

CENTRAL PUGET SOUND

GROWTH PLANNING HEARINGS BOARD

State of Washington

HAPPY VALLEY ASSOCIATES,) Case No. 93-3-0008
)
CITY OF ISSAQUAH,) ORDER GRANTING RESPONDENT
) KING COUNTY'S MOTION TO
and) DISMISS and DENYING HAPPY
) VALLEY'S MOTION TO AMEND
GRAND RIDGE PARTNERSHIP and) ITS PETITION FOR REVIEW
GLACIER RIDGE PARTNERSHIP,))
Petitioners,))
)
vs.))
)
KING COUNTY,))
)
Respondent.))
)

A. PROCEDURAL BACKGROUND

On September 24, 1993 the Central Puget Sound Growth Planning Hearings Board (the **Board**) received Respondent King County's Motion to Dismiss in the above captioned matter. Submitted in support of the Motion to Dismiss (and memorandum in support) were various declarations, affidavits and exhibits from Larry Phillips, Jim Reid, Paul Reitenbach, Anne Knapp, Anne Masuo and Gerald Peterson. King County (the **County**) filed a corrected Motion to Dismiss on September 27, 1993.

On October 6, 1993 the Board received responsive briefs from each petitioner as follows: Happy Valley Associates (**Happy Valley**): "Petitioner Happy Valley's Response to King County's Motion to Dismiss and Motion to Amend Petition"; City of Issaquah (the **City** or **Issaquah**): "City of Issaquah's Responsive Brief to Motion for Summary Judgment"^[1] which contained an Affidavit of Wayne D. Tanaka; and Grand Ridge Partnership/Glacier Ridge Partnership (**Grand Ridge**): "Memorandum of Grand Ridge Partnership and Glacier Ridge Partnership in Opposition to Motion to Dismiss" with one exhibit.

On October 13, 1993 the County filed its Reply Brief with the Board, along with a supplemental affidavit with exhibits from James Reid and an Affidavit of Arthur Thornbury, with exhibits. The Board held a hearing on the County's Motion to Dismiss on October 14, 1993 at 10:00 a.m. in Room 1225, One Union Square, Seattle. Court reporting services were provided by Donna K. Woods of Robert H. Lewis & Associates. Present were the Board's three members: M. Peter Philley, Joseph W. Tovar, and Chris Smith Towne, presiding. Representing Happy Valley were John W. Hempelmann and Alan L. Wallace, Cairncross and Hempelmann; Wayne D. Tanaka, Ogden Murphy Wallace, represented the City; Thomas A. Goeltz, Davis Wright Tremaine, represented Grand Ridge; and Charles E. Maduell, Senior King County Deputy Prosecuting Attorney, represented the County.

When the Board entered its Prehearing Order in this case, it set Friday, October 22, 1993 as the date for it to enter an order granting or denying the County's Motion to Dismiss. At the conclusion of the hearing on the motion to dismiss, the parties orally indicated that the Board should waive its self-imposed October 22, 1993 deadline, if necessary, because of the number of exhibits to be reviewed and the importance of the decision.

B. FINDINGS OF FACT

1. The King County Comprehensive Plan (**KCCP**) is the first part of the County's historic three-part planning system that existed prior to and remains in place since the adoption of the Growth Management Act (**GMA** or **Act**). It comprises the "... County's long-range, county-wide comprehensive land use plan..." and "... consists of goals, land use policies and the Comprehensive Plan Map." Exhibit (**Ex.**) 1 to Masuo Affidavit (**Aff.**), at 3. Pursuant to the King County Code (**KCC**) 20.12.010, the comprehensive plan "... shall be the principal planning document for the orderly physical development of the county and shall be used to guide community plans [and] functional plans...." Community plans comprise the second tier of the three-part pre-GMA planning system. Community plans "... develop detailed land use and capital improvement plans for local subareas of King County based on the policies adopted in the Comprehensive Plan." Ex. 1 to Masuo Aff., at 3. The third tier is functional plans "... which provide detailed programs for providing public facilities and governmental services to support the policies of the Comprehensive Plan and community plans...." Ex. 1 to Masuo Aff., at 3.

2. In December, 1982 the 1982 East Sammamish Community Plan and Area Zoning^[2] (**ESC Plan**) was adopted by the County. See Ex. 2 to Peterson Aff., at 13 and 325. See also Ex. 4 of Masuo Aff., at 1 - Finding 2 of Ordinance No. 9365, and Ex. 5 of Masuo Aff., at 11 - Section 3 of Ordinance No. 10298. The ESC Plan was adopted by Ordinance No. 6252^[3] as "an **amplification** and **augmentation** of the Comprehensive Plan for King County and as such constitutes the official county policy for the geographic area defined therein." See Ex. 6 to Masuo Aff., at 3 - Section 1 of Ordinance No. 10746.

3. The major portion of the current version of the KCCP (Ex. 1 to Masuo Aff.) was adopted in April, 1985 by Ordinance No. 7178. Pursuant to KCC 20.12.010, the 1985 KCCP was adopted

under the provisions of the King County Charter, King County's constitutional authority and Chapter 36.70 RCW, the Planning Enabling Act.^[4]In contrast however, according to the KCCP itself, it was adopted under only the authority of the King County Charter (Articles 2 and 3).As the KCCP indicates, although "... King County's approach to land use planning and regulation is similar to that provided for in the Washington State Planning Enabling Act (RCW 36.70)...", the County relies directly on the Washington State Constitution for authority to plan and regulate land use.Ex. 1 to Masuo Aff., at 2.^[5]

4.On December 11, 1989, the King County Council adopted Ordinance No. 9234, entitled:

An ordinance establishing interim zoning on certain areas of the East Sammamish community planning area, amending the sewer Local Service Area (LSA) and LSA map (Figure 8) in the East Sammamish Community Plan and declaring an emergency.Ex. 3 to Masuo Aff (emphasis in original).

5.The interim zoning adopted by Ordinance No. 9234 was to remain in effect for 120 days from the effective date of the ordinance.Ex. 3 to Masuo Aff., at 11 (Section 3).

6.On December 18, 1989, the King County Council adopted Motion No. 7771, entitled:

A Motion initiating the East Sammamish Community Plan, describing the scope of the Plan Update and Area Zoning, establishing the responsibilities of a community plan citizen advisory committee and the King County planning and community development division in updating the East Sammamish Community Plan and approving the appointment of citizens to serve on the East Sammamish Community Plan Citizen Advisory Committee.Ex. 2 of Peterson Aff., at 325.

7.On March 26, 1990, the King County Council adopted Ordinance No. 9365, entitled:

An ordinance establishing interim zoning on certain areas of the East Sammamish Community Planning Area, amending the sewer Local Service Area (LSA) and LSA map (Figure 8) in the East Sammamish Community Plan, repealing Ordinance 9234, and finding an emergency.Ex. 4 to Masuo Aff.

8.The interim zoning established by Ordinance No. 9365 was to remain in effect for twenty-four months from the effective date of the ordinance.Ex. 4 to Masuo Aff., at 15 (Section 3).

9.The first paragraph of Finding 2 in the Preamble to Ordinance No. 9365 acknowledged that the ESC Plan would be updated and that the purpose of the ESC Plan and Area Zoning:

... is to implement and amend the 1985 Comprehensive Plan.It will update and provide more detailed policy guidelines for land use, the environment and transportation which will be implemented through the simultaneous adoption of area-wide zoning.Ex. 4 to Masuo Aff., at 1 (emphasis added).*See also* Ex. 1 to Peterson Aff., Ordinance No. 10847, at 1.

10.On July 1, 1990, SHB 2929, what is commonly referred to as the Growth Management Act became effective.It is primarily codified in Chapter 36.70A RCW.Laws of 1990, 1st Ex. Sess., ch. 17.

11.In July, 1990, "[p]ublic workshops and regular Citizens Advisory Committee (CAC) meetings began..."Ex. 5 of Masuo Aff., at 1.

12.On July 16, 1991, the Washington State Legislature's 1991 amendments to the GMA, enacted

pursuant to RSHB 1025, became effective. Laws of 1991, 1st Sp. Sess. ch. 32.

13. On January 13, 1992, the King County Council passed Ordinance No. 10237, entitled: An ordinance relating to comprehensive planning; amending the 1985 King County Comprehensive Plan; and amending Ordinance 7178, Section 1 and KCC 20.12.010.Ex. 9 to Masuo Aff.

14. Ordinance No. 10237 amended the 1985 King County Comprehensive Plan and added new sections to it. For instance, a new policy was added, PI-303 B, which provides:

King County should support annexation and incorporation proposals when:

The proposed area is within an urban growth area, potential annexation area or Rural Activity Center expansion area identified by King County plans and policies;... Attachment to Ex. 9 to Masuo Aff., at 1 (emphasis added).

15. On March 16, 1992, the King County Council passed Ordinance No. 10298, entitled: An ordinance extending the expiration date, and modifying the terms of, interim zoning in the East Sammamish community planning area, amending Ordinance 6252 as amended and K.C.C. 20.12.340G.Ex. 5 to Masuo Aff.

16. Ordinance No. 10298 again extended the interim zoning until "the earlier of January 31, 1993 or the effective date of an ordinance adopting an update to the 1982 East Sammamish Community Plan and Area Zoning..." unless other specified events occurred. The latest extension possible due to such other circumstances was to March 31, 1993. Ex. 5 to Masuo Aff., at 11-12 (Section 3).

17. Finding No. 4 of Ordinance No. 10298 provides:

In its 1990 and 1991 Sessions, the Washington State Legislature enacted major new land use planning and growth management legislation, known as the Growth Management Act (GMA), after the East Sammamish Community Plan update process was under way and after the council adopted Ordinance 9365. This new legislation has had a major impact on the original schedule and scope of the East Sammamish Community Plan and Area Zoning Update. The GMA requires greater coordination with the Cities of Issaquah and Redmond regarding urban growth boundaries, development standards, and more specific standards for phasing growth concurrently with adequate public facilities and services. Ex. 5 to Masuo Aff., at 2 (emphasis added).

18. Finding No. 10 of Ordinance No. 10298 provides:

Unless interim zoning is continued until adoption of the East Sammamish Community Plan Update and Area Zoning, King County's opportunity to implement the 1985 King County Comprehensive Plan... and to comply with the GMA will be foreclosed.... Ex. 5 to Masuo Aff., at 3 (emphasis added).

19. Finding No. 11 of Ordinance No. 10298 indicates:

The extension of the interim zoning adopted by this ordinance is necessary to protect the public health, safety and welfare, in light of the extraordinary progress King County and the CAC have already made in trying to comply with the original timetables set by Motion

7771 and Ordinance 9365, the new state planning requirements established by the GMA....
Ex. 5 to Masuo Aff., at 4 (emphasis added).

20. July 1, 1992 was the deadline for counties to adopt countywide planning policies. RCW 36.70A.210.

21. On July 6, 1992, the King County Council passed Ordinance No. 10450, entitled:
An Ordinance adopting the Countywide Planning Policies [CPPs] pursuant to RCW 36.70A.210 and ratifying the Countywide Planning Policies for unincorporated King County. Ex. 2 to Masuo Aff. (emphasis added).

The CPPs were attached to the Ordinance.

22. King County and the cities within the county established a Growth Management Planning Council (GMPC) to develop and adopt CPPs, and agreed upon a three-phase process for that purpose. Phase I, adoption of initial CPPs, was accomplished in 1992, through County adoption of Ordinance No. 10450, and subsequent ratification by the cities. Ordinance No. 10450 laid out the work to be accomplished in subsequent stages. Phase II includes designation of centers, population and employment allocations, refinement of housing and economic development elements, further fiscal analysis and possible revision of the East Sammamish portion of the Urban Growth Area map included in the CPPs. In Phase III, the County Council will review and adopt amendments to the KCCP (the **KCCP Update**) and incorporate any changes made to the CPPs in Phase II.

23. Finding No. 7 of Ordinance No. 10450 provides:

With respect to the Urban Growth Area (UGA) Boundary a number of study areas have been identified which require additional consideration by the GMPC. These study areas are identified on the GMPC Recommended Urban Growth Area map [on reverse side of page 15 of the CPPs]. For the East Sammamish area, the GMPC determined that the area should be further evaluated and possibly revised based on the East Sammamish Community Plan Update process which is now under way and which will be completed in January 1993. Recommendations on the UGA Boundary will be developed in cooperation with the affected cities, neighborhoods, property owners and the general public. Changes to the adopted UGA Boundary may be recommended to the county by the GMPC and subject to adoption and ratification. Ex. 2 of Masuo Aff., Ordinance provisions, at 2 (emphasis added).

24. The CPPs' Framework Policy FW-2 provides in part:

Countywide Planning Policies are effective after King County adoption and city ratification for the purposes of updating comprehensive plans, and providing a policy framework for other governmental actions of all jurisdictions... Ex. 2 to Masuo Aff., CPPs, at 8.

25. Chapter II of the CPPs is entitled "Land Use Pattern"; Part A is entitled "Resource Lands: Agricultural, Forestry and Mineral." Policy FW-5 provides:

The land use pattern for the County shall protect the natural environment by reducing the consumption of land and concentrating development. Urban Growth Areas, Rural Areas, and Resource Lands shall be designated and the necessary implementing regulations

adopted. This includes Countywide establishment of a boundary for the Urban Growth Area. Local jurisdictions shall establish these land use designations, based on the Countywide Planning Policies. Ex. 2 of Masuo Aff., CPPs, at 13 (emphasis added).

26. Part B of Chapter II is labeled "Rural Areas." Policy FW-6 reiterates that "Urban Growth Areas... shall be designated and the necessary implementing regulations adopted. This includes Countywide establishment of an Urban Growth Area...." Ex. 2 of Masuo Aff., CPPs, at 14 (emphasis added).

27. Part C of Chapter II of the CPPs is entitled "Urban Areas." The introductory text of that part states as follows:

The following policies establish an Urban Growth Area (UGA) and methods to phase development within this area in order to bring certainty to long-term planning and development within the county. The Urban Growth Area is a permanent designation. Land outside the Urban Growth Area is designated for permanent rural and resource uses, except for the cities in the rural area. Countywide policies on rural and resource areas are found in Chapter IIA, Resource Lands, and Chapter IIIB, Rural Areas. Ex. 2 of Masuo Aff., CPPs, at 15 (emphasis added).

28. Within Part C of Chapter II of the CPPs, FW-8 provides:

The land use pattern for King County shall protect the natural environment by reducing the consumption of land and concentrating development. An Urban Growth Area ... shall be designated and the necessary implementing regulations adopted. This includes the countywide establishment of a boundary for the Urban Growth Area.... Ex. 2 of Masuo Aff., CPPs, at 16 (emphasis added).

29. Part C, Subsection (1) of Chapter II is designated "Urban Growth Areas." Its introductory text states:

The GMA requires King County to designate an Urban Growth Area (UGA) in consultation with cities. The Countywide Planning Policies must establish an Urban Growth Area that contains enough urban land to accommodate at least 20 years of new population and employment growth.... A UGA map [entitled "Growth Mgmt Planning Council Recommended Urban Growth Area", dated June 27, 1992] is attached. Ex. 2 of Masuo Aff., CPPs, at 16 (emphasis added).

30. CPPs Policy LU-14 indicates:

The lands within the Urban Growth Area (UGA) shall be characterized by urban development.... The Countywide Planning Policies shall establish the Urban Growth Area ... Ex. 2 of Masuo Aff., CPPs, at 16 (emphasis added).

31. Part C, Subsection (3) of Chapter II is designated "Joint Planning and Urban Growth Areas around Cities." Its introductory text states:

The GMA requires each county to designate Urban Growth Areas, in consultation with cities. Within the countywide Urban Growth Area, each city will identify land needed for its growth for the next twenty years. Although the GMA does not explicitly equate Urban Growth Areas with municipal annexation areas, the Urban Growth Areas around cities may

be considered potential expansion areas for cities.Ex. 2 of Masuo Aff., CPPs, at 17.

32.Part C of the CPPs, Subsection (4) of Chapter II is designated "Cities in the Rural Areas."Policy LU-26 provides:

... Each city in the rural area, King County and the GMPC shall work cooperatively to establish an Urban Growth Area for that city.Urban Growth Areas must be approved by the GMPC by January 1, 1993.Ex. 2 of Masuo Aff., CPPs, at 19 (emphasis added).

33.On July 29, 1992 the "Executive Proposed East Sammamish Community Plan Update and Area Zoning" (**Executive Proposed ESC Plan Update**) (i.e., Ex. 2 to Peterson Aff.) was transmitted from the County Executive to the County Council.Ex. 6 to Masuo Aff., at 2 (Ordinance No. 10746 - Finding 3).*See also* Ex. 7 to Masuo Aff., at 1 (Motion No. 8783) and Ex. 8 to Masuo Aff., at 1 (Ordinance No. 10848 - Finding 1).

34.Chapter I of the Executive Proposed ESC Plan Update is the Introduction.Under the heading "State Growth Management Act," the document reveals that:

King County adopted new Countywide planning policies for the purpose of meeting the requirements of the State of Washington GMA on July 16, 1992 (Ordinance 10450).The Urban Growth Area boundary for the East Sammamish area should be further evaluated and possibly revised based on the East Sammamish Community Plan Update process which is now under way and which will be completed in January 1993.Ex. 2 to Peterson Aff., at 18 (emphasis added).

35.Under the heading "1985 King County Comprehensive Plan," the Introduction portion of the Executive Proposed ESC Plan Update also notes that:

The 1992 East Sammamish Plan Update is the third Community Plan prepared to follow the guidance of both the King County Comprehensive Plan and the GMA.Ex. 2 to Peterson Aff., at 18 (emphasis added).

36.Under the heading "Plan Implementation", the Executive Proposed ESC Plan Update indicates that:

The East Sammamish Community Plan is expected to guide decisions for six to ten years after which the plan will be evaluated for any needed revisions.Ex. 2 to Peterson Aff., at 22 (emphasis added).

37.Chapter II of the Executive Proposed ESC Plan Update is entitled Growth Management and Regional Coordination.A portion of the introductory language states:

This chapter lays the policy foundation for directing future urban growth to Issaquah and Redmond or within a potential new city on the East Sammamish Plateau.The policies in this chapter implement the 1985 King County Comprehensive Plan and the 1990 Washington State Growth Management Act (GMA) as they relate to future urban growth. Ex. 2 to Peterson Aff., at 37 (emphasis added).

38.Chapter II of the Executive Proposed ESC Plan Update also contains a section on Intergovernmental Coordination.A passage indicates:

... A key feature of the GMA is the promotion of coordination and consistency between jurisdictions.To this end King County and the 31 cities in the County have adopted a Joint

Regional Strategy (JRS). The JRS is focusing on coordinating ... (4) the designation of urban growth areas... Ex. 2 to Peterson Aff., at 38 (emphasis added).

39. Chapter II of the Executive Proposed ESC Plan Update also has a section entitled "Municipal Urban Growth Areas." The first paragraph of this section states:

The CAC recommended that lands designated Rural by the KCCP stay Rural (except for Grand Ridge...) and that future growth be directed to the areas in and around Issaquah and Redmond. Both the KCCP and the GMA support a growth pattern which directs growth to Urban Areas served by urban services and facilities, and which protects rural and resource lands. Municipal urban growth areas (MUGAs) are lands identified and planned for future urban use and provision of urban services. It is anticipated that these areas will be annexed or will incorporate. MUGAs are portions of the areas designated Urban by the KCCP which are to receive the majority of growth during the next 20 years.... Ex. 2 to Peterson Aff., at 41.

40. Policy GM-7 in the Executive Proposed ESC Plan Update states:

If the MUGAs identified in this plan conflict with the urban growth areas identified by the regional Growth Management Act process, adjustments shall be made through the community plan amendment process. Ex. 2 to Peterson Aff., at 42.

41. On September 14, 1992, the King County Council passed Motion No. 8733, entitled:

A Motion appointing the Panel to review the Executive's Proposed East Sammamish Community Plan [Update] and Area Zoning and to jointly review, with the Council's Utilities Committee, the East Sammamish Basin Plan. Ex. 7 to Masuo Aff., at 1.

42. On October 13, 1992, the panel of King County Councilmembers that had been formed to review the Executive Proposed ESC Plan Update began its work. Ex. 6 to Masuo Aff., at 2 (Ordinance No. 10746 - Finding 3).

43. On October 26, 1992, a public hearing was held on the Executive Proposed ESC Plan Update. Ex. 6 to Masuo Aff., at 2 (Ordinance No. 10746 - Finding 3); *see also* Ex. 8 to Masuo Aff., at 2 (Ordinance 10848 - Finding 4).

44. On February 8, 1993, the King County Council passed Ordinance No. 10746, captioned:

An ordinance extending the expiration date, and modifying the terms of, interim zoning in the East Sammamish community planning area, amending Ordinance 6252 and K.C.C. 20.12.340 as amended. Ex. 6 to Masuo Aff., at 1.

45. Ordinance No. 10746 extended the interim zoning until May 31, 1993. Ex. 6 to Masuo Aff., at 4 (Section 3).

46. In April, 1993, the County issued a Final Environmental Impact Statement on the Executive Proposed ESC Plan Update that included the County Council panel's recommended changes. Aff. of Anne Knapp, at 4.

47. On May 10, 1993, the King County Council held a thirteen hour public hearing to consider its panel's recommendations. A second thirteen hour meeting was held on May 24, 1993. Ex. 8 to Masuo Aff., at 2 (Ordinance No. 10848 - Finding 4); *see also* Aff. of Anne Knapp, at 4.

48. On May 25, 1993, the King County Council passed Ordinance No. 10847 which adopted what

the Board refers to as the ESC Plan Update that is the subject of the Board's current review. The ordinance is entitled:

An ordinance relating to comprehensive planning; adopting the East Sammamish Community Plan Update; adopting the East Sammamish Community Plan Area Zoning update; amending the King County Sewerage General Plan; amending Ordinance 4035 as amended; repealing Ordinance 6252 as amended, and K.C.C. 20.12.340.Ex. 1 to Peterson Aff., at 1 (emphasis added).

The Board notes that since adoption, the County evidently has not republished the ESC Plan Update to include the County Council's amendments. Instead, the ESC Plan Update consists of several documents: the Executive Proposed ESC Plan Update (Ex. 2 to the Peterson Aff.), the "Panel-Recommended Revisions to the Executive Proposed East Sammamish Community Plan Update" (Ex. 3 of Peterson Aff.), and the King County Council's ESC Plan "Amendment Package" for its May 24, 1993 meeting. Ex. 4 of Peterson Aff.

49. According to the County Council's first Finding of Fact in Ordinance No. 10847:

... The purpose of the East Sammamish Community Plan and Area Zoning is to implement and amend the 1985 King County Comprehensive Plan. It will update and provide more detailed policy guidelines for land use, the environment and transportation which will be implemented through the simultaneous adoption of areawide zoning. Land use, growth, redevelopment and adequate urban services are best addressed in the context of an update of the community plan. Ex. 1 to Peterson Aff., at 1 (emphasis added).

50. Section 1(A) of Ordinance 10847 indicates that the ESC Plan Update is adopted as "an amplification and augmentation of the Comprehensive Plan for King County and as such constitutes official county policy for the geographic area defined therein." Ex. 1 to Peterson Aff., at 2.

51. On June 1, 1993, the Washington State Legislature's 1993 amendments to the GMA as enacted by ESHB 1761 became effective. Laws of 1993, 1st Sp. Sess., ch. 6.

52. Also on June 1, 1993, the King County Council passed Ordinance No. 10848 entitled:

An ordinance establishing interim zoning on portions of the East Sammamish community planning area, amending Ordinance 6252 and K.C.C. 20.12.340 as amended and declaring an emergency. Ex. 8 to Masuo Aff., at 1 (emphasis in original).

53. Finding No. 7 of Ordinance 10848 provides:

The application of the interim zoning adopted by this ordinance is necessary to protect the public health, safety and welfare, in light of the extraordinary progress King County made in trying to comply with the original timetables set by Motion 7771, Ordinance 9365, Ordinance 10298 and Ordinance 10746, and in light of the imminent effective date of Ordinance 10847 [i.e., no later than June 17, 1993]. Ex. 8 to Masuo Aff., at 3.

54. Ordinance No. 10847 took effect no later than June 17, 1993. Ex. 8 to Masuo Aff., at 2 (Ordinance No. 10848 - Finding 4).

55. July 1, 1993 was the original deadline for cities and counties to adopt comprehensive land use plans pursuant to RCW 36.70A.040(3). This deadline was extended to July 1, 1994 by the 1993

amendments to the GMA.Laws of 1993, 1st Sp. Sess., ch. 6, § 1.

C.DISCUSSION

In determining whether the County's Motion to Dismiss should be granted, the Board was faced with three basic questions:

1. Did King County adopt the East Sammamish Community Plan Update and Area Zoning (the **ESC Plan Update**) in an effort to comply with the requirements of the GMA?
2. Has King County adopted Interim Urban Growth Area (**IUGA**) boundaries pursuant to the GMA?
3. Did the three Petitioners timely file their petitions for review with the Board?

The first two questions deal with the Board's jurisdiction.Reduced to its most basic arguments, the County asserted that the ESC Plan Update was not adopted pursuant to the GMA nor had the County yet adopted IUGA boundaries pursuant to the Act.Therefore, the Board lacked the requisite subject matter jurisdiction to hear any of the petitions for review filed in this matter.In sharp contrast, Grand Ridge and Issaquah argued that the ESC Plan Update was done pursuant to the GMA and that the County has already drawn IUGA boundaries pursuant to the Act generally in the CPPs and specifically for the East Sammamish area in the ESC Plan Update.

Happy Valley took the position that the County's motion should be granted, since the ESC Plan Update was not yet ripe for review.However, Happy Valley also asked the Board to either confirm the Board's ultimate jurisdiction to review any community plan adopted as part of and/or as an amendment to the King County Comprehensive Plan Update or, alternatively, to grant its Motion to Amend Petition and permit it to seek a declaratory ruling to that effect from the Board. Happy Valley's Response Brief, at 1, 2, 6 and 7.

As for the timeliness of the petitions for review, the County acknowledged that Happy Valley's petition was timely filed (*see* Respondent King County's Reply Brief, at 8) but maintained that Grand Ridge and Issaquah failed to file petitions of review in time.Issaquah contended that its petition was timely; Grand Ridge argued that the County never published notice of adoption of the ESC Plan Update, and therefore its petition was timely.Alternatively, Grand Ridge noted that its petition contained a request to intervene in the Happy Valley case.

1.The ESC Plan Update

RCW 36.70A.280(1) specifies the extent of a growth planning hearings board's subject matter jurisdiction.It provides as follows:

A growth planning hearings board shall hear and determine only those petitions alleging either: (a) That a state agency, county, or city is not in compliance with the requirements of this chapter, or chapter 43.21 RCW as it relates to plans, regulations, and amendments thereto, adopted under RCW 36.70A.040; or (b) that the twenty-year growth management planning population projections adopted by the office of financial management pursuant to

RCW 43.62.035 should be adjusted.

To begin with, the Board notes that its jurisdiction does not apply to all planning documents enacted by a local government or a state agency. Instead, the Board's jurisdiction is limited to planning documents, such as comprehensive plans and development regulations, that were adopted in an effort to comply with the requirements of the GMA. As this Board has repeatedly indicated in prior decisions (*see Tracy v. Mercer Island*, CPSGPHB Case No. 92-3-0001 (1993), at 8-9; *Gutschmidt v. Mercer Island*, CPSGPHB Case No. 92-3-0006 (1993), at 7-9; and *Twin Falls, et al. v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993) - Order on Dispositive Motions, at 4-10 and 12), its subject matter jurisdiction is strictly limited to the matters specified in RCW 36.70A.210(6) and RCW 36.70A.280(1). This conclusion is bolstered by the legislature's use of the word "only" in the quote above from that statute and the fact that RCW 36.70A.300(1) indicates that a board's final decision "... shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, or chapter 43.21C RCW as it relates to plans, regulations, and amendments thereto, adopted under RCW 36.70A.040...." (Emphasis added).

Therefore, the question becomes whether the ESC Plan Update was adopted in response to the requirements of the GMA. If it was, this Board has jurisdiction; if it was not, the Board lacks the requisite jurisdiction to hear the matter.

That the KCCP is not a GMA-required document is certainly clear to County planning staff:

... While the planning staff ESCP [Update] team, which I headed, was aware of the GMA, staff did not consider the proposed ESCP [Update] to be implementing the GMA. We were aware that GMA implementation through an update to the King County Comprehensive Plan was a separate process by separate staff which was in its very early stages when the executive-proposed ESCP [Update] was drafted. We also knew that once the Comprehensive Plan was updated under the GMA, all community plans would need to be made consistent with the Plan update. Instead, staff drafted policies and area zoning to implement the existing King County Comprehensive Plan, not the GMA; although, where possible, we attempted to make some of the policies generally consistent with GMA goals, many of which are similar to King County Comprehensive Plan policies and goals. Aff. of Anne Knapp, at 2-3, ¶ 4.

Jim Reid, Manager of the Planning and Community Development Division of the King County Department of Parks, Planning and Resources, stated:

As Manager, I am responsible for and oversee the development of comprehensive plan amendments and community plan and area zoning updates for transmittal to the King County Council. I am familiar with the County's Growth Management Act planning process and supervise the Division staff performing that work. Aff. of Jim Reid filed on Sept. 24, 1993, at 2, ¶ 3.

The ESCP [Update] was not part of the County's GMA planning process. Certainly planning staff were aware of the GMA and where possible, attempted to be consistent with the GMA goals and guidelines, many of which are similar to those in King County's Comprehensive

Plan. However, the ESCP [Update] was developed and intended to be consistent with, and implement, the existing King County Comprehensive Plan. Aff. of Jim Reid filed on Sept. 24, 1993, at 5, ¶ 12.

Of course once the Comprehensive Plan Update under the GMA is adopted by the King County Council, it is anticipated that all adopted community plans, including the ESCP, will be reviewed and made consistent with the County Plan Update. Aff. of Jim Reid filed on Sept. 24, 1993, at 6, ¶ 13.

Paul Reitenbach, Chief of the Community Planning Section within the Planning and Community Development Division, supervises the planners who develop comprehensive plan amendments, community plan updates and other planning documents; he supervised the preparation of the Executive Proposed East Sammamish Community Plan Update and Area Zoning. In his declaration, he observed that:

Community plan adoptions and updates typically follow a long and thorough process. They are updated every six to ten years.... Declaration of Paul Reitenbach, at 2, ¶ 3.

... The entire community planning process can take up to three or four years to complete. Declaration of Paul Reitenbach, at 3, ¶ 4.

The [ESC Plan Update] followed this process. The last community plan for the East Sammamish Community Planning Area had been adopted in 1982. Declaration of Paul Reitenbach, at 3, ¶ 5.

When the 1985 King County Comprehensive Plan ("KCCP") was adopted, all pre-existing community plans became out of date and in need of revision. Declaration of Paul Reitenbach, at 3, ¶ 6.

When the Growth Management Act ("GMA") was adopted in 1990, work was substantially underway on each of the three community plans.... Both the community plans and KCCP were reviewed and updated in a completely separate process from GMA planning. Declaration of Paul Reitenbach, at 4, 10.

While the planning goals of GMA provided general guidance for these community plan updates, the KCCP was the policy document that governed the [East Sammamish] community plan update process. Declaration of Paul Reitenbach, at 4, ¶ 11.

The ESCP [Update] is one of three community plan and area zoning updates initiated before and adopted after the GMA went into effect All three community plan updates discussed the GMA and attempted, where possible, to achieve consistency with GMA goals. However, they are not related to, nor a part of, the County's three-phase process for complying with the GMA, which will culminate in a Comprehensive Plan Update [being adopted] consistent with GMA requirements by July 1, 1994 and implementing zoning and other development regulations. Instead, these three community plan updates were adopted as an amplification and augmentation of the existing KCCP. Declaration of Paul Reitenbach, at 5-6, ¶ 14.

Arthur Thornbury, lead council staff on the ESC Plan Update, stated:

As staff, we attempted to highlight areas of overlap between the KCCP and the GMA as

they related to the proposed [East Sammamish] community plan, but our recommendations were never based upon GMA requirements and I do not believe that the Council's decisions were either. In some of these areas of overlap, GMA terminology was used to describe plan elements responding to KCCP requirements, elements that have appeared in community plans developed prior to the enactment of the GMA. Aff. of Arthur Thornbury, at 2, ¶ 3.

King County Councilmember Larry Phillips served as chair of the four-member panel of councilmembers ("Panel") convened in September, 1992 for the purpose of reviewing the Executive Proposed East Sammamish Community Plan and Area Zoning. He reported:

Of course the Panel was aware of and, on occasion, discussed the GMA during our review of the ESCP [Update]. Where possible, the Panel attempted to make recommendations on the executive-proposed ESCP that would be consistent with the GMA's goals and guidelines, many of which are similar to those in the King County Comprehensive Plan. However, the ESCP [Update] was not part of, or intended to be part of, the County's process for compliance with the requirements of the GMA. Nor did the Panel, to my knowledge, intend the ESCP [Update] to be adopted under authority of or to otherwise implement the requirements of the GMA.... Aff. of Larry Phillips, at 2-3, ¶ 5.

Furthermore, as the May 25, 1993 adopting Ordinance No. 10847 indicates, the ESC Plan Update was enacted to amplify and augment the 1985 KCCP. Findings of Fact No. 50 The 1985 KCCP was adopted well before the enactment of the GMA. It is uncontested that it is the only countywide comprehensive plan that the County has in existence at this time. Unquestionably, the existing KCCP is not a GMA document. Instead, it was adopted pursuant to the King County Charter, King County's constitutional authority and possibly (*see* footnotes 4 and 5 of this order) the Planning Enabling Act, Chapter 36.70 RCW.

The County pointed out that Ordinance No. 10847 "... mentions only the KCCP and not the GMA. Respondent King County's Motion to Dismiss, at 17. Although this is a correct statement, the Board notes that this was not always the case during the process of updating the 1982 ESC Plan. The version of the community plan that the ESC Plan Update replaced was adopted in December, 1982 by Ordinance No. 6252. Findings of Fact No. 2. Between the ESC Plan adoption in December, 1982 and the ESC Plan Update adoption in May, 1993, Ordinance No. 6252 was amended. When the County Council passed Ordinance No. 10298 in March, 1992, the GMA was specifically referenced. Findings of Fact No. 17, 18 and 19.

In addition, the Board is aware that the ESC Plan Update itself is replete with references to the GMA. *See, for instance*, Findings of Fact Nos. 34, 35, 37 and 38. While some of these references to the Act are merely factual recitations, acknowledging the existence of the GMA or certain of its provisions, others could be interpreted as having been adopted in order to comply with the GMA.

Despite these references to the Act, the Board concludes that the ESC Plan Update was not adopted pursuant to the GMA. Instead, it is a community plan adopted pursuant to the County's charter authority over which this Board has no jurisdiction.¹⁶ Several reasons exist for this conclusion. First, nothing in the adopting ordinance (No. 10847) or introductory language to the

ESC Plan Update itself clearly indicates that the ESC Plan Update was adopted to comply with the requirements of the GMA. Second, the uncontroverted statements contained in the affidavits and declarations of County personnel clearly indicate that the ESC Plan Update was part of the pre-existing and non-GMA related planning process in King County. Third, as the following discussion reveals, even if the adopting ordinance or the ESC Plan Update itself indicated that either was or both were adopted in order to comply with the GMA, it would nonetheless be impossible for the County do have done so at this time.

King County is required to adopt a comprehensive plan by July 1, 1994 pursuant to RCW 36.70A.040(3),^[7] which provides in part:

Any county or city that is initially required to conform with all the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: ... (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994. (Emphasis added).

The County is still working toward updating the KCCP so that it will comply with the GMA. As affidavits and the County's briefs point out, this is hoped to be accomplished by the July 1, 1994 deadline imposed by RCW 36.70A.040(3). However, until the County formally adopts a comprehensive plan intended to comply with the requirements of the GMA, no such document exists. Conversely, if the July 1, 1994 deadline for adopting a comprehensive plan passes without such a document being adopted, the County will be not be in compliance with the Act and will be subject to direct sanctions by the governor. *See* Laws of 1993, 1st Sp. Sess., ch. 6, § 5. Clearly, the existing 1985 KCCP (as amended in 1992) does not comply with the GMA, nor was it intended to. RCW 36.70A.070 lists a series of mandatory elements that a comprehensive plan must contain. As the County itself acknowledged, it does not have a comprehensive plan that complies with these GMA requirements because a GMA plan does not yet exist. Respondent King County's Motion to Dismiss (Corrected), at 17.

In addition, RCW 36.70A.080(2) provides:

A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

This Board has outlined the interactive and iterative nature of the planning hierarchy established by the GMA. *See, for instance, Edmonds and Lynnwood v. Snohomish County*, CPSGPHB Case No. 93-3-0005 (1993), at 26 - fn. 10; and *Snoqualmie*, at 17. The Board has also noted the important distinction in the GMA between policy documents, such as CPPs and comprehensive plans, and development regulations. *Edmonds*, at 26; *Gutschmidt*, at 15; *Poulsbo*, at 23. However, the Board has not yet commented upon subarea plans. As RCW 36.70A.080(2) reveals, they are a subset of comprehensive plans. Therefore, subarea plans also are planning policy documents under the GMA. They may contain more specific policies aimed at a localized area within a city or county.

Likewise, even though the ESC Plan Update contains an Area Zoning component that would

constitute "development regulations" in a GMA context, development regulations that implement a GMA required comprehensive plan cannot exist until a GMA mandated comprehensive plan has been adopted. Since the County has yet to adopt its GMA comprehensive plan, it cannot have development regulations that implement and are consistent with that plan. RCW 36.70A.040(3). Therefore, even if the ESC Plan Update had been passed in order to comply with the GMA, it could not do so since King County has yet to adopt a GMA-required comprehensive plan. As a community plan that may be similar to a "subarea plan", the ESC Plan Update could not be consistent with the GMA-mandated comprehensive plan since the latter has yet to be adopted. Furthermore, none of the parties have claimed that the ESC Plan Update by itself constitutes the County's comprehensive plan. It clearly is limited to a small geographic portion of King County rather than applying countywide.

In a related vein, the Board agrees with the County that if a city or county were permitted to do its GMA planning first through subarea plans before comprehensive plans had been adopted, it "... would turn this [GMA planning] process on its head by forcing the comprehensive plan to be consistent with the earlier adopted and more specific subarea plan. Such a result is wholly at odds with the GMA's planning hierarchy, which contemplates planning from the regional (countywide planning policies) to the local (comprehensive plans) ..." Respondent King County's Motion to Dismiss (Corrected), at 20.

Having held that the ESC Plan Update is not a GMA-required document, the Board nonetheless cautions the County about its future actions. If the County modifies any of its existing adopted pre-GMA community plans, after adopting a comprehensive plan that is intended to comply with GMA requirements, in order to make those community plans consistent with that new comprehensive plan, it must clearly label them as GMA subarea plans to its GMA comprehensive plan. As for the ESC Plan Update, it currently is not a GMA comprehensive plan or subarea plan. It will not become the latter unless the County elects to adopt it as such. Whether an ESC Plan Update, that has been revised after the County adopts its GMA comprehensive plan, ultimately complies with the GMA will be determined by the Board only if and when a petition is filed. The Board concludes that the public was poorly served by the confusing and inconsistent way in which the County characterized the ESC Plan Update relative to GMA. Depending upon which County document is read, a citizen would conclude that the ESC Plan Update was prepared to *implement* the GMA or that the ESC Plan was *parallel and coincident* to the GMA or the ESC Plan was simply a *predicate* to subsequent compliance with the GMA. Meaningful public participation depends upon local government being clear and consistent in the way it characterizes the authority, scope and purpose of proposed planning enactments. In this case, the County will suffer no consequence for its poor performance because the Board has concluded that the ESC Plan Update is not a GMA enactment. As noted above, the County has indicated that it will be subsequently making the ESC Plan Update, together with other community plans, consistent with GMA requirements. This compels the Board to offer two further cautionary notes. First, the County's attention is directed to RCW 36.70A.140, which concerns public participation. The Board looks forward to the County's meeting a much higher standard of clarity and

consistency in communicating to the public the authority, scope and purpose of its GMA-required enactments than was evidenced with the ESC Plan Update.

Second, because the ESC Plan Update was a creature of a pre-existing framework for planning (either Chapter 36.70 RCW and/or the County's inherent constitutional and charter authority, each of which the County cited), it was not obliged to balance local, regional and state interests as the GMA requires. Any GMA subarea plan must reflect the state planning goals, and be consistent with other parts of the County's GMA comprehensive plan, the plans of adjacent jurisdictions and the countywide planning policies. Any sub-area plans within a comprehensive plan must be consistent with the comprehensive plan, not the reverse. A GMA comprehensive plan is more than a cobbling together of thirteen pre-existing subarea plans, each of which was developed without these external considerations and the balancing of interests.

Finally, the Board turns to an argument raised by both Grand Ridge and Issaquah. These Petitioners claimed that the County was required to comply with its own countywide planning policies when it passed the ESC Plan Update. Policy FW-2 of the County's CPPs was cited to support this contention. Memorandum of Grand Ridge in Opposition to Motion to Dismiss, at 6. FW-2 provides in part:

Countywide Planning Policies are effective after King County adoption and the city ratification for the purposes of updating comprehensive plans, and providing a policy framework for other governmental actions of all jurisdictions....Ex. 2 to Masuo Aff., at 8 (emphasis added).

Grand Ridge contended that the ESC Plan Update is an amendment to the KCCP and therefore must comply with the CPPs because of FW-2. The Board disagrees with Grand Ridge's assessment of Policy FW-2. It holds that the phrase "for the purposes of updating comprehensive plans" refers to future efforts to update existing pre-GMA comprehensive plans to bring them into compliance with the Act, or to undertake subsequent modifications of those GMA plans. It does not involve efforts by jurisdictions to update pre-GMA comprehensive plans for non-GMA purposes nor does it deal with updating non-GMA required community plans.

2. Interim Urban Growth Areas Boundaries

RCW 36.70A.110(4)^[8] provides:

On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter....Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110. Such action may be appealed to the appropriate growth planning hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

Both Grand Ridge and Issaquah contend that the County adopted a general UGA when it adopted its county-wide planning policies on July 6, 1992. Memorandum of Grand Ridge in Opposition to

Motion to Dismiss, at 8^[9] and Issaquah's Responsive Brief to Motion for Summary Judgment, at 5. When the County passed the ESC Plan Update, they contend that the County "re-drew" the UGA boundary to exclude any of Grand Ridge's property from being designated as within an urban growth area, leaving it zoned entirely rural. Memorandum of Grand Ridge in Opposition to Motion to Dismiss, at 8 and 9.

a. UGAs in the CPPs

The Board has reviewed the CPPs to determine whether Grand Ridge's and Issaquah's contention is correct. Certainly, the wording of some of the specific policies within the CPPs reinforces the claim the UGAs were designated within the CPPs. However, as this Board previously has held in an earlier case challenging the County's CPPs (*see Snoqualmie*, at 26) King County has not yet set urban growth area boundaries.

After reviewing the record in this case, the Board concludes that the only part of the CPPs which could even be considered as the County's designation of UGAs would be the map, entitled "Growth Mgmt Planning Council -- Recommended Urban Growth Area", that is found on the reverse side of page 15 of the CPPs. This map simply is inadequate to designate UGAs. It is not precise nor are legal boundaries labeled. For instance, aside from obvious geographic features such as Vashon Island and large blocks of eastern King County, it is extremely difficult to determine boundary line locations with any degree of certainty. Furthermore, the map itself indicates that:

This map is intended for planning purposes only and is not guaranteed to show accurate measurements. Ex. 2 to Masuo Aff., between 15 and 16 (emphasis added).

The Board holds that when a county does designate urban growth areas it must do so accurately, precisely and in detail for the designation to have binding legal effect under the GMA. The map in the CPPs does not meet any of these requirements. Instead, it is simply a broad conceptual depiction of King County used solely for planning purposes. It cannot be a binding legal document.

Importantly, the Board notes that the map in question, that conceivably could constitute a UGA boundary, is contained in the County's CPPs. As the Board has repeatedly ruled, CPPs are planning policy documents that are fundamentally different than development regulations. *Poulsbo*, at 23.

The CPPs were adopted on July 6, 1992. *See* Findings of Fact No. 21. RCW 36.70A.110(4) provides in part:

On or before October 1, 1993, each county that was initially required to plan under 36.70A.040(1) shall adopt development regulations designating urban growth areas under this chapter. (Emphasis added).

The map on the reverse side of page 15 of the CPPs cannot constitute a UGA boundary; it was adopted as part of a GMA policy document and not as a development regulation.^[10]

The Board's holding is consistent with King County's own statements of intent. As Jim Reid declared on October 14, 1993:

King County has not yet adopted interim or final urban growth areas under the GMA but is

still in the process of doing so. Aff. of Jim Reid, at 2, ¶ 3 (emphasis added).

Moreover, the County's brief pointed out that:

Until King County designates its interim and final urban growth areas as required by the GMA, which it has not yet done, any petition alleging noncompliance with the GMA provisions regarding designation of urban growth areas is premature. Respondent King County's Reply Brief, at 7-8 (emphasis added).

The County's response in its Annual Report to the Washington Department of Community Development on the implementation of the Growth Management Act (the **Annual Report**), dated January 15, 1993¹¹¹, buttresses this interpretation. In response to Section II(H) of the Annual Report, the County indicated that it actually identified urban growth areas on June 6, 1992. Ex. 4 to the supplemental Aff. of James Reid (dated October 14, 1993), at 4. However, a note refers the reader to an Addendum Item II.H.1 which is entitled "Urban Growth Areas" and states:

Urban areas were established in the 1985 King County Comprehensive Plan (KCCP). The Countywide Planning Policies have a proposed urban growth area which is about 50 square miles smaller than the urban area of the KCCP. The final urban growth area will be incorporated into the KCCP as part of Stage Two, described in Addendum Item II.E. Ex. 4 to the supplemental Aff. of James Reid (signed October 14, 1993), at A - 1-2 of Addendum.

The Board further notes that King County Councilmember Larry Phillips sent a letter to the Mayor of Issaquah on February 5, 1993, that stated:

... Once the County complies with the Growth Management Act by designating Urban Growth Areas in consultation with the cities, we can begin the collaborative process of designating the cities' potential annexation areas as called for by the Countywide Planning Policy LU-19. Attachment 3 to the Aff. of Wayne Tanaka, at 2 (emphasis added).

Therefore, the Board will strictly hold the County to its contention that it has not yet adopted either interim or final UGAs, in either its CPPs or the ESC Plan Update. As a result, the prohibition in RCW 35.13.005 and RCW 35A.14.005 cannot yet take effect. Both statutes indicate that no city (code or otherwise) or town located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond such an area. Since King County has not adopted UGA's it cannot rely on either provision to prevent annexation. In addition, the County, as it has argued, cannot rely on policy LU-24 in its CPPs to preclude annexation attempts, specifically the following provision:

...Until the Washington State Boundary Review Board [BRB] for King County is disbanded, it should be governed in its decisions by the interim urban growth area boundary

As the County has convincingly argued, it has yet to designate an interim urban growth area boundary. Therefore, the King County BRB is not bound by such a non-existent designation. The Board notes that its review of the record provided by the County to support its Motion to Dismiss has left it with a high level of apprehension. A close review of the Findings of Fact reveals that the County has been anything but clear in announcing its intentions in updating the ESC Plan or in implementing GMA requirements. The Board is satisfied that, had a reasonable

person unknowledgeable about the GMA been asked to read the same record and the Act, that person easily could have concluded that the ESC Plan Update was an integral part of the County's GMA process, and that UGAs had been designated by the CPPs. For instance, compare the language in the quotation above from Councilmember Phillips' February 5, 1993 letter to the Mayor of Issaquah with the following language in his February 23, 1993 letter to the Mayor. He responds to statements in a February 8, 1993 letter from the Mayor to other members of the County Council as follows:

2. The County has not respected the City as a partner in devising the Urban Growth Area.

To the contrary, in establishing the Urban Growth Area, King County has gone to great lengths to consult with the City of Issaquah officials as required by the GMA. Attachment 4 to Aff. of Wayne Tanaka, at 3 (italics in original; underlining added for emphasis).

While the February 5, 1993 letter clearly indicates that UGAs have yet to be designated, the February 23, 1993 letter implies that UGA boundaries had already been drawn. It is not unless one reads the February 23 letter in its entirety that one can see that Councilmember Phillips had earlier related UGAs to the existing KCCP and not to the GMA:

1. The County has based its process for defining the City's Urban Growth Area on an unreasonable and unworkable standard.

The "standard" to which you refer is King County's 1985 Comprehensive Plan....

Attachment 4 to Aff. of Wayne Tanaka, at 2. (Italics in original).

The Board is not suggesting that the County intentionally misled the public. On the one hand, the Board recognizes the difficulty the GMA poses for jurisdictions such as King County that had a fully established and elaborate land use planning process in place prior to the 1990 adoption of the Act. Accordingly, it is easy to understand that the transition into the GMA planning process might not be entirely smooth when the "old" system required community plan updates to the comprehensive plan even though the "new" (GMA) system required far more expansive and mandatory comprehensive plans that had to be consistent with "new" documents such as CPPs. This rough transition is worsened by the fact that the GMA was phased in over a period of several years even while it was silent about the continuation of pre-existing land use planning activities. On the other hand, while it is not within the Board's jurisdiction to comment on the validity of non-GMA actions, we cannot refrain from making the following observation. After more than three years and thousands of hours of citizens', staff members', and elected officials' efforts on the ESC Plan Update, the County must now undertake an extensive effort to adopt Interim and Final UGAs, allocate population and employment, and reconcile the planning and regulatory elements of the ESC Plan Update with the requirements of the GMA. The County knew the GMA took effect in 1990; nonetheless, it pursued the ESC Plan Update to its adoption, under other authorities. The County was fortunate that the 1993 Legislature amended the law to extend the comprehensive plan deadline to July 1, 1994.

The Board is convinced that the County could have done a much better job of explaining its intentions. The Board is not critical of the County's policy decision to proceed with the ESC Plan Update even though the GMA was enacted shortly after that update process had begun. *See*

Findings of Fact Nos. 6 and 10. The decision to proceed with the pre-existing land use planning process had its merits in that the County could comply with the legal requirements pursuant to its pre-existing land use authority, yet still look forward in anticipation of the new GMA requirements. What is troublesome is that the County never, in this Board's estimation, clearly defined where it was going and how it was going to get there. Instead, the County sent mixed signals as repeatedly evidenced in the CPPs (regarding UGAs), in the ordinances leading up to the adoption of the ESC Plan Update, and in the ESC Plan Update itself (regarding the GMA).^[12] Thus, what the County did might be legally permissible; however, it simply should have been more clearly and thoroughly explained so that the citizens of King County would have fully known what direction the County was taking.

b. UGAs in the ESC Plan Update

Both Grand Ridge and Issaquah claim that the CPPs established the UGA generally. However, they cite to the seventh finding of Ordinance No. 10450 that adopted the CPPs (*see* Findings of Fact No. 23) for the proposition that the CPPs did not designate UGAs for the East Sammamish area. Instead, they claim that the seventh finding reveals that the ESC Plan Update would designate UGAs for the East Sammamish area and that subsequently, the ESC Plan Update did indeed set those boundaries.

In response to arguments that the ESC Plan Update designated a UGA for the East Sammamish area, the County responded that by its very terms the ESC Plan Update did not purport to adopt a UGA under the GMA. The County quoted Policy GM-9 in the ESC Plan Update which states:

If the ~~MUGAs~~ identified in this plan conflict with the urban growth area as identified by Ordinance 10450, ~~the regional Growth Management Act process, adjustments~~ changes to the adopted UGA boundary shall be ~~made through the community plan amendment process recommended to the Growth Management Planning Council by King County.~~ Respondent King County's Reply Brief, at 5 (quoting from Ex. 3 Appendix A, Ch. 2 of the Aff. of Peterson (dated 12/15/92)). (Strikethroughs denote language deleted by the County Council; underlined language indicates language added by the Council).^[13]

The County contended that:

[A]t most, as Policy GM-9 indicates, the ESCP [Update] merely recommends an urban growth area to the GMPC for their consideration as part of the ongoing Phase II process for refinements and amendments to the CPP. Respondent King County's Reply Brief, at 6.

In footnote three of its reply brief, the County noted that it had recommended the urban/rural line as contained in the ESC Plan Update to the GMPC at a June, 1993 meeting, but that the GMPC deferred action on the recommendation until Phase II of its GMA planning process. Respondent King County's Reply Brief, at 6.

The Board notes that like GM-9 above, as-adopted Policy GM-6 (i.e., GM-5 in the Executive Proposed ESC Plan Update) also deleted reference to "Municipal" UGAs and changed the criteria for designating UGAs. However, neither GM-6 as adopted, GM-5 as proposed by the county

executive, GM-7 in the Executive Proposed ESC Plan Update, nor GM-9 as adopted mentioned the GMA. The Board agrees with the County's assessment that although the ESC Plan Update used the GMA phrase "urban growth area" in designating an urban/rural line in the East Sammamish area, neither the ESC Plan Update itself, nor the UGA, mentioned in that document was designated in order to comply with RCW 36.70A.110. Although the County could have been far more clear in indicating that it was using GMA terms in a non-GMA document, nothing prohibited the County from "commingling" the terms. Thus, the Board holds that the County did not designate an interim UGA boundary for the East Sammamish area when it adopted the ESC Plan Update. However, the Board notes that the deadline for designating interim UGAs was October 1, 1993. Although none of the petitions before the Board in this consolidated appeal challenged the County for failing to designate UGAs because each was filed before such designation was required,^[14] such a challenge is clearly ripe now, given the County's assertion that it has not yet so designated and the Board's agreement with that contention.^[15]

3. Timeliness of Appeals

Because the Board has determined that the County's Motion to Dismiss should be granted on other grounds, the question of whether Grand Ridge and Issaquah filed petitions for review with the Board in a timely manner has become moot and will not be further addressed by the Board.

D. ORDERS

Having considered the documents filed in support and in opposition to the County's Motion to Dismiss and the oral arguments of the parties, and having reviewed the file in this matter, the Board enters the following order.

1. King County's Motion to Dismiss is **granted**; at this time the ESC Plan Update does not constitute a document enacted to comply with the requirements of the GMA. For that reason, the Board does not have jurisdiction to review the ESC Plan Update. Ultimately, this Board may obtain jurisdiction over the ESC Plan Update or any other community plans if:

A. King County attempts to bring the planning portion of the ESC Plan Update and/or other King County community plans enacted under its pre-GMA authority into compliance with the GMA as a part of and/or as an amendment to the KCCP Update, once the latter is adopted to comply with the GMA, or as subarea plans of the comprehensive plan it ultimately adopts pursuant to the requirements of the GMA; and

B. a petition for review challenging such action is filed.

2. Happy Valley's Motion to Amend [Its] Petition for Review in order to request a declaratory ruling from the Board is **denied** since the Board, in granting the County's Motion to Dismiss, has ruled that it will have jurisdiction over what the County presently calls "community plans" that ultimately may be adopted as part of and/or as an amendment to the KCCP adopted in order to comply with the GMA or as a subarea plan of that GMA comprehensive plan.

So ORDERED this 25th 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 Order constitutes a final order as specified by RCW 36.70A.300.

^[1]The Board's Rules of Practice and Procedure do not allow for motions for summary judgment. Instead, dispositional motions, such as a motion to dismiss, are anticipated. Dispositive motions are similar to a motion for summary judgment. See WAC 242-02-530(4) and *Twin Falls, et al. v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), Order on Dispositive Motions, at 19-21.

^[2]Area zoning is zoning that implements community plans. It is adopted simultaneously with community plans. KCC 20.16.100.

^[3]The County did not file a copy of Ordinance No. 6252 with the Board.

^[4]Ordinance No. 10237, which amended the KCCP in 1992, also indicates that the KCCP was adopted under the provisions of Article 990 of the King County Charter, King County's constitutional authority and pursuant to Chapter 36.70 RCW. Ex. 9 to Masuo Aff.

^[5]The precise role of the Planning Enabling Act, Chapter 36.70 RCW, in King County is unclear due to conflicting official statements by the County. KCCP Chapter Three (I)(A) states that:

... As a Home Rule County operating under a charter, King County relies directly on the Washington State Constitution for its authority to plan and regulate land use. King County's land use planning and regulation process is generally similar to that provided for in the Planning Enabling Act (RCW 36.70). Ex. 1 to Masuo Aff., at 19 (emphasis added).

In contrast, Chapter Three (II)(A) of the KCCP indicates that the Planning Enabling Act either governs or has a major influence on land use in King County. It "... establishes the approach to planning and zoning required for most counties and serves as a general model for home rule jurisdictions such as King County." Ex. 1 to Masuo Aff., at 28 (emphasis added).

^[6]The Board is not now taking a position on whether the GMA supersedes other statutes such as the Planning Enabling Act. Until and unless the legislature chooses to clarify the status of Chapter 36.70 RCW in counties required to plan pursuant to GMA, there is no clear statutory direction. Similarly, the Board is not now taking a position on whether the GMA controls over a county charter in counties required to plan pursuant to the Act. These issues are not before the Board at this time. A forthcoming written decision by the Washington State Supreme Court on the context of charter county authority may shed light on these questions.

^[7]Prior to the adoption of the 1993 amendments to the GMA (Laws of 1993, 1st Sp. Sess., ch. 6, § 1), RCW 36.70A.040 required counties and cities planning pursuant to the Act to adopt comprehensive plans on or before July 1, 1993. Implementing development regulations were required to be adopted within one year of adoption of the comprehensive plan. Former RCW 36.70A.120. With passage of the 1993 amendments, the comprehensive plan

adoption date was extended one year, but the deadline for adoption of development regulations that implement a comprehensive plan was set to coincide with the plan adoption date, July 1, 1994. Laws of 1993, 1st Sp. Sess., ch. 6, § 1 and 3.

^[8] RCW 36.70A.110(4) and (5) were added by the enactment of the 1993 amendments to the GMA. Laws of 1993, 1st Sp. Sess., ch. 6, § 2. Prior to the 1993 amendments there was no requirement for the adoption of interim urban growth areas, nor was there an explicit deadline for adopting urban growth areas.

^[9] Interestingly, the question whether the CPPs actually designated UGAs is blurred even in Grand Ridge's arguments. While Grand Ridge makes the unequivocal statement that "[t]he CPPs established an Urban Growth Area (UGA) for King County" in one part of its memorandum (Memorandum of Grand Ridge in Opposition to Motion to Dismiss, at 8), in another part it states that "[t]he designation of the Grand Ridge property as Rural is contrary to the UGA recommended in the CPP." Memorandum of Grand Ridge in Opposition to Motion to Dismiss, at 9 (emphasis added).

^[10] The Board notes that when the County Council adopted the CPPs, including the map on the reverse side of page 15, it did not delete the word "recommended" in the title of the map. Arguably, therefore, this map remains just that -- a recommendation from the GMPC. Originally this was the GMPC's recommendation, that subsequently became the Council Council's to take to the cities when negotiating IUGAs.

^[11] The Annual Report was prepared prior to the legislature amending RCW 36.70A.110 by adding subsection (4) which requires that interim urban growth areas be designated as development regulations.

^[12] The lack of clarity in the direction taken by the County strayed into the County's briefs before the Board. For example, as indicated above, the ultimate County position is that it has yet to adopt interim or final UGAs. Yet just the opposite is also stated in the County's brief:

Clearly the Council did not intend the ESCP [Update] to amend the urban growth area identified in the King County County-wide Planning Policies (CPP)... Respondent King County's Reply Brief, at 5 (emphasis added). Thus the ESCP did not establish an urban growth area under the GMA -- permanent or interim -- or even amend the urban growth area identified in the CPPs. Respondent King County's Reply Brief, at 7 (emphasis added).

^[13] Policy GM-9 of the ESC Plan Update, as ultimately adopted by the King County Council, was initially listed as Policy GM-7 in the Executive Proposed ESC Plan Update (i.e., Ex. 2 of the Peterson Aff., at 42). However, in addition to re-numbering the policy, the County Council amended GM-7.

^[14] Grand Ridge claims that the County did designate UGAs but that those designations were not done in compliance with the requirements of the GMA. Memorandum of Grand Ridge in Opposition to Motion to Dismiss, at 4.

^[15] The Board is aware that the County claims that it is scheduled to designate interim UGAs at a November 8, 1993 Council meeting. *See* Respondent King County's Reply Brief, at 6, fn 2.