Attached to the letter was a position paper.The letter and position paper voiced opposition to the proposed CPPs and requested that the CPPs not be adopted in its current form. {Exhibit 3}.
  - 15.The King County Council held two public hearings on the CPPs on June 22, 1992 and June 29, 1992.{see Exhibit 3and testimony of Craig Larsen.}
  - 16.On June 26, 1992, Thomas J. Nesbitt of Nesbitt Planning and Management, Inc., transmitted to Michael Alvine of the King County Planning and Community Development Department "the work products of the final phase of the Fiscal/Economic Impacts Study".{Exhibit 17}.
  - 17.On July 20, 1992, Snoqualmie Mayor Jeanne Hansen sent a letter to King County Executive Tim Hill, notifying him that she could not recommend that the Snoqualmie City Council enter into another interlocal agreement with King County regarding the GMPC, nor could she recommend that the city council ratify the CPPs.{Exhibit 20}.
  - 18.On July 6, 1992, the King County Council passed Ordinance No. 10450, adopting the CPPs and ratifying the CPPs for unincorporated King County.The GMPC's "Recommendation to the King County Council" was incorporated by reference and attached to the Ordinance.The

Ordinance establishes a phased process for further revisions to the King County CPPs and directs the GMPC to perform additional tasks and make recommendations to the King County Council. Phase I consists of adopting the GMPC's version of the CPPs. {Exhibit 1}.

19. On September 1, 1992, Snoqualmie filed its Petition for Review with this Board.

20. On September 8, 1992, the King County Council passed Motion No. 8766 relating to the CPPs and "...declaring King County's policy that appeals of the policies by cities to the growth management hearings board should be allowed at the conclusion of Phase II of county implementation of the Growth Management Act as set forth in Ordinance 10450." {Exhibit 4}.

21. On September 14, 1992, the King County Council passed Motion No. 8776 {Exhibit 5}. This motion approved a work program for Phase II, the refinement of the CPPs. The work program included three attachments that were specified in the Motion. In addition, although not specifically mentioned in the Motion itself, a "Fiscal/Economic Analysis Work Program" was attached to the Motion as Exhibit 1.

22. On September 28, 1992, the King County Council passed Motion No. 8794, declaring that the CPPs had been ratified by ten jurisdictions representing over seventy percent of the population of King County. {Exhibit 6}.

### C. STATEMENT OF LEGAL ISSUES

***1. Within the express provisions of what is commonly referred to as the Growth Management Act, primarily codified as Chapter 36.70A RCW, and within the legislative intent of the Act, may a county's adopted county-wide planning policies lawfully establish a regional planning agency, the King County Growth Management Planning Council (GMPC), with authority to establish specific population and employment goals for individual cities, or authority to direct population and employment to one urban growth area (city) or away from another?***

***2. Within the express provisions of what is commonly referred to as the Growth Management Act, primarily codified as Chapter 36.70A RCW, and within the legislative intent of the Act, may a county's adopted county-wide planning policies lawfully establish a regional planning agency, the King County Growth Management Planning Council (GMPC), with an authority or role in the establishment of urban growth areas, particularly under the express provisions of RCW 36.70A.110?***

***3. Within the express provisions of the what is commonly referred to as the Growth Management Act, primarily codified as Chapter 36.70A RCW, and within the legislative intent of the Act, may a county's adopted county-wide planning policies lawfully establish a regional planning agency, the King County Growth Management Planning Council (GMPC), with any role or authority as arbiter of disputes concerning the consistency of local comprehensive plans under RCW 36.70A.100?***

***4. May a county's adopted county-wide planning policies lawfully require cities to adopt a specific land use regulation or prohibit cities from expanding existing zoning capacity for business/office parks?***

***5. May a county's adopted county-wide planning policies, specifically King County's LU-26 and LU-27, lawfully require a city's local comprehensive plan to include any specific community characteristics, including design standards and types of businesses or scale of development within the city?***

***6. May a county's adopted county-wide planning policies lawfully require inclusion in a city's local comprehensive plan of substantive policies, specifically requiring each city to make decisions that support the program of the regional planning agency, the King County GMPC, or the urban centers concept?***

***7. Whether King County conducted the fiscal analysis required by the GMA at RCW 36.70A.210 (3)(h) prior to adopting its county-wide planning policies?***

#### **D. GENERAL DISCUSSION**

The Board notes that the solutions that are appropriate and necessary to address the unique circumstances and problems of Central Puget Sound may not pertain to other regions of the state. This is consistent with the regional diversity that is one of the hallmarks of Washington's approach to growth management. Although geographically the smallest of the three Board jurisdictional regions created by RCW 36.70A.250(1)(b), the Central Puget Sound region has over 56% of the state's population and the greatest concentration of local governments (four counties, seventy three cities, including five of the six largest in the state, and 274 special districts). It also includes three counties which have a greater percentage of their population living in unincorporated areas than in incorporated areas (Kitsap, Pierce and Snohomish).<sup>[1]</sup>

The Board finds that to resolve the legal issues raised in the Snoqualmie case, it must first answer three fundamental and inter-related questions. What is the *purpose* of county-wide planning policies, what is their *nature*, and what is their *effect*? Following a general discussion of these three questions, the Board then answers the specific legal issues.

##### **1. The purpose of county-wide planning policies**

County-wide planning policies (CPPs) are defined at RCW 36.70A.210(1) as:

a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter.<sup>[2]</sup>

In turn, the purpose of this framework<sup>[3]</sup> is to ensure the consistency of the comprehensive plans of cities and counties (RCW 36.70A.210(1)) that have, "...in part, common borders or related regional issues" (RCW 36.70A.100).

The following significant terms in the definition of a CPP are undefined by the GMA: "policy" and "framework". Where, as here, a statute does not define a material term, the word should be given its ordinary meaning. In ascertaining common meaning, resort to dictionaries is acceptable. *TLR, Inc. vs. Town of La Conner*, 68 Wn. App. 29, 33, P.2d (1992). (citations omitted).

*Black's Law Dictionary* 1041 (5th ed. 1981) defines "policy" as:

The general principles by which a government is guided in its management of public affairs, or the legislature in its measures.

*Black's* (supra) at 1074 defines "principle" as:

A fundamental truth or doctrine, as of law; a comprehensive rule or doctrine which furnishes a basis or origin of others;

Finally, *Webster's New World Dictionary of the American Language* 553 (2nd College Ed. 1984) defines "framework" as:

the basic structure, arrangement, or system.

The CPPs fit the description of a "basic structure, arrangement, or system" that consists of "principles" that guide "public affairs" or "the legislature in its measures" which, in the latter instance, the Board takes to mean the legislative body of a city or county. The CPPs are an inter-related body of policies used within the geographic scope of the county on the subject of "related regional issues".

Having reviewed how the Act has defined a CPP, the Board turns to the question of the purpose of a CPP. The Board holds that there is both an *immediate* purpose for county-wide planning policies, and a *long-term* purpose. The Act sets certain deadlines for tasks to be accomplished in the near term and sets direction for the meeting of long-term objectives, such as the preferred pattern of land use, service delivery and local governance. The basis for this conclusion is the language of the Act, particularly sections RCW 36.70.A.100 and .210, which were adopted in 1990 and 1991, respectively.<sup>[4]</sup>

Crucially, a requirement for coordination and consistency is codified at RCW 36.70A.100:

The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.

There was no means specified within SHB 2929 to measure this consistency directive. The mechanism was created with the adoption of ReSHB 1025 in 1991 and has been codified as the requirement for county-wide planning policies.

The Act required that the CPPs be adopted by July 1, 1992, because their *immediate* purpose was to assure consistency among the comprehensive plans that the GMA requires to be adopted by July 1, 1993.

Because a reviewing body is "required to give effect to every part of a statute, whenever possible, and should not deem a clause superfluous, unless it is the result of obvious error,"<sup>[5]</sup> the Board concludes that an important long term purpose of a CPP is revealed in the opening words of RCW 36.70A.210(1):

The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. (emphasis added)

The Board therefore holds that a *long term* purpose of county-wide planning policies is to

facilitate the transformation of local governance in the urban growth area so that urban governmental services are provided by cities and rural and regional services are provided by counties. Within the span of GMA plans<sup>[6]</sup>, urban growth is to occur primarily within the boundaries of incorporated cities, while counties are to become divested of urban local government service delivery responsibilities and invested with responsibilities for regional policy making and service delivery.<sup>[7]</sup>

The role of cities as the providers of urban services to the urban growth area (and the implicit role of other local governments, such as counties, as providers of local government services for 'nonurban' areas) is set forth in RCW 36.70A.030(16) which states that "urban governmental services" include:

those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and not normally associated with nonurban areas." (emphasis added).

The legislatively preferred governance configuration for the urban growth area is further revealed by the Act's definitions of "urban growth"<sup>[8]</sup>, and the explicit statements at RCW 36.70.A.210(3) and RCW 36.70A.110(3).

RCW 36.70A.210(3) lists the subjects to be addressed in the CPPs:

- (a) Policies to implement RCW 36.70A.110; [Note: RCW 36.70A.110 is the section of the GMA dealing with urban growth areas].
- (b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;
- (c) Policies for siting public capital facilities of a county-wide or state-wide nature;
- (d) Policies for county-wide transportation facilities and strategies;
- (e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;
- (f) Policies for joint county and city planning within urban growth areas;
- (g) Policies for county-wide economic development and employment; and
- (h) An analysis of the fiscal impact. (emphasis added)

RCW 36.70A.110 is entitled "Comprehensive Plans -- Urban Growth Areas". Subsection (3) states that:

"Further, it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas" (emphasis added).

When these citations in the Act are read together, they lead to a conclusion that can be paraphrased as "**that which is urban should be municipal**". The corollaries to this conclusion are "**that which is rural should be county-served**" and "**that which is regional policy making and services should be provided by a county**".

The Act provides an urban growth area governance framework, then, for considering the specific requirements of county-wide planning policies listed at RCW 36.70A.210(3). Moreover, it gives

clearer meaning to sub-paragraph (h) which requires that the CPPs must address "an analysis of the fiscal impact". The Board holds that such analysis must include a strategy or a process whereby the actions of cities and counties will move them toward the legislatively preferred result wherein cities are the "primary providers of urban services" and "counties are regional governments within their boundaries".<sup>[9]</sup>

The Board finds that the short time-frame that the Act allocated for this task means that the fiscal analysis was to proceed with dispatch. This is consistent with the GMA's predilection to set direction and take action in a timely fashion (for example, numerous deadlines for compliance and the 180-day time-frame for Board review). To meet the time constraint, it follows that the CPPs may, upon first adoption, simply include an outline of the issues related to the transformation of governance in the urban growth area and a strategy for dealing with the fiscal consequences. Because there is no limitation on the frequency that the CPPs can be amended, flexibility exists to develop and adjust the fiscal strategy as growth and GMA plans proceed. As circumstances and priorities shift, it can be assumed that adjustments will be made to keep the CPPs current and viable.

## **2. The nature of county-wide planning policies**

Opinion varies as to the nature of county-wide planning policies. They are claimed to be policies, meta-policies<sup>[10]</sup>, plans, comprehensive plans, regional plans or simply guidelines. Some argue that they are procedural, others that they have substantive effect. The essence of the question addressed herein is, just what *are* county-wide planning policies?

### *a. The CPPs are policy documents, as opposed to land use regulations*

Most basically, the CPPs are policy documents. As cited in the previous section, the definition of policy refers to "principles", "plans" or "courses of action" pursued by government. Such definitions describe the nature of the two most significant policy documents referred to in the Act: the CPPs and the comprehensive plans of cities and counties. Policy documents such as a CPP and comprehensive plans are not "development regulations" under the GMA. RCW 36.70A.030(7) states that:

"Development regulations" means any controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances.

The items listed in this definition are fundamentally different in nature than policy documents. The items listed are of a like kind, in that they address development standards, dimensional criteria, permit processes and procedures that directly affect the servicing or development of individual parcels of land.

The authority and mechanics that govern "development regulations" are set forth in a variety of non-GMA statutes. By contrast, the authority to prepare the CPPs and comprehensive plans is intrinsic to Chapter 36.70A RCW. The relationship between policy documents and development

regulations is discussed below in the review of the effect of the CPPs on comprehensive plans and the effect of comprehensive plans on development regulations..

*b. The CPPs are not comprehensive plans, but a 'framework' for comprehensive plans*

While both the CPPs and comprehensive plans are policy documents under the GMA, it is clear that the CPPs are not comprehensive plans. By the Act's explicit terms, the CPPs are a framework for comprehensive plans. It may be convenient for others to refer to the CPPs as a "plan"; however, the Board notes that no such explicit reference is given in the Act, nor does such labeling of the CPPs alter their nature or effect.

RCW 36.70A.210(1) states that:

"...a county-wide planning policy is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. (emphasis added).

Snoqualmie argued that the legislature did not intend for the CPPs to be, in essence, county-wide comprehensive plans or regional plans providing substantive direction to the content of city comprehensive plans. To bolster this argument, Snoqualmie cited the words "solely" and "framework" to suggest a de minimus structure and effect.

The Board concludes that the word "solely" was intended to differentiate this body of policy from the comprehensive plans of cities and counties, but it does not minimize the importance of the CPPs. The difference between the Board's and Snoqualmie's interpretation of the word "framework" is the key. The Board interprets "framework" to mean much more than a formless procedural amoeba. Rather, framework means a skeleton constructed of substantive bones. Individual counties have great discretion in how detailed they wish to be in their CPPs and what additional CPPs they choose to add.<sup>[11]</sup> There is no requirement that the CPPs of any two counties have a similar length, format or level of detail. The Board concludes, therefore, that within the GMA context of local choice and regional diversity, the term "framework" should be construed as flexible and enabling rather than narrow and limiting.

*c. The CPPs may be general or detailed, but should always be clear and cogent*

The CPPs may be very general or very detailed. Some CPPs may be written as goal or value statements. Others may be written as measurable objectives or targets. The more abstract CPPs are, the more room will be left for interpretation. This may be a desired and appropriate choice; however, it comes with the consequence that inconsistency will be more difficult to prove. On the other hand, CPPs that include numeric standards or otherwise objective benchmarks, such as jobs or housing targets, are more measurable and achievable and thus more readily a cause of action for alleged non-compliance.

Likewise, CPPs that are written in a clear and cogent fashion, with key terms and phrases defined, will be less open to varying interpretations. Finally, all CPPs should be internally consistent to avoid sending conflicting messages. The more internally inconsistent the CPPs are,

the less consistent comprehensive plans will have to be.

Moreover, the Board must determine the weight and meaning that are attached to the words 'shall' and 'should' in the CPPs.<sup>[12]</sup> Is 'shall' directive? Is 'should' simply advisory? Under the GMA, the very nature of policy documents has changed. Policy statements, in both the CPPs and comprehensive plans, are now substantive and directive. The Board therefore holds that the use of either auxiliary verb in a GMA policy document must be construed to have specific directive meaning.

While counties are free to use either, both, or neither of these verbs in the CPPs (just as cities and counties are free to use either, both or neither in comprehensive plans), the difference in meaning between 'shall' and 'should' is now one of degree rather than kind. For instance, the King County CPPs use the word 'shall' 290 times and the word 'should' 48 times. While even the 'shoulds' now have directive and substantive meaning, the 'shalls' impart a higher order of substantive direction. If the county means to provide advice rather than substantive direction with a CPP, then it is obliged to explicitly qualify such use of the word 'should' or to clarify the intent of the words selected in a preamble or footnote.

The Board also notes that great care should be taken in selecting the action verb as well as the auxiliary verb. For example, consider the variations when coupling the action verbs "adopt" and "study" with the auxiliary verbs 'shall' and 'should'. The effect of the different combinations in ascending order of directiveness would be:

"Cities should study ...."

"Cities shall study ..."

"Cities should adopt..."

"Cities shall adopt..."

The decision of how directive any part of the CPPs are intended to be relative to local comprehensive plans can vary from county to county and from CPP to CPP. However, the county legislative body, with ultimate authority to adopt the CPPs, should take great care in the selection of both auxiliary and action verbs since the Board will interpret them differently (i.e. "shall" does not equal "should" and "study" does not mean "adopt").

In conclusion, the Board holds that the CPPs are a body of policy that must be interpreted to possess the force of law in order to fulfill the immediate purpose of RCW 36.70A.100 "to ensure that city and county comprehensive plans are consistent" as well as the long term purposes of RCW 36.70A.210, including a preferred result in local government service delivery and regional policy-making.

### **3. The effect of county-wide planning policies**

#### *a. Policy documents under the GMA*

The preceding section clarified that CPPs are policy documents. In general theory, policy is a body of thought that guides or directs specific implementing actions. In the context of planning and growth management, policy documents provide direction to implementing measures, such as

capital projects and programs, development regulations and the issuance of permits.

Two of the most profound impacts of the GMA upon planning are that: (1) planning is now required of all cities and counties and (2) consistency is now required of that planning.<sup>[13]</sup> The *mandated* countywide planning policies and comprehensive plans, as defined and developed under the authority of Chapter 36.70A RCW, are fundamentally different than the *voluntary* comprehensive plans authorized under the Planning Enabling Act, Chapter 36.70 RCW.

Under Chapter 36.70 RCW and the case law developed around it, land use policy plans were 'just' advisory 'blueprints' that did not bind local governments when they considered adoption of development regulations or the issuance of development permits. The GMA creates a new and critical connection between policy decisions and implementing actions such as land use regulations and capital projects. Under Chapter 36.70A RCW, consistency demands that policy documents now give substantive direction to local government implementing actions. Cities and counties, therefore, must take great care to say precisely what they mean in policy documents, because the consistency requirement of the GMA requires that they do what they say.

#### *b. Discussion of the effect of Countywide Planning Policies on Comprehensive Plans*

Given that policy documents under GMA are now directive rather than advisory, what is the effect of the CPPs on comprehensive plans? After answering that question, it is appropriate to then clarify the effect of comprehensive plans on development regulations

The CPPs certainly have a procedural effect. The requirement that plans be coordinated suggests the need to jointly decide upon procedural matters such as schedules, formats, common data bases and methods for communication. However, RCW 36.70A.100 requires not just coordination but also consistency. To achieve the consistency requirement of the GMA requires more than simply a coordination of the mechanics of process, but rather a substantive and directive relationship between the policies in the CPPs and the policies in the comprehensive plans of cities and counties. Therefore, the Board concludes that the *effect* of the CPPs is both procedural and substantive.

In reaching the conclusion that the CPPs provide substantive direction to city (and county) comprehensive plans, the Board was required to reconcile two explicit references in the Act which, when read in isolation, would defeat the intent and purpose of the other. RCW 36.70A.100 requires consistency between the comprehensive plans of cities that share a common border or related regional interests, while RCW 36.70A.210(1) states "Nothing in this section shall be construed to alter the land-use powers of cities".<sup>[14]</sup>

In considering this apparent conflict, the Board first notes that "the land use powers of cities" is not defined by the Act. The Board holds that this phrase refers to "development regulations" and other controls such as right-of-way or street vacation, annexation and environmental review procedures. The mechanics and lawful extent to which such land use powers may be wielded by local governments is established and limited by a variety of statutes, including but not limited to the State Environmental Policy Act (Chapter 43.21C RCW), the Shoreline Management Act (Chapter 90.58 RCW), the Public Disclosure Act (Chapter 42 RCW) and the annexation and zoning authority derived from Titles 35 and 35A, RCW.

The Board is persuaded that nothing in the Act can alter the fundamental authority or mechanics that derive from the statutes that authorize and limit the land use powers of cities. While it may be necessary for the Board in certain cases to review other statutes when reviewing petitions alleging noncompliance with Chapter 36.70A RCW or SEPA for GMA actions, we have held that we have no jurisdiction to rule on alleged non-compliance with those other statutes.<sup>[151](#)</sup>

Further, the Board observes that the CPPs provide substantive direction not to development regulations, but rather to the comprehensive plans of cities and counties. Thus, the consistency required by RCW 36.70A.100 and RCW 36.70A.210 is an *external* consistency between comprehensive plans. The CPPs do NOT speak directly to the implementing land use regulations of cities and counties. Thus, the Board concludes that the requirement for consistency in RCW 36.70A.100 and .210 does not require an alteration to the land use powers of cities.

It is important to note, however, that RCW 36.70A.210(1) states that "Nothing in this section shall be construed to alter the land-use powers of cities" (emphasis added). The land use powers of cities, as defined by the Board above, are, in fact, altered by other provisions of the GMA. Perhaps the clearest example is RCW 35.14.005 which states:

No code city located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond an urban growth area.

Another GMA section that alters the land use powers of cities is RCW 36.70A.120, which requires an *internal* consistency between a city's development regulations and its adopted comprehensive plan. The section reads:

"Within one year of the adoption of its comprehensive plan, each county and city that is required or chooses to plan under RCW 36.70A.040 shall enact development regulations that are consistent with and implement the comprehensive plan. These counties and cities shall perform their activities and make capital budget decisions in conformity with their comprehensive plans." (emphasis added)

To sum up, the Board holds that the CPPs create no new land use powers nor do they alter land use powers that presently exist; neither do they provide substantive direction directly to local land use regulations. Rather, the CPPs are part of a hierarchy of substantive and directive policy. Direction flows first from the CPPs to the comprehensive plans of cities and counties, which in turn provide substantive direction to the content of local land use regulations, which govern the exercise of local land use powers, including zoning, permitting and enforcement.

Last, the Board rejects the proposition that substantive CPPs are alien to what Snoqualmie characterized as the GMA's 'bottom up' approach to decision-making. The Board notes that the term 'bottom up' does not appear in the Act.<sup>[161](#)</sup> The GMA is founded on the premise that local governments, rather than state government, have the primary duty and authority for growth management policy-making and further, that the choices made by those local governments may be different in different parts of the state. The Board finds Washington's model to be a contrast to truly 'top down' systems in other states which are premised on growth management policymaking centralized at the state government level and applied uniformly throughout the state.

The Board concludes that, even with the hierarchy of policy described above, the GMA

generally, and the CPPs specifically, are premised on local government control. It is still local governments (cities and counties) not regional or state government, that are invested with the authority and responsibility to act jointly to prepare, adopt and implement the CPPs, and to act singly to prepare, adopt and implement comprehensive plans and development regulations.

*c. Limits on the substantive effect of the CPPs - a three prong test*

Notwithstanding the consistency requirement of RCW 36.70A.100, great deference must still be given to local prerogatives and choices under GMA. Policies within CPPs that needlessly or excessively intrude upon local prerogatives can have no substantive effect. Therefore, the Board holds that, in order for a specific policy within a CPP to provide substantive direction to city and county comprehensive plans, it must meet all three of the following tests:

*(1) A specific policy within the CPPs must meet a legitimate regional objective*

RCW 36.70A.100 requires coordination and consistency between the comprehensive plans of cities and counties if those cities and counties have "common borders or related regional issues". (emphasis added). "Related regional issues" is not defined; however, RCW 36.70A.210(3) explicitly directs that the CPPs must address urban growth areas, siting of certain public capital facilities, transportation systems, provision of urban services, affordable housing, economic development and employment. These are clearly related regional issues.

Meeting these objectives will likely entail essentially distributive exercises. For example, assignment of facilities or population, employment and housing targets throughout parts of the county fit this description. In addition, RCW 36.70A.100 identifies the "common borders" of cities and counties as a circumstance that could give rise to a need for coordination and consistency between comprehensive plans. Therefore, a specific policy within a CPP that addresses common border issues would meet a legitimate regional objective.

*(2) A specific policy within the CPPs can provide substantive direction only to the provisions of a comprehensive plan, and cannot directly affect the provisions of an implementing regulation or other exercise of land use powers.*

RCW 36.70A.210 states that the CPPs are "... a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter..." and that "This framework shall ensure that city and county comprehensive plans are consistent as required by RCW 36.70A.100. Nothing in this section shall be construed to alter the land use powers of cities." (emphasis added). The emphasized text is the basis for the test that a specific policy within the CPPs must directly address a comprehensive plan rather than development regulations or other exercises of local land use power.

The CPPs may not intrude upon local prerogatives as to specifically how a legitimate regional objective, which must be addressed in a local comprehensive plan, is to be manifested in a local development regulation or other exercise of land use power. The specific site development standards and review procedures of city zoning codes reflect local circumstances and priorities. While the CPPs may suggest such details, they may not dictate them.

*(3) A specific policy within the CPPs must be consistent with other relevant provisions in the*

GMA.

The CPPs must be consistent not only with the provisions of RCW 36.70A.210, but with all other relevant provisions of the GMA.

## E.DISCUSSION OF SPECIFIC ISSUES

### Preliminary Issue within Legal Issues Nos. 1, 2 and 3: the Role of the GMPC

The first three legal issues raised by Snoqualmie each begin with the following prefatory language:

***Within the express provisions of what is commonly referred to as the Growth Management Act, primarily codified as Chapter 36.70A RCW, and within the legislative intent of the Act, may a county's adopted county-wide planning policies lawfully establish a regional planning agency, the King County Growth Management Planning Council (GMPC)?***

Following this introductory question, each legal issue then raises a more specific question challenging the authority of the GMPC on a particular issue. Before addressing the three specific legal issues, the Board must first determine whether the GMPC was established by King County's county-wide planning policies and, if so, whether express provisions of the GMA authorize this creation and its functioning as a regional planning agency.

### Positions of the Parties

Snoqualmie contends that the GMPC was created by the CPPs, rather than interlocal agreements. Snoqualmie correctly points out that the CPPs are replete with references to the GMPC, while the policies themselves seldom refer to the King County Council. {see Exhibit 1}. Snoqualmie concludes that there can be no doubt that:

...the CPPs establish a regional planning agency with the authority to make decisions purported to be binding upon cities. (Petitioner's Opening Brief, p. 13).

The City cites to FW-1, Step 2; FW-1, Step 4(b); and LU-26 for the proposition that it is the GMPC, rather than the King County Council, that will take future actions on and under the CPPs. (see Petitioner's Reply Brief, p. 4). Snoqualmie argues that:

The GMPC originally existed only by interlocal agreement but it wrote itself an existence and role of its own in the CPPs that far transcends [the] body authorized in the interlocal agreement. (Petitioner's Reply Brief, p. 3; emphasis in original).

In fact, the Board need only read the CPPs to ascertain whether the GMPC now exists by virtue of interlocal agreement or by virtue of the CPPs themselves.... Nowhere, however, does the County address the role given to the GMPC in the CPPs themselves for the implementation of the adopted policies. (Petitioner's Reply Brief, p. 4).

The functions committed to [the] GMPC by the above-cited policies are

implementation of rather than amendments to the CPPs.(Petitioner's Reply Brief, p. 5; emphasis in original).

King County responds by stating:

... the CPP adopted by the County and ratified by the Cities neither establishes nor continues the existence of the GMPC.The GMPC was created and exists solely by agreement of the County and cities....Without an agreement between the County and the cities on the GMPC, the GMPC will cease to exist regardless of the CPP, for there will no longer be a GMPC to perform the tasks given it by the CPP....

... there is not language in the CPP or the ordinance adopting the CPP that can reasonably be construed to give the GMPC any authority to take actions or make decisions binding on the cities or county.(King County's Post-Hearing Brief, p. 2. lines 12 - 22).

The County repeatedly characterizes the GMPC as:

... an interjurisdictional advisory body that exists by agreement of the cities and the county and whose function it is to assist cities and the county in the development and implementation of the CPP and the adoption of local comprehensive plans.(King County's Post-Hearing Brief, p.2, lines 23 -24;p. 3, lines 1 - 3).

King County argues that the role of the GMPC:

... is advisory...Nothing in the CPP or the ordinance adopting the CPP even remotely suggests that the GMPC has any authority to alter, amend, or enforce any policies in the CPP.(King County's Post-Hearing Brief; p. 3, lines 14 - 22).

### Discussion

RCW 36.70A.210(2) requires the legislative authority of a county, in cooperation with the cities located within its jurisdiction, to establish a collaborative process that provides a framework for the adoption of a CPP.The legislature did not specify what type of process had to be established to develop this framework; instead, it left establishing this process to the full discretion of local jurisdictions.The record indicates that to comply with the legislative mandate to establish a collaborative process, King County and several of the cities within the county entered into a series of three interlocal agreements pursuant to the Interlocal Agreement Act, Chapter 39.34 RCW.{Exhibits 12, 13 and 14 respectively}.

The first interlocal agreement (the Interlocal Agreement) was entitled an "Agreement among King County, the City of Seattle, and Suburban Cities and Towns in King County for the Growth Management Planning Council of King County".The Interlocal Agreement created the GMPC and specified its membership, staffing, duties and duration.{Finding of Fact No. 1; Exhibit 12}.In addition, the Interlocal Agreement provided that the GMPC would develop the CPPs and make a recommendation to the King County Council which would then adopt the policies. {Exhibit 12, Section 3 and 4(a)}.

Subsequently, Interlocal Agreement No. 2 was adopted.{Finding of Fact No. 4; Exhibit 13}.

Section 3 of that agreement provided:

The GMPC shall develop and recommend to the King County Council the CPP.

Following a public hearing, *the King County Council shall adopt a CPP* and circulate it for ratification. The CPP shall be deemed ratified when approved by at least thirty percent (30%) of the city and county governments representing seventy percent (70%) of the population of King County. {Exhibit 13; italics added}.

Although Interlocal Agreement No. 3 {Exhibit 14} later amended Section 3, the provision stating that the GMPC was to make its recommendation to the King County Council remained unchanged. (see Finding of Fact No. 10).

On June 3, 1992, the GMPC prepared a "Recommendation to the King County Council" that was the CPP ultimately adopted by the King County Council. {Finding of Fact 12; Exhibit 1}.

The King County Council enacted Ordinance No. 10450 (the Ordinance) on July 6, 1992 adopting the CPPs. The GMPC's Recommendation to the King County Council was attached to the Ordinance and incorporated by reference. {Finding of Fact 18; Exhibit 1}. The Ordinance clearly provides that the King County Council is the ultimate authority for adopting the CPPs and that the GMPC's function is to make recommendations to the King County Council. Finding No. 2 of the Ordinance provides:

RCW 36.70A.210 requires that, through a process agreed to by King County (county), the City of Seattle (Seattle), and incorporated suburban cities and towns (suburban cities), the county, as the legislative authority, adopt Countywide Planning Policies no later than July 1, 1992. {Exhibit 1; emphasis added}.

Finding No. 3 of the Ordinance described the process of creating the GMPC through interlocal agreements. Finding No. 4 of the Ordinance found:

After six months of deliberation which included public workshops and hearings, the GMPC adopted and recommended the Countywide Planning Policies to the King County Council. Exhibit 1; emphasis added}.

Finding No. 6 discusses "additional work" that is planned to "further refine" the CPPs. The finding continues:

...the GMPC will recommend to the county amendments to the Countywide Planning Policies. These amendments would be subject to further environmental review, and adoption by the county and ratification by the cities.... {Exhibit 1; emphasis added}.

Finding No. 7 discusses the boundaries of the urban growth areas (UGA). It provides:

Recommendations on the UGA Boundary will be developed... Changes to the adopted UGA Boundary may be recommended to the county by the GMPC and subject to adoption and ratification. {Exhibit 1; emphasis added}.

Section 2 of the Ordinance provides:

The Countywide Planning Policies attached hereto are hereby approved and adopted for purposes of complying with RCW 36.70A.210.... {Exhibit 1; emphasis added}.

Section 3 of the Ordinance, which discusses Phase II, provides:

In Phase II the county will reconvene the GMPC no later than December 1992 to

evaluate the following information and recommendations....GMPC will consider the results of the additional work and may recommend amendments to the Countywide Planning Policies to the county.Any such recommended amendments shall be subject to adoption by the county...{Exhibit 1; emphasis added}.

The Board holds that the GMPC is a creature of a series of interlocal agreements between King County and certain cities within King County.Nothing in the GMA requires such agreements as a predicate to completing the CPP's task or prohibits King County and the cities within the county from entering into such interlocal agreements.Instead, interlocal agreements are a satisfactory mechanism for "establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy."(RCW 36.70A.210(2)(a)).

Whether an interlocal agreement creates an entity like the GMPC is left entirely to the discretion of the county and the cities within it.This conclusion is consistent with the Board's affirmation that the GMA does promote a "bottom up" approach to land use planning where the State of Washington provides broad policy dictates but leaves the actual implementation to local jurisdictions.In this case, the state required local governments to adopt a collaborative process; it left the specifics of that process up to the local jurisdictions within each county that is required or chooses to plan under the Act.

Furthermore, the Board holds that the GMPC was not created by the King County CPPs, nor do any provisions in the GMA expressly authorize the creation of a regional planning agency through county-wide planning policies.<sup>[17]</sup>Although Snoqualmie correctly has indicated how frequently the CPPs refer to the GMPC rather than to the King County Council, the Board nonetheless cannot ignore the language of the adopting Ordinance which clearly indicates that it is the county council that has the responsibility to adopt the CPPs.The council is free to completely ignore the GMPC's recommendation, to modify the recommendation or, as in this case, to adopt the recommendation verbatim.

RCW 36.70A.210(2)(a) requires that "the legislative authority of the county shall adopt a county-wide planning policy".The record in this case is clear that ultimately it was the King County Council that adopted the CPPs after the GMPC made a recommendation to the council.Although the GMPC has a role within the CPPs to perform specified tasks and make recommendations once the task is completed, such action is nonetheless advisory and has no binding effect under the GMA until and unless the recommendations are adopted by the King County Council.

### Conclusion No. 1

The Growth Management Act does not expressly authorize the creation of a regional planning body like the King County Growth Management Planning Council.Therefore, adopted county-wide planning policies cannot create a regional planning body.However, the legislative authorities of a county and the cities located within the county can use interlocal agreements to meet the GMA requirement to establish a collaborative process that provides a framework for the adoption of county-wide planning policies.A regional planning organization like the GMPC can

be created as a result of an interlocal agreement. The King County GMPC is an advisory body to the King County Council that was created by a series of such interlocal agreements between King County and certain cities within the county. The GMPC was not created by the King County CPPs. As for the CPPs themselves, they were formally adopted by the King County Council pursuant to RCW 36.70A.210(2)(e). Although the King County CPPs refer to the GMPC on numerous occasions and assign certain tasks to that body, as long as the ultimate authority for adopting and amending the CPPs remains with the King County Council, the collaborative process selected by the cities and King County is in compliance with the GMA.

Legal Issues No. 1 and 2

***Whether the GMPC has authority to establish specific population and employment goals for individual cities, or authority to direct population and employment to one urban growth area (city) or away from another, and whether the GMPC has authority or a role in the establishment of urban growth areas, particularly under the express provisions of RCW 36.70A.110?***

Snoqualmie challenges the ability of the GMPC to establish specific population and employment goals and to direct population and employment to or from specific UGA's. Specifically, it challenges policies FW-1, Step 2(e) and LU-26 as ignoring and thus violating RCW 36.70A.110. (Petitioner's Opening Brief, pp. 21 - 22). FW-1, Step 2(e) provides:

The GMPC shall confirm the Urban Growth Areas based on Centers designations and subarea population and employment targets, insuring sufficient capacity within the Urban Growth Area to meet projected growth. (December 1992 target date). {Exhibit 1; the CPPs at pp. 7 - 8}.

LU-26 provides:

In recognition that cities in the rural area are generally not contiguous to the countywide Urban Growth Area, and to protect and enhance the options cities in rural areas provide, these cities [Black Diamond, Carnation, Duvall, Enumclaw, North Bend, Snoqualmie and Skykomish] shall be located within an Urban Growth Area. These Urban Growth Areas generally will be islands separate from the larger Urban Growth Area located in the western portion of the county. Each city in the rural area, King County and the GMPC shall work cooperatively to establish an Urban Growth Area for that city. Urban Growth Areas must be approved by the GMPC by January 1, 1993. The Urban Growth Area for cities in rural areas shall:

- a. Include all lands within existing cities in the rural area;
- b. Be sufficiently free of environmental constraints to be able to support rural city growth without major environmental impacts;
- c. Be contiguous to city limits; and
- d. Have boundaries based on natural boundaries, such as watersheds, topographical features, and the edge of areas already characterized by urban

development. {Exhibit 1; CPPs at p. 19}.

The GMPC has authority to perform whatever functions are assigned to it by the series of interlocal agreements. The GMPC's functions and authority are specified in Section 4(a) of all three interlocal agreements {Exhibits 12, 13 and 14}. One of the GMPC's assigned functions is to address "policies to implement RCW 36.70A.110". The interlocal agreements did not supply specific details as to the parameters of that task. When the King County Council adopted the CPPs, it directed the GMPC to perform additional tasks, consistent with the GMPC's responsibility specified in the interlocal agreements, to assist in completing the next phases of the CPPs. (see Exhibit 1, Section 3 of the Ordinance). Specifically, among its assignments, the GMPC was instructed to evaluate information and make recommendations about "nominations of urban and manufacturing/industrial centers by affected jurisdictions; the target numbers for population and employment by jurisdiction...." Within this assignment, the GMPC has the option to recommend specific population and employment goals and to direct population and employment to or away from urban growth areas.

Importantly, what matters most is not whether the GMPC completes its tasks but whether the King County Council makes further revisions to the CPPs. The Board will not review the recommendations of the GMPC unless and until they are adopted by the King County Council and the CPPs are thus subsequently amended. The Board is concerned with the final actions of the King County Council and not with the GMPC as they relate to the CPPs. For instance, whether the GMPC complies with FW-1, Step 2(e) is not the Board's concern. Rather, the Board is concerned with reviewing a challenged policy within the CPPs for compliance with the GMA. As written, FW-1, Step 2(e) is simply one of several directives to the GMPC asking it to make certain determinations. Until the King County Council adopts any recommendations the GMPC may make, this step is without effect in terms of compliance with the GMA. No city needs to comply with FW-1, Step 2(e); not unless and until it is actually implemented by an amendment to the CPPs, must a city be concerned with it.

As for LU-26, the Board again points out that it is immaterial for its purposes of reviewing the CPPs for compliance with the GMA whether representatives from the GMPC meet with representatives of individual cities and the county in establishing an urban growth area. Furthermore, it is irrelevant to the issue of GMA compliance whether the GMPC met its January 1, 1993, deadline to approve an urban growth area. The Board nevertheless notes and encourages a continuation of the collaborative city/county effort.

Finally, the Board points out that nothing in the record indicates that the urban growth area boundaries for King County have been set nor does the record reveal that urban center designations have been made. However, when an urban growth area is designated, it must be done by the King County Council in compliance with RCW 36.70A.110. Once the King County Council has designated urban growth area boundaries, this Board will review those actions for compliance with the GMA only if they are appealed.

The GMPC may exercise authority delegated to it to perform certain tasks such as establishing specific population and employment goals, but its work remains only recommendations unless and until the King County Council adopts them by amending the King County CPPs. The GMPC's actions alone have no binding effect on cities within King County, nor must cities have comprehensive plans that are consistent with GMPC recommendations. The actions of the King County Council are controlling -- the Board will review only the King County Council's actions for compliance with the GMA and not those of the GMPC.

### Legal Issue No. 3

#### ***Whether the King County Growth Management Planning Council has any role or authority as arbiter of disputes concerning the consistency of local comprehensive plans under RCW 36.70A.100?***

Snoqualmie challenges FW-1, Step 4(b) of the CPPs because it alleges this provision alters the GMA's dispute resolution mechanisms. FW-1, Step 4(b) provides:

The GMPC shall establish a process for resolving conflicts between local plans and the Countywide Planning Policies as raised by local jurisdictions, and may recommend amendments to either the Countywide Planning Policies or local plans. (July 1994 target date)<sup>[18]</sup>

The GMA provides two basic dispute resolution mechanisms. One is the responsibility given to the Washington State Department of Community Development to provide mediation services (see RCW 36.70A.190(5) and RCW 36.70A.210(2)(d)). The second establishes and gives authority to the growth planning hearings boards to consider and decide petitions for review. (see RCW 36.70A.250 through .330).

First, the Board points out that this issue is not yet ripe. FW-1, Step 4(b) is a further directive to the GMPC by the King County Council. The county council has not yet adopted an internal dispute resolution process as part of the CPPs. Nonetheless, the Board holds that as long as the authority of the GMA's two dispute resolution mechanisms is not altered or interfered with, the King County Council in the future can adopt an internal process for resolving conflicts. Whether the county council adopts the GMPC's recommendation in whole or in part remains within the council's discretion. As this holding pertains to the Board's jurisdiction, the process for dispute resolution that the GMPC develops and King County Council ultimately adopts cannot preclude a county or city from filing a petition for review within sixty days from publication pursuant to RCW 36.70A.290. For instance, although a city or the county may be required by the CPPs to participate in good faith in an internal dispute resolution process, the right to simultaneously file a petition for review with this Board cannot be abridged.

### Conclusion No. 3

The specific provisions of the CPPs, FW-1, Step 4(b), which directs the GMPC to establish an

internal dispute resolution mechanism for local governments in King County, is in compliance with the GMA. The GMPC can recommend a dispute resolution mechanism to the King County Council that the county council can adopt in whole or in part, so long as this specific mechanism does not alter or interfere with the operation of the GMA's dispute resolution mechanisms.

#### Legal Issue No. 4

***May a county's adopted county-wide planning policies lawfully require cities to adopt a specific land use regulation or prohibit cities from expanding existing zoning capacity for business/office parks?***

Snoqualmie challenges the authority of King County to adopt policies in the CPPs that it claims would require cities to adopt specific land use regulations or prohibit cities from expanding existing zoning capacity for business or office parks. The City cites to several specific instances, LU-58 and 59 and FW-2(c)<sup>[19]</sup>, to substantiate its claim that the CPPs prohibit the city from expanding its zoning capacity for business/office parks. (Petitioner's Opening Brief, p. 25).

LU-58 states:

Office building development is directed primarily to Urban Centers. Office building development outside Urban Centers should occur within activity areas and promote transit, pedestrian and bicycle uses. {Exhibit 1; the CPPs at p. 27}.

LU-58 passes the three-prong test for individual policies within a CPP. First, the distribution of office building and business park development is a legitimate regional issue. King County persuasively argued that business parks are land consumptive and generate a burden on transportation systems, thus increasing already high infrastructure expenses. Second, LU-58 does not alter the land use powers of cities. Although LU-58 directs office building development to urban centers, the use of the word "primarily" implies that office building development may be found to be acceptable in areas other than urban centers. Third, LU-58 is consistent with other provisions of the GMA. The Board therefore holds that LU-58 is in compliance with the Growth Management Act.

The Board notes that the King County CPPs fail to define significant terms such as "business park" or "office building". To some extent, then, the CPPs lack clarity. In the future, if an individual city's comprehensive plan is challenged as being inconsistent with the CPPs, the fact that key terms are undefined may benefit the city. The more unclear the CPPs, the less consistent a city will have to be. Conversely, the clearer the CPPs, a higher degree of consistency will be required of a city's action.

In contrast to LU-58, LU-59 provides:

Jurisdictions shall not expand existing land area zoned for business/office parks.  
{Exhibit 1; the CPPs at p. 27}.

Citing to the last sentence of RCW 36.70A.210(1), Snoqualmie maintains that:

If a policy purporting to prohibit the expansion of existing business/office park zoning does not alter the specific statutory land-use power of cities, nothing does. (Petitioner's Opening Brief, p. 26).

The city referred to the general zoning authority of cities found in RCW 35A.63.100(2) to verify its contention that its land use power had been altered by the CPPs.

In response, King County claims that LU-59 does not alter Snoqualmie's land use authority; instead, it merely "affects" it. (King County's Post-Hearing Brief, p. 5, lines 12 - 18 and Proposed Final Decision and Order, p. 11). Secondly, the county claims that the policies contained in the CPPs are merely guidelines or blueprints for development of the city and county comprehensive plans. (King County's Post-Hearing Brief, p. 6, lines 3 - 18 and Proposed Final Decision and Order, p. 11). Therefore, rather than prohibiting the expansion of existing land area zoned for business/office parks, LU-59 "discourages" such expansion. (Proposed Final Decision and Order, p. 11). The county maintains that considerable discretion is still left to the city to decide for itself what kind of community it will be. (King County's Post-Hearing Brief, p. 6, lines, 12 -14).

The Board holds that LU-59 is not in compliance with the Growth Management Act. A fundamental purpose of county-wide planning policies is to serve as a framework for comprehensive land use plans. LU-59 exceeds this mandate since it directly addresses development regulations. The CPPs provide substantive direction to comprehensive plans, which in turn, pursuant to RCW 36.70A.120, provide substantive direction to development regulations. However, the CPPs may not have a direct connection to development regulations that implement comprehensive plans. Such regulations fall within a city's land use powers. Therefore, LU-59 does alter the land use power of cities.

#### Conclusion No. 4

LU-58 is in compliance with the Growth Management Act as an appropriate county-wide planning policy. However, LU-59 and FW-2(c) are not in compliance with the GMA since they require cities to adopt specific land use development regulations that prohibit expanding zoning for business and office parks.

#### Legal Issue No. 5

***May a county's adopted county-wide planning policies, specifically King County's LU-26 and LU-27, lawfully require a city's local comprehensive plan to include any specific community characteristics, including design standards and types of business or scale of development within the city?***

LU-26 has been previously quoted in its entirety on page 24 in the discussion of Legal Issue Nos. 1 and 2. The Board holds that LU-26 is in compliance with the GMA. LU-26 is an appropriate policy statement that provides a framework for adoption of local comprehensive plans. The policy does not interfere with a city's ability to adopt implementing development regulations. The policy

discusses cities in the rural area. It covers a legitimate regional objective. Furthermore, local land use authority is not altered since no specific community characteristics are required. Finally, it is not inconsistent with other provisions of the Act.

In contrast, LU-27 states:

Cities in rural areas shall include the following characteristics:

- a. Shopping, employment, and services for residents, supplies for resources industries, including commercial, industrial, and tourism development at a scale that reinforces the surrounding rural characteristic;
- b. Residential development, including small-lot single-family, multifamily, and mixed-use developments; and
- c. Design standards that work to preserve the rural, small-town character and promote pedestrian mobility. {Exhibit 1; the CPPs at p. 19}.

Although Snoqualmie recognizes that a city cannot be oblivious to a county's comprehensive plan, and vice versa, it argues that LU-27 infringes upon a city's authority because "... some aspects of a comprehensive plan are ... fundamentally local in nature ..." such as community character, design standards, types of businesses and scale of development. (Petitioner's Opening Brief, p. 27).

The Board agrees with Snoqualmie's assessment. Whether Snoqualmie chooses to look like a quaint 18th-century Bavarian village or the set of *Star Trek X* (or neither!) should be left to purely local prerogative. The design standards that a community selects are not a legitimate regional issue; CPPs that attempt to make those choices intrude into land use regulation. Therefore, LU-27 is not in compliance with the GMA.

#### Conclusion No. 5

A county's adopted county-wide planning policies may generally require a city's local comprehensive plan to identify existing community characteristics and even to articulate the characteristics to which a community aspires. However, the adopted CPPs cannot dictate or select specific characteristics for a city to adopt in its comprehensive plan. Specific design standards and scale of development within a city are not legitimate regional issues that should be addressed by the CPPs.<sup>[20]</sup> Instead, they should be left to the discretion of the individual cities. Accordingly, LU-26 is in compliance with the GMA and LU-27, is not in compliance with the Act.

#### Legal Issue No. 6

***May a county's adopted county-wide planning policies lawfully require inclusion in a city's local comprehensive plan of substantive policies, specifically requiring each city to make decisions that support the program of the regional planning agency, the King County GMPC, or the urban centers concept?***

This legal issue repeats themes already addressed in prior legal issues. First, the Board has already

held that local jurisdictions are not bound by recommendations or actions of the King County GMPC unless and until the King County Council adopts them by amending the CPPs. Therefore, whether Snoqualmie chooses to call the GMPC a regional planning agency or any other name, or whether an entity like the GMPC even exists, is immaterial from the Board's perspective. What matters to this Board is whether the CPPs adopted by the King County Council are in compliance with the Act.

Second, as the General Discussion portion of this Final Decision and Order reveals, the CPPs are substantive in nature as long as they address legitimate regional objectives, do not alter the land use powers of cities, and are consistent with other provisions of the Growth Management Act. Individual cities must adopt comprehensive plans that are consistent with such CPPs. King County has adopted specific policies within the King County CPPs that discuss urban centers. Specific urban center policies that have not been challenged in this appeal or that have been attacked but found by this Board to be in compliance with the GMA are binding upon cities when they develop and adopt comprehensive plans.

#### Conclusion No. 6

A county's adopted county-wide planning policies that have met the Board's three prong test (e.g., legitimate regional objective, not altering land use powers of cities and consistency with other GMA provisions) may provide substantive direction that will require cities to adopt certain policies within their comprehensive plans in order to achieve consistency.

#### Legal Issue No. 7

***Whether King County conducted the fiscal analysis required by the GMA at RCW 36.70A.210 (3)(h) prior to adopting its county-wide planning policies?***

RCW 36.70A.210(3)(h) provides that a CPP shall address "an analysis of the fiscal impact". The Act itself does not specify the fiscal impact upon whom. The statute is also silent as to the purpose, format, content and level of detail of the fiscal analysis, and does not direct the preparation of rules to fill in the gap. It is therefore up to the Board to determine the legislative intent of subsection (3)(h).

#### Positions of the Parties

Snoqualmie contends that King County failed to conduct any fiscal analysis whatsoever. The city claims that Section B of Chapter VIII of the CPPs (entitled "Finance") {Exhibit 1, p. 46} only mentions the fiscal impact analysis requirement; that section does not comprise the fiscal impact analysis. (Petitioner's Opening Brief, p. 32). The city invited the Board to review the entire CPPs "to see whether there is anything which even remotely resembles fiscal impact analysis. None will be found". (Petitioner's Opening Brief, p. 33). Snoqualmie also alleges that it is the CPPs

themselves that must address an analysis of the fiscal impact. The city claims it is irrelevant whether the GMPC may have had some degree of fiscal analysis presented to it and contends that from the record before the Board, one cannot conclude whether the King County Council had any fiscal analysis before it. (Petitioner's Reply Brief, pp. 10-11). The city concluded this argument by stating:

Neither King County Ordinance 10450 nor the CPPs contain a fiscal impact analysis. Neither incorporates by reference nor approves any fiscal impact analysis. Neither even makes any oblique reference to an existing fiscal impact analysis. (Petitioner's Reply Brief, p. 10).

In addition, Snoqualmie pointed to specific Ordinance provisions for the city's contention that King County itself admits that it has yet to conduct the proper fiscal analysis. The provisions from the Ordinance cited by Snoqualmie (Petitioner's Opening Brief, pp. 33-34) provide:

Section 1. The county will implement the major planning requirements of the Growth Management Act (GMA) in three phases, each accompanied by the appropriate scope and level of environmental review pursuant to both the GMA and the State Environmental Policy Act (SEPA) and fiscal review. Phase I is the adoption of the Countywide Planning Policies for the purposes described in Section 2. Phase II is the process for refinement of Countywide Planning Policies through proposed amendments to them, and the preparation of an SEIS and a fiscal analysis.

...

Section 3. In Phase II the county will reconvene the GMPC no later than December 1992 to evaluate the following information... further fiscal analysis... The objectives of the fiscal analysis are to a) provide information on the anticipated financial and economic impacts on the individual, and on the private and public sectors, and b) determine how these impacts affect the fiscal viability of the individual and of the private and public sectors. {Exhibit 1; emphasis added by the Petitioner}.

Snoqualmie argued that "this can only be construed as a remarkably frank admission by King County that at the time they adopted the CPPs, they were simply without information as to the economic impacts of the policies... and the impact upon fiscal viability of the individual and the public and private sectors." (Petitioner's Opening Brief, p. 34). The city cites *Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980) for the proposition that SEPA case law requires that a detailed EIS must be considered by the decision makers during the decision making process, rather than afterwards. (Petitioner's Opening Brief, p. 37). Finally, Snoqualmie argues that if Exhibits 15 through 19 truly consisted of sufficient fiscal analysis to comply with the fiscal impact analysis requirement, the Ordinance or the CPPs would have referred to the material. (Petitioner's Reply Brief, p. 11).

King County responded that it had prepared an adequate fiscal analysis. The county listed the documents that had been prepared and presented to the GMPC at its May 14, 1992 meeting to support this contention. This included a "draft" overview of the possible fiscal impacts of the April 22, 1992 draft version of the CPPs, dated May 12, 1992 {Exhibit 15} and "the work

products of the final phase of the Fiscal/Economic Impacts Study" {Exhibit 17}. This exhibit consisted of a two-page letter (with attachments) from Thomas J. Nesbitt to Michael Alvine, dated June 26, 1992. (Brief of Respondent, p. 18).

Testimony at the hearing from Craig Larsen indicated that, in addition, a paper entitled "Economic Foundations for Growth Management" {Exhibit 18} was included in the record. This document, dated March 23, 1992, consists of a summary of interviews with six "key elected officials and staff" and a literature review of studies on four planning topics. A more detailed "Literature Review Summary", dated April 15, 1992, is also included in the record. {Exhibit 19}. (King County's Post-Hearing Brief, p. 7).

It is King County's position that the fiscal impact analysis {Exhibits 15 through 19} was part of the record for the King County Council's consideration when it adopted the CPPs and that both the GMPC and county council considered this analysis of fiscal impacts in developing and adopting the CPPs. (King County's Post-Hearing Brief, p. 7, lines 3-8).

King County notes that the GMA does not "define or clarify the required fiscal analysis". The county alleges that the scope of the CPP's fiscal impact analysis is "left to the discretion of cities and counties". (Brief of Respondent, p. 18). Therefore, King County urges the Board to employ a "rule of reason with the level of impacts discussed in the level of detail appropriate to the level of planning for the proposal". The county cited case law and WAC 197-11-442(2) to support this request. (Brief of Respondent, p. 18, lines 16-20). Paraphrased, it appears that King County is suggesting that the amount of detail required in the fiscal impact analysis of a CPP should correlate to the level of detail in the CPPs -- the more detailed the CPPs, the more detailed the fiscal analysis.

The county admits that the level of fiscal analysis it conducted was "somewhat general" (Brief of Respondent King County, p. 18, line 21) and, "necessarily broad, general, and ultimately, inconclusive" (King County's Post-Hearing Brief, p. 7, lines 11-12). However, the county alleges that this was consistent with the "rather broad policies" in the CPPs (Brief of Respondent King County, p. 18, lines 16-24) and, until the county-wide vision will be implemented, "a more detailed or conclusive fiscal analysis was not possible". (King County's Post-Hearing Brief, p. 7, lines 15-18).

#### Analogy to SEPA

Because RCW 36.70A.210(3)(h) uses the word "impact", an analogy to a SEPA environmental impact statement (EIS) readily comes to mind. This approach is suggested because Issue No. 7 is discussed by the parties in terms of the "adequacy" of the fiscal impact analysis (e.g., Petitioner's Opening Brief, p. 37 and Brief of Respondent, p. 18, lines 4-5); an EIS is reviewed to determine its adequacy. In addition, King County has requested that the Board apply "the rule of reason" to the adequacy of its fiscal analysis. The rule of reason is a common law rule used in determining the adequacy of an EIS. It provides that, to be adequate "a reasonably thorough discussion of the significant aspects of the probable environmental consequences is all that is required by an

EIS."<sup>[21]</sup> Furthermore, King County also cited the SEPA Rules at WAC 197-11-442(2) as a standard for the Board to apply to the scope of fiscal impact analysis. Finally, Snoqualmie recommended that the Board adopt by analogy SEPA case law holdings that inadequate analysis mandates that an underlying action be declared invalid. Washington courts have developed an extensive set of cases regarding the adequacy of an EIS that the Board has reviewed but will not repeat here.

### Why SEPA Analysis Does Not Apply to Fiscal Impact Analysis

The Board's review of SEPA case law at first glance shows some rationale for applying EIS adequacy analysis to questions regarding the adequacy of a county's fiscal impact analysis. However, there are important distinctions between the GMA's fiscal impact analysis requirement and SEPA's required environmental impact analysis.

First, RCW 36.70A.210 was enacted as part of the 1991 amendments to the Growth Management Act. The 1991 amendments became effective on July 16, 1991. Pursuant to RCW 36.70A.210(2) (a), counties only had until September 14, 1991 (i.e., sixty calendar days from July 16, 1991) to convene a meeting with representatives of each city to establish a collaborative process for the development of the CPPs. Cities and counties were given until October 1, 1991 to reach an agreement on what this collaborative process would be. (RCW 36.70A.210(2)(d)). RCW 36.70A.210(2)(e) then required the legislative authority of a county to adopt the CPPs no later than July 1, 1992. At a maximum, the legislature gave counties less than one year to adopt the CPPs from the time RCW 36.70A.210 became effective.

Practically, counties were given much less time to adopt a CPP. If the agreement on a collaborative process between a county and its cities did not have to be reached until October 1, 1991, that left only nine months for counties to adopt the CPPs. In fact it appears that the collaborative process that was actually adopted in King County, through an interlocal agreement, was not finalized until after December 1, 1991.<sup>[22]</sup> This left only seven months to complete the task. Even less time was allowed for conducting the fiscal impact analysis since, before such analysis could be done, there had to be a specific proposed policy to be evaluated. Therefore, the short time allocated for producing the CPPs raises serious questions about the intended scope of the fiscal impact analysis. How detailed and exhaustive could the fiscal analysis be in the short time counties were given to adopt a CPP?

Second, deadlines for completing analysis are also markedly different between SEPA and the GMA. In comparison to fiscal impact analysis with its tight time frames, SEPA contains few deadlines. The responsible official in most jurisdictions is required to make a threshold determination within ninety days after a completed application has been submitted pursuant to RCW 43.21C.033(1). When a threshold determination leads to a determination of significance, an EIS is required. (see RCW 43.21C.030; WAC 197-11-310 and -330). However, no specific deadline for the completion of an EIS is imposed by either SEPA itself or the SEPA Rules, Chapter 197-11 WAC. Instead, WAC 197-11-055(2) simply requires the lead agency to prepare

an EIS "at the earliest possible point in the planning and decisionmaking process". Consequently, SEPA provides much more latitude for meeting the detailed requirements for an EIS. In sharp contrast, very little time is given local jurisdictions by the GMA to prepare fiscal impact analysis. Third, SEPA discusses an EIS in far greater detail than the GMA mentions fiscal impact analysis. For instance, compare the high level of detail in the language of RCW 43.21C.030(2)(c) and RCW 43.21C.031 with the six words in the GMA at RCW 36.70A.210(3)(h): "an analysis of the fiscal impact". The legislature is presumed to know the language of existing statutes. Thus, it was aware of RCW 43.21C.030 and RCW 43.21C.031. If the legislature wanted to provide a detailed description of fiscal impact analysis, it could have drafted language similar to SEPA. In addition, the legislature is presumed to be aware of case law interpreting statutes. Yet the legislature did not incorporate any case law holdings regarding EIS adequacy. If the legislature intended to apply SEPA case law rulings to fiscal impact analysis, it could have done so.

Just as significantly, the SEPA Rules provide even more detailed discussion regarding environmental impact statements. (see WAC 197-11-420, "EIS preparation"; WAC 197-11-425, "Style and size"; WAC 197-11-430, "Format"; WAC 197-11-440, "EIS contents"; and WAC 197-11-442, "Contents of EIS on nonproject proposals"). In an extremely sharp contrast, no Washington Administrative Code provisions give guidance as to how to prepare a GMA-required fiscal impact analysis of the CPPs. In fact, no state agency is even charged with preparing such a document. Yet the legislature obviously knows how to direct a state agency to adopt regulations that implement a statute. For instance, the Department of Ecology was charged with adopting the SEPA Rules.<sup>[23]</sup> Within the GMA itself, the legislature directed the Department of Community Development to adopt minimum guidelines and procedural criteria but that charge did not extend to the CPPs.<sup>[24]</sup>

Fourth, the SEPA analogy is specifically being made to statutory and administrative provisions, and case law that deal with the preparation and adequacy of an EIS. This analogy assumes that an EIS is a comparable document to the fiscal impact analysis required by the GMA. The Board notes that this may be jumping to conclusions. Although SEPA clearly requires the preparation of an EIS under certain circumstances, the level of detailed analysis required for an EIS is not necessary when the responsible official makes a determination of nonsignificance (DNS). (see WAC 197-11-340). Therefore, an equally appropriate analogy might be to the SEPA requirements for a DNS or mitigated DNS, which requires less analysis than an EIS.

In conclusion, the Board rejects the position of the parties that fiscal impact analysis is analogous to SEPA EIS adequacy analysis. Although some conceptual similarities exist between an EIS and fiscal impact analysis of a CPP, the timing constraints for adoption of the CPPs, and the lack of legislative or administrative guidance as to the purpose and content of the CPPs analysis, precludes applying SEPA analysis to the CPPs fiscal impact analysis. Where SEPA and its rules provide a detailed discussion about not only the format and content of an EIS but also its purpose, all the GMA offers are six words. Therefore, far more latitude must be given to local jurisdictions in the choices made as to the proper scope of GMA fiscal impact analysis. Accordingly, the Board will not review the King County CPPs fiscal analysis to determine whether it is "adequate".

Instead, the Board will review the manner in which King County addressed the analysis of fiscal impacts to determine whether it complied with the GMA.

### General Observations

Having specifically decided not to apply EIS adequacy analysis to the fiscal impact analysis of the CPPs, what type of analysis should the Board apply? In considering this question, the Board made several observations about RCW 36.70A.210(3) in general and especially subsection (3)(h). First, the Board notes that the requirement to address an analysis of the fiscal impact is listed as subsection (3)(h) of RCW 36.70A.210. It does not stand alone as if it were an independent subsection (4). Instead, the Board notes that fiscal impact analysis is the last item listed in subsection (3). This suggests, as already discussed, that fiscal impact analysis could not be undertaken until specific policies for items (a) through (g) had been drafted that could be analyzed.

Second, the first seven items listed in subsection (3), items (a) through (g), generally deal with issues which bear on local government decision making and service delivery. These include establishing UGA's, providing urban services, siting public capital facilities, planning for county-wide transportation facilities, considering affordable housing, and conducting joint city/county planning within UGA's. These issues involve the long range purpose of the CPPs: to assist in the transformation of local governance in the urban growth area from what we have known to what we will have. The new equation is:

**city = urban (municipal) services; county = regional and rural policy and services.**

Third, the seven items immediately before subsection (3)(h) tend to have corresponding comprehensive plan requirements. For example, designations of UGA's are addressed at RCW 36.70A.110; urban services are discussed in RCW 36.70A.070(1) and (4); public capital facilities at RCW 36.70A.070(3) and RCW 36.70A.200; affordable housing at RCW 36.70A.070(2); county-wide transportation facilities at RCW 36.70A.070(6); and, joint county and city planning within urban growth areas at RCW 36.70A.110.

Fourth, as already discussed in detail in the SEPA analysis above, the Board notes that the legislature technically gave cities and counties less than one year to reach consensus on a collaborative process, draft CPPs, fiscally analyze those CPPs and then adopt them. Practically, even less time was allocated to perform the fiscal impact analysis and still comply with the deadline for adopting the CPPs.

Fifth, the Board notes that the legislative history of the Act and the legislature's findings (RCW 36.70A.010) gave virtually no insight into the meaning of the subsection (3)(h).

Sixth, the Board finds that no administrative provisions provide specific guidance as to the intent of subsection (3)(h).

## GMA Requirements for Fiscal Impact Analysis

With these observations in mind, it is the Board's responsibility to attempt to give meaning to the legislature's intent, even if it is not clear on its face. What is not clear from RCW 36.70A.210(3)(h) can be summarized as:

- a. the fiscal impact on whom?
- b. scope of analysis: whether the analysis must be substantive or procedural (i.e., simply a process for conducting fiscal analysis)?
- c. timing of the analysis: whether the analysis could be phased over time or whether it all had to be completed and included within the adopted CPPs by July 1, 1992?
- d. level of detail: how detailed (a summary or great detail)?

Definitions of the key terms or concepts in subsection (3)(h) follow. To "**address**" means 1. to direct (spoken or written words to); 2. to speak to and write to (address an audience); 3. to apply (oneself) or direct (one's energies). *Webster's New World Dictionary* 16 (School and Office Edition 1984). To "**analyze**" means: 1. to separate (a thing, idea, etc.) into its parts so as to find out their nature, proportion, function, interrelationship, etc.; 2. to examine in detail so as to determine the nature or tendencies of. *Webster's New World Dictionary* 49 (School and Office Edition 1984). "**Fiscal**" means: In general, having to do with financial matters; i.e., money, taxes, public or private revenues, etc. Belonging to the fisc, or public treasury. Relating to accounts or the management of revenue. Of or pertaining to the public finances of a government or private finances of a business. *Black's Law Dictionary* 572 (5th ed. 1981). Finally, "**impact**" means "the power of an event, idea, etc. to produce changes, move the feelings, etc." *Webster's New World Dictionary* 703 (School and Office Edition 1984) or "the effect or impression of one thing upon another." *Webster's II New Riverside University Dictionary* 612 (1988).

The Board concludes that the phrase "address an analysis of the fiscal impact" means that the CPPs should:

direct written words to an examination of the interrelationship between the public treasury and the power of the CPP's to produce changes.

What is the purpose of this examination? The Board concludes that the purpose of fiscal impact analysis is to realistically assess the fiscal costs and constraints of implementing the CPPs and thereby to contribute to the design of an effective strategy to overcome those constraints. This task was imposed upon cities and counties because they are the units of government directly responsible for creating and implementing the CPPs as well as the parties most directly affected fiscally by the implementation of the CPPs.

The Board notes that King County intends to conduct further fiscal analysis "on the individual, and on the private and public sectors". {Exhibit 1; Section 3, lines 22 - 25 of the Ordinance}. While conducting such a wide scope of fiscal analysis is laudable, the Board holds that all the fiscal impact analysis must address is the impact of the CPPs upon local governments within the adopting county. Beyond this examination, the scope of fiscal analysis can be as expansive as the adopting jurisdiction chooses. The fiscal analysis can discuss the impact on state government,

special districts, regional government, the individual or the private sector. Whether a county elects to incorporate this expanded fiscal analysis of impacts on other jurisdictions and the private sector into its CPPs is left to the county's discretion. If the expanded analysis is incorporated (as opposed to conducted but not specifically addressed in the CPPs), the Board will review it for compliance with the GMA in the event it is appealed. However, the Board will not find fiscal impact analysis in noncompliance with the GMA on the grounds that only the impact on general purpose local governments within a county is addressed.

Second, the Board holds that King County's adopted CPPs must include a specific discussion of fiscal impact analysis. The Board rejects any contentions that a legislative body simply had to *consider* fiscal impact analysis, but not include a specific discussion of that analysis within an adopted CPP. If the legislature simply wanted consideration of fiscal impacts, it would have used the verb "consider". Instead, the legislature directed that the CPPs "address" fiscal impact analysis. King County complied with this holding.<sup>[25]</sup> Chapter VIII - Section B of the CPPs, entitled "Finance"<sup>[26]</sup>, provides:

A fiscal analysis is required by the GMA. This section of policies is intended to bring together references to financial matters found in earlier chapters (see Chapter II, "Rural Areas" and "Urban and Manufacturing/Industrial Centers," Sections B and D) and to provide direction for the fiscal analysis of the anticipated results of implementing the countywide planning policies.

FW-32 To implement the Countywide Planning Policies, jurisdictions shall cooperatively identify regional funding sources and establish regional financing strategies by July 1, 1993. Such strategies shall consider the infrastructure and service needs of Urban Centers, Manufacturing/Industrial Centers, Activity Areas, Business/Office Parks, other activity concentrations, and rural areas. Such strategies shall also provide incentives to support the Countywide Planning Policies and should:

- a. Make existing and newly identified funding sources respond in the most flexible way to meet countywide needs;
- b. Ensure that a balance of services is available countywide to meet, among others, human service, public safety, open space and recreation, education, and transportation needs; and
- c. Evaluate current revenue and service demands and the potential for more effective coordination of service delivery. {Exhibit 1; CPPs at p. 46}.

Third, what degree of fiscal impact analysis must have been completed by July, 1992? The Board holds that the fiscal analysis that had to be included or incorporated by reference in adopted CPPs is, at a minimum, a discussion that outlines a *process* for conducting further fiscal analysis. The Board's analysis of why SEPA is not analogous to GMA impact analysis convinces us that the legislature could not have intended thorough *substantive* fiscal analysis to have been completed in the short time allocated. King County complied with the requirement. FW-32 of the CPPs does establish a process for conducting further fiscal analysis. In addition, Section 3 of the Ordinance discusses Phase II, the process for further fiscal analysis.

Fourth, having found that only a process had to be established by July, 1992, is there a further requirement to conduct substantive fiscal analysis and, if so, when? The Board holds that substantive fiscal analysis must be conducted. The definitions of the words in the phrase "address an analysis of the fiscal impact" are persuasive -- they mean more than creating a process. When then must substantive fiscal analysis take place? No doubt, the sooner, the better. As a practical matter, it can begin as early as the period immediately preceding the initial adoption of the CPPs.<sup>[27]</sup> More difficult is determining when the substantive analysis must be completed. The Board concludes that substantive fiscal analysis of the impact of the CPPs upon the adopting county and the cities within it must be completed by the time the county adopts its comprehensive land use plan or by the time the county designates urban growth areas within that county, whichever occurs first. Since the CPPs are the framework for comprehensive plans and because the UGA concept is intertwined in the comprehensive planning process, it makes sense that substantive fiscal analysis be completed by the time the first of these events is completed by a county.

The four counties in the Central Puget Sound region are required to adopt comprehensive plans no later than July 1, 1993 pursuant to RCW 36.70A.040(3). RCW 36.70A.110, entitled "Comprehensive plans -- Urban growth areas" does not specify a deadline for counties to designate urban growth areas. Although it may be logical and advisable for a county to designate urban growth boundaries prior to adopting its comprehensive plan, establishing the deadline for designating UGA's was not an issue before the Board. The Board's conclusion therefore maintains a county's latitude in determining for itself when it will designate urban growth areas. All the Board's ruling does is require a county to have conducted (and included within or incorporated by reference in its CPPs) its fiscal impact analysis of the CPPs by the time its county comprehensive plan is adopted or its urban growth areas are designated.

The GMA has proclaimed that things will be different in the future. Yet, not all change will occur overnight. All cities will not immediately become the primary providers of urban services. Instead, some change will be gradual. What is crucial to understand is that the GMA is a fluid body of law, the implementation of which demands constant fine-tuning at the local level. Therefore, because of the iterative nature of the county-wide planning process over the twenty year span of a GMA planning cycle, supplemental fiscal analysis must be *considered* every time a county amends its CPPs. Whether additional fiscal analysis will actually have to be *conducted* (i.e., addressed in writing or incorporated by reference in the CPPs) can only be determined on a case by case basis. If it is decided that the amendments to the CPPs do not merit supplemental fiscal analysis, counties are urged to put this conclusion in writing so as to eliminate any doubt whether the county "considered" the issue.

In the future, because of the discussion in the King County CPPs about urban growth areas, the CPPs may be amended once King County adopts its urban growth area boundaries. If so, the county might then be expected to take that specific new information (which was unavailable when the CPPs were initially adopted in July, 1992) and analyze its fiscal impact -- to take the urban growth area and compare governmental financing within that area as it is today with what it

may ultimately look like in twenty years, when everything within an urban growth area that was rural today has potentially either been annexed or incorporated into a city. Furthermore if urban growth area designations are not incorporated as part of the CPPs, or if the CPPs are not amended as a result of urban growth areas being designated, good planning practice nonetheless suggests that a county might consider re-evaluating its fiscal impact analysis any time UGA boundaries are re-drawn.

Finally, having concluded that substantive fiscal analysis is a requirement of the Act, the Board must address how it will determine if this analysis is sufficient. The Board adopts a modified rule of reason that requires fiscal impact analysis to contain a reasonably thorough discussion of the anticipated fiscal impacts of the CPPs on general purpose local governments. In deciding what is reasonable, the Board will look at several factors including the amount of substance, degree of direction and level of detail in the CPPs. Generally, the more substantive the CPPs, the greater the amount of effort that must be expended on conducting fiscal analysis. For instance, a mere literature review will not suffice for analyzing far-reaching CPPs. Similarly, the more directive or detailed the CPPs, the more substantive the corresponding fiscal impact analysis will have to be.

#### Conclusion No. 7

King County conducted the required amount of initial fiscal impact analysis prior to adopting the King County County-wide Planning Policies. The fiscal impact analysis contained within the CPPs themselves and the adopting Ordinance addresses a *process* for conducting further detailed and substantive analysis. Establishing such a process met the requirement to "address" the impacts by July, 1992. However, *substantive* fiscal impact analysis must be completed by the time the county either adopts its comprehensive land use plan or it designates the urban growth areas within the county, whichever occurs first. Subsequently, additional fiscal analysis may be required each time the county amends its CPPs. The Board will review the sufficiency of *substantive* fiscal impact analysis by determining whether it contains a reasonably thorough discussion of the anticipated fiscal impacts of the CPPs on general purpose local governments. Fiscal impact analysis need not address the fiscal impact of the CPPs on the individual, special districts, regional or state government or the private sector. If it does so, and such analysis is included or incorporated by reference in the CPPs, the Board will review the expanded analysis in the event an appeal is filed challenging its sufficiency.

#### **F. ORDER**

Having reviewed the file and exhibits in this case, having considered the briefs and arguments of counsel, having heard testimony, and having entered the foregoing Findings of Fact and Conclusions, the Board orders that:

The King County County-wide Planning Policies and the action of the King County Council adopting them, Ordinance No. 10450, are in compliance with the requirements of the Growth

Management Act except for the following policies which are **remanded**:

- 1.)FW-2(c).King County is instructed to either remove this policy from the CPPs, or to otherwise bring this policy into compliance with the Board's holdings and conclusions.
- 2.)LU-27.King County is instructed to either remove this policy from the CPPs, or to otherwise bring this policy into compliance with the Board's holdings and conclusions.
- 3.)LU-59.King County is instructed to either remove this policy from the CPPs, or to otherwise bring this policy into compliance with the Board's holdings and conclusions.

Pursuant to RCW 36.70A.300(1)(b), the Board directs King County to comply with this Final Decision and Order by **5:00 p.m. on June 1, 1993.**

DATED this 1st day of March, 1993

CENTRAL PUGET SOUND GROWTH PLANNING HEARINGS BOARD

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M. Peter Philley  
Board Member

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Joseph W. Tovar, AICP  
Board Member

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Chris Smith Towne  
Board Member

Note:This Final Decision and Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

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<sup>[1]</sup> The Board takes official notice of population data from the Washington State Office of Financial Management.

<sup>[2]</sup> Of the key terms in the definition of the CPPs, only "comprehensive plans" is defined by the GMA.Comprehensive land use plan, comprehensive plan or plan is defined by RCW 36.70A.030(4) to mean: "a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter."

<sup>[3]</sup> Note that RCW 36.70A.210(2)(a) discusses a second framework. It provides that city and county representatives shall establish "a collaborative process that will provide a framework for the adoption of a county-wide planning policy."Furthermore, pursuant to RCW 36.70A.210(2)(b), this framework for adoption of the CPPs "shall determine the manner in which the county and cities agree to all procedures and provisions including but not limited to desired planning policies, deadlines, ratification of final agreements and demonstration thereof, and financing, if any, of all activities associated therewith."The framework discussed in RCW 36.70A.210(1) is different than the one discussed in RCW 36.70A.210(2).The former is predominantly substantively-based; the latter is clearly procedurally oriented.

<sup>[4]</sup> RCW 36.70A.100 is a codification of Sec. 10 of SHB 2929, which was passed in the 1990 legislative session. RCW 36.70A.210 is a codification of Sec. 2 of ReSHB 1025, which was passed in the 1991 legislative session.

<sup>[5]</sup> *Smith v. Spokane County*, 67 Wn.App. 478, 482, \_\_\_ P.2d \_\_\_ (1992) citing *Dennis v. Department of Labor & Industries*, 109 Wn.2d 467, 479, 745 P.2d 1295 (1987).

<sup>[6]</sup> The Act directs local governments to take a long term view in forecasting growth and developing plans and regulations to manage that growth.Specific sections of the Act set five, six, ten and twenty year planning horizons.

See RCW 35.58.2795; 35.77.010; 36.70A.070(3) and (6), .110(2), .130(3), .280(1), .350(2); 36.79.150; 36.81.121 and 43.62.035

<sup>[7]</sup> This transformation of local governance does not assume or depend upon charter or statutory reform of the fundamental authority or character of cities and counties. Rather, it assumes the continuation of the existing trends toward incorporation and annexation of urbanized and urbanizing land. To the extent that urbanization has already occurred or will occur in unincorporated areas, a clear implication of this legislative direction is that incorporations and annexations must occur. Fiscal impact analysis should lead to the development of strategies to address the identified fiscal consequences. These could include interlocal agreements, tax base sharing, joint legislative agendas for new fiscal tools, contracting for certain services, charter amendments and other steps.

<sup>[8]</sup> RCW 36.70A.030 (14) defines "Urban growth" as "growth that makes intensive use of land for the location of buildings, structures and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services." Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth" (emphasis added).

<sup>[9]</sup> An analysis of the fiscal impact will logically include an assessment of costs and fiscal constraints. The Board construes the objective of this analysis to be the development of a strategy for achieving the adopted CPPs, including the governance structure for the urban growth area, rather than a catalogue of reasons why the CPPs cannot be achieved.

<sup>[10]</sup> This is a term used by Snoqualmie to mean "policies which guide the procedures and process for a county and its cities to adopt consistent comprehensive plans." (Petitioner's Opening Brief, at p. 17, emphasis in original).

<sup>[11]</sup> RCW 36.70A.210(3) explicitly lists several issues that must be addressed in any CPPs, but prefaces the list with the statement: "A county-wide planning policy shall at a minimum, address the following: (emphasis added)." This language leaves room for other policies to be adopted as local circumstance and priority warrant.

<sup>[12]</sup> At the hearing, the County stated that the CPPs, as policies rather than regulations, were simply not binding on the cities. Upon questioning by the Board, the County stated that the CPPs would have the same effect whether the words used were always 'should' or always 'shall'. The Board notes with interest that elsewhere in brief and argument, the County contended that the CPPs did have substantive effect over the comprehensive plans of cities and counties.

<sup>[13]</sup> Consistency is used many times in GMA. Such uses include consistency between an adopted comprehensive plan and its development regulations and capital programs, the relationship between or among the plans of a county and the cities within its boundaries, and between each local government's comprehensive plan and the CPPs.

<sup>[14]</sup> King County argued that this simply means that RCW 36.70A.210 created no new or additional land use authority for cities, and rejected the argument that cities could ignore plans and regulations prepared by others. They presented argument that, had the legislature meant to say that local land use decisions are to be exempt from and impervious to a consistency requirement, then it could have said so explicitly, but did not.

<sup>[15]</sup> One issue that may bear further legislative scrutiny is the extent of the Board's jurisdiction in reviewing petitions alleging non-compliance with other statutes on matters arising from GMA action.

<sup>[16]</sup> The Department of Community Development does discuss the concept of 'bottom up' in its Procedural Criteria at WAC 365-165-010(3) and 050(2).

<sup>[17]</sup> Labeling the GMPC a "regional planning agency" does not confer upon it land use powers or authority to adopt GMA required policy documents.

<sup>[18]</sup> The Board notes that the directive in FW-1, Step 4(b) to the GMPC to establish a conflict resolution process is similar to Section 4(b) of Interlocal Agreement Nos. 2 and 3 which provides:

The GMPC shall devise and the parties shall comply with a locally based conflict resolution process which will be directed at conflicts which may arise from the work of the GMPC. {Exhibits 13 and 14}. Because Snoqualmie is not a party to Interlocal Agreements 2 or 3, the provisions of Sections 4(b) from those agreements cannot pertain to it. However, because the King County Council adopted FW-1 as a specific part of the

King County CPPs, and because the CPPs have a directive effect on all cities whether or not a particular city signed an interlocal agreement, FW-1, Step 4(b) may become binding on Snoqualmie in the future if the King County Council adopts the process recommended by the GMPC and that process is consistent with the Board's decision in this case.

<sup>[19]</sup>FW-2(c) contains language nearly identical to LU-59 and therefore will be treated the same. {Exhibit 1; the CPPs at p.8}.

<sup>[20]</sup>The Board does not intend to convey that community character and design are trivial or inappropriate subjects for comprehensive plans simply because they don't belong in CPPs. The Board notes that the Department of Community Development, in its Procedural Criteria at WAC 365-195-345(3)(d), strongly recommends inclusion of a comprehensive plan design element. Every community has characteristics that are the product of its unique physical setting and human history. The future to which a community aspires could build upon those existing characteristics or consciously impose a thematic affectation. In either case, defining community character and selecting design strategies for enhancing or changing that character are local prerogatives.

<sup>[21]</sup>*Cheney v. Mountlake Terrace*, 87 Wn. 2d 338, 344-345, 552 P.2d 184 (1976), quoting from *Trout Unlimited v. Morton*, 509 F.2d 1276, 1285 (9th Cir. 1974).

<sup>[22]</sup>The Board notes that the date of preparation of the interlocal agreement apparently was October 16, 1991. All but the Town of Skykomish signed the agreement after December 1, 1991. (Finding of Fact Nos. 1 and 2; Exhibit 12).

<sup>[23]</sup>see RCW 43.21C.110.

<sup>[24]</sup> see RCW 36.70A.050 and RCW 36.70A.190(4)(b) respectively.

<sup>[25]</sup>Although the Board holds that King County complied with the requirement to specifically include a section in the CPPs that addresses fiscal impact analysis, the Board notes that what King County maintains was adequate fiscal analysis that was "considered" by the GMPC and the county council, was not incorporated into the CPPs by reference. In addition, the "Work Program to Refine Countywide[sic] Planning Policies" (attachment A of the Ordinance {Exhibit 1}) does not mention fiscal impact analysis. A "Fiscal/Economic Analysis Work Program" did not come into existence until it was included, but not incorporated by specific reference, as part of the packet attached to Motion No. 8776 as "Exhibit 1", dated September 4, 1992 {Exhibit 5}.

<sup>[26]</sup>The Board notes that the Table of Contents for the CPP's refers to Chapter VIII as pertaining to "Economic Development and Fiscal Impact". {Exhibit 1, page 3 of the CPP's; emphasis added}.

<sup>[27]</sup>The Board has reviewed the "substantive" analysis that King County claims to have conducted {Exhibits 15 through 19} prior to adopting the CPPs. Although interviews with "six key people" {Exhibit 18, page 2} and literature reviews {Exhibits 18 and 19} may be sound initial components of fiscal analysis, by themselves they are insufficient. The analysis must correspond to actual CPPs. It must also be included or incorporated by reference in the CPPs.