

**CENTRAL PUGET SOUND**

**GROWTH PLANNING HEARINGS BOARD**

**State of Washington**

CITY OF EDMONDS)  
)  
and) **Case No. 93-3-0005**  
)  
CITY OF LYNNWOOD,) )  
**FINAL DECISION**  
Petitioners,) **AND ORDER**  
)  
v.)  
)  
SNOHOMISH COUNTY,) )  
Respondent.)  
)

**A. PROCEDURAL HISTORY OF THE CASE**

On April 2, 1993, the City of Edmonds (**Edmonds**) filed a Petition for Review with the Central Puget Sound Growth Planning Hearings Board (the **Board**), assigned Case No. 93-3-0004. The Petition challenged the validity of certain of the county-wide planning policies (**CPPs**) adopted by Snohomish County (the **County**). On April 5, 1993, the City of Lynnwood (**Lynnwood**) filed a Petition for Review with the Board, also challenging the validity of certain of the County CPPs. On April 12, 1993, the Board issued an "Order of Consolidation and Notice of Hearing" which consolidated the two cases and assigned Case No. 93-3-0005. On April 28, 1993, the County filed with the Board "Snohomish County's Answer to Petitions for Review."  
On May 7, 1993, the County filed with the Board "Snohomish County's Complete Index of Documents for County-wide Planning Policies (Ordinance 93-004)."  
A prehearing conference with the parties was held on May 13, 1993. The parties discussed the legal issues, possible briefing schedules and the preparation of the record, and related case matters.  
On May 19, 1993, the County filed a revised Index, entitled "Snohomish County's Complete Index of Documents for County-Wide Planning Policies (Ordinance 93-004) (Revised May 17,

1993)."

On May 24, 1993, the Board issued a Prehearing Order. The Order set forth the legal issues, established a schedule for filing motions, briefs, preliminary and final witness and exhibit lists, and other case matters. The Order established June 7, 1993 as the deadline for filing Motions to Supplement the Record and June 14, 1993 as the deadline for filing Responses to such Motions. On June 7, 1993, Lynnwood filed with the Board "Lynnwood's Motion to Supplement Record" and "Lynnwood's Preliminary Exhibit List." Both documents indicated that Lynnwood desired to supplement the record with a January 7, 1993 letter from Marc LaFerrier, Lynnwood Associate Planner, to Steven Toy, Snohomish County Planning Department.

On June 14, 1993, the County filed with the Board "Snohomish County's Response to Lynnwood's Motions to Supplement the Record to Allow Additional Documentary Evidence and Testimony of Witnesses."

On June 22, 1993, the Board issued an "Order on Motions to Supplement the Record and Order Granting Edmonds' Motion to Amend Pleading to Voluntarily Dismiss Portions of Appeal [i.e., Legal Issue #7]."

On June 29, 1993, the County filed with the Board "Snohomish County's Objection to Order on Motions to Supplement Record, or, in the Alternative, Snohomish County's Motion to Allow Discovery." On July 9, 1993, the Board issued "Order Denying Snohomish County's Motion to Supplement the Record or Allow Discovery and Ordering that Witness Testimony be Limited to Evidence in the Record or Admitted Supplementary Evidence."

On July 1, 1993, Edmonds filed with the Board a "Stipulation of Fact" regarding the proper interpretation of policy HO-21.

On July 8, 1993, the County filed with the Board "Stipulation Concerning Preparation of the Record" on behalf of the parties.

On July 13, 1993, 1000 Friends of Washington (**1000 Friends**) filed with the Board a "Motion for *Amicus Curiae* Status."

On July 14, 1993, Lynnwood filed with the Board "Lynnwood's Opening Brief." On the same date, Edmonds filed with the Board its "Prehearing Brief."

On July 16, 1993, Lynnwood filed with the Board the "City's Response to Motion to File Brief of *Amicus Curiae*" and on July 21, 1993, the County filed with the Board "Snohomish County's Brief in Support of *Amicus Curiae*." On July 21, 1993 the Board heard oral argument on the Motion for *Amicus Curiae* from 1000 Friends as well as from the parties. On July 22, 1993, the Board issued an "Order Granting Motion by 1000 Friends of Washington for *Amicus Curiae* Status." The order limited participation by 1000 Friends to submitting a brief on legal issues 4a, 6 and 11 only.

On July 26, 1993 the County filed with the Board "Snohomish County's Responsive Brief."

On July 27, 1993 the County and Lynnwood filed a "Motion for Stipulated Order" and "Stipulation on Issues 4b and 4c." Accordingly, the Board issued an "Order Granting Motion for Stipulated Order" which dismissed Legal Issues 4b and 4c.

On July 29, 1993 Lynnwood filed with the Board "Lynnwood's Reply Brief."

The hearing on the merits of the Petitions for Review was held on August 2, 1993 in the City of Everett Council Chambers. Present were the three members of the Board: M. Peter Philley, Chris Smith Towne and Joseph W. Tovar, Presiding Officer. Representing Lynnwood was John Watts; representing Edmonds was Scott Snyder; representing Snohomish County were Sue Tanner and Gordon Sivley. Court reporting services were provided by Duane Lodell of Robert H. Lewis & Associates. No witnesses testified in this matter.

The parties had stipulated to exhibits 1 through 353 from the record below which are referred to by the letter "R". Each page of the record is also consecutively numbered. In addition, the Board took official notice of :

April 7, 1992 draft of Department of Community Development Guidebook: *Predicting Growth and Change in Your Community: A Guide to Subcounty Population Forecasting*;

November 16, 1992 draft of Department of Community Development Guidebook: *The Future of Housing in Washington: A Guide to Preparing a Housing Element under the Growth Management Act*.

In addition to the record below, the Board admitted several documents as supplemental evidence. Edmonds filed two supplemental exhibits that are referred to by the letter "E". Lynnwood filed four supplemental exhibits that are referred to by the letter "L". In addition, exhibits R-354 through 368 were admitted as supplements to the record.

At the conclusion of the hearing, the Presiding Officer reminded the parties that reply briefs to the 1000 Friends *amicus* brief could be filed with the Board. On August 9, 1993, Lynnwood filed with the Board "Lynnwood's Reply Brief to *Amicus*."

## **B. FINDINGS OF FACT**

1. On April 4, 1989, the Snohomish County Executive sent a letter to the Snohomish County Council indicating his concern about the County's ability to balance the need for strong economic growth and quality of life values. R-1, at 3.
2. On June 14, 1989, the Snohomish County Council adopted Motion No. 89-159, entitled "A Motion Adopting 'Snohomish County Tomorrow' as a Plan to Address the Challenges and Opportunities of Growth and Requesting the Executive to Direct Departments to Develop a Work Plan." The Motion adopted and incorporated by reference the document entitled "Snohomish County Tomorrow." R-1, at 3-4.
3. In June, 1989, the Washington State Office of Financial Management (OFM) developed an interim population forecast for Snohomish County of 680,585 persons. R-120, at 1198.
4. On August 2, 1989, the County Council reviewed a Draft Technical Work Program for Snohomish County Tomorrow. R-10, at 122.
5. On October 5, 1989, a presentation was given to a group of city and county council members from throughout Snohomish County about the Snohomish County Tomorrow plan. As a result, a body named "Snohomish County Tomorrow" (SCT) was created. R-10, at 122. The SCT Assembly included elected officials from cities and towns within the county, the

Tulalip Tribes and the County.

6.A SCT Steering Committee was established as the “action arm” of the SCT, comprised of elected officials selected by the county and by each city and town and the tribes.It met approximately 41 times between January 10, 1990 [R-10, at 122] and February 12, 1992 [R-10, at 126].<sup>111</sup>

7.The Planning Advisory Committee (**PAC**) to the SCT is composed of planning directors and other staff of SCT member governments.The SCT’s Community Advisory Board (**CAB**) is comprised of citizen representatives from throughout the county.

8.On July 1, 1990, the Growth Management Act (**GMA or Act**), SHB 2929, became effective.

9.On July 19, 1990, the SCT Steering Committee drafted a document entitled “Snohomish County Tomorrow Steering Committee Goals.” R-22, at 188.Subsequently, on August 22, 1990, a modified draft of this document was also prepared by the Steering Committee.R-56, at 476.

10.On September 26, 1990, the Snohomish County Council adopted Motion No. 90-294.The Motion adopted the SCT Steering Committee’s August, 1990 goals document.R-56, at 476.

11.In October, 1990, the SCT Steering Committee published a document entitled “Snohomish County Tomorrow Goals.” R-56.This document contained a “Snohomish County Tomorrow Assembly Resolution” entitled “Approving Goal Statements for Growth Management in Snohomish County” that was signed by a County representative and representatives from sixteen cities in Snohomish County, including Edmonds and Lynnwood. R-56, at 428-29.The goals document also contained the steering committee’s mission statement.R-56, at 432.

12.On October 25, 1990, the General Assembly of the Puget Sound Council of Governments (**PSCOG**) approved Resolution A-90-01, adopting VISION 2020, the “Growth and Transportation Strategy for the Central Puget Sound Region.”R-349.

13.A November 8, 1990 SCT table shows the 1989-2010 population forecast, with a 2010 population of 680,585.This forecast was based on the OFM 1989 estimates and 2010 preliminary interim county forecast, the PSCOG's “Forecast and Analysis Zone” (FAZ) forecast, and the County’s “POPUL” model.R-119.

14.A February 14, 1991 SCT table shows 1989-2010 population forecasts broken down into regional districts within the county, using OFM’s interim 2010 forecast as the base.This forecast used the County’s POPUL model, which, in turn, used the PSCOG’s FAZ forecast.R-120, at 1198-99.

15.On September 25, 1991, the SCT Steering Committee agreed to utilize the SCT process, framework and goals report as the collaborative process for adopting countywide planning policies pursuant to RCW 36.70A.210(2)(a).R-348, at 3347.

16.In September, 1991, the PSCOG published a document entitled “Step 91-- Central Puget Sound Regional Econometric Model and Regional Economic and Demographic Forecasts 1990-2020: Technical Documentation.”R-203.

17. In January, 1992, OFM released its population projections for Snohomish County. It predicted a county population of 714,244 persons in the year 2012. R-216, at 2134; R-219, at 2146.
18. On February 12, 1992, the SCT Steering Committee's "Operating Guidelines" were produced. R-63, at 570. *See also* R-306, at 2968.
19. On February 18, 1992, a draft population and employment forecast for the year 2000 was prepared by the Puget Sound Regional Council (PSRC).<sup>121</sup>R-209, at 2083.
20. On March 5, 1992, the PAC's Population Projection and Distribution Subcommittee met. R-211.
21. On March 16, 1992, the PSRC prepared a draft population, households, and household size forecast for the years 1980, 1990, 2000, and 2010. R-212, at 2106.
22. In March, 1992, the SCT Steering Committee "Operating Guidelines" were revised. R-63.
23. In April, 1992, the "Puget Sound Subarea Forecasts: Model Calibration and Forecasts" was prepared for the PSRC. R-205.
24. The Transportation Technical Coordinating Committee and the SCT Community Advisory Board met throughout 1992. R-262, 263, 266; R-80g.
25. A May 15, 1992 draft of the County-wide Planning Policy was developed by SCT. R-177. *See also* R-276.
26. On May 28, 1992 the PSRC issued a draft Vision 2020 Alternative #1 population forecast. R-348, Note at 3380.
27. On or about July 21, 1992, an Interlocal Agreement was entered into between the County and nine cities within the county, including Lynnwood and Edmonds, for implementation of the GMA. R-306.
28. On August 5, 1992, the Snohomish County Planning Department prepared the Initial [year] 2012 Population Forecast for cities and interim urban growth areas in Snohomish County. The forecast was corrected on August 19, 1992. "These forecasts are based on the May 28, 1992 draft PSRC Vision 2020 Alt. #1 forecast, adjusted to add to the Office of Financial Management 2012 population projection of 714,244 people for Snohomish County." Individual city calculations were then derived by using the County's POPUL model. R-227, at 2174-2175.
29. In August, 1992, Draft "Countywide Planning Policies for Snohomish County" were prepared. R-82, at 954. The text of this draft indicates "SCT Draft 9/12/92." R-82, e.g., at 956.
30. On September 11-12, 1992, the SCT Steering Committee held a weekend retreat to review draft county-wide planning policies. R-279, at 2567. *See also* R-348, at 3347.
31. On September 12, 1992, the Initial [year] 2012 Population Forecast for cities and interim urban growth areas in Snohomish County that had been prepared on August 5, 1992 was revised. This forecast was attached as Appendix B to the CPPs. R-348, at 3379-80.
32. On September 29 and October 7, 1992, the SCT Steering Committee's Policy Subcommittee held meetings. R-279, at 2567.

33. An October 28, 1992, draft of the “Countywide Planning Policies for Snohomish County” was prepared following the SCT Steering Committee Retreat and the SCT Steering Committee’s Policy Subcommittee meetings. R-279, at 2567-68.
34. On November 9, 1992, the SCT Policy Subcommittee reached agreement on certain draft policies. R-90, at 1069. A similar document is dated November 18, 1992. R-91. *See also* R-348, at 3347.
35. On November 10 and 24, 1992, the Snohomish County Planning Commission held workshops to review the proposed Countywide Planning Policies. R-317, at 3071.
36. On December 2, 1992, the SCT Steering Committee met and reviewed the recommendations of its Policy Subcommittee. R-341.
37. On December 9, 1992, the SCT Steering Committee accepted the Countywide Planning Policies. R-268 and 346. *See also* R-342, at 3259-60.
38. On December 15, 1992, and January 19, 1993, the Snohomish County Planning Commission held public hearings on the Countywide Planning Policies. R-317, at 3071.
39. On January 25, 1993, the City of Lynnwood adopted Resolution No. 93-2, entitled “A Resolution Opposing Snohomish County Council’s Adoption of Snohomish County Tomorrow Steering Committee’s December 9, 1992 Draft of Countywide Planning Policies, and Recommending Revisions Thereto.” R-326, at 3172.
40. On February 4, 1993, the Snohomish County Council adopted Ordinance No. 93-004, entitled “Adopting a County-wide Planning Policy Pursuant to RCW 36.70A.210.” The Ordinance adopted and incorporated by reference the December 9, 1992 “County-wide Planning Policies for Snohomish County.” R-348, at 3347. *See also* R-350 for a partial transcript of the public hearing.
41. On February 20, 1993, Ordinance No. 93-004 became effective. R-348, at 3348.

### **C. DISCUSSION OF SPECIFIC ISSUES**

The specific issues pertain to one or both of the petitioners. If a specific issue pertains to Lynnwood, it is followed by the bracketed notation [L]. If a specific issue pertains to Edmonds, it is followed by a bracketed notation [E]. If a specific issue pertains to both petitioners, it is followed by both a bracketed [L] and a bracketed [E].

#### Legal Issue No. 1

***Does a CPP (UG-7) that requires development of regulations and incentives that encourage higher densities and employment concentrations that result in a majority of growth locating in metropolitan [centers], designated subregional centers, and pedestrian pockets, violate local land use powers of Lynnwood, a designated subregional center, contrary to RCW 36.70A.210?***  
[L]

UG-7 states:

As part of the joint comprehensive planning process for each UGA, develop regulations and incentives that encourage higher densities and employment concentrations so that the majority of growth locates within the Metropolitan Centers, the designated Subregional Centers and Pedestrian Pockets.R-348, at 3355.

### Positions of the Parties

#### a.City of Lynnwood

Lynnwood maintains that "UG-7 could be interpreted as requiring each city in an urban growth area (**UGA**) in Snohomish County, including Everett and Lynnwood, to target through their planning processes a population growth of 110,000 into Everett and Lynnwood."Lynnwood's Opening Brief (**LOB**), at 8-9.Lynnwood points out that the only "metropolitan center" in Snohomish County is the City of Everett; likewise, the only "designated subregional center" is the City of Lynnwood.As an example, citing to the "Initial [year] 2012 Population Forecast" attached to the CPPs as Appendix B to UG-2 (*see* R-348, at 3379-80), which shows a 219,944 increase in population between 1992 and 2012, Lynnwood claims that "a majority of growth" equals approximately 110,000 people that each city would have to plan for.Lynnwood also points out that a recommendation by County staff to correct this "factual error" (because "the majority of growth in the county is not forecasted to occur in the three listed types of urban centers but in the urban growth areas as a whole" [R-332, at 3198] by adding the words "the urban growth areas including" after the word "within" was never adopted.LOB, at 9.

#### b.Snohomish County

The County maintains that UG-7 is a "process" policy.

Policy UG-7 does not call for "development" regulations.Rather, the policy states that during the joint comprehensive planning process for each UGA, as detailed in interlocal planning agreements between the county and its cities, the county and cities are to jointly develop regulations and incentives that encourage higher densities and employment concentrations and thus, support the allocations of population and employment [to centers]. Snohomish County's Responsive Brief (**SCRB**), at 33, quoting Snohomish County's Answer to Petitions for Review, at 6.

The County disputed Lynnwood's claim that it was a designated subregional center.Instead, the County claimed that Lynnwood nominated itself as such a center but that the final designations of centers had not taken place.The County quoted Vision 2020 language (R-122, at 1213) to support this contention.The County also maintained that initial Vision 2020 guidelines for designations of centers no longer applied.As a result, Lynnwood's population would not increase as greatly as under the earlier guidelines.SCRB, at 34.

Because Legal Issue 4b had been withdrawn, the County argued that the only remaining issue regarding UG-7 was whether the County had the ultimate authority to allocate population and employment to cities.The County alleged that this same issue also applied to UG-2 and UG-4.

SCRB, at 34 and 36.

### Discussion

Because the Board concludes below in Legal Issue 4a that counties do have the authority to allocate population and employment, Legal Issue No. 1 has become moot.

### Conclusion No. 1

Legal Issue No. 1 has become moot. Refer to the Board's discussion below of Legal Issue No. 4a.

### Legal Issue No. 2

***Does a CPP (UG-4) that establishes a special process for citizen participation violate local land use powers? [L]***

Lynnwood challenges the underlined language of policy UG-4:

The regional Vision 2020 plan should be implemented through a collaborative planning process between the cities and the county. This process should include the citizens appointed by the cities and the county within the affected areas. The plan should establish a hierarchy and recommended designation of centers within urban growth areas, as specifically described on pages 20-25 of the Vision 2020 plan and as modified by the Puget Sound Regional Council or Snohomish County Tomorrow. (Emphasis added).

### Positions of the Parties

#### a. City of Lynnwood

Lynnwood interprets the direction "This process should include..." as substantive, citing the Board's *Snoqualmie* decision (*Snoqualmie v. King County*, CPSGPHB Case No. 92-3-0004 (1993)). LOB, at 53. Furthermore, it assumes that "centers" refers to the metropolitan or subregional center designations in Vision 2020. Since Lynnwood claims to be a designated subregional center,

...the policy "directs," or could be interpreted to direct, the County to appoint citizens as part of Lynnwood's planning process to implement Vision 2020. State law on planning processes for code cities is codified at RCW 35A.63, and prescribes a required process for municipal land use decisions involving the city council and city planning commission, and public participation through public hearings. RCW 35A.63.070. Provision allowing the County to appoint citizens (whether local residents or County residents is unclear but immaterial) as part of Lynnwood's process adds a requirement to the statutory framework, and thereby alters the land use powers of the City, contrary to GMA. LOB at 53-54

(emphasis in original).

Lynnwood asks that the second sentence of UG-4 be stricken, or revised to read that it only applies to "affected areas" that cross jurisdictional boundaries.

#### b.Snohomish County

The County asks the Board to examine the portion of UG-4 at issue in the context of the policy as a whole, and in the context of the preceding sentence. "...the only reasonable meaning to ascribe to the second sentence is that cities will appoint citizens for the cities' part of the collaborative planning process and the county will appoint citizens for its part of the process."The County cites to R-306, the Interlocal Agreement, as evidence that such a process is already in place.SCRB, at 37.

The County argues that UG-4 meets all three of the Board's tests for validity:

- (1) It meets a legitimate regional objective;
- (2) It addresses only plans and not implementing regulations;
- and (3) It is consistent with the GMA.SCRB, at 37-38.

#### Discussion

RCW 36.70A.210, County-wide planning policies, requires that a county's policy address:

- (3)(f) Policies for joint county and city planning within urban growth areas.

The first section of the "Countywide Planning Policies for Snohomish County" is entitled "Policies to Implement Urban Growth Areas (RCW 36.70A.110)."The introductory text preceding policies UG-1 through -16 cites the GMA requirement for UGAs, and references the interlocal agreements between the county and most cities for joint planning pursuant to the GMA. R-348, at 3352.

The Interlocal Agreement between Snohomish County and nine southwest cities, including Lynnwood, signed in mid-1992, sets forth a process for coordinating planning and implementation of the GMA.Among its purposes are to provide for the establishment of a joint comprehensive planning area (JCPA) encompassing the urbanized and urbanizing areas adjacent to or surrounding the nine cities, a planning process for preparation of a joint comprehensive plan for that area, and a means by which citizens can participate in that process.R-306, at 2954-2955.A Growth Management Coordinating Committee (**GMCC**) has representatives appointed by the parties to the Agreement; they may be local government officials, or citizens residing within the planning area.Its responsibilities include review of plans, presentation of proposals to the public at meetings, workshops and open houses, and recommendations to member planning commissions.R-306, at 2960-2961.

Section 5 A. of the Interlocal Agreement, Joint Planning Team (**JPT**), directs that:

The County and each City that is a party to this agreement shall each assign at least one staff person to the JPT which shall conduct the planning within the IUGA and the Joint Comprehensive Planning Area (JCPA)...and provide staff support to the Growth Management Coordinating Committee...R-306, at 2959.

Section 5 C., Growth Management Coordinating Committee, establishes a body of

representatives appointed by each city and an equal number appointed by the County, with general procedures for weighted voting and specific procedures for votes on consistency of plans. It directs that:

2.The GMCC shall provide guidance and coordination to the JPT and to the City and County planning commissions in the preparation of comprehensive plans within the JCPA. R-306, at 2960.

Section 5 D., Planning in Incorporated Areas and Unincorporated Islands, provides:

Comprehensive Planning for the Cities will be conducted by the Cities, which shall allow for participation by citizens from adjacent unincorporated areas.Planning for unincorporated "islands" of less than 150 acres which are surrounded by the corporate limits of one or more cities, shall be conducted jointly by the County and the adjacent Cities, with the Cities taking the lead.R-306, at 2961.

Section 5 E., Role of Planning Commissions and County/City Councils, provides that:

The City and County Councils will conduct their own meetings and hearings prior to the adoption of the joint comprehensive plan....R-306, at 2961.

Section 8, Relationship to Existing Laws and Statutes, states:

This agreement in no way modifies nor supersedes existing laws and statutes....

The ultimate authority for land use and development decisions is retained respectively by the County and Cities.By executing this agreement, the County and the Cities do not in anyway [sic] abrogate their respective decision-making responsibility accorded them by law.R-306, at 2962.

Policy UG-4, standing alone, is not a model of clarity and precision.If read in isolation, the portion of UG-4 providing for a special citizen participation process could be read as directing the "worst case" outcome envisioned by Lynnwood.Like courts in interpreting statutes, this Board turns to rules of statutory construction when interpreting GMA-mandated documents enacted by local jurisdictions, such as CPPs, comprehensive plans and development regulations.

A document adopted pursuant to the GMA which is clear on its face is not subject to Board interpretation.However, an ambiguity exists if the document is subject to more than one reasonable interpretation.*See Marriage of Kovacs*, 121 Wn.2d 795, 804, \_\_\_ P.2d \_\_\_ (1993) (citing *Biggs v. Vail*, 119 Wn.2d 129, 134, 830 P.2d 350 (1992) and *Kadoranian v. Bellingham Police Dep't.*, 119 Wn.2d 178, 184-85, 829 P.2d 1061 (1992)).The cities and the County each have reasonable interpretations of UG-4.Unfortunately, they are totally opposite interpretations. An ambiguity exists because UG-4 is not clear on its face.If the language is susceptible of two constructions, one of which will carry out and the other defeat the manifest legislative object, it should receive the former construction.*Clements v. Travelers Indemnity Co.*, 121 Wn. 2d 243, 254, \_\_\_ P.2d \_\_\_ (1993) (citing *PUD 1 v. Public Empl. Relations Comm'n.*, 110 Wn.2d 114, 120, 750 P.2d 1240 (1988) (quoting *Roza Irrig. Dist. v. State*, 80 Wn.2d 633, 497, P.2d 166 (1972))).

Therefore, when a GMA document is subject to interpretation, this Board will attempt to construe

it in the manner that best fulfills the legislative purpose and intent. *See Marriage of Kovacs*, at 804. As the Washington Supreme Court has held:

In construing statutes, ‘the spirit and intent of the statute should prevail over the literal letter of the law’ and ‘there should be made that interpretation which best advances the perceived legislative purpose.’ *Martin v. Triol*, 121 Wn.2d 135, 143, \_\_\_ P.2d \_\_\_ (1993) (quoting *Wichert v. Cardwell*, 117 Wn.2d 148, 151, 812 P.2d 858 (1991)).

Likewise, the court has said:

We avoid a literal reading of a statute if it would result in unlikely, absurd, or strained consequences. The spirit or purpose of an enactment should prevail over the express but inept wording. *State v. Elgin*, 118 Wn. 2d 551, 555, 825 P.2d 314 (1992) (citing *State v. Neher*, 112 Wn.2d 347, 351, 771 P.2d 330 (1989) and *State v. Day*, 96 Wn.2d 646, 648, 638 P.2d 546 (1981)); *see also Bowles v. Dept. of Retirement Systems*, 121 Wn.2d 52, 77, \_\_\_ P.2d \_\_\_ (1993).

Therefore, the preamble or statement of intent can be crucial to interpretation of a statute or GMA document. *See Spokane County Health District v. Brockett*, 120 Wn.2d 140, 151, 839 P.2d 324 (1992) (citing *Roy v. Everett*, 118 Wn.2d 352, 356, 823 P.2d 1084 (1992)).

In the Introduction section, under the heading “Purpose”, the CPPs provide:

... Nothing in this section shall be construed to alter the land use powers of the cities (RCW 36.70A.210)...R-348, at 3350.

This sentence is a direct quote from the last sentence of RCW 36.70A.210(1). Although the reference to the words “this section” are misplaced in a CPPs format (since the actual reference to “this section” is to RCW 36.70A.210 and not to the County’s CPPs), the Board nonetheless concludes that by incorporating this sentence into the “purpose” provisions of its CPPs, the Snohomish County Council’s clear intent was not to alter the land use powers of cities.

Read in the context of UG-4 as a whole, taking into consideration the above-quoted purpose text of the introductory section of the CPPs, as well as the provisions of the Interlocal Agreement, the Board is persuaded that the challenged portion will not have the effect feared by Lynnwood.<sup>[3]</sup> The County cannot usurp Lynnwood’s authority to appoint members to the city’s own planning process regardless whether the designees reside within or outside the city limits. The Board will not interpret UG-4 to permit such a seizure of authority.

## Conclusion No. 2

The Board concludes that the challenged portion of Policy UG-4 relating to citizen participation is in compliance with the GMA.

## Legal Issue No. 3

***Is Policy UG-4 otherwise in compliance with the Growth Management Act?[L]***

### a.City of Lynnwood

The City of Lynnwood's challenge to Policy UG-4 was set forth in two legal issues.Issue No. 2 asked whether UG-4 established a special citizen participation process that violated local land use powers.Lynnwood's second concern with UG-4 is related to Issue 4b, which asks:"If the county does have the authority to allocate population and employment to the cities, do UG-2, UG-4, UG-7 and UG-8 effectuate such allocation?"

Lynnwood states:

Since no fiscal analysis has occurred, the CPPs on population can only be preliminary allocative exercises, which have no binding or mandatory effect on cities whatsoever.The Board should find that the County CPPs that purport to allocate population (UG-2, UG-4, UG-7, and UG-8) and particularly Appendix B, are not binding on a cities' [sic] comprehensive plan.LOB, at 40.

Lynnwood then asks the Board to declare that Policy UG-4 is "...non-binding and without substantive effect for purposes of any consistency challenge."LOB, at 42.In its discussion, Lynnwood asks:

Is it a procedural policy only, with the general policies of Vision 2020 serving as a working basis for or guiding the collaborative planning process?Is it a substantive policy, that directs a result which the collaborative planning process must attain.Since the word "implement" in UG-4 ("Vision 2020 plan should be implemented") means "to accomplish" and "to carry into effect," Webster's New World Dictionary (Second College Edition, 1980), UG-4 could be construed to require a tangible result against which consistency is measured.

...

If UG-4 is something more than procedure, and is given substantive effective [sic] so that it becomes a measure of comprehensive plan consistency, it is also flawed and inconsistent with GMA because it dictates or could be interpreted to dictate a specific result involving population allocations in advance of UGA designations, city and county comprehensive plan adoption, and prior to fiscal impact analysis, and negates a city's ability to achieve an internally consistent plan.

UG-4 is also flawed and inconsistent with GMA because of the modification language in UG-4... any attempt to create a substantive CPP that is subject to being changed by anyone other than the County Council is inconsistent with GMA.LOB, at 44-5.

### b.Snohomish County

The County responds by citing its Answer to Petitions for Review, at 6:

Policy UG-4 does not mandate any specific population densities.The policy calls for a collaborative planning process between cities and the county to establish a hierarchy and recommended designation of centers within UGAs as described in the Vision 2020 plan, but also makes clear that in its recommendation to the county council, Snohomish County Tomorrow may modify the specifics of the Vision 2020 plan.SCRB, at 33 (emphasis

added).

The County then states that: "With the withdrawal of Issue 4(b) from the case, it appears that the only remaining issue concerning ... UG-4 is identical to that discussed above with respect to UG-2: Does the county have the ultimate authority to allocate population and employment to the cities?"SCRB, at 34.

### Discussion

Because the Board concludes below in Legal Issue No. 4a that counties do have the authority to allocate population and employment, that part of Lynnwood's challenge to Legal Issue No. 3 related to the County's authority to allocate has become moot.

Next, Lynnwood asks whether UG-4 is procedural or substantive regarding implementation of Vision 2020, and if the latter, whether future modifications to that plan would be binding on the City. The regional Vision 2020 Plan, approved by the PSCOG in 1990, was intended to serve as the regional long-range planning framework for guiding growth and transportation in the Central Puget Sound. Finding of Fact No. 12. The Plan included a process for designating centers within the urban growth areas where population and employment would be concentrated. R-349, at 3403-3407.

Lynnwood alleges that the portion of UG-4 that authorizes the PSRC or SCT to modify the Vision 2020 plan is "... flawed and inconsistent with the GMA."

The threshold question here is whether modification to a plan by a body other than the adopting authority, and subsequently modified by that body or another group, may directly control the collaborative planning process of UG-4. The prospective designation of centers within Snohomish County will significantly affect the comprehensive planning and implementation of the affected cities and the County. The process contemplated in UG-4, involving a joint cities/county recommendation on designation of centers, is an appropriate response to the Act's instructions for cooperative and coordinated planning.

However, Policy UG-4 directs that the joint recommendation follow the specific directives of Vision 2020, including such modifications as may be made subsequent to the adoption of the CPPs. This policy, as written, is not in compliance with the Act.

In *Snoqualmie*, the Board considered the extent of authority of a growth management planning council (GMPC), established by interlocal agreement among King County and the cities in the county, to adopt or amend CPPs or carry out implementation actions. The Board concluded:

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 only review the King County Council's action for compliance with the GMA and not those

of the GMPC.

The Board holds this conclusion to be applicable to the issue before us.

If the County intends that future modifications to Vision 2020, by the PSRC or SCT, will shape the preparation of comprehensive plans within the county, then it must amend the CPPs to incorporate such changes.

The following is a non-inclusive list which the County may use to bring Policy UG-4 into compliance with the Act:

- 1) Strike "...and as modified by the Puget Sound Regional Council or Snohomish County Tomorrow;" or
- 2) Add a proviso that substantive modifications will be made by amendments to the CPPs by the Snohomish County Council; or
- 3) Strike "...as specifically described on pages 20-25...." and insert "... after consideration..."

### Conclusion No. 3

Because the Board concludes below in Legal Issue No. 4a that counties do have the authority to allocate population and employment, that portion of Legal Issue No. 3 related to the County's authority to allocate has become moot.

The Board concludes that Policy UG-4's requirement for planning under prospective modifications to Vision 2020 is not in compliance with the Act, because in any future consistency challenges of UG-4, the Board will consider only the enactments of the County Council, not those of the PSRC or SCT. That portion of the policy must be deleted or amended to be in compliance with the Act and the Board's Order.

### Legal Issue No. 4a

***Does the county have the authority to allocate population and employment to the cities rather than just to the urban growth areas?[L]***

### Origin of Issue 4a

Issue 4a is the result of several actions taken by the parties and the Board since the filing of Lynnwood's Petition for Review. That Petition stated:

...Lynnwood's objections to Snohomish County's CPPs...(include) Policy UG-2, which incorporates population forecasts (Appendix B), and improperly confers on the Snohomish County Tomorrow Steering Committee the authority with respect to population forecasts and density standards. Petition for Review at 2-5.

At the Prehearing Conference of May 13, 1993, proposed legal issues were reviewed. The matter of population allocation was subsequently split into three issues as follows:

4a. Does the county have the authority to allocate population and employment to the cities rather than just urban growth areas?

4b. If the county does have the authority to allocate population and employment to the cities, do UG-2, UG-4, UG-7 and UG-8 effectuate such allocation?

4c. If Snohomish County has allocated population and employment to Lynnwood, what level of proof is required to support such an allocation, and has the county met the requisite burden of proof? *See Board's Prehearing Order, filed June 22, 1993, at 8.*

The parties subsequently stipulated to dismissal of issues 4b and 4c and the Board so ordered on July 27, 1993.

Although the sub-issue that explicitly listed UG-2, UG-7 and UG-8 has been dismissed, those CPPs provide the basis of the disagreement that poses the fundamental question of the County's authority. UG-2 is most germane to this issue, particularly the underlined portions. It provides:

UG-2 Allocate growth projections consistent with the county-wide planning policies through a cooperative planning process involving Snohomish County Tomorrow and including the following steps:

a. Initial population projections will be based on the following sources:

1. The 20-year population projection of the Office of Financial Management (OFM) for Snohomish County;
2. The Puget Sound Regional Council's (PSRC) Vision 2020 population distribution;
3. A further distribution of the population forecasts within each of the 47 PSRC Forecast Analysis Zones in Snohomish County to arrive at forecasts for cities (within current city limits) and for preliminary urban growth areas subject to further Snohomish County tomorrow review prior to finalization;

The forecasts shown in appendix B are a starting point.

b. The Snohomish County Tomorrow Steering Committee will review and recommend the initial population forecasts and density standards to the County Council for incorporation into the countywide policies.

c. Each city will initially determine land capacity and its ability to accommodate forecasts within current city limits and the county within unincorporated areas.

d. Initial employment projections will be based on the PSRC's Vision 2020 employment projection and distribution for the PSRC's Forecast Analysis Zones within Snohomish County.

e. The Joint Planning Teams and the Growth Management Coordinating Committees within the interim Urban Growth Areas will investigate in greater detail the initial population and employment forecasts for their respective joint comprehensive planning areas and compare them with the holding capacity of each urban growth area for residential and non-residential land uses.

f. The Joint Planning Teams and the Growth Management Coordinating Committees will make recommendations on the capacity and ability of each urban growth area to finance and provide urban services and capital facilities for the projected growth.

g. As the comprehensive planning process proceeds in each jurisdiction and more detailed land, capital facilities and urban service capacity information becomes available, the Steering Committee may evaluate the initial population allocations and densities and recommend refinements or amendments to the County Council consistent with the countywide planning policies.

h. The Snohomish County Tomorrow Steering Committee and the County Council will incorporate the final population and employment forecasts in the countywide planning policies prior to approval of the comprehensive plans which meet the requirements of the Growth Management Act, not later than March 31, 1993.R-348, at 3353-3354 (emphasis added).

### Positions of the Parties

#### a. City of Lynnwood

Lynnwood argued that its sovereignty would be seriously undermined if the County has the authority to allocate population and employment. In brief, it argued that:

... zoning ordinances, by which density levels are set, are development regulations. As such, a city's zoning ordinance is a "local land use power" not affected by County adoption and implementation of CPPs under RCW 36.70A.210, or this Board's decision in *Snoqualmie*. LOB, at 20.

Lynnwood cites case law to establish that zoning, rather than comprehensive plans, establishes density and is controlling. A municipality's state constitutional authority, derived from Article 11 § 11, was also cited. LOB, at 21.

Lynnwood also argues that a variety of other statutes reserve certain powers to the cities and that because the GMA is silent on these matters, it "... cannot be construed to set forth the intent of the legislature to alter the land use, housing, public utility, taxing, expenditure or revenue or other powers of cities." LOB, at 23.

Lynnwood argues that cities have a "co-equal" authority with a county to "permit" density through their comprehensive plans because RCW 36.70A.130(3) reads in part:

...The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. LOB, at 24 (emphasis in original).

Lynnwood cites statutes and case law from Oregon to support the argument that a municipality's "pre-eminent" land use power is its comprehensive plan. LOB, at 25.

Turning to the *Snoqualmie* decision, Lynnwood argues that the Snohomish County CPPs violate the Board's three prong test. Lynnwood argues that population allocation to a city goes beyond a "legitimate regional interest" and violates the land use powers of cities by interfering with local prerogatives.

In its reply to the *Amicus* Brief, Lynnwood argues that the proposition for County authority to allocate population to cities is based on policy arguments rather than legal arguments. Further, Lynnwood disputes the argument that the only way to achieve consistency is by allowing "County mandated population allocation." Lynnwood Reply Brief to Amicus, at 2. Lynnwood argues that:

...a specific detailed population allocation made by the County in a CPP contravenes the processes set up by the Legislature to achieve consistency through collaborative planning, and not by County mandate....If the Board allows detailed population allocations to be incorporated into CPPs, the Board should hold the ultimate burden of proof, in the event of their use in a consistency challenge, is on the County to justify the allocation, if the city establishes a *prima facie* case supporting the city's own planning result. Lynnwood's Reply Brief to Amicus, at 8-9.

#### b. Snohomish County

The County argues that Policy UG-2 and the authority of the County to allocate population to cities is in compliance with the Act.

...UG-2 is a valid CPP and must be followed by the cities within the county, as well as the county. It meets the legitimate regional objectives of RCW 36.70A.100 and .110 on setting UGA boundaries and on consistency among comprehensive plans of jurisdictions sharing regional issues. The policy is consistent with .100 and .110, as well as with UGAs goals of reducing sprawl, allocating housing supplies and supporting public transportation. UG-2 does not, itself, alter the land use powers of cities, although there is no question but that RCW 36.70A.100 and .110 do effect such an alteration. SCRB, at 32.

The County does not agree that the GMA did not alter the land use powers of cities. It argues: The cities' opening briefs are based largely on a fundamental fallacy concerning the GMA: That the Act did not alter the land use powers of cities. The Act includes many references to consultation, collaboration and attempted agreement, and RCW 36.70A.210 states that nothing in that section shall be construed to alter the land use powers of the cities. Clearly, however, the Act categorically alters land use powers of both cities and counties, and no amount of rhetoric concerning sovereign rights and basic governmental powers will change that fact.... SCRB, at 10-11 (emphasis in original).

The County argued that Lynnwood's constitutional argument fails to maintain the city's land use sovereignty because the GMA is a "general law."

Article 11, § 11 of the Washington State Constitution is the source of both city and county police powers, including land use powers:

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.  
(Emphasis added).

The highlighted language declares that supremacy of general laws enacted by the state legislature over locally adopted police power regulations....

The GMA is a general law of the state, adopted to deal with a matter of state-wide concern:

Unplanned and uncoordinated growth.RCW 36.70A.010. ... [T]he GMA constitutes a limit on, or direction to, a charter county's and code city's constitutionally based police powers, rather than a delegation of such powers.Consequently, all city and county land use powers, including zoning, subdivision, etc., must now be exercised subject to the requirements of GMA.Such powers, under whatever statute or statutes exercised, no longer exist independently of GMA's requirements.SCRB, at 11-12 (emphasis in original; citations omitted).

Having argued that the GMA alters land use powers, the County then states that CPPs do not need to alter those powers to have substantive effect.

It is important to note that because CPPs have a substantive effect upon city comprehensive plans, they can provide substantive direction as to how city land use powers will be exercised without altering the powers themselves.SCRB, at 16 (emphasis in original).

The County argues that cities, by refusing to accept growth, could oblige the County to expand the unincorporated UGA, thereby contradicting the Act's direction that sprawl is to be reduced and urban growth directed to urban areas.

...If the city were to fail to accommodate its share of growth within the incorporated area, the county would be forced to create more capacity in unincorporated urban growth areas and thus extend the urban growth area boundaries beyond areas which are urban, or urbanizing in nature and have capital facilities and public services available.

...

...In the DCD procedural criteria on a city's developing a proposal for its UGA, DCD states that in determining the amount of land necessary to accommodate likely growth, the city should, among other things, use regional population and employment forecasts, where available.WAC 365-195-335(3)(d)(ii).Further, UGAs should "be based on densities selected to promote the goals of the Act - densities which accommodate urban growth served by adequate public facilities and which discourage sprawl."WAC 365-195-335(3)(b). SCR B, at 24, 26.

The County rejects Lynnwood's proposed method of coordinating the accommodation of population among the County and the cities.

GMA prohibits the planning approach which Lynnwood advocates throughout its opening brief: 21 jurisdictions doing their own comprehensive planning in isolation, (if not in secret), with a time for comparison at the end of the process to check for consistency.Such an approach is both highly inefficient and ignores the entire thrust of the GMA and the specific requirements of .100 and .210 that CPPs ensure a framework in advance for consistency in the development of comprehensive plans.SCR B, at 26-27 (emphasis in original).

#### c.1000 Friends

1000 Friends maintains that the County has authority to allocate population to cities.The brief argues that certain regional issues are specifically identified by RCW 36.70A.210(3) as requiring coordination, and that the county is identified as the regional government with the responsibility

for that coordinating function.

The list of subjects to be addressed in the CPPs affirms that urban growth areas, housing and transportation (the topics on appeal in this case) are regional issues requiring coordination:

(a) Policies to implement RCW 36.70A.110;

...

(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 and parameters for its distribution; . . .

RCW 36.70A.210(3).1000 Friends *Amicus Curiae* Brief (***Amicus*** Brief), at 3.

1000 Friends further argue that the legislature's intent to prevent sprawl is embodied in the requirement for urban growth areas. The Final Report of the Governor's Growth Strategies Commission (September 1990) is quoted, which provides:

Urban Growth Areas

Containing development within urban growth boundaries prevents sprawl, protects the environment and uses public facilities efficiently. Coordinated planning by counties and cities for development in these areas can reduce costs of governmental services. *Final Report: A Growth Strategy for Washington State*, Washington State Growth Strategies Commission (1990), at 11.

1000 Friends claims that the allocation of population and employment to individual cities is essential in order to ensure that plans are coordinated and consistent: to leave the establishment of population targets entirely to the discretion of individual cities would not only be inefficient, but also frustrate the Act's goals.

...Absent a coordinated population allocation, each of the cities within the county could adopt a "no growth" comprehensive plan, raising housing costs within the cities and leading to the proliferation of sprawling, urban-style development outside of the urban growth area. Such a development pattern is clearly inconsistent with GMA.

Alternatively, each of the cities in the county could aggressively plan for a large share of future population growth, resulting in uncoordinated plans that plan for much more growth than that anticipated during the 20-year planning period. Such an outcome would lead to wasteful investment in unneeded infrastructure improvements and the unnecessary disruption of established neighborhoods. *Amicus* Brief, at 9-10.

1000 Friends rejects Lynnwood's proposed alternative to the County having the authority to allocate. It argues:

As an alternative to the County taking on additional urban growth, the City of Lynnwood suggests a process of coordination by appeal. GMA clearly does not anticipate that coordination could be achieved by cities and counties acting with unfettered independence through the planning process, resolving the inevitable (and perhaps unintended) conflicts through appeals to the Hearings Boards. This would be an extraordinarily unwieldy process that is antithetical to the goals of coordinated planning, predictable permit processing,

efficient service delivery, and the prevention of urban sprawl. *Amicus* Brief, at 11-12. Finally, 1000 Friends argues that the allocation of population to individual cities is a regional policy matter rather than a local land use regulatory matter.

It is the allocation of the population projection (more than the projection itself) that is an important regional policy choice, because it establishes each city's share of future growth. *Amicus* Brief, at 14 (emphasis in original).

### Discussion

RCW 36.70A.210(3) provides:

A county-wide planning policy shall at a minimum, address the following:(a)Policies to implement RCW 36.70A.110;...

RCW 36.70A.110 provides:

(1)Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.Each city that is located in such a county shall be included within an urban growth area.An urban growth area may include more than a single city...

(2)Based upon the population growth management planning population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty year period.Each urban growth area shall permit urban densities and shall include greenbelt and open space areas...(Emphasis added).

The emphasized text in subsection (1) authorizes Snohomish County to "designate" urban growth areas and to include one or more cities within a designated urban growth area.The language of subsection (2) requires that sufficient "areas and densities" will be included in such urban growth area designations to accommodate twenty years of growth as projected by OFM.*See also* RCW 43.62.035.Because the prefatory language of RCW 36.70A.110(1) identifies the county as the actor in designating urban growth areas, the Board holds that the language in subsection (2) requiring sufficient "areas and densities" is a mandate directed to the county.

OFM has made the twenty year growth projection for Snohomish County.*See* Findings of Fact #3 and #17.The question before the Board for resolution is:what does the Act require be done with that projection?The County argues that it has the responsibility and the authority to make sub-county population allocations to individual urban growth areas.The County further argues that, because an urban growth area may include "...a single city..." a sub-county population allocation may be made to an individual city.Lynnwood argues that the OFM projection is to be used by cities as well as the county in establishing the population for which an individual city is to plan. The Procedural Criteria adopted by the Department of Community Development address meeting the requirements for Urban Growth Areas.*See* WAC 365-195-335.Both Lynnwood and the County cite to the Procedural Criteria to support their arguments.

The emphasized portions of UG-2 are the focal points for Lynnwood's contention that the CPPs provide the County's authority to allocate population and employment to cities. Appendix B, which is referenced in a portion of the emphasized text above, lists population forecasts for the year 2012 for each of the cities in Snohomish County and contains footnote 1 which reads: "City forecasts are shown for current city boundaries. IUGA forecasts are based on preliminary IUGA boundaries as of July 15/92 (see attached map)." R-348, at 3379.

The emphasized clause of UG-2(h) indicates that the County will "incorporate" into the CPPs final population and employment figures prior to approval of comprehensive plans. This phrase contains two important ideas. First, it indicates that a final version of Appendix B, including specific allocations to individual cities, will be prepared between the February 4, 1993 adoption date of the CPPs and such future time as the comprehensive plans are adopted. Taken with other statements in the CPPs about process and the characterization in UG-2 of Appendix B as a "starting point," this conveys that the final forecasts will result from an inter-active process of collaboration between the cities and the County. Second, the latter portion of the emphasized phrase suggests that these forecasts will be a prerequisite of "approval of the comprehensive plans." The use of the word "approval" is unclear. The Board construes this word to mean "adoption" by the respective local legislative bodies.

In reviewing this issue, the Board believes that each party makes several valid points. However, we do not agree that either has put forward the complete and correct answer to Issue No. 4a. This is a difficult question due to the inherent tension between regional and local interests and the Act's clear direction that both interests are to be served by CPPs as well as by comprehensive plans. The Board has to look at the Act as a whole to interpret the law in a way that reconciles the apparent conflicts and gives meaning to every clear legislative direction.

In order to resolve Issue No. 4a, the Board finds it necessary to clarify and expand upon the purpose, nature and effect of CPPs, as first set forth in its *Snoqualmie* decision and affirmed in the *Kitsap* decision (*Poulsbo, Port Orchard and Bremerton v. Kitsap County*, CPSGPHB Case No. 92-3-0009 (1993)). After this exposition, the answer to Issue 4a becomes apparent.

In the *Snoqualmie* decision, the Board said that CPPs have two primary **purposes**: first, to achieve consistency between plans as required by RCW 36.70A.100; second, to achieve a transformation of local governance within the UGA. *Snoqualmie*, at 9. In the case before us, the Board holds that another long term purpose of the CPPs is to direct urban development to urban areas and to reduce sprawl.<sup>[4]</sup> The Board reaches this determination because the GMA is intended to address the threat of "uncoordinated and unplanned growth"<sup>[5]</sup> by requiring that comprehensive plans meet "common goals"<sup>[6]</sup>. Because CPPs are to provide a framework for the preparation of comprehensive plans, they provide the county-wide vehicle for addressing planning goals, particularly those that are county-wide in scope.

In *Snoqualmie*, the Board held that the **nature** of CPPs and comprehensive plans is that they are policy documents, as contrasted with *development regulations*.<sup>[7]</sup> *Snoqualmie*, at 12. The Board also held that development regulations are a sub-set of "land use powers" as that phrase is used in RCW 36.70A.210(1). *Snoqualmie*, at 16. In this case, the Board further holds that GMA policy

documents, such as CPPs developed pursuant to RCW 36.70A.210 and comprehensive plans developed pursuant to RCW 36.70A.040, are not "land use powers."<sup>[8]</sup>As the Board held in *Snoqualmie*, CPPs provide substantive direction to city and county comprehensive plans. The comprehensive plan of a city or county, in turn, will provide substantive direction to the performance of that jurisdiction's "activities" pursuant to RCW 36.70A.120.<sup>[9]</sup>

The Board has previously observed that planning generally is an "interactive and iterative deliberation process." *See Twin Falls, et al. v. Snohomish County*, CPSGPHB Case No. 93-30003, 78, footnote 27 (1993). The Board holds that the nature of growth management planning under GMA is similarly **interactive and iterative** in nature, with specific steps along the way specifically noted for future review and adjustments.<sup>[10]</sup>

In *Snoqualmie* the Board held that the **effect** of CPPs is both procedural and substantive with regard to comprehensive plans. A three prong test was established to assure that the CPPs would serve legitimate regional interests, not violate the land use powers of cities, and otherwise be in compliance with the Act. *See Snoqualmie*, at 18-19.

Lynnwood argues that the "land use powers of cities" includes policy documents (such as a city's comprehensive plan) as well as implementing measures (such as a city's development regulations). Lynnwood therefore sees a directive CPP as an intrusion on the city's land use powers, whether that CPP speaks to the comprehensive plan or to the development regulations. The County appears to agree with Lynnwood that a city's comprehensive plan is a part of the "land use powers of cities." However, the County contends that this power is altered by the GMA, specifically the requirement for consistency in RCW 36.70A.100 and the authority given to counties to adopt the urban growth areas for cities pursuant to RCW 36.70A.110. Therefore, rather than saying that Lynnwood's comprehensive plan is not a part of the city's land use powers, the County is instead saying that "it is" and the Act requires those land use powers to be altered. In view of the fact that certain of the CPPs (e.g., UG-7, OD-2, HO-18), explicitly mention regulations, the County's position seems to suggest that the Act's license for CPPs to alter city land use powers extends not just to the policy documents but also the implementing measures. These conflicting and somewhat extreme positions are engendered by each party's legitimate concerns as well as each party's worst case assumptions about the intentions and actions of the other. The County fears that if the City's traditional sovereignty remains intact, the Act's requirements for coordination and consistency will be thwarted and sprawl will continue unabated. The City fears that if local sovereignty is undermined, an uninformed and unaccountable County will usurp local control and make it impossible for the City to meet its other obligations under the Act.

To conclude that comprehensive plans continue to be an inviolable part of the land use powers of cities would perpetuate the historic pattern of decision-making and development in the Central Puget Sound region. This region is home to the state's greatest concentrations of both people and local governments, with seventy three cities and four counties encompassing over 56% of the state's population in less than 10% of the state's land mass.<sup>[11]</sup> To conclude that each of those local governments retains the full range of its pre-GMA land use prerogatives would perpetuate

balkanized self-interest and thwart the Legislature's clear direction to take decisive regional action to limit sprawl, site needed facilities, meet pressing human needs, protect the environment and sustain economic development. *See* RCW 36.70A.010 and RCW 36.70A.020.

The broadened perspective that permeates the Act means that local governments, particularly cities, must include a regional perspective in the making of their plans, indeed, in the definition of their responsibilities to plan for the future. The "land use powers of cities" cannot be construed in such a way as to allow a city to deny its regional context or shirk its regional responsibilities. The County's allocation of population and employment to cities is an exercise with a regional context and rationale. It is a legislative policy exercise that is required in order to achieve the consistency and coordination of comprehensive plans as mandated by RCW 36.70A.100 and to give force and effect to the urban growth area designations as required by RCW 36.70A.110. The Board notes that the County could have effectuated the requirement of RCW 36.70A.110 to allocate population through a separate enactment, thus avoiding the issue of section .210's proscription concerning the land use powers of cities. Instead, up to this point the County has chosen to do so through its CPPs.

Nonetheless, the allocation does not needlessly or excessively intrude upon local prerogatives, nor does the allocation alter the land use powers of cities. The Board concludes that such "land-use powers", as that phrase is used in RCW 36.70A.210(1) and was discussed by the Board in its *Snoqualmie* and *Kitsap* decisions, do NOT include comprehensive plans; adopting comprehensive plans is not an exercise of the land use powers of cities under Chapter 36.70A RCW. Furthermore, even if adopting comprehensive plans were, in fact, a part of the land use powers under the GMA, the Board agrees with that portion of the County's argument that the alteration of such powers occurs as a result of the requirements of RCW 36.70A.100 and RCW 36.70A.110, and not because of RCW 36.70A.210.

The Board therefore holds that the County may allocate population and employment to cities. CPPs that include this allocation are not in violation of the land use powers of cities. A major rationale for this holding is the GMA's clear direction regarding the legislatively preferred roles of counties and cities.<sup>[12]</sup> With responsibility for regional coordination of comprehensive plans in conformance with the planning goals, a county must be capable of directing urban growth<sup>[13]</sup> to areas that are already urban in character,<sup>[14]</sup> including cities. Because urban growth consists of people and jobs, the county is therefore charged with authority to undertake a task that is essentially an allocation of population and employment.

Even while the Board holds that the allocation of population and employment is a legitimate activity for the regional government, we also affirm the three prong test articulated in *Snoqualmie*.

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. *Snoqualmie*, at 18.

Each city retains the local prerogative of determining just how the regional policy allocation of

population and employment is going to be accommodated and configured through local development regulations and other exercises of the land use powers of cities.

The cities are reminded that the Act is premised on the efficient delivery of services to relatively compact urban growth areas. This suggests that the configuration of new development and redevelopment will result in greater densities of employment and population than has typically occurred. The record indicates that the local governments in Snohomish County understand this, for example, by virtue of the adoption of Vision 2020 as the regional development strategy. At the same time, the County is reminded that CPPs may not "short cut" past the comprehensive plans of the cities by attempting to dictate specific regulatory features, such as building forms, localized densities or design characteristics. *See Snoqualmie*, at 30. Moreover, the County is advised in setting the population forecasts to take great care not to place the cities in a position of being unable to comply with other provisions of the Act.

Turning to Lynnwood's specific legal arguments, the Board rejects their references to Washington pre-GMA and Oregon examples. The former is an outdated frame of reference and the latter is simply irrelevant. If the County's action were being processed under Chapter 36.70 RCW, Lynnwood would have some winning arguments. However, the GMA, as primarily codified in Chapter 36.70A RCW, makes Lynnwood's rationale obsolete.

When Lynnwood argues that "[t]here is nothing in GMA giving a higher priority to a county's comprehensive plan than [to] a city's" (LOB, at 31), it makes a true statement that entirely misses the point: there *is* a policy document with a higher priority, on certain issues, than any comprehensive plan - namely, the county-wide planning policies. In a related vein, Lynnwood argued that "[t]he legislature did not designate the county under GMA a countywide planning super-agency, with authority to establish and determine a countywide comprehensive plan for each jurisdiction, with authority over land use, capital facilities, capital facilities budgets, etc." LOB, at 30. Again, the Act identifies counties as "regional governments within their boundaries." This clear legislative declaration, when viewed together with the explicit authority given to counties for designation of the urban growth areas and the adoption of the CPPs, leads to the conclusion that population allocation is a regional legislative policy exercise that, for the sake of consistency and reducing sprawl, must be made at the regional level by the Act's designated regional government -- the county.

Lynnwood cited to the Procedural Criteria and the Interlocal Agreement as evidence that the County may not allocate population to the cities. The Board held in *Tracy v. Mercer Island*, CPSGPHB Case No. 92-3-0001 (1993), p. 22, and again in *Twin Falls, et al., v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), that the Minimum Guidelines promulgated by the Department of Community Development are advisory, not binding. Procedural Criteria are similarly advisory because the language of RCW 36.70A.320 merely requires the Board to "consider" them. *See also* WAC 365-195-030. Moreover, as the Board held in *Poulsbo, et al., v. Kitsap County*, CPSGPHB Case No. 92-3-0009 (1993), p. 45, a county's authority to adopt CPPs does not depend upon an interlocal agreement. The Board likewise holds that a county's authority to designate urban growth boundaries does not depend upon an interlocal agreement.

Lynnwood argued that "[c]onsistency results from the statutory processes, and if necessary, by review by the Board. Consistency and planning result is not established under GMA by a pre-determined county mandate." LOB, at 35. Adoption of either CPPs or urban growth areas or any amendments to either are subject to the filing of a petition for review to the Board, and it is logical to assume that at least some of the inconsistencies among the plans of cities and a county would result in such appeals. However, to wait as Lynnwood suggests until the cities have substantially completed their comprehensive plans and then attempt to reconcile county-wide discrepancies through, in effect, multi-lateral cross appeals, does not comply with the Act's mandate that coordinated and consistent plans be adopted. The Board reaches this conclusion not only because of the tremendous investment of time and effort that each comprehensive plan requires and because the Act's deadlines demand that these planning efforts proceed with dispatch, but also because, as 1000 Friends correctly opined, Lynnwood's suggested process:

... is antithetical to the goals of coordinated planning, predictable permit processing, efficient service delivery, and the prevention of urban sprawl. *Amicus* Brief, at 12.

The Board does not conclude, however, that the County's authority to allocate population and employment to cities constitutes a "pre-determined county mandate" as Lynnwood stated, nor should the County assume that such allocations can be unilaterally determined and, once formulated, remain static. The Board holds that the nature of planning under the GMA is **interactive** and **iterative**. It is expected that the process will entail many drafts of potential population allocations to various cities and unincorporated portions of urban growth areas, with attendant analysis, adjustments and iterations.

The County has an obligation to collaborate with cities in the preparation, refinement and adjustment of the many inter-related components of county-wide growth management: the comprehensive plans of the county and the cities, the CPPs and the urban growth areas. The same is true of population and employment allocations. Each has a duty to work with the other, but the County ultimately has the responsibility to act as the regional government to adopt final CPPs, final urban growth areas and final population and employment allocations to urban growth areas, including cities. As the County performs these duties, particularly the allocation of population and employment, it must be responsive to the concerns and needs of the cities, and mindful of the obligations that the cities have as primary providers of urban services under the Act.

Cities and the County are operating under an entirely new statutory scheme under Chapter 36.70A RCW. The newly clarified roles for cities and counties, and the careful balancing of obligations and prerogatives, will require ongoing dialogue, flexibility and adjustments by all parties. The Board agrees with the argument of 1000 Friends that allocating growth (and its constituent parts, population and employment) is a regional policy exercise rather than a local regulatory exercise.

#### Conclusion No. 4a

The Board concludes that the County does have the authority to allocate population and

employment to the cities rather than just to urban growth areas. Counties are required to take OFM's county-wide population forecasts and to allocate them among both the incorporated and unincorporated portions of urban growth areas and the non-urban growth areas within the county. This allocation is implicitly authorized by RCW 36.70A.100 and RCW 36.70A.110 and may be formatted and adopted through the countywide planning policies process of RCW 36.70A.210. This authority does not alter the land use powers of cities because, under Chapter 36.70A RCW, such land use powers refer not to policy documents but rather to development regulations, capital budget decisions and similar implementing actions and activities.

#### Legal Issues No. 4b and 4c

*Legal Issues 4b and 4c were dismissed pursuant to the Board's July 27, 1993 Order Granting Motion for Stipulated Order.*

#### Legal Issue No. 5

*Does Policy UG-10 mandate adoption of land use incentives? If so, does that mandate alter the land use powers of cities? [L] [E]*

UG-10 provides:

As a means of encouraging efficient use of non-residential land areas, local jurisdictions should provide various incentives for multi-story commercial and mixed use development. R-348, at 3355.

#### Positions of the Parties

##### a. City of Edmonds

Edmonds alleges that UG-10 must be struck down by the Board because it alters the city's land use powers since it provides a direct connection to implementing development regulations. The Board's *Snoqualmie* decision is repeatedly referenced. The City equates the verbs "should provide" as meaning "should adopt" and points out that the latter phrase has a "high component of 'directiveness.'" Edmonds' Prehearing Brief (**EPB**), at 9. Edmonds also points out that the Snohomish County CPPs make frequent use of the verb "encourage"; yet UG-10 uses "provide" which "... is obviously intended to give a much stronger direction." EPB, at 9. Edmonds' complaint with this CPP also is that it "requires a local jurisdiction to provide incentives to multi-story commercial development" even though incentives are but one "of a variety of possible land use techniques that could be used to encourage the development of mixed use commercial development." EPB, at 9. As an example, Edmonds refers to its zoning code that imposes a 25-foot height limitation on all<sup>[15]</sup> development within the city, presumably to protect "the City's view sensitive residential development." Edmonds Community Development Code,

16.45.020, E-1, at 103; EPB, at 10. Yet, to accommodate further development, Edmonds "has traditionally exercised a full variety of zoning and land use powers ... by going down rather than up or by transferring development rights." EPB, at 10.

#### b. City of Lynnwood

Also citing the Board's *Snoqualmie* decision, Lynnwood argues that the use of the verb "should" has a "distinctive" meaning, the effect of which is to direct that local jurisdictions use "incentives" to achieve a goal. It points out that the word "incentives" is undefined in the CPPs, but that whether Lynnwood elects to use incentives or some other technique is within its land use prerogatives. Thus, Lynnwood claims that Policy UG-10 is equivalent to a requirement that the cities adopt a specific land use regulation. This violates the Board's holding in *Snoqualmie* that CPPs may not have a direct connection to implementing development regulations. Instead, Lynnwood maintains that UG-10 should be amended to make "incentives" one of several techniques that a city might consider for multi-story commercial and mixed use development. LOB, at 53-54.

#### c. Snohomish County<sup>[16]</sup>

The County takes the position that UG-10 can be validly interpreted so that it does not alter the land use power of cities. It maintains that this specific policy is directed toward comprehensive plans and not their implementing development regulations:

The policy does require that comprehensive plans provide various incentives but it is left entirely to the individual jurisdictions to determine what type of incentives to use in their comprehensive plans. SCRB, at 39.

Although UG-10 generally directs that incentives be included in comprehensive plans, the County contends that this policy satisfies the Board's three-prong *Snoqualmie* test for an individual CPP: it meets a legitimate regional objective of encouraging efficient use of non-residential land areas; it addresses only comprehensive plans; and it is consistent with the GMA. Finally, the County rejects Edmonds' argument that UG-10 is contrary to that city's traditional building height limitation. The County argued that the term "multi-story" is not defined, yet is broad enough to include the development techniques Edmonds uses. SCRB, at 40. In oral argument, the County expanded this contention by pointing out that "multi-story" could even include structures with portions below ground level.

### Discussion

This Board has previously held that CPPs are policy documents that must "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." *Snoqualmie*, at 15. The Board also pointed out that:

... 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.

...

... 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. *Snoqualmie*, at 16-17 (emphasis in original).

Therefore, the Board agrees with Lynnwood that the use of the verbs “should provide” in UG-10 does indicate a rather high degree of directiveness.<sup>17</sup> As the Board indicated in its *Snoqualmie* decision:

Moreover, the Board must determine the weight and meaning that are attached to the words 'shall' and 'should' in the CPPs. 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.... 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. *Snoqualmie*, at 14 (Footnote omitted).

Subsequently, the Board expanded on this discussion in its *Kitsap* decision:

The Board further held in *Snoqualmie* that the use of the word 'should' does not reduce a CPP to the status of a purely advisory statement. Even 'shoulds' when included in GMA policy documents provide a measure of substantive direction. Thus, the legislative bodies and others reading the CPPs must give weight to any policy statement, regardless of whether it uses the modifying verb 'should' or 'shall'. For this reason, the Board rejects Kitsap's argument that the CPPs are purely "discretionary and not mandatory." If a policy is included in the CPPs, substantial weight and regard must be given to it by all parties, including individual citizens, city and county governments and state agencies. *Kitsap*, at 27. (Footnote omitted).

In footnote 17 of its *Kitsap* decision, the Board stated:

The Board also cautions that the action verbs that follow 'should' or 'shall' in a statement must be carefully chosen because they can provide much more precise and clear direction as to what implementing action or compliance is expected and required. *Kitsap*, at 27.

Finally, in its most recent discussion of the issue, the Board held:

... as the Board concluded in *Snoqualmie v. King County*, policy documents under the GMA have substantive effect. Therefore, any policy statement must be presumed to have some directive effect. We further stated that "should" can impart a lower order of direction than "shall", but that in using that term the adopting legislative body had an obligation to explicitly state such nuance of meaning or intent. Kitsap is free to use both "shall" and "should" and to use the latter to provide advisory guidelines, if it so indicates its intention. Another way to differentiate between policy statements that are intended to be permissive or advisory, as opposed to directive, would be to use the word "may", and to clearly indicate that a policy using this auxiliary verb is purely discretionary. *Kitsap*, Order Granting Kitsap County's Petition for Reconsideration and Modifying Final Decision and Order, at 7-8.

Having concluded that the phrase "should provide" is directive, the next question becomes what does UG-10 mandate? The cities focus their argument on the fact that UG-10 requires that they adopt land use incentives for multi-story commercial and mixed use development. The Board agrees with this assessment. UG-10 does require that land use incentives be adopted. The purpose of these incentives are "as a means of encouraging efficient use of non-residential land areas." (Emphasis added). The Board notes that UG-10 itself suggests that incentives are not the only means; however, incentives are the only means specified in UG-10. Nonetheless, the Board agrees with the County that, because the term "incentives" is undefined, cities have a wide degree of latitude in determining how they will "encourage efficient use of non-residential land areas." The next and more important question is whether this mandate alters the land use powers of cities. The cities claim that requiring land use incentives does constitute such an alteration because it forces them to adopt specific implementing development regulations. In contrast, the County claims that UG-10 is aimed only at comprehensive plans and therefore does not alter land use powers of cities. The County admits that UG-10 "does require that comprehensive plans provide various incentives" but contends that because it is left to the individual cities as to what those incentives will be, UG-10 is valid.

At its most basic level, this issue boils down to whether the County's CPPs can require a city to provide incentives for multi-story commercial and mixed use development, whether or not the city wants "multi-story" structures. The County did not define what constitutes a multi-story structure. The word "multi" means:

1. having, consisting of, or affecting many; 2. more than two (or sometimes one); 3. many times more than. *Webster's New World Dictionary of the American Language*, 935 (1984).

Thus, "multi" has more than one meaning. The Board concludes that the more common meaning of the term is "more than two." Thus "multi-story" structures consist of more than two floors. Yet, significantly, as the definition of "multi" itself reveals, on occasion, "multi" could mean "more than one". If UG-10 is such an occasion, "multi-story" would mean a structure with more than one floor. Even though Edmonds' existing zoning code permits development over twenty-five feet in height in certain instances, presumably Edmonds nonetheless permits structures with more than

one floor even where the twenty-five foot restriction applies. Accordingly, if “multi-story” means more than one floor, UG-10 would not alter Edmonds’ existing zoning. The Board has previously held that:

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. *Snoqualmie*, at 13 (emphasis added).

In light of the County’s clear statement of intent not to alter the land use powers of cities and the fact that it failed to define the term “multi-story”, coupled with the admission by Edmonds that it traditionally has exercised its zoning and land use powers by “going down rather than up”, the Board holds that UG-10, although not the model of clarity it might be, is in compliance with the GMA.

#### Conclusion No. 5

UG-10 does direct cities to adopt various incentives to encourage efficient use of non-residential land areas. However, cities are free to determine for themselves what the word “incentives” means and how they will employ incentives to achieve this goal. In addition, cities are not limited to using only incentives to achieve this goal since incentives are merely one means of encouraging efficient use.

The Board concludes that UG-10 is in compliance with the GMA; it does not alter the land use powers of cities. However, because certain key terms in the policy are undefined, more room will be left to an individual city’s interpretation of UG-10. In the event that the County subsequently challenges a city for failing to comply with UG-10, the lack of clarity in the wording of UG-10 will benefit the challenged city.

#### Legal Issue No. 6

***Does the Fair Share process established under Policies HO-4, HO-5, HO-7, HO-8, HO-9, HO-11, HO-17, HO-18, HO-21 and OD-8 alter the land use powers of cities?[L] [E]***

HO-4 Adopt and implement a fair share distribution of low-income and special needs housing so as to prevent further concentration of such housing into only a few areas. The county and cities will collaborate in formulating a methodology to assess existing and projected housing needs of the county's population and a fair share housing allocation methodology. R-348, at 3362 (emphasis added).

### Positions of the Parties

#### a. City of Edmonds

Edmonds acknowledges that the initial portion of the first sentence in HO-4 is “clear and unambiguous.” EPB, at 11. However, its concern is with the second half of the sentence and the fact that the word “areas” is undefined. The City does not know whether the term is referring to urban growth areas under the GMA, individual communities within urban growth areas, or specific neighborhoods or zoning districts of a city. If “area” means either larger urban growth areas or specific communities within the region, HO-4 addresses an appropriate regional issue. However, if “area” has a smaller scale meaning, so that it applies to zoning districts or neighborhoods within a city, then HO-4 alters the land use powers of the City by directing the use of a specific development regulation. EPB, at 14.

Edmonds is concerned that HO-4:

could be applied to prohibit concentrations of “special needs housing” in multi-family zones within the City of Edmonds thereby requiring it to amend its comprehensive plan and zoning requirements to require inclusion of group homes as permitted uses in single-family neighborhoods.

...

... The City’s concern remains that special needs populations be placed in zoning districts of the City which are most compatible with the specific use, particularly in terms of density and the ability of the facility to be serviced by appropriate infrastructure. EPB, at 13.

#### b. Snohomish County

The County responded to Edmonds’ concerns by indicating that:

Policy HO-4’s use of the term “areas” was not intended to be given such a narrow interpretation as to refer to neighborhoods or zoning districts within jurisdictions. Rather, the term “areas” was intended to refer to the much larger category of “jurisdictions.” The county’s intent was that there be a fair share distribution of low income and special needs housing among jurisdictions. How each jurisdiction deals with its responsibility to provide its fair share is not mandated by Policy HO-4. SCRB, at 41.

#### c. 1000 Friends

1000 Friends did not address HO-4 or any of the challenged policies individually in its *amicus* brief. However, “1000 Friends’ primary concern is that the County, through the CPPs, has the authority to adopt and implement a fair share distribution of low-income and special needs housing.” *Amicus* Brief, at 15. Furthermore, 1000 Friends argued:

The need for consistency and coordination among the comprehensive plans of cities and counties again support CPPs that establish a specific fair share housing allocation for each city. Such a fair share housing distribution does not alter the land use authority of the cities, because the distribution simply implements a requirement of the housing element and because the cities can choose from a variety of techniques to meet the fair share requirements....*Amicus* Brief, at 16.

### Discussion

There is no question that HO-4 deals with a legitimate regional issue nor does Edmonds claim otherwise.<sup>[18]</sup> Neither does the City allege that HO-4 is inconsistent with these and other provisions of the Act. Instead, its concern regards the meaning of the word “areas” which is undefined in the CPPs. This is a legitimate concern that leads to varying reasonable interpretations of the word. Although the County argues that “areas” was not intended to be narrowly interpreted but rather to refer to a much larger territory, nothing on the face of HO-4 itself reveals that intent. The question thus becomes whether HO-4 alters the land use powers of cities because this undefined term could refer to an intra-city area (i.e., a neighborhood or zoning district) rather than a regional area.

As the Board indicated in its discussion of UG-10, when counties adopt CPPs but leave key terms undefined, they do so at their own risk. The chance a county takes is that a city, in attempting to interpret a specific policy in the CPPs, guesses incorrectly as to what the county meant. Here, the County has not defined the word “areas” but argues that it means a broader geographic territory than a neighborhood within a city. Edmonds acknowledges that if “area” means either urban growth areas or specific communities within a region, then it has no problem with HO-4. The Board holds that, despite the fact that the actual geographic limits of the word “areas” is unknown, HO-4 complies with the GMA and does not alter the land use powers of cities. Again, the Board bases its decision on the County Council’s statement of intent not to alter such power, and the other language in the policy itself. However, as the Board held regarding UG-10, the fact that “areas” is undefined will benefit cities should their comprehensive plans ever be challenged as not being consistent with this policy in the CPPs.

### HO-5

HO-5 Each jurisdiction's comprehensive plan housing element will specify which strategies are available to attain the jurisdiction's fair share housing objectives. The jurisdictions will consider as appropriate the strategies for achieving affordable housing presented in "The Report of the Partnership for Tomorrow's Low Cost Housing Opportunities Subcommittee" (May 1992) and the Residential Development Handbook for Snohomish County Communities (March 1992). R-348, at 3362 (emphasis added).

## Positions of the Parties

### a.City of Edmonds

Edmonds took no formal position regarding HO-5 other than indicating that if the Board “struck down” HO-4, its concerns with HO-5 would be addressed.EPB, at 17.

### b.City of Lynnwood

Lynnwood objected to HO-5 because of the use of the phrase “will consider as appropriate” in the second sentence.In essence, the City was uncertain what the phrase means:

Does the phrase ... mean that the particular strategies in the referenced documents ... are “deemed” to be appropriate, and if so, must those strategies, and only those strategies be specified in a city comprehensive plan.Must all the strategies referred to in the referenced documents be specified, or may specifying only some of the strategies be consistent with HO-5.Does HO-5 limit use by a city of other strategies.What if Lynnwood prefers none of the strategies referenced in the documents, but plans to achieve affordable housing goals by other methods, including, direct participation.LOB, at 55-56.

Because the second sentence of HO-5 contained “unnecessary detail and could be interpreted to require specified strategies ...”Lynnwood asks the Board to exclude the second sentence entirely or to order that the questioned phrase be modified to read “... may consider, among other options...”LOB, at 56.

### c.Snohomish County

The County contends that the questioned language:

... does mean that the referenced strategies are deemed to be appropriate.However, there is nothing in this policy to suggest that these strategies compose an exclusive list of those from which cities may choose or that each city must use all of the referenced strategies.The operative portion of Policy HO-5 is the first sentence...Each jurisdiction will make its own decision as to which strategies to specify.SCRB, at 42.

## Discussion

The Board appreciates the concerns raised by Lynnwood.As written and interpreted literally, one could read HO-5 to mean that only the documents specifically listed are appropriate.As such, by requiring cities to consider only those two documents, the County would infringe upon a city's land use powers.However, the County's interpretation of HO-5 is also reasonable.Given the statement of intent in the Introduction to the CPPs not to alter the land use powers of cities, the Board concludes that the County's interpretation is controlling.This conclusion is bolstered by the fact that, had two commas been inserted in the sentence, there would be no question that the County's interpretation was correct.HO-5 would have read as follows:

... The jurisdiction will consider, as appropriate, the strategies for achieving affordable housing presented in ...(Commas added).

Accordingly, the documents specified in HO-5 must be considered by local jurisdictions before adopting comprehensive plans.<sup>[19]</sup> However, jurisdictions are not required to adopt any specific strategies recommended in those documents nor are jurisdictions limited to considering only the two documents listed in HO-5.

## HO-7

HO-7 Ensure that adequate affordable housing is available in designated urban growth areas by adopting land use and density incentives and in rural areas by means of cluster housing that minimizes infrastructure costs. R-348, at 3363.

### Positions of the Parties

#### a. City of Edmonds

Edmonds challenges this policy because of the use of the verb “ensure” which it claims is a directory verb requiring local jurisdictions to adopt “land use and density incentives.” The City alleges that this mandate forces it to adopt a specific land use technique, in this case density incentives, which alters its land use powers. EPB, at 14-15.

#### b. City of Lynnwood

Lynnwood’s objection to HO-7 mirrors Edmonds’. Lynnwood claims that by requiring the cities to achieve adequate affordable housing availability by a specified technique (i.e., density incentives), the County is altering the land use powers of cities. The City points out that if this policy simply means that it is acceptable if a local jurisdiction “allows for” affordable housing by any number of techniques, including density incentives, then it would have no objection. As an example, the City cites to the possibility of ensuring such housing by “direct municipal financial contribution.” However, Lynnwood argues that if the policy means a city must affirmatively “ensure” available, affordable housing, the land use powers of cities are altered. LOB, at 56-57.

#### c. Snohomish County

Snohomish County claims that the phrase in HO-7, “adopting land use and density incentives,” is not a mandate for a specific implementing regulation but “a broadly worded requirement that cities include some measures in their comprehensive plans to provide incentives for the development of affordable housing within their jurisdictions.” SCR B, at 45. The County maintains that HO-7, to the extent that it requires jurisdictions to achieve adequate affordable housing availability, does no more than restate the requirements of RCW 36.70A.020(4), the GMA’s housing goal. The County rejects Lynnwood’s argument that the policy may mean that cities merely have to allow for affordable housing. It alleges that the use of the verb “encourage” in subsection (4) of the Act’s goals provisions means that cities must not just passively “allow for” affordable housing but instead, they must be proactive. In addition, the County argues that RCW

36.70A.210(3)(e) requires a policy such as HO-7.

The County claims that any suggestion that direct financial contributions by cities are precluded by HO-7 is unfounded.

The cities are free to choose any type of such incentives they wish - no particular one is required. If Lynnwood chooses to make direct financial contributions, that is its prerogative. SCRB, at 44.

The County also claims that leaving the ultimate choice up to the cities is consistent with DCD's regulations at WAC 365-195-060(6).

### Discussion

The Board agrees with the County that RCW 36.70A.210(3)(e) requires that CPPs address "[P]olicies that consider the need for affordable housing..." In addition, the County is correct that HO-7 somewhat tracks the language of RCW 36.70A.020(4) which states:

Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

Significantly however, while RCW 36.70A.210(3)(e) uses the verb "consider" and RCW 36.70A.020(4) uses the verb "encourage", the County has elected to use the word "ensure." The Board agrees with the cities that the use of the verb "ensure" in HO-7 is far more directive than those used in the Act. This is especially so when HO-7 also requires cities to adopt certain mechanisms. Thus, the Board understands why the cities have raised concerns about HO-7. Their interpretation of that policy is not unreasonable. The use of the term "ensure", while laudable, is not consistent with other provisions in the GMA because it exceeds those requirements.

In addition to the choice of verbs used in HO-7, nothing in the GMA provisions cited above specifically requires cities to adopt "land use and density incentives and in rural areas by means of cluster housing." Therefore, HO-7 is a clear violation of the land use powers of cities. Even though incentives and cluster housing techniques might be selected by cities as the means for encouraging affordable housing, cities must be free to achieve the affordable housing goals in whatever manner they choose. However, their duty to affirmatively address this planning goal is not lessened by the fact that a county cannot dictate the actual mechanism as Snohomish County has done in HO-7.

### HO-8

HO-8 Implement policies and programs that encourage the upgrading of neighborhoods and the rehabilitation and preservation of the supply of existing affordable housing, including but not limited to mobile home park housing, single room occupancy (SRO) housing, and manufactured housing. R-348, at 3363.

## Positions of the Parties

### a. City of Edmonds

Edmonds stated that if the Board struck down HO-4, its objections to HO-5, 8, 9 and 11 would be addressed. EPB, at 17.

### b. City of Lynnwood

Lynnwood objected to HO-8 because it "... could be interpreted to mean that policies must provide for retention of existing mobile home parks, no matter how dilapidated. By using the phrase 'including but not limited to,' it appears all of the listed types of housing are required to be included for rehabilitation and preservation." Therefore, HO-8 could intrude on Lynnwood's decision, for instance, to terminate existing mobile home parks if they are extremely dilapidated. Accordingly, the City asked that a period be placed after the phrase "existing affordable housing" -- in effect, deleting the phrase "including but not limited to mobile home park housing, single room occupancy (SRO) housing, and manufactured housing." LOB, at 57.

### c. Snohomish County

The County simply responded to Lynnwood's concerns by stating that HO-8 does not include a requirement that cities must permanently preserve all mobile home parks, regardless of their condition. Instead, the County accuses Lynnwood of unreasonably interpreting HO-8. SCRB, at 45-46.

## Discussion

The Board agrees with the County that Lynnwood's interpretation of HO-8 is unreasonable. HO-8 does not prohibit cities from terminating existing mobile home parks if they are extremely dilapidated nor would it prevent a city from performing its other health, welfare and public safety duties.

### HO-9

HO-9 Implement a coordinated monitoring program to evaluate progress towards achieving housing goals and objectives on a countywide and jurisdictional level. Such a monitoring program shall entail the preparation of a housing monitoring report every five years or more frequently if housing conditions warrant. The housing report will include an assessment of the adequacy of the jurisdictions' supply of developable residential building lots, the jurisdictions' supply of land for non-residential land uses, the location of urban growth boundaries, and an assessment of the jurisdictions' strategies for achieving their housing objectives. R-348, at 3363 (emphasis added).

## Positions of the Parties

a.City of Edmonds

See Edmonds' position above regarding HO-8 for its position on HO-9.

b.Snohomish County

Because it claims that HO-4 is a valid policy, the County claims that Edmonds' objections to HO-9 were already satisfied.SCRB, at 45.

Discussion

Only Edmonds objected to HO-9 but indicated it would not continue its objection if the Board struck down HO-4.The Board concluded that HO-4 was in compliance with the GMA.Likewise, the Board concludes that HO-9 complies with the GMA.HO-9 discusses "achieving housing goals and objectives on a countywide and jurisdictional level" which is consistent with and bolsters the County's interpretation of the word "areas" in HO-4 -- that "areas" means a larger category of jurisdictions that intra-city neighborhoods.

HO-11

HO-11 Adopt a local planning process that reconciles the need to encourage and respect the vitality of established residential neighborhoods with the need to identify and site essential public residential facilities for special needs populations, including those mandated under RCW 36.70A.200.R-348, at 3363 (emphasis added).

Positions of the Parties

a.City of Edmonds

See Edmonds' position above regarding HO-8 for its position on HO-11.

b.City of Lynnwood

Lynnwood objected to HO-11 and requested that the phrase "Adopt a local planning process" be deleted and replaced with the words "Contain policies."The City's contention was that the phrase "local planning process" was unclear.Did it mean development of an entirely new process or simply the modification of an existing one?Furthermore, regardless of the meaning of this phrase, by directing cities to do this, the County was requiring an implementing development regulation procedure rather than providing a policy statement for a comprehensive plan.As a consequence, the County had violated the GMA.LOB, at 57-58.

c.Snohomish County

The County totally disagreed with Lynnwood's position on HO-11.The County maintains that HO-11 addresses comprehensive plan provisions, not implementing regulations, addresses a regional objective, and is consistent with the GMA.The County claims that specifics of the planning process a city is required to include within its comprehensive plan are left to a city's "own design."Finally, the County accuses Lynnwood of ignoring RCW 36.70A.200(1) which

requires comprehensive plans of cities to include a process for identifying and siting essential public facilities. SCRB, at 46.

### Discussion

The use of the verb "adopt" in HO-11 is certainly directory. However, as Lynnwood pointed out, the phrase "a local planning process" is undefined. Therefore, it is not certain whether HO-11 requires an implementing development regulation procedure or constitutes a policy statement for a comprehensive plan. The Board repeats that when a County adopts its CPPs, it should be as precise as possible in wording specific policies. When a specific policy is vague, the Board generally will either remand the policy with instructions to clarify the policy, or it will allow the policy to stand as written with the understanding that any uncertainty will benefit cities attempting to implement the policy in their comprehensive plans. Thus, counties will have more difficulty in successfully challenging a city's actions in adopting comprehensive plans that allegedly are inconsistent with the County's CPPs in instances where the CPPs themselves are vague.

HO-9 can stand as is; however, cities will be given wide latitude in the manner in which they elect to "[a]dopt a local planning process." As the County argued, this will be left to an individual city's "own design." Accordingly, the Board interprets HO-11 as addressing comprehensive plan provisions and not implementing development regulations. This holding is consistent with the Board's determination regarding policies CF-1 and OD-7. *See* Legal Issue No. 8 below .

### HO-17

HO-17 Minimize housing production costs by considering the use of a variety of infrastructure funding methods, including but not limited to existing revenue sources, impact fees, local improvement districts, and general obligation bonds. R-348, at 3364 (emphasis added).

### Positions of the Parties

#### a. City of Edmonds

Edmonds objects to HO-17 because the policy contains the directory verb "minimize" in the same sentence as the participle "considering." The City's complaint is that "directing a city to minimize housing production costs can not be achieved by simply considering a use of a variety of infrastructure funding methods." Edmonds argues that the only way to minimize costs is by actually using a tool that is designed to reduce overall housing costs. However, this policy limits traditional legislative discretion available to a city. On the other hand, Edmonds acknowledges that if HO-17 simply means that a local legislative authority is required to consider but not required to implement a specific mechanism, then it is not an objectionable policy. EPB, at 15.

### b.City of Lynnwood

Lynnwood did not object to HO-17 because it concluded that the policy meant only that a city must consider the use of a variety of infrastructure funding techniques, but it was not required to adopt them.LOB, at 58.

### c.Snohomish County

The County claims that HO-17 has two parts.First, the overall “aspirational goal” of the policy is to “minimize housing production costs.”The second part of the policy is a “... statement of the means each jurisdiction is to use to try to achieve the goal.”The County maintains that all cities must do to comply with HO-17 is to consider the use of a variety of infrastructure funding methods.SCRB, at 47.

## Discussion

Although the Board appreciates Edmonds' concern as to how HO-17 could be literally interpreted, it concludes that this interpretation is not reasonable.A city is not limited to minimizing housing costs by considering only the listed infrastructure funding methods.The policy itself indicates that the methods listed are just an example (e.g., "including but not limited to").This conclusion is reinforced because the policy uses the word "variety" -- implying that other methods that are not listed can also be considered.In addition, HO-17 does not mean that cities cannot use other, non-infrastructure, funding methods to reduce housing costs.As the County argued, the main goal of HO-17 is to minimize costs.HO-17 simply requires cities to consider, among any other methods it chooses to achieve this goal, infrastructure funding methods.

## HO-18

HO-18Ensure that each jurisdiction's impact fee program adds no more to the cost of each housing unit than a fairly-derived proportionate share of the cost of new public facilities needed to accommodate the housing unit, as determined by the impact fee provisions of the Growth Management Act cited in RCW 82.02.R-348, at 3364.

## Positions of the Parties

### a.City of Edmonds

Edmonds stated that if the Board interprets HO-18 to mean nothing more than that a city is required to comply with the impact fee provisions of the GMA, it would not have an objection. However, the City asserts that the paraphrasing of statutory language in HO-18 is incomplete and thus misleading.For instance, Edmonds argues that HO-18 does not address the requirements of RCW 82.02.050(2) regarding balancing impact fees and other sources of public funds, nor the

language of RCW 82.02.060 regarding the specific requirements imposed on local governments in order to impose impact fees. Therefore, the City suggests rewording HO-18 as follows:

Comply with the impact fee provisions of the Growth Management Act as cited in [Chapter] 82.02 [RCW] in order that each jurisdiction's impact fee program does not require a specific development to pay arbitrary or duplicative fees for the same impact. EPB, at 16.

b. City of Lynnwood

Lynnwood objected to HO-18 because that policy assumes that a jurisdiction has or will have an impact fee program. "Lynnwood does not currently have an impact fee program. Whether Lynnwood chooses such a program in its comprehensive plan and development regulations is for Lynnwood, within its local prerogative, to determine." LOB, at 58.

c. Snohomish County

The County again responded that the Petitioners' objections were frivolous because this policy "does not require any jurisdiction to adopt an impact fee program." The County also pointed out that it cannot amend Chapter 82.02 RCW by adopting a planning policy -- only the legislature can amend statutes. Finally, it argued that HO-18 is consistent with the proportionate share limitation of RCW 82.02.050(3)(b).

Discussion

The Board has reviewed Chapter 82.02 RCW and concluded that the policy specified in HO-18 does not conflict with that chapter. The Board interprets HO-18 as meaning simply that if a city elects to adopt an impact fee program pursuant to Chapter 82.02 RCW, it must comply with that chapter. The Board agrees with Lynnwood that it remains within its local prerogative whether a city will adopt such an impact fee program. HO-18 does not alter that discretion. The "ensure" language in HO-18 applies if a city elects to participate in an impact fee program; it does not require that a city so participate.

HO-21

HO-21 Encourage local jurisdictions to implement housing relocation programs as provided under chapter 59.18 RCW. R-348, at 3365.

Positions of the Parties

a. City of Lynnwood

Lynnwood objected to HO-21 because a local jurisdiction that did not elect to adopt a housing relocation program under Chapter 59.18 RCW would not be in compliance with this policy. Lynnwood maintains that it is its business whether it will adopt a Chapter 59.18 RCW housing relocation program -- the County cannot mandate it. Therefore, the City suggests that HO-21 be

revised to require local jurisdictions merely to consider Chapter 59.18 RCW programs.LOB, at 58.

b.Snohomish County

The County alleges that Lynnwood’s objection to HO-21 is frivolous because the policy does not require cities to adopt a housing relocation program.Instead, they are only encouraged to do so. However, each jurisdiction must make its own determination what type of housing relocation program, if any, it will adopt in its implementing regulations.SCRB, at 48.

Discussion

The Board agrees with the County's interpretation of HO-21.The policy does not require a city to implement housing relocation programs as provided under Chapter 59.18 RCW.It only encourages a city to do so, which the Board treats similarly to asking a jurisdiction to consider the program.Whether a city elects to implement a Chapter 59.18 RCW housing relocation program remains in its sound discretion.“HO-21 does not, therefore, mandate or require the implementation of housing relocation programs...” nor does it “... alter the land use powers of the cities.”*See* Stipulation of Fact filed by the parties on July 1, 1993 , at 2.

OD-8

OD-8Encourage land use, economic and housing policies that co-locate jobs and housing to optimize use of existing and planned transportation systems and capital facilities.R-348, at 3358.

Positions of the Parties

a.City of Edmonds

Edmonds “appealed policies HO-5, 7, 8, 9, 11, 17, 18 and OD-8 because of the inter-relationship of the various provisions.”EPB, at 11.However, the City never specifically addressed OD-8.

b.City of Lynnwood

Lynnwood voiced “no objection” to OD-8. LOB, at 58.

c.Snohomish County

Since neither Edmonds nor Lynnwood objected to OD-8, the County requested that the Board affirm it.SCRB, at 48.

Discussion

The Petitioners’ treatment of OD-8 constitutes an abandonment of that portion of Legal Issue No. 6.Therefore, that portion of Legal Issue No. 6 that challenges OD-8 is dismissed with prejudice.

## Conclusion No. 6

The Board concludes that the following policies challenged by the Petitioners, HO-4, 5, 8, 9, 11, 17, 18 and 21, and OD-8 of the Snohomish County CPPs are in compliance with the GMA since they address legitimate regional issues, do not alter the land use powers of cities and are otherwise consistent with the GMA.

The Board further concludes that HO-7 is not in compliance with the GMA because it is not consistent with other provisions of the Act and because it alters the land use powers of cities.

## Legal Issue No. 7

***Legal Issue No. 7 was dismissed pursuant to the Board's June 22, 1993, Order on Motions to Supplement the Record and Order Granting Edmonds' Motion to Amend Pleading to Voluntarily Dismiss Portions of Appeal [i.e., Legal Issue No. 7].***

## Legal Issue No. 8

***Do Policies CF-1 and OD-7 relating to Capital Facilities siting alter the land use powers of cities? [E]***

The Snohomish CPPs on capital facilities siting include:

CF-1 Formulate a common site review process to evaluate facility proposals according to criteria established for sites anywhere in Snohomish county. The Snohomish County Tomorrow Steering Committee shall establish this process, which shall provide for or include:

a. a definition of these facilities

b. an inventory of existing facilities and planned future facilities of the type under consideration for siting;

c. economic and other incentives to host jurisdictions;

d. a public involvement strategy;

e. safeguards for the environment and for public health and safety;

f. consideration of alternatives to the facility; and

g. variations in the process to account for special cases, such as, 1) facilities with inherent siting limitations (e.g., ports), 2) modifications or expansions of existing facilities on existing sites, and 3) scale differences between "countywide" and "statewide" facilities.

(Sample components of a site review process are available in a separate working paper.) R-348, at 3366.

OD-7 Develop and coordinate compatible capital facility construction standards for all service providers within a particular UGA. R-348, at 3358.

## Positions of the Parties

### a.City of Edmonds

#### (1)Policy CF-1

The City of Edmonds asks the Board for clear direction on the above cited policies. Its concern arose after adoption of the CPPs, when a draft policy providing for a county-wide hearing examiner system was proposed by a SCT advisory board, the Planning Advisory Committee on Capital Facilities Siting. The City characterized that draft as in conflict with local jurisdictions' decision making authority. While it notes that the draft policy has since been modified to eliminate that conflict, the advisory board's initial action, characterized by the City as badly misconstruing the policy, led Edmonds to continue to seek clarification. EPB, at 17.

If CF-1 is interpreted to convert a planning process into an interjurisdictional administrative review process aimed at the details of siting, it would violate a variety of land use powers exercised by cities. EPB, at 18.

Edmonds notes that various drafts issued by the advisory committee are intended to apply only to essential capital facilities of regional (county-wide or state-wide) significance, but the policy does not provide guidance on how to determine which facilities are of a county-wide nature.

The City further challenges Section (f) of the policy, requiring the consideration of alternatives, as an intrusion into the cities' authority and duties under the State Environmental Policy Act.

Finally, Edmonds asks the Board to provide clear direction that:

... CF-1 and the common site review process can not usurp the City's traditional decision making authority regarding issues such as zoning, architectural design review, building permit review and issuance, conditional use requirements and SEPA review. EPB, at 20.

#### (2)Policy OD-7

Edmonds notes that a UGA may contain both incorporated and unincorporated areas, and agrees that a requirement in such areas for "...uniform standards for pavement and sidewalk width, and the sizing of water and sewer pipes, is good regional planning..." Its concern is with the potential effect of the policy on a municipality's design standards for capital facility construction within its boundaries. EPB, at 21.

#### (3)Combined Effect of Policies CF-1 and OD-7

Finally, Edmonds expresses concern that "...the ambiguity of OD-7 combined with the intrusive and directory language of CPP CF-1 could be read to provide for a common siting and construction standard process to be applied to all capital facilities construction regardless of where located..." EPB, at 21. It asks the Board to:

... confirm that CF-1 is a planning process, not an authorization to substitute a county-wide approval system for capital facilities for the existing land use system which vests final approval in local jurisdictions... OD-7 similarly requires a limited interpretation. By adopting such an interpretation, the policies can be preserved and will not alter the land use powers of the cities. EPB, at 22.

## b.Snohomish County

### (1)Policy CF-1

The County directs the Board's attention to the context in which CF-1 is presented in the CPPs.It is located under the heading "Policies for the siting of public capital facilities of a county-wide or state-wide nature," followed by a head note stating that: "The following policies shall guide development of the siting process to be included within the comprehensive plans of Snohomish County and its cities."SCRB, at 49 (emphasis in original).

In response to Edmonds' "... apparent fear ... that the common site review process referred to in Policy CF-1 is intended to substitute for the traditional permit review process of the city," the County denies such intent:

The required provisions of the review process to be included in comprehensive plans stated in subparagraphs (a) through (g) do not describe a substitute permitting process but rather a process for the formulation of uniform planning policies needed to accommodate sites for public facilities of a county- and state-wide nature within each jurisdiction's comprehensive plan.SCRB, at 51.

Responding to Edmonds' concerns about the types of facilities potentially subject to the planning process contemplated by CF-1, the County asserts that, contrary to Edmonds' concern, the policy does not affect siting of individual, independent small facilities in specific areas of a community.

Such detailed implementation decisions are appropriately left to the local jurisdictions to be made in their regulations implementing their comprehensive plans.SCRB, at 51.

The County refutes Edmonds' speculation that it would be required to revise its SEPA process, observing that "[t]he only connection between this policy and SEPA is that both the policy and the state statute contain the word 'alternatives' somewhere within their text."SCRB, at 51.

Finally, the County asserts that Policy CF-1:

... meets a required regional objective of addressing the siting of public facilities of a county-wide or state-wide nature, it provides substantive direction only to the provisions of comprehensive plans and it is consistent with other relevant provisions of the GMA.Thus, Policy CF-1 is valid under the Board's analytical framework.SCRB, at 51-2.

### (2)Policy OD-7

The County asserts the validity of Policy OD-7:

... it meets the legitimate reasonable objective of providing compatible capital facilities within a UGA, it does not require any set implementing regulation and it is consistent with the GMA.SCRB, at 52-3.

## Discussion

Edmonds objects to CF-1 and OD-7 on the grounds that these policies intrude upon the city's traditional land use powers by directing the city to adopt a common site review process for siting capital facilities of a county-wide or state-wide nature that the County will determine in the future. While Edmonds' assertion appears to have some merit, a closer look at the GMA reveals that this

is not the case: it is not the County's CPPs that alter the city's traditional land use powers, but it is the GMA.

RCW 36.70A.210, Countywide planning policies, at subsection (1) provides two important points concerning the purpose and effect of CPPs. The first point, as noted in our decision in *Snoqualmie*, is that the CPPs provide a "framework [to] ensure that city and county comprehensive plans are consistent as required by RCW 36.70A.100." RCW 36.70A.210(1). The second and most relevant point here is that "[n]othing in [the section describing CPPs] shall be construed to alter the land-use powers of cities." If one were to stop reading section .210 of the GMA after subsection (1) and also fail to consider the substantive effect that other provisions of the GMA have on the cities' land-use powers, one would be inclined to believe Edmonds' argument. However, section .210 cannot be read in a vacuum: to do so would lead to inconsistent conclusions and absurd results that would ultimately frustrate the intent of the GMA.

RCW 36.70A.210 at subsection (3)(c) directs each county to address within its CPP "[p]olicies for siting capital facilities of a county-wide or state-wide nature." RCW 36.70A.070, Comprehensive plans - mandatory elements, at subsection (3), directs each jurisdiction planning under the Act to include in its comprehensive plan:

A capital facilities plan element of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

In addition, RCW 36.70A.200, Siting of essential public facilities, provides that:

(1) The comprehensive plan of each county and city that is planning under this chapter shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, and group homes.

(2) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list. No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(Emphasis added).

Clearly, the Act requires counties and cities to address the issue of siting essential public facilities in their respective comprehensive plans. However, the Act does not stop with requiring cities and counties to simply address the issue: the Act specifically imposes the positive requirement that

the comprehensive plans of all jurisdictions planning under the Act must include a process for identifying and siting public facilities (RCW 36.70A.200(1)) and may not preclude the siting of essential public facilities (RCW 36.70A.200(2)). Therefore, it is section .200 of the Act that alters the traditional land-use powers of the cities, not the requirements of RCW 36.70A.210(3)(c). Thus, pursuant to RCW 36.70A.210(1), the policies outlined in CF-1 and OD-7 have no substantive binding effect on the comprehensive plan of Edmonds or any other city in Snohomish County. The fact that the County has chosen to outline the positive requirements of the GMA (found elsewhere in the Act) on cities' and counties' comprehensive plans in its CPPs does not mean that the County's CPPs necessarily control or direct what a city must include in its comprehensive plan. The County's planning policy merely collects in one document all of the mandatory provisions of the GMA that alter the cities' traditional land-use powers, instead of leaving the cities to their devices to figure out what the GMA requires. By including the mandatory elements of the GMA in its CPPs, the County is fulfilling its responsibility to aid in the consistent development and implementation of city and county comprehensive plans. *See* RCW 36.70A.100 and .210(1).

As for policy OD-7, the Board holds that it is in compliance with the GMA as written. However, this policy is another instance where the County has adopted a vague policy. For instance, the phrase "construction standards" is undefined. The Board again cautions the County that any subsequent challenge it might bring against a city for failing to comply with OD-7 will not be looked upon favorably, because the lack of clarity in OD-7 provides a maximum degree of flexibility to cities. With this warning in mind, the Board nonetheless approves OD-7 as an attempt to address a legitimate regional goal: "compatible construction standards." As Edmonds itself pointed out, "[r]equiring uniform standards ... is good regional planning which enables the ready passage of traffic and pedestrians or [which serves as] the basis for an economic transfer of service from a water or sewer district to a city." EPB, at 21. However, the Board's willingness to permit the County to develop a system for achieving compatible capital facility construction standards will end if the County attempts to dictate the actual design or construction standards of any city. *See Snoqualmie*. Achieving compatibility of the construction standards of the various service providers within a UGA falls within the purview of a legitimate regional issue; specifying what the particular construction and design standards are remains within the sole province of cities.

#### Conclusion No. 8

Policy CF-1 is in compliance with the GMA. This policy addresses a legitimate regional issue, the siting of public capital facilities of a countywide or statewide nature. Although a strict reading of the policy could lead to the conclusion that it alters the land use powers of cities, the Board concludes that other provisions in the Act, particularly RCW 36.70A.200, instead alter a city's pre-GMA land use authority. Therefore, CF-1 is not inconsistent with the other provisions that require proactive steps to be taken to identify and site such public facilities, and that prohibit any

jurisdiction from precluding the siting of essential public facilities.

The Board also concludes that OD-7 is in compliance with the Act. The Board finds that establishing a process for achieving compatible construction standards is a legitimate regional exercise. However, the process cannot dictate the actual construction or design requirements for individual cities.

### Legal Issue No. 9

***Does Policy HO-16 require a city to process permit applications within 180 days? If so, does it alter the land use powers of cities? [E]***

The CPPs sets forth the following permitting policy in HO-16:

Ensure the expeditious and efficient processing of development applications by endeavoring to process complete development applications within 180 days. The jurisdictions shall maintain clear and specific submittal standards and the most current available information on wetlands, geologic hazardous areas, and fish and wildlife habitat conservation areas. The expeditious processing of development applications shall not result in the lowering of environmental and land use standards. R-348, at 3364.

### Positions of the Parties

#### a. City of Edmonds

Edmonds asserts that HO-16, by its own terms specifically applicable to development applications, deals with the land use powers of cities, and where it inserts a specific time frame, 180 days for permit processing, it attempts to alter the city's land use powers. EPB, at 22. It first asks whether the 180-day period is a mandatory or a directory element, given the use of the terms "ensure" and "endeavor" in the same sentence. Edmonds suggests that a Board ruling that the position of the 180 day limitation following "endeavor" renders it a generalized goal rather than a mandatory requirement would "cure" its concerns with HO-16.

Without such clarification, the City alleges that the policy would intrude on its land use powers, such as a specialized administrative review process for geological hazardous areas, and its prerogative to "...establish review and appeal procedures which encourage broad public participation and the reasonable exercise of due process rights both by citizens and developers." EPB, at 23.

Edmonds offers three specific examples where the time limit is incompatible with the City's permit process: generally, "...where the development application includes a variety of review processes such as site plan review, rezone, building permit applications, and architectural design review, with sequential processing;" specifically, where its geotechnical review process alone "...frequently takes 180 days and more to complete because of the highly technical geotechnical

issues involved...;" and finally, where under Edmonds' appeal process for land use decisions, a hearing examiner's initial decision is appealable *de novo* to the City Council. In the last instance, imposition of a time limit would interfere with the City providing "...for full citizen input and appeal by limiting the overall time in which an application may be considered." EPB, at 24-25.

#### b. Snohomish County

The County responds that "[W]hat the policy requires is that local jurisdictions endeavor to process applications within 180 days." Endeavor equates with "attempt" or "try." ... Policy HO-16, used as intended as a policy to guide the preparation of the city's comprehensive plan, is clearly valid. SCRB, at 53-54.

### Discussion

In short, Edmonds argues that if the 180-day permit processing time limit is mandatory, then Policy HO-16 impermissibly alters the land use powers of cities.

Where, as here, the Act sets forth a planning goal concerning permit processing<sup>[20]</sup> to guide development of comprehensive plans and implementing regulations, it is an appropriate exercise of the County's authority and responsibility to address such a goal in its CPPs since CPPs establish "a county-wide framework from which county and city comprehensive plans are developed and adopted." RCW 36.70A.210(1).

With these observations in mind, the first question is whether HO-16's establishment of a 180-day period for permit processing is a reasonable interpretation of RCW 36.70A.020(7)'s "timely" processing requirement to "ensure predictability." The second is whether the time period is mandatory or advisory. Finally, if mandatory, does it alter the land use powers of cities contrary to RCW 36.70A.210(1).

Edmonds cites several specific factors which would thwart its attempt to complete permitting within 180 days. First, the Board notes that HO-16 addresses the processing of permit applications, not a city's requirements for a complete application, or its procedure for making the final decisions to approve or deny them in response to an appeal. Under even the most restrictive reading of this policy, cities would still retain their broad discretion.

Second, Edmonds alleges that its geotechnical review process would potentially hinder its meeting a 180-day processing deadline. The Board notes that one of the benefits of the Act's requirement that cities and counties identify and regulate critical areas, including geologically hazardous areas, under RCW 36.70A.170(1)(d) is to provide much more geotechnical information as well as detailed regulations to an applicant, potentially allowing for a significant reduction in the need for site specific analysis at the time of permit application.

Third, after permit issuance, nothing in UG-16 could be read to interfere with the City's continued use of those appeal processes authorized by SEPA and other land use and permitting statutes, as implemented by the City's ordinances.

Fourth, Edmonds is concerned that the time limit could interfere with "full citizen input and appeal." The Board observes that under the GMA, the primary and appropriate opportunity for

citizen participation is at the policy level. RCW 36.70A.020(11) encourages "... the involvement of citizens in the planning process...." RCW 36.70A.140 requires "...early and continuous public participation..." in comprehensive planning and the development of implementing regulations. Under GMA planning, the preferred and primary opportunities for citizen involvement occur earlier. The emphasis shifts from permitting to planning activities, when the comprehensive plan and regulations are adopted.

The Board holds that the selection of 180 days is a reasonable interpretation of the Act's goal of timely processing of permit applications.

Next, the Board examined the specific terms used in HO-16 to determine whether the policy was mandatory and, if so, whether it altered the city's land use powers. The policy is phrased both as an outcome and a method of achieving that outcome: "Ensure the expeditious and efficient processing of permit applications by endeavoring to process permits within 180 days." The intended outcome is "expeditious and efficient processing of permit applications." This is the "aspirational" goal of HO-16. Because it uses the word "ensure," a verb the Board concludes is extremely directive, HO-16 mandates that cities and the County process development applications expeditiously and efficiently. However, this portion of HO-16 does not alter the land use powers of cities since it merely paraphrases one of the Act's goals.

What about the method HO-16 utilizes to achieve its goal, i.e., "by endeavoring to process complete development applications within 180 days" -- does it alter the land use authority of cities? Importantly, the County elected to use the word "endeavoring" for this portion of the policy. This term is far less directive than the word "ensure." Had HO-16 read: "Ensure the expeditious and efficient processing of complete development regulations within 180 days", the Board certainly would have held that the policy altered the land use authority of cities. Nevertheless, as written, the Board treats the "endeavoring" language as simply suggesting a measurement for achieving HO-16's aspirational goal.

The Board's construction of HO-16 is consistent with the County's acknowledged overall purpose in adopting the CPPs and its intent not to alter the land use powers of cities. Thus, a reasonable reading of the entire sentence would be that cities must make a good-faith effort to process permits within six months in order to reach the desired outcome of expeditious and efficient processing. However, the Board treats only the aspirational goal as mandatory. The measurement for achieving this goal, the 180 days, is not mandatory; a city is not required to process a permit application within 180 days and may on occasion have perfectly legitimate reasons for not doing so. Failing to meet the 180 day deadline, by itself, would not constitute legitimate grounds for an appeal. Conversely, failing to take steps to ensure expeditious and efficient permit processing would.

#### Conclusion No. 9

Policy HO-16 is a reasonable interpretation of the GMA's planning goal at RCW 36.70A.020(7). Moreover, it is in compliance with the Act since it does not alter the land use powers of cities.

That portion of HO-16 that requires jurisdictions to “ensure” expeditious and efficient permit processing is mandatory and binding as a legitimate regional objective. However, the reference to completing the processing of permits within 180 days is only advisory and not binding.

### Legal Issue No. 10

#### ***Does Policy OD-2 alter the land use powers of cities?***

OD-2 provides:

Allow development within the incorporated and unincorporated portions of the UGA as follows:

- a. The cities will regulate development such that it does not preclude urban densities and does provide for urban governmental services and capital facilities.
- b. The county will regulate development within the urban growth areas in a manner that does not preclude urban densities, based on strategies which will be developed as part of the joint comprehensive planning process for each urban growth area. These strategies will consider the unique development opportunities and constraints in each urban growth area and could range from development limitations in one area to the authorization of development at planned urban densities in those areas that have urban governmental services and capital facilities available.
- c. Development will be consistent with six and twenty year land use and capital facilities plans. R-348, at 3357-3358.

### Positions of the Parties

#### a. City of Edmonds

Edmonds' concern is with subparagraph (b) of OD-2 because:

Any attempt by the county to regulate development within the incorporated portion of any urban growth area is a clear intrusion into the local jurisdiction's (cities) land use powers. EPB, at 25.

If the Board finds that the language of OD-2(b) is applicable to the entire urban growth area, incorporated and unincorporated, then it must find that the county's attempt to exercise development regulations alters the City's land use powers by usurping it. EPB, at 26.

#### b. City of Lynnwood

Lynnwood argues that the language of OD-2 is vague because of a lack of definitions and a lack of clarity about who takes actions to determine densities. Lynnwood provides specific recommendations for revisions to OD-2 to make it clearer and to bring it into compliance with the Act.

Lynnwood states its objections to OD-2 as follows:

- (1) "Urban densities" is not defined, nor is it clear who sets or how urban densities will be

determined. This phrase in OD-2 should be revised to read "urban growth" a defined term at RCW 36.70A.030(14).

(2) "Regulate development" could be interpreted to require comprehensive plans and development regulations deny permit issuance where a property is zoned to a [sic] "urban density," but the permit applies for a lesser density. The policy should be revised to clarify that no minimum density or minimum lot size is required to be adopted by a local jurisdiction, since to do so would violate local land use prerogative.

(3) The phrase "provide for" urban governmental services and capital facilities should be clarified and revised to make clear that the local jurisdiction is not required to "provide" the capital facilities, but only to ensure that statutory concurrency requirements are met. LOB, at 59.

### c. Snohomish County

The County argues that the lack of specificity in OD-2 leaves maximum flexibility and therefore does not alter the land use powers of cities.

... Lynnwood's concern over the lack of definition of "urban densities" is surprising since the lack of a definition in the CPP allows the city to devise its own definition within its comprehensive plan, assuming the definition the city selects is consistent with GMA requirements and the interlocal agreement [i.e. Exhibit 306] it has entered into with the county along with the other southwest cities.

Policy OD-2 is directed to comprehensive plans and does not direct specific requirements for implementing regulations. Thus, the phrase "regulate development" does not require the city to adopt the required minimum densities. ...

Finally, as to Lynnwood's objections, subparagraph (a) of Policy OD-2 directs cities to regulate development such that the development provides for urban governmental services and capital facilities. It does not require the city itself to provide them. SCRB, at 55 (emphasis in original).

In answer to Edmonds' brief, the County states:

Edmonds is concerned with subparagraph (b) of Policy OD-2. To answer Edmonds' stated concerns, Policy OD-2 will not operate in a vacuum. The mere adoption of this CPP does not suddenly amend the state constitution and allow the county to adopt land use regulations which apply within incorporated areas of the county. Read in context with subparagraph (a) of Policy OD-2, it is obvious that subparagraph (b) concerns only the unincorporated portions of urban growth areas. SCRB, at 56.

### Discussion

Lynnwood's specific objections to OD-2(a) are valid insofar as the phrase "will regulate development" appears to speak directly to the land use powers of cities, and thus violate the second of the three prongs articulated in the *Snoqualmie* decision:

(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. *Snoqualmie*, at 18.

A valid policy within the CPPs to achieve the County's apparent intent would read: "City comprehensive plans shall include strategies and land use policies to achieve urban densities and provide for urban governmental services and capital facilities."

Such a policy would be appropriate because is it logical to assume that urban densities will be achieved within urban growth areas and that new growth will be required to provide for the urban governmental services and capital facilities that are necessitated by that growth. However, this is not the only way to achieve this result but merely a suggested wording of the policy. Yet, no matter how a policy is worded, in order to be in compliance with the Act, such a policy must speak explicitly to comprehensive plans rather than to development regulations or other exercises of the land use powers of cities. Since OD-2(a) does go directly to development regulations, it is not in compliance with the GMA.

With regard to Lynnwood's concern about the vagueness of "urban densities," the Board finds no non-compliance. The designation of a city's urban growth boundaries will determine its geographic area and the population and employment allocations will determine the number of people and jobs for which it must plan. These two actions will establish a gross density citywide that will, by definition, constitute "urban densities."

Edmonds' objection to Policy OD-2(b) is based on the assumption that it is intended to apply to the incorporated areas as well as the unincorporated areas. The Board agrees with the County's argument that OD-2(b) was intended to address only the unincorporated portions of the UGA. The Board reaches this conclusion based on the initial sentence of OD-2, which acknowledges the distinction between incorporated and unincorporated areas, and because of the general intent of the CPPs not to alter the land use powers of cities. Therefore, the Board will read OD-2(a) and (b) as if the following underlined words were included within the actual language of the policy:

a. The cities will regulate development within the incorporated portion of UGA's such that it does not preclude urban densities and does provide for urban governmental services and capital facilities.

b. The county will regulate development within the unincorporated portions of urban growth areas in a manner that does not preclude urban densities, based on strategies which will be developed as part of the joint comprehensive planning process for each urban growth area. These strategies will consider the unique development opportunities and constraints in each urban growth area and could range from development limitations in one area to the authorization of development at planned urban densities in those areas that have urban governmental services and capital facilities available. (Emphasized language added).

#### Conclusion No. 10

Policy OD-2(a) is not in compliance with the Act because it uses the phrase "will regulate

development" and thereby violates the land use powers of cities. This policy should be deleted or amended to be in compliance with the Act and the Board's determination. Policy OD-2(b) applies only to the unincorporated portions of the UGA. It does not alter the land use powers of cities and is therefore in compliance with the Act.

### Legal Issue No. 11

#### ***Does Policy TR-12 alter the land use powers of cities? [L]***

TR-12 provides:

Establish land use designations and site design requirements that are supportive and compatible with public transportation and as optional elements, to be separately determined by each local jurisdiction, encourage innovative techniques such as:

- a. pedestrian-scale neighborhoods and activity centers to stimulate use of high-occupancy vehicles,
  - b. mixed-land uses and pedestrian-friendly design, and
  - c. employment-intensive land uses and shared parking.
- R-348, at 3376.

### Position of the Parties

#### a. City of Lynnwood

Lynnwood claims that TR-12 alters its land use powers in three ways. First, subsections (a), (b) and (c) of TR-12 go beyond policy language into specific "... zoning techniques or development regulations." Therefore, the City asks that this portion of the policy be stricken. LOB, at 60.

Second, Lynnwood alleges that TR-12 is too vague since it is uncertain whether the general policy (to "establish land use designations") applies "throughout and to every area of a city." Therefore, the City asks that the verb "establish" be deleted and the verb "include" be inserted. LOB, at 60.

Third, Lynnwood criticized the TR-12 because "[w]hat the land use designations (and site design requirements) that are 'supportive and compatible with public transportation,' and with what types of public transportation, is not clear." Accordingly, Lynnwood requested that the policy be revised so that "it is clear land use designations for the entire city need not be 'supportive' of any prescribed or minimum level of public transportation." LOB, at 60.

#### b. Snohomish County

The County responded to Lynnwood's complaints by citing to RCW 36.70A.210(3)(d). Since that subsection requires CPPs to address "policies for county-wide transportation facilities and strategies," the County maintains that TR-12 meets a legitimate regional objective and does not alter the land use powers of cities. Accordingly, that objective is to "establish land use designations and site design requirements that are supportive and compatible with public transportation." This is an appropriate policy statement in CPPs that is directed toward an individual jurisdiction's comprehensive plan and not its implementing development regulations. Furthermore, the County claims that Lynnwood misread TR-12. Referring to the subsections of TR-12, the County argued that these are "optional elements, to be separately considered and determined by each local jurisdiction and that the listed items are merely given as examples, not requirements." The County argued that the type and location of land use designations and site design requirements "is left to each city to decide." SCRIB, at 57-58.

#### d.1000 Friends

1000 Friends alleges that TR-12 is supported by the GMA's transportation goal at RCW 36.70A.020(3), which provides:

Transportation. Encourage efficient multi-modal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

1000 Friends' arguments about the specific language of TR-12 mirrored that of the County. "The policy in no way alters the land use authority of the cities." *Amicus* Brief, at 17.

#### Discussion

The Board agrees completely with the County's and 1000 Friends' interpretation of TR-12. The first portion (i.e., "Establish land use designations and site design requirements that are supportive and compatible with public transportation") constitutes an appropriate general policy statement for CPPs that again focuses on the compatibility of standards. It does not alter the land use powers of cities since it simply establishes a broad goal that must be accomplished through comprehensive plans and implementing development regulations. How to achieve that goal is left to the discretion of individual jurisdictions.

The remaining portion of TR-12 does list three innovative techniques. However, TR-12 on its face specifies that these are merely "optional" and only examples (by use of the phrase "such as"). Importantly, the verb "encourage" is also used, rather than the more directive "establish." Therefore, cities remain free to determine for themselves which, if any, innovative techniques they might employ.

#### Conclusion No. 11

TR-12 is in compliance with the GMA. It addresses a legitimate regional objective, does not alter the land use powers of cities and is otherwise consistent with provisions of the Act.

#### **D.ORDER**

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

The Snohomish County County-wide Planning Policies are in compliance with the Growth Management Act except for the following policies which are **remanded** with instructions for Snohomish County to either remove those policies from the CPPs or to otherwise bring them into compliance with the Board's holdings and conclusions.

- 1.)UG-4.
- 2.)HO-7.

3.)OD-2(a).

Pursuant to RCW 36.70A.300(1)(b), the Board directs Snohomish County to comply with this Final Decision and Order no later than by **5:00 p.m. on February 11, 1994.**

So ORDERED this 4th day of October, 1993.

CENTRAL PUGET SOUND GROWTH PLANNING HEARINGS BOARD

\_\_\_\_\_  
M. Peter Philley  
Board Member

\_\_\_\_\_  
Joseph W. Tovar, AICP

Board Member

\_\_\_\_\_  
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.

\_\_\_\_\_  
<sup>[1]</sup>The SCT Steering Committee has continued to meet since the adoption of the County's CPPs. See for instance, R-357.

<sup>[2]</sup>The Puget Sound Regional Council, established in 1991, is the successor to the Puget Sound Council of Governments.

<sup>[3]</sup>Even if UG-4 were to be eliminated, the Interlocal Agreement would stand, and its signators, including the City of Lynnwood, would remain committed to a collaborative planning process that includes citizen involvement and that spells out the roles and responsibilities of the county and cities.

<sup>[4]</sup>RCW 36.70A.020, Planning goals, provides:

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations ... (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner: (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.... (Emphasis added).

RCW 36.70A.210, County-wide planning policies, provides:

... 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).

<sup>[5]</sup>The legislature's fundamental intention in adopting the Act is RCW 36.70A.010 entitled **Legislative findings**. It provides:

The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by the residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.... (Emphasis added).

<sup>[6]</sup>Planning goals are "to guide" the development of comprehensive plans while CPPs are a "framework" for the development of such plans. It follows that these must be mutually consistent and that, in fact, the CPPs are to provide a locally appropriate format to meet state planning goals.

<sup>[7]</sup>RCW 36.70A.030 provides that:

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

<sup>[8]</sup>The Board has previously held that the phrase "Land use powers of cities" 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. *Snoqualmie*, at 16.

<sup>[9]</sup>Section 120 of the Act was amended in 1993. ESHB 1761, Section 3 reads:

RCW 36.70A.120 and 1990 1st ex.s. c 17 s 12 are each amended to read as follows:

~~((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))~~ Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform ((their)) its activities and make capital budget decisions in conformity with ((their)) its comprehensive plan ((s)).

<sup>[10]</sup>The interactive and iterative sequence under GMA is: (1) Designate and adopt *interim* critical areas and resource land regulations (RCW 36.70A.170, .060); (2) Adopt CPPs with at least **procedural** fiscal analysis (per *Snoqualmie*); (3) Adopt *Interim* Urban Growth Areas (RCW 36.70A.110(4)); (4) Adopt final phases of CPPs and/or **substantive** fiscal analysis as needed (per *Snoqualmie*); (5) Adopt comprehensive plans, including Final Urban Growth Areas (RCW 36.70A.110(4)); (6) Perform activities and make capital budget decisions in conformity with the adopted comprehensive plan (RCW 36.70A.120).

<sup>[11]</sup>The Board takes official notice of statistics cited in the Spring 1993 OFM population estimates. The 1993 state estimated population of King, Pierce, Snohomish and Kitsap Counties is listed as 1,587,700, 640,700, 507,000 and 210,600, respectively. The square miles of these counties, as cited by the Washington State Association of Counties Directory, dated January 1993, in the same sequence, is listed as 2,128, 1,676, 2,098 and 393. The population of the four county region totals 2,946,300; the total land mass totals 6,295 square miles. The total population listed for the state is 5,240,900, the total land mass is listed as 66,536 square miles.

<sup>[12]</sup>RCW 36.70A.210(1) provides:

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

<sup>[13]</sup>The Act defines "urban growth" at RCW 36.70A.030(14) as:

"Urban growth" refers to 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.

<sup>[14]</sup>RCW 36.70A.110(3) provides:

Urban growth should be located first in areas already characterized by urban growth that have existing public facilities and service capacities to serve such development, and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional

needed public facilities and services that are provided by either public or private sources. Further, it is appropriate that urban government services should be provided by cities, and urban governmental services should not be provided in rural areas.

<sup>[15]</sup> Although Edmonds stated that its zoning code imposes a 25-foot height limitation on all development within the city, it in fact does not. See Edmonds Community Development Code 16.30.030(A)(1) (allowing roof to extend five feet above 25-foot height limitation in Multiple Residential zones, provided the roof has a slope of 4" in 12" or greater); 16.50.020(A)(2) (allowing roof to extend five feet above 25-foot height limitation in Community Business zones, provided the roof has a slope of 4" in 12" or greater); 16.55.020(A) (imposing a 30-foot height limitation in Commercial Waterfront (CW) zones); 16.55.020(A)(2) (imposing a 48-foot height limitation on petroleum products storage tanks in CW zones); 16.60.020(A) (imposing a 35-foot height limitation in General Commercial (CG) zones and a 45-foot height limitation in CG2 zones); 16.60.030(B) (authorizing buildings to exceed maximum height limitations subject to the issuance of a Conditional Use Permit).

<sup>[16]</sup> The Snohomish County Responsive Brief erroneously refers to this legal issue as number 2, instead of Legal Issue No. 5, as enunciated in the Board's Prehearing Order.

<sup>[17]</sup> In the *Snoqualmie* decision at 14, the Board listed a series of phrases to illustrate varying degrees of directiveness: 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..."

<sup>[18]</sup> In the GMA alone, housing is identified in RCW 36.70A.020(4), .070(2) and .210(3)(e).

<sup>[19]</sup> The Board notes the difference between HO-5 (where the County required that two specified documents be considered) and UG-9 (where the County merely "noted" other studies that might accomplish the objectives of that policy).

<sup>[20]</sup> RCW 36.70A.020(7) Permit applications for both state and local government permit should be processed in a timely and fair manner to ensure predictability.