

State of Washington
CENTRAL PUGET SOUND

GROWTH PLANNING HEARINGS BOARD

CITY OF TACOMA, CITY OF MILTON,) Case No. 94-3-0001

CITY OF PUYALLUP and CITY OF)

SUMNER,)

)

Petitioners,) **FINAL DECISION AND ORDER**

)

v.)

)

PIERCE COUNTY,)

)

Respondent.)

_____)

A. PROCEDURAL HISTORY

On October 12, 1993, the Pierce County Council (the **County**) adopted Pierce County Ordinance No. 93-91S (**Ordinance 93-91S** or the **Ordinance**), establishing Interim Urban Growth Areas (**IUGAs**) and creating a process for adopting Final Urban Growth Areas (**FUGAs**). Notice of adoption was published November 12, 1993.

On January 6, 1994, within the 60-day limit for filing a petition on a legislative action, the Cities of Tacoma, Milton, Puyallup and Sumner (the **Cities**) filed a Petition for Review with the Central Puget Sound Growth Planning Hearings Board (the **Board**).[\[FN1\]](#)

The Board held a prehearing conference on February 3, 1994, and issued its Prehearing Order on February 4, 1994. The order established deadlines for filings of motions and briefs.

On February 10, 1994, the Cities filed a Dispositive Motion for Order that Pierce County Ordinance 93-91S Fails to Comply with the Growth Management Act (the **Act** or the **GMA**), and a memorandum in support of that motion. They also filed a Motion and Affidavit to Supplement the Record with Exhibits. On the same day, the County filed Respondent's Motion to Dismiss and Respondent's Memorandum in Support of Motion to Dismiss.

On February 18, 1994, the Board issued an order granting amicus status to Associated General Contractors, Pierce-Tacoma Association of Realtors, Association of Washington Cities, Washington State Association of Counties, Peninsula Neighborhood Association, Master Builders Association and Cascadia. Subsequently, amicus status was also granted to 1000 Friends of Washington and John A. Berry.

Following a February 23, 1994 hearing on motions, the Board issued an Order on Dispositive Motions on March 4, 1994. The Board denied the County's motion to dismiss Legal Issues 1, 2, and 3, ruling that it did not have jurisdiction to determine violations of equitable doctrines. The order also granted the Cities' dispositive motion on Legal Issue No. 6 (*see* below), and remanded Ordinance 93-91S to the County, with instructions to bring a portion of Section 5 into compliance with the GMA.

On April 12, 1994, the Board held a hearing on the merits of the Cities' Petition for Review at the Metropolitan Park District offices in Tacoma. Present were the Board's three members; M. Peter Philley, presiding officer, Chris Smith Towne, and Joseph W. Tovar. Kyle J. Crews and Leah Clifford represented Tacoma; Mark H. Calkins represented Milton; Robin Jenkinson represented Puyallup and Eileen M. McKain represented the County. Court reporting services were provided by Robert H. Lewis and Associates.

As a preliminary matter, the presiding officer ruled on the admissibility of several offered exhibits: Exhibits 182, 183 and 184 were admitted as supplemental exhibits; Exhibits 185, 186 and 187 were not admitted. In addition, because Exhibits 129 and 132 were prepared after the Ordinance was adopted, the presiding officer ruled that they were admitted only as supplemental exhibits rather than exhibits from the record below.

In the days preceding the hearing on the merits, the parties and each of the amici filed prehearing, response or reply briefs with the Board, totaling 269 pages. No witnesses testified at the hearing.

B. FINDINGS OF FACT

1. Exhibit 1, *Pierce County Regional Council (PCRC) Recommendation* [Oversized Map], was issued August 3, 1993 by the County Department of Planning and Land Services (**County PALS Department**). It delineates IUGAs for each city lying wholly or in part within Pierce County, an interim urban ural line, overlap areas, forest land zone and federal lands.
2. Exhibit 2, *Interim Urban Growth Areas* [Oversized Map], was adopted by the Pierce County Council as part of Ordinance 93-91S, and was issued October 14, 1993, by the County PALS Department. It delineates IUGAs for each city lying wholly or in part within Pierce County, an interim urban ural line, unincorporated urban Pierce County, unincorporated rural Pierce County, overlap areas, forest land zone, and federal lands.
3. Exhibit 16, *Draft Environmental Impact Statement (Draft EIS)* for the proposed County Comprehensive Plan, was issued in July, 1993.

In the section entitled "Urban Growth Area Discussion," page 26 et seq, part C is an "Analysis of Capacity within the 'Urban ural' Line." The analysis uses the following current and projected population figures: Washington State Office of Financial Management (**OFM**) 1990 population - 586,203; OFM 2010 projected population - 792,179; OFM 2012 projected population - 812,104; County's population estimate for 2014, extending the assumed growth rate used by OFM - 832,607.

Table 4, page 28, Population Disaggregation for Pierce County, assumes a population increase of 208,607 from April 1, 1992 to April 1, 2014, and assigns 32,000 to unincorporated rural growth; 74,000 to city growth, and 102,607 to unincorporated urban growth.

Table 6, page 29, Residential Holding Capacity within Urban ural Line (Unincorporated Pierce

County), bases its calculations on the following: 2.5 persons per dwelling unit; high density urban residential development at an average of six dwellings units per acre, moderate development at three units per acre, and low development at two units per acre.

The document concludes, at page 29, that "184,000 persons could be accommodated within the urban ural line in unincorporated areas. Therefore, additional population capacity within the study urban ural line appears to be adequate. Data from cities and towns indicates that an additional 127,900 persons could be accommodated within existing municipal boundaries. These figures coupled with a projected 32,000 additional persons in unincorporated rural areas total additional capacity of over 344,000 persons, well in excess of the projected 208,000 new persons by 2014."

The report continues at page 30: "Some factors, such as potential in underdeveloped land parcels (one residence on large acreage) and potential for redevelopment, were not considered. If average density figures change or if proposed land use designations are altered, then the capacity figures would also change." It also acknowledges that the location of the UGA was not finalized at the time the document was prepared.

4. Exhibit 17, *Final Environmental Impact Statement (Final EIS) for Pierce County Comprehensive Plan*, was issued on September 20, 1993. In a response to a comment on the size of the urban growth area, at page 38, the County noted that:

[The GMA direction to include areas and densities sufficient to permit projected urban growth] does not mean that it [the urban growth area] should include *only* enough land to accommodate the expected growth. The Urban Growth Area is larger than needed. However, the tiering concept will be used to allocate urban land to designated areas over three different time periods. (Emphasis in original.)

5. Exhibit 19, Excerpt from *Vision 2020 Growth and Transportation Strategy* (p. 25), identifies four dwellings units per residential acre as a minimum standard for small towns; six units for non-central business district activity clusters; and eight units for non-central business district subregional, metropolitan, and regional employment centers.

6. Exhibit 21, *County-Wide Planning Policies for Pierce County (PCCPPs)*, Washington (Ordinance No. 92-74) was adopted by the Pierce County Council on June 30, 1992.

The document containing the policies, incorporated by reference in the Ordinance, is identified as

Attachment A.

Pierce County Resolution No. R-92-86, passed June 30, 1992, authorized the Executive to execute an Interlocal Agreement approving and ratifying the CPPs. Second unnumbered attachment to Ex. 21, with Exhibit A attached.

7. Exhibit 77, *Minutes of Pierce County Regional Council Meeting, September 16, 1993*, records discussion of and action taken on allocation of population among jurisdictions, and consideration of the County Planning Commission's recommended IUGA. Members raised concerns about whether each municipality would receive an IUGA; deviations from the PCRC recommendation; and the weight to be given Community Plans.

8. Exhibit 108, *Urban Growth Study Areas [Map]*, issued by the County PALS Department in July, 1991, depicts Urban Growth Study Areas, areas of overlap of two or more municipalities and an Urban ural Study Area Boundary.

9. Exhibit 110, *Urban Growth Area Background Report*, issued January 28, 1993 was prepared by the County Planning and Land Services Comprehensive Plan Team. The Report sets forth the requirements of the GMA for designation of urban growth areas (**UGAs**); the criteria of the countywide planning policies (**CPPs**) which must be used in delineating those areas; and the process for developing and adopting the designations. The report set forth the methodology used to determine UGAs, utilizing sanitary sewer and domestic water service areas and existing predominant land uses by quarter section. Areas with predominant commercial or industrial land use and residential uses with densities at or above 4 DU were labeled "Urban." The analysis includes calculations of vacant and underdeveloped land, density assumptions, population projections and capacities of cities and towns, OFM projections, and application of the analysis to a preferred alternative configuration.

10. Exhibit 111, *Pierce County Council Minutes of September 28, 1993 Meeting*, include the hearing on proposed Ordinance No. 93-91, designating IUGAs. Following County staff and Planning Commission presentations, testimony was heard from representatives of the Washington State Department of Community Development (**DCD**), [\[FN2\]](#) municipalities and community groups; and Council members commented on matters including community overlap areas.

11. Exhibit 118, Ordinance of the Pierce County Council Designating Interim Urban Growth Areas as required by the Growth Management Act, RCW 36.70A.110(4); establishing the process by which Pierce County will formally designate the Final Urban Growth Areas, as required by RCW 36.70A.110(1); and adopting findings of fact (Ordinance 93-91S), was passed on October 12, 1993.

Section 1 of the Ordinance describes the Ordinance's purposes: to designate IUGAs pursuant to RCW 36.70A.110(4), and to establish the process for the County's designation of FUGAs pursuant to RCW 36.70A.110(1).

Section 2 states that the designated IUGAs for the cities and towns are those areas originally proposed by them as "urban growth study areas."

Section 3 sets forth the prerequisite steps for designation of final municipal urban growth areas beyond existing municipal limits.

Section 4 sets forth the prerequisite steps for designation of a final County urban growth area.

Section 5 states that the requirements in Section 3 "are required by state laws, regulations, Central Puget Sound Growth Hearings Board decisions, and County-wide planning policies, and will expedite the designation of final urban growth areas by the County. Therefore, if a municipality fails to complete those steps by April 15, 1994, the County must designate municipal urban growth areas at the municipality's existing jurisdictional limits. Once the steps set forth in Section 3 are complete, the County will designate final municipal urban growth areas during the annual plan amendment process as authorized by RCW 36.70A.130(2)."

Exhibit A describes the large map delineating the IUGAs, i.e., Ex.2, above.

12. Supplemental Exhibit 129, *Sewer Services* [(preliminary draft) Map], issued February 1, 1994 by the County PALS Department, delineates a drainage basin, current service area, service area boundary, and interceptor, forced main and gravity main lines.

13. Exhibit 130, *Net Residential Density* [Map], issued November 3, 1992 by the County PALS Department, uses a multi-color code to show six categories of development density, using dwelling units per acre based on a forty acre average.

14. Exhibit 131, *Generalized Existing Land Use* [Map], issued November 3, 1992 by the County PALS Department, uses a multi-color code to show single and multiple residential, commercial, industrial, public, natural resource, and recreational land uses, as well as to identify incorporated areas and vacant lands.

15. Supplemental Exhibit 132, *Water Services* [Map], issued October 25, 1993 by the County PALS Department, shows areas of the county served by urban water systems, and an urban rural line.

16. Exhibit 133, *Urban Growth and Services* [Map], issued November 3, 1992 by the County PALS Department, uses a multi-color code to show the status of urban land use and critical urban services of areas in the County. The map identifies the areas where all three criteria exist, where two exist, where only one exists, and where none exists.
17. Exhibit 134, *Prime Agricultural Soils* [Map], issued November 3, 1992 by the County PALS Department, displays areas of prime agricultural soil in the County, based on the US Department of Agriculture's soil survey of the Pierce County Area.
18. Exhibit 135, *Flood Hazard Risk* [Map], was issued by the County PALS Department on November 3, 1992. It delineates, in color and pattern, categories of flood hazard risk.
19. Exhibit 137, An Ordinance of the Pierce County Council Amending Ordinance No. 91-1, the "Executive's Interim Growth Management Policies"; and adopting Findings of Fact (Ordinance 91-93S), was passed on July 16, 1991. Ordinance 91-1 (attached), which adopted the "Executive's Interim Growth Management Policies" as amendments to the 1962 Pierce County Generalized Comprehensive Plan, was enacted on March 26, 1991.
20. Exhibit 144, *Parkland-Spanaway Community Plan*, was adopted by the Pierce County Council on January 21, 1980 as a portion of the Pierce County Comprehensive Plan.
21. Exhibit 145, *Summit-Waller Community Plan*, was adopted by the Pierce County Council on May 2, 1989 as a portion of the Pierce County Comprehensive Plan.
22. Exhibit 147, *North Hill Community Plan*, was adopted by the Pierce County Council on May 2, 1989 as a portion of the Pierce County Comprehensive Plan.
23. Exhibit 155, *Lakewood Community Plan*, was adopted by the Pierce County Council on December 10, 1991 as a portion of the Pierce County Comprehensive Plan.
24. Exhibit 159, An Ordinance of the Pierce County Council amending the Pierce County Code Section 18.10.212.015; Creating a new section 18.10.395 (General-Rural Zone); Amending the Official Zoning Atlas; and Adopting Findings of Fact (Ordinance No. 93-84S2), was adopted by the Pierce County Council on August 31, 1993.

Section 6 of Ordinance 93-84S2 states that the amendments will "become null and void on December 1, 1994, unless extended or repealed by official action of the Pierce County Council."

Exhibit C to Ordinance 93-84S2 sets forth a new GR-General-Rural Use Classification in the Pierce County Code (PCC) at 18.10.395©(1)and (2) for "the relatively undeveloped portions of the County." On lands within that classification, the minimum lot area for residential and non-residential uses is ten acres, with an exception allowing for greater density for purposes of constructing a principal residence for an immediate family member if conditions for sewage disposal and water supply are met.

Exhibit D is the official zoning atlas; a note on the face of the exhibit informs the reader that the atlas is located in the offices of the County PALS Department.

Exhibit E contains thirty-three findings of fact, incorporated by reference in Ordinance 93-84S2. Finding of fact No. 21 states that: "The Planning Commission finds that areas developed in lots less than five (5) acres are not rural in character." Finding of fact No. 32 states that: "The Council finds that to preserve the County's rural character and guide development towards rural activity centers, areas around certain intersections should be excluded from the General-rural rezone and remain as they are presently zoned until the Comprehensive Plan and implementing regulations are completed and adopted."

25. Exhibit 160, Interim Urban Growth Areas [Map], dated October 14, 1994, is a small-scale version of the IUGAs map (Ex. 2).

26. Exhibit 161, An Ordinance of the Pierce County Council amending the Pierce County Zoning Atlas; implementing the "North Hill Community Plan" (Pierce County Ordinance No. 91-115) was adopted December 17, 1991. Exhibit A contains forty-five pages of detailed plat maps.

27. Exhibit 164, A Resolution of the Pierce County Council establishing the 20-year planning period for the County's Comprehensive Plan; and establishing total county population projections for the planning period and the total rural population growth increase for the planning period (Resolution R93-95), was passed on May 25, 1993. The Resolution:

Established the twenty-year planning period as 1994-2014;

Found that the OFM estimated population for 1992 was 624,000;

Found that the total County population projected by OFM for 2012 was 812,000;

Established an adjusted total County projected population increase for 2014 of 208,000;

Noted a total County population projected by OFM for 2000 of 697,000; and

Noted a total rural population increase projected by the County PALS Department for 2014 of 32,000.

28. Exhibit 166, A Resolution of the Pierce County Council adopting a Joint Planning Framework to be used as a Guideline for Joint Planning Interlocal Agreements and Establishing Generalized Joint Planning Areas for the County and Cities and Towns within the County, was passed by the Pierce County Council on July 13, 1993.

C. STATEMENT OF LEGAL ISSUES

Cities' Issues

1. Did the County adopt Interim Urban Growth Areas (IUGAs) under Ordinance 93-91S and, if so, does it comply with the requirements of the Growth Management Act (GMA), including RCW 36.70A.020 and .110; the Pierce County Countywide Planning Policies (PCCPPs); and Chapter 365-195 WAC, including WAC 365-195-335?
2. Did the County in its adoption of Ordinance 93-91S violate the procedures of RCW 36.70A.110 and did it improperly designate certain areas characterized by urban growth as rural and rural areas as urban contrary to the requirements of the GMA, including RCW 36.70A.020 and .110; the PCCPPs; and Chapter 365-195 WAC, including WAC 365-195-335?
3. Did the IUGAs adopted by the County pursuant to Ordinance 93-91S designate certain areas not characterized by urban growth and/or not zoned for development at an urban level as urban contrary to the GMA, including RCW 36.70A.020 and .110; the PCCPPs; and Chapter 365-195 WAC, including WAC 365-195-335?
4. Does the overlap of community plans on municipal IUGAs established by Ordinance 93-91S comply with the requirements of the GMA, including RCW 36.70A.020, .110, .140; the PCCPPs; and Chapter 365-195 WAC, including WAC 365-195-335 and -825(3)?
5. By imposing prerequisite steps upon cities in Ordinance 93-91S at Sections 3 and 5 as preconditions for designation of final UGAs, did the County fail to comply with the requirements

of the GMA, including RCW 36.70A.020 and .110; the PCCPPs; and Chapter 365-195 WAC, including WAC 365-195-335 and -825(3)?

6. Do the provisions of Section 5 of Ordinance 93-91S, relating to designating the final UGAs, comply with the GMA, including RCW 36.70A.020 and .110; the PCCPPs; and Chapter 365-195, including WAC 365-195-335 and -825(3)?

County's Issues (Defenses)

7. Does the Board have jurisdiction to determine the validity of estoppel defenses?

8. If the Board has estoppel jurisdiction, after contributing to the development of, and later recommending that the County Council adopt the interim urban growth areas recommended by the Pierce County Regional Council (PCRC), are the Cities estopped from now making claims against the County's adopted IUGAs, which claims are inconsistent from their earlier contributions and approval and hinder the County in its efforts to comply with the GMA?

D. DISCUSSION AND CONCLUSIONS

General Discussion

Each county planning under the GMA is required to designate an urban growth area or areas [\[FN3\]](#) within which urban growth shall be encouraged and outside of which growth can occur only if is not urban in nature. RCW 36.70A.110 This is one of the fundamental requirements of the Act that differentiates what land use planning in Washington State has been from what it will be.

The requirement to adopt UGAs involves both mandatory and discretionary elements. Therefore, local legislative bodies must comply with the mandatory requirements of the Act but also have a great deal of flexibility to make choices in complying. As an example of a mandate, the Act establishes population planning projections upon which UGAs must be based. These exclusive projections are made for each county by OFM; no discretion is permitted for local jurisdictions to use their own numbers. If a local government deems the OFM projections to be unsatisfactory, its only choice is to file a petition for review pursuant to RCW 36.70A.280. If a County population allocation to an individual city or to a city UGA is deemed to be unsatisfactory, the city's only choice is to file a petition for review alleging noncompliance with some provision of the Act, or the CPPs, or other GMA enactment.

On the other hand, local jurisdictions have great discretion in deciding how to accommodate

these projections in light of local circumstances and traditions. Thus, counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act.

Local circumstances, traditions and identity will result in unique choices and solutions by each county and each city within it. Jurisdictions have broad discretion to make UGA policy decisions. For instance, emphasis on market factors, or a jobs-based economy, or urban village concepts are all policy choices. While such policy choices may be included in the sizing or configuration of the UGA, they must be made in a measurable way and with sufficient documentation as to the rationale.

RCW 36.70A.110 imposes several mandatory requirements upon counties in adopting UGAs. UGAs *shall*:

- include each city that is located in a county. RCW 36.70A.110(1);
- be based upon the growth management planning population projection made for the county by the office of financial management. RCW 36.70A.110(2);
- include areas and densities sufficient to permit the projected urban growth for the succeeding twenty-year period. RCW 36.70A.110(2);
- permit urban densities. RCW 36.70A.110(2); and
- include greenbelt and open space areas. RCW 36.70A.110(2).

The first requirement listed above is integral to the UGA concept. Cities are the focal points for growth. The Act intends that growth will be centered on cities. Thus, the boundaries of a UGA and the city limits of existing municipalities will be identical, assuming the cities can accommodate all the projected growth.

In order for counties to make an informed choice as to the location of UGAs, cities must first provide counties with detailed information about their size, population, population densities and zoning. Both cities and counties must have designated critical areas and natural resource lands (RCW 36.70A.170) and identified greenbelts and open space areas. Then, if a county's preliminary analysis documents that existing cities cannot accommodate the projected growth, the county must consider the areal extent and densities necessary to provide for the additional population. This determination would include projected net capacity of a proposed UGA and could include the application of a "safety factor" to the land supply in order to assure adequate availability and choice at all times.[\[FN4\]](#)

Once this determination has been made, the County must choose where to physically locate the growth within one or more of the six areas outside the cities where the Act permits. The Act establishes a locational rank order priority for whatever urban growth cannot be accommodated in cities. That order is:

First, UGAs *may* include territory outside existing city limits *only* if that additional territory is already "land having urban growth located on it." RCW 36.70A.110(1);

Second, UGAs *may* include territory outside existing city limits *only* if that additional territory is already "land located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1);

Third, UGAs *may* include territory outside existing city limits *only* if that additional territory is adjacent to territory already "... having urban growth located on it." RCW 36.70A.110(1);

Fourth, UGAs *may* include territory outside existing city limits *only* if that additional territory is adjacent to territory already "... located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1). *See Rural Residents*, at 44-45.

In addition, UGAs *may* be established outside of cities for new fully contained communities (RCW 36.70A.350) and master planned resorts (RCW 36.70A.360) if the requirements for those areas are met.

Again, it must be pointed out that the exercise of discretion is crucial. For example, just because an area adjacent to a city is characterized by urban growth does not impose a requirement that this territory be included within a UGA, unless existing cities cannot accommodate the additional projected growth and it is otherwise an appropriate location for such growth. The consequence of existing urbanized areas outside cities not being included within a UGA is simply that *new* urban development will not be permitted in those areas. Existing uses and improvements may continue subject to applicable laws. An area falling within one of the rank order exceptions listed above may be included within UGAs; it is not mandatory that it be included.

Next, the efficiency with which urban services could be provided, primarily by cities, should be weighed. The proposed allocation of projected growth must be evaluated against the goals of the Act, in particular Planning Goal 1, to "encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner," [RCW 36.70A.020(1)] and Planning Goal 2, to "reduce the inappropriate conversion of undeveloped land into sprawling, low-density development [RCW 36.70A.020(2)].

Finally, when counties formally adopt their UGAs, they must document that final action to show how it complies with the requirements and goals of the Act. Counties cannot rely on prior documentation for proposed UGAs if the adopted UGAs substantially vary from the earlier proposal.

The Board observes that comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve *consistency* among plans pursuant to RCW 36.70A.100; (2) to achieve the *transformation of local governance* within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve *compact urban development*.[\[FN5\]](#)

The *consistency* purpose will require the county's and cities' comprehensive plans to be made mutually consistent. The county, with its statutory responsibility to adopt CPPs and UGAs throughout the county, will establish the UGA for each city. In addition, the county has the lawful authority to allocate population and employment to the unincorporated portion of a city UGA, as well as to the incorporated cities. *See Edmonds*, at 31. The County would therefore also include in its comprehensive plan at least generalized land use designations and densities sufficient to achieve the population allocated to the unincorporated portions of city UGAs. What each city brings to the joint comprehensive planning discussions concerning the unincorporated portions of city UGAs are the more specific land use designations (e.g., specific lot sizes), site development standards (e.g., building dimensions, landscaping and grading requirements), infrastructure standards (e.g., utility, street and sidewalk requirements) and levels of service (e.g., parks, street intersections).

The Board notes that portions of the adopted Pierce County IUGA have no association with any specific city and are identified simply as the "metropolitan UGA." The County asserts that neither the GMA nor state annexation law distinguishes between one city's UGA, and another city's UGA, and that it is therefore appropriate for the County to use a generic "metropolitan" appellation. County Prehearing Brief (**County's PHB**), at 49-50. While there is no explicit requirement to make such a distinction, the Board finds that it is a necessary implication of the Act. This implied requirement arises from RCW 36.70A.110(2) which provides that "each city shall propose the location of an UGA," and the necessity for a county to know, for each portion of the lands covered by the county's comprehensive plan, which city's comprehensive plan must be addressed to meet the consistency requirements of RCW 36.70A.100 and the joint planning requirements of RCW 36.70A.210(3)(f).

The *transformation of local governance* purpose will require the County and the cities to ultimately resolve the matter of which services will be provided by cities, which by the County and which by special districts, so that the cumulative effect is that cities are the primary providers of urban governmental services within the UGA. This can take many forms, and there is much discretion available to the County and cities collectively to craft a solution that is appropriate and unique to Pierce County. *See Poulsbo, et al. V. Kitsap County CPSGPHB Case No. 92-3-0009* (1993), Order Granting Kitsap's Request for Reconsideration, at 12-13.

The *compact urban development* purpose will require that the land use pattern and urban form of

the unincorporated portions of UGAs be "compact" and efficient. As the Board held in *Rural Residents*, a county will have to "show its work" to justify the UGA, a part of which will require the definition, in numeric terms, of "urban" uses and densities and an inventory of land available to accommodate the growth. This is essentially a countywide accounting exercise which must show that the net land available for urban development will be sufficient to accommodate the forecasted growth. The integrity of the accounting and the validity of the UGA depend upon the actual utilization of land achieving the densities adopted in the comprehensive plans. It will no longer be sufficient for development permits to simply meet the minimum lot size specified in a zoning ordinance. RCW 36.70A.120 now requires that planning activities, such as permitting and platting, be consistent with the comprehensive plans.[\[FN6\]](#)

The process of adopting UGAs is complicated, involving a series of iterative interactions between a county and its cities. The complexity of the situation is compounded by existing conditions, which are the result of a century or more of development decisions, some of which provided the very impetus for the legislature to enact the GMA. *See* RCW 36.70A.010. No county or city works with a blank slate. However, acknowledging the present day consequences of past land use choices is not license to repeat the mistakes of the past. The Act requires a county to consider many factors before making its ultimate UGA decisions. Care must be taken to weigh each of the factors rather than to make decisions based on only a select few.

Legal Issue No. 1

Did the County adopt Interim Urban Growth Areas (IUGAs) under Ordinance 93-91S and, if so, does it comply with the requirements of the Growth Management Act (GMA), including RCW 36.70A.020 and .110; the PCCPPs; and Chapter 365-195 WAC, including WAC 365-195-335?

Discussion

Although Legal Issue No. 1 first asks whether the County adopted IUGAs under Ordinance 93-91S, the Cities never contest that question. Instead, the Cities focus on the portion of Legal Issue No. 1 that assumes that the County did adopt IUGAs--but ask whether the Ordinance complies with two provisions of the GMA, the PCCPPs and the Washington Administrative Code (WAC).

1. RCW 36.70A.020

The Cities contend that nothing in the record indicates that the County complied with the procedural requirement to consider the Act's thirteen planning goals (*see* RCW 36.70A.020) or that the County complied with the substantive requirement for Ordinance 93-91S to be consistent with those goals. In *Rural Residents*, the Board recently reaffirmed that the Act does not impose a procedural requirement that local jurisdictions put in writing how they considered the GMA's planning goals. *Rural Residents*, at 29. Therefore, neither the Ordinance nor any document need show how the Act's thirteen planning goals were considered.

As for substantive compliance, in the same that decision the Board reaffirmed that all development regulations and comprehensive plans must comply with the Act's planning goals. *Rural Residents*, at 29. The Cities did not raise any allegations that the County failed to comply with specific planning goals in the portion of their brief discussing Legal Issue No. 1. The Board will review only specific allegations by the Cities, if any, that the County failed to comply with the planning goals. For purposes of this legal issue, the Board will not examine the Act's planning goals any further.

2. RCW 36.70A.110

RCW 36.70A.110 is entitled "Comprehensive plans--Urban growth areas." It is the central provision of the GMA at issue in this case. RCW 36.70A.030(15) defines "urban growth areas" (UGAs) as:

... those areas designated by a county pursuant to RCW 36.70A.110.

In *Rural Residents*, the Board conducted a detailed examination of the nature, purpose and effect of UGAs and pointed out the differences between interim and final UGAs. *See Rural Residents*, at 11-12.

Of import to this discussion is the Board's conclusion that the requirements of RCW 36.70A.110 apply to adoption of IUGAs as well as FUGAs. RCW 36.70A.110(4), the only subsection of the Act that discusses IUGAs, indicates that adoption of IUGAs must comply with the other provisions in RCW 36.70A.110. The relevant requirements of .110 are found in subsections (1) and (2). These subsections do not distinguish between IUGAs and FUGAs, but instead refer generically to UGAs; therefore, IUGAs must also comply with subsections (1) and (2).

The Cities have challenged the County for failing to comply with several of these requirements and with the Board's decision in *Happy Valley et al. V. King County*, CPSGPHB Case No. 93-3-0008 (1993).

a. IUGAs as Development Regulations

RCW 36.70A.110(4) directs that:

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....[\[FN7\]](#)

The IUGAs Boundary Line

The Cities contend that the County failed to comply with the Act because Ordinance 93-91S does not adopt development regulations. The Cities argue that the designation of IUGAs should be accompanied by development controls that prevent urban development in rural areas and require urban development in urban areas. Petitioners' Prehearing Brief (**PPHB**), at 11. Instead, the Cities claim, all that Ordinance 93-91S amounts to is "a line on the map." PPHB, at 15.

The Cities incorrectly assess the effect of the IUGAs boundary line as shown on Exhibit 2. As the Board held in *Rural Residents*, counties have a significant effect on land use activities by simply drawing the IUGA line:

... IUGAs are regulatory in nature because they control development or land use activities by automatically prohibiting annexations (RCW 35.13.005 and RCW 35A.14.005), and by prohibiting urban development beyond the boundary.... *Rural Residents*, at 15.

Therefore, the County did adopt a development regulation that has a regulatory effect when it enacted Ordinance 93-91S designating its IUGA boundary lines.

Interim Development Regulations that Implement the IUGAs Boundary Line

The question remains whether the Act contemplates something more than just drawing the IUGAs boundary lines. The Board concludes that it does. RCW 36.70A.110(4) requires more than a line since it refers to development regulations in the plural, not the singular. Thus, counties have an obligation to not only draw the line (which is a development regulation by itself) but also to give meaning to that line beyond those controls automatically taking effect under other provisions of the Act. By itself, the line only informs one that annexations and urban development cannot take place outside it; the line does not indicate in quantifiable terms what constitutes "urban" development within it and what constitutes "nonurban" development outside it. Although the Act defines "urban growth," [\[FN8\]](#) that definition is not very useful unless local governments give life to it by adopting implementing development regulations. Giving meaning to the line is crucial due the fact that IUGAs, although having a limited life expectancy, continue until replaced by permanent development regulations. As stated in *Rural Residents*: IUGAs, in turn, provide direction to subsequent actions, including adoption of comprehensive plans, and result in a prohibition on urban development beyond the growth boundary. The interim nature of IUGAs also fits into the *iterative* cycle of planning and decision making. Absent a complete set of facts, detailed capacity analyses and decisions, IUGAs postulate a first cut, "minimum sprawl hypothesis" for accommodating the twenty-year population forecast. In keeping with the *iterative* planning cycle, the Act affords the flexibility for the FUGA boundary to be adjusted as those subsequent facts, analyses and decisions become available. *Rural Residents*, at 14 (footnote omitted).

...

The policy purpose of IUGAs ceases upon the adoption of the comprehensive plan. The regulatory effect of IUGAs ceases upon adoption of the FUGA boundary with regard to annexations, and upon adoption of implementing regulations with regard to prohibiting urban development beyond the boundary. *Rural Residents*, at 15 (emphasis added).

Until development regulations are adopted that implement the comprehensive plan, only the development regulations that effectuate the IUGA line exist. Accordingly, it is imperative that counties do more than draw the IUGA boundary line.

What did the County do other than designating IUGA boundary lines? It is clear that the text of Ordinance 93-91S by itself does not constitute a development regulation. Nothing on its face

"controls" development within or outside the IUGAs. The County contends, however, that the twenty-five Findings of Fact that are incorporated by reference in Section 6 of the Ordinance do address such controls.

Specifically, Finding No. 14 to Ordinance 93-91S (attached as Exhibit B to the Ordinance) indicates that:

The [Pierce County] Council finds that Ordinance No. 93-91, designating the Interim Urban Growth Areas is a development regulation pursuant to RCW 36.70A.110(4). The Council further finds that *the designation of the Interim Urban Growth Areas supplements and further implements existing development regulations of the County*. Ex. 118 (emphasis added).

The Cities contend that:

... Merely making a finding of this nature does not make the Ordinance a development regulation. The Ordinance did not amend the Pierce County Zoning Code, Chapter 18.10 or the County's other regulatory codes, including its subdivision ordinance. Nothing in the Ordinance explains the immediate effect of the interim urban growth area designation upon proposed development projects. PPHB, at 13.

Finding No. 15 provides:

The Council finds that in anticipation of enactment of the Growth Management Act and in furtherance of its goals, the County enacted numerous interim development regulations to curb sprawl and manage development while planning could occur. Since 1990, the following interim development regulations have been adopted and remain in place... [Finding No. 15 then goes on to list twenty-eight County ordinances.] Ex. 118.

The Cities contend that:

... there is no indication that any of these "interim development regulations" have any bearing on or relationship to the areas designated as interim urban growth areas or to the areas outside the IUGAs left in a rural designation. The record does not indicate that an analysis was conducted to review these ordinances for their consistency and sufficiency to appropriately regulate land given the new direction found in the GMA and its amendment ESHB 1761....PPHB, at 13.

Finding No. 16 provides:

The Council finds that in 1991, the enactment of Ordinance No. 91-1 (Interim Growth Management Policies), specifically addressed the "Urban Growth Areas". *Many of these policies*

will now apply to development in Pierce County as a direct result of the designation of the IUGAs. Ex. 118 (emphasis added).

The Cities also attack this finding:

... the Interim Growth Management Policies (IGMP) are just that--policies, *not* regulations. Pierce County understood this distinction and notes within Ordinance 91-1, which adopted the IGMP as amendments to the 1962 Generalized Comprehensive Plan '... that Comprehensive Plans, including policy statements, are subordinate to the standards and criteria set forth in official controls, such as zoning, subdivision and environmental regulations....' PPHB, at 14 (emphasis in original).

Lands Inside the IUGAs

The Act's requirements for IUGA development regulations are governed by a portion of RCW 36.70A.110. IUGAs must place "controls" on the development or use of land in order to meet the explicit direction in RCW 36.70A.110 that:

(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....* (Emphasis added.)

As indicated in *Rural Residents*, while urban growth outside a UGA is clearly prohibited, inside a UGA it is only encouraged. *See* discussion below of Lands Outside IUGAs. The "encouragement" of urban growth establishes a less stringent requirement for interim development regulations implementing IUGAs within the designated boundary lines. Since all cities are automatically within an UGA (*see* RCW 36.70A.110(1)), cities already have development regulations in place for the incorporated portions of UGAs. If these existing regulations do not already "encourage urban growth" they must be amended to do so.

Here the County has adopted twenty-eight ordinances that it contends constitute IUGA implementing development regulations for the unincorporated portions of the IUGAs. One of those, Ordinance 93-84S2, is discussed below as it deals only with lands outside IUGAs. The Board is remanding the County's IUGA ordinance for other reasons than discussed here. The Board holds that the County's array of other ordinances could suffice to constitute implementing development regulations for areas within the IUGAs. However, the County must re-examine whether these other ordinances continue to suffice after it complies with the Board's remand orders, unless, of course, in the meantime the County adopts its comprehensive plan and implementing development regulations.

In either case, it is nonetheless imperative that the County base its UGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and specify the methods and assumptions used to support the IUGA designation. In essence, the County must "show its work" so that anyone reviewing a UGAs ordinance, can ascertain precisely how the County developed the regulations it adopted.

Finally, the Board also notes that Finding No. 16 to Ordinance 93-91S refers to Pierce County Ordinance No. 91-1 [Exhibit A attached to Ex. 137]. It provides:

The Council finds that in 1991, the enactment of Ordinance No. 91-1 (Interim Growth Management Policies), specifically addressed the "Urban Growth Areas." Many of these policies will now apply to development in Pierce County as a direct result of the designation of IUGAs. Exhibit 118, Exhibit B thereof, at 5-6.

This finding fails to incorporate by reference Ordinance 91-1 and therefore does not directly connect it to Ordinance 93-91S. Furthermore, even if it did, Finding No. 16 is insufficient because of its vagueness. No one knows exactly which of the "many policies" are applicable. In addition, as the Board has previously held, under the GMA there is a great difference between "policies" and "regulations." *Snoqualmie v. King County*, CPSGPHB Case No. 92-3-0004 (1993), at 12. If Ordinance 91-1 truly constitutes a policy document, it cannot also serve as an interim development regulation for IUGAs.

Lands Outside the IUGAs

Finding No. 17 to Ordinance 93-91S states:

The Council finds that the enactment of Ordinance No. 93-84S2 on August 31, 1993, also has a direct effect outside the Interim Urban Growth Areas. This interim development regulation establishes the General Rural Zone and sets 10 acres as the minimum lot size for new development. Exhibit 118.

The Cities contend that Ordinance 93-84S2 "... in part established a General-Rural zone which affected *some, but not all*, of the area located outside the IUGAs." PPHB, at 14 (emphasis added). Ordinance 93-84S2 excludes six "rural activity centers." *See* Exhibit 159 and its Reference Document. The Cities claim, and the County did not refute, that the excluded area, to which Ordinance 93-84S2 does not apply, totals approximately 6,240 acres or an equivalent of 9.75 square miles. PPHB, at 15.

Ordinance 93-84S2, creates a new section of the Pierce County Code, 18.10.395 (General-Rural Zone). PCC 18.10.395©(1) and (2), specify that the minimum lot area for residential and non-residential uses shall be ten acres. Exhibit 159, Ex. C thereof, at 3.

In *Rural Residents*, the Board discussed areas outside IUGAs:

RCW 36.70A.110(1) uses the somewhat equivocal word "encouraged" with respect to what is to happen inside the designated urban growth area. Significantly, however, it says something very different with regard to the land outside the urban growth area. The phrase "... outside of which growth can occur *only* if it is not urban in nature" (emphasis added) is not equivocal. It does not say "reduce" or "discourage" urban growth outside the UGA. The use of the word "only" clearly means that urban growth is **prohibited** outside of the UGA. The only manner to achieve such a prohibition is for the IUGAs to have some immediate and controlling regulatory effect relative to what happens beyond the designated growth area.

The Board notes that the regulatory effect of the IUGA in controlling land use may require the county to amend its land use regulations and permitting procedures so as to "prohibit urban development" beyond the boundary. *At the very least, this will require the county to collect and analyze data; to define urban and rural uses and development intensity in clear and unambiguous numeric terms, including lot sizes, how many and specifically where; and to specify the methods and assumptions used to support the designation. It must be clear to a potential permit applicant what can be permitted on one side of the line that cannot be allowed on the other.* Further, recall that the IUGA continues as a development regulation until it is replaced by the development regulations that implement the comprehensive plan. If there is a temporal gap between the comprehensive plan adoption and the adoption of the subsequent implementing regulations, the IUGAs continue in effect so as to preclude a regulatory gap in the prohibition of urban growth beyond the boundary. If the comprehensive plan and the FUGA it incorporates moves the urban growth area boundary line from its IUGA alignment, the county must be mindful of a potential need to amend or otherwise adjust the IUGA development regulation for the interim period until the implementing development regulations arrive. *Rural Residents*, at 20-21 (emphasis in original).

The Board concurs that a density of one unit per ten acres is a rural density and holds that generally Ordinance 93-84S2 is an appropriate development regulation that does comply with the Act's mandate to prohibit urban growth outside UGAs. By enacting Ordinance 93-84S2, the County achieved one of the practical purposes of IUGAs which is:

... to allow the legislature to move back the comprehensive plan deadline by nine months without similarly delaying a prohibition on urban development outside of designated UGAs. *Rural Residents*, at 16, fn. 7.

As for the six "rural activity centers" that are excluded, Finding No. 32 (a part of Exhibit E attached to Ordinance 93-84S2) indicates:

The Council finds that to preserve the County's rural character and guide development towards rural activity centers, areas around certain intersections should be excluded from the General-Rural rezone and remain as they are presently zoned until the Comprehensive Plan and implementing regulations are completed and adopted. Exhibit 159, Ex. E thereof, at 4.

There simply is insufficient evidence in the record before the Board to determine the status of these areas.[\[FN9\]](#) The Cities have failed to overcome the presumption of validity granted to Ordinance 93-84S2 as incorporated by reference by Ordinance 93-91S. Because the Board is remanding Ordinance 93-91S, it will not require that the record be supplemented to provide the additional information necessary to make an appropriate determination. However, the County is cautioned that its "rural activity centers" will be closely scrutinized by the Board in the event of any future challenge to the County's FUGAs or comprehensive plan. Because these centers are outside the IUGAs boundary line, additional urban growth cannot be permitted there.

b. OFM Population Projections

In *Rural Residents*, the Board recently analyzed the Act's population projection requirements. RCW 36.70A.110(2) requires counties to base their UGAs on OFM's twenty year growth management planning population projection.[\[FN10\]](#) The Board has concluded that it is the latest twenty-year population projection on which counties must exclusively base their UGAs--the year 2012 projection. *Rural Residents*, at 36. The Board was not persuaded by Kitsap County's contention that the OFM projections were solely a minimum number and that county's claim that it relied upon DCD's similar interpretation. *Rural Residents*, at 32-37, and *Rural Residents*, Order Denying Kitsap County's Petition for Reconsideration, at 1-3.

Furthermore, OFM itself rejected DCD's interpretation. The Board takes official notice of the OFM document entitled, "Washington State County Population Projections -- 1990-2010, 2012" (**OFM Population Projections**), prepared by the OFM Forecasting Division and dated January 31, 1992. In the narrative portion of this document, OFM indicated:

...

The projections result from historical trends in demographic components, modified according to available local and state-wide information, carried forward in time to reflect population growth

and composition change. *They are best viewed as medium, or "middle series" projections.* County population forecasts taken as a group are reconciled with the middle series of alternative state population forecasts. *Based on the interpretation provided by the Department of Community Development, the population projections represent the minimum amount of population that each county must plan for under the Growth Management Act. However, the county population projections are not intended to represent the minimum amount of population expected in each county during the projection period. They represent the middle forecast series....* OFM Population Projections, at 1 (emphasis added).

The Board takes official notice that the OFM population projection for Pierce County in the year 2012 is 812,104 persons. OFM Population Projections, at 11. Ordinance 93-91S does not mention OFM's population projections. However, the County has acknowledged OFM's population projection in Pierce County Resolution No. R93-95, entitled "A Resolution of the Pierce County Council establishing the 20-year planning period for the County's comprehensive plan; and establishing total county populations for the planning period and the total rural population growth increase for the planning period." Exhibit 164.

The fifth paragraph of Resolution R93-95 provides:

WHEREAS, the Washington State Office of Financial Management (OFM) total county population projection for 2010 *must be adjusted* to reflect Pierce County's 20-year planning period... Exhibit 164 (emphasis added).

Section 1 of Resolution R93-95 provides:

For purposes of planning and assuring consistent population assumptions and planning periods are used within the County's Comprehensive Plan, the following planning period and population projections are hereby established:

...

b. OFM estimated population for 1992: 624,000

c. Total County population projected by OFM for 2012: 812,000

d. *Adjusted* total County population projected for 2014: 832,000 ...

Exhibit 164 (emphasis added).

RCW 36.70A.110(2) provides in part that urban growth areas must be:

[b]ased upon the population growth management planning population projection made for the county by the office of financial management... (Emphasis added.)

In a recent order, the Board examined this language and noted:

[Kitsap] County reads into the language of RCW 36.70A.110(2) the word "base" in order to support the argument that the OFM projection is a point of departure for (presumably upward) manipulation by the County. In fact, the emphasized language above shows that the Act does not use the noun "base." If the Act had used the word "base" to describe the OFM population forecast, perhaps the County would have a more compelling, although still losing, argument.

Instead, the Act uses the word "based," which is not a noun, but rather a transitive verb. "Based upon" directs the counties to use the quantitative target of population growth developed by OFM as the first step in sizing UGAs sufficient to permit that projected growth.... *Rural Residents*, Order Denying Kitsap County's Petition for Reconsideration, at 2.

In *Rural Residents*, the Board held:

... that counties must use *only* OFM's twenty-year population projection in adopting UGAs. OFM's forecast is the exclusive source for the relevant *countywide* figures--both the floor and the ceiling for population projections. Counties must base their UGAs on only these projections. Counties cannot add their own calculations to nor deduct from OFM's projections.

The Board reaches this decision for several reasons. First, this interpretation constitutes a sound legislative policy. If the legislature intended to permit counties to modify OFM's projections, it would have drafted RCW 36.70A.110 and RCW 43.62.035 differently. Second, OFM is a state agency *independent* of local political considerations. If counties were free either to alter OFM's projections or derive their own projections, local biases could enter into the formula and, as *Rural Residents* argued, enable counties to skew the forecasts to justify any size UGA. *See Rural Residents' Prehearing Brief*, at 11. Accordingly, by placing the sole responsibility on OFM for making countywide population projections, the legislature has accomplished an overriding purpose of the GMA: achieving consistency. Yet, the legislature protected local jurisdictions by requiring OFM to review its projections with each county. RCW 43.62.035.

Third, if a county concludes that OFM's twenty-year population projections are incorrect and should be adjusted, it can appeal the matter to the Board. *See* RCW 36.70A.280(1). If the legislature intended that a county could modify OFM's numbers at will, it need not have bothered to establish a specific appeals procedure to challenge OFM projections. Importantly, if a county does not timely appeal an OFM projection, a county is bound by it. Fourth, counties are also

required to review their designated UGAs at least once every ten years, presumably to coincide with OFM's decennial review. *See* RCW 36.70A.130(3). If OFM elected to prepare a twenty-year projection more than once every ten years, counties could re-evaluate their UGAs accordingly. In addition, because OFM is required to annually determine the current population of each county, the Board presumes that if OFM observed an unexpected fluctuation in annual population, it would re-analyze its twenty-year forecast sooner than every decade.

Fifth, RCW 36.70A.350(2) provides:

New fully contained communities may be approved outside established urban growth areas *only if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly* for allocation to new fully contained communities that meet the requirements of this chapter. Any county electing to establish a new community reserve shall do so no more often than once every five years as a part of the designation or review of urban growth areas required by this chapter. The new community reserve shall be allocated on a project-by-project basis, only after specific project approval procedures have been adopted pursuant to this chapter as a development regulation. When a new community reserve is established, *urban growth areas designated pursuant to this chapter shall accommodate the unreserved portion of the twenty-year population projection....* (Emphasis added.)

Again, the legislature has made it clear that OFM's figures are the only population projections that matter. RCW 36.70A.350 recognizes this by requiring counties to deduct from OFM's projections the number of persons it expects to reside in a new fully contained community.

In sharp contrast to OFM's twenty-year population projections for an *entire* county, which are both a minimum and a maximum number, counties are required to allocate OFM's figure *within* the county. In *Edmonds*, the Board held that a county does have the authority to allocate OFM's population projections to cities within its jurisdiction. *See Edmonds*, at 31. Precisely how this distributive process, called "disaggregation," is carried out is discretionary--a matter for a county to determine. However, the Board fully expects local considerations to play a role in determining these final allocations. For instance, a county could utilize methods such as the procedures outlined in its CPPs or refer to subarea population projections such as those from the US Census Bureau, a regional agency, or estimates from individual cities, in determining how to allocate OFM's forecast. As long as the sum of the individual population allocations equals the OFM twenty-year population projection for the entire county, the county will be in compliance with the GMA.

To recap, the first requirement a county must meet in establishing its UGAs is to ascertain what twenty-year population projection OFM has made for it. A county cannot "base" its UGAs on OFM's projection if it does not know what the OFM projection is. Secondly, a county must apply

OFM's countywide projection locally by disaggregating the overall forecast to subparts of the county. In order to comply with the GMA, a county must indicate both what its OFM projection is and precisely how it allocated that forecast throughout the county. *Rural Residents*, 33-35.

Although Ordinance 93-91S itself does not refer to OFM's Population Projections, the record is replete with references to them. More importantly, an official legislative action, Resolution R93-95, more than suffices as an acknowledgment by the County of OFM's projections. Thus, the County clearly ascertained OFM's Population Projections.

Nonetheless, Ordinance 93-91S will be **remanded** because the County's IUGAs were not based upon OFM's growth management planning population projection. Instead, the County adjusted OFM's forecast. Although a county has discretion in determining the physical size of a UGA, it does not have discretion in how much population it should plan for. OFM's twenty-year population projection is the exclusive number to use when designating UGAs.

Section 2 of Resolution R93-95 does not comply with the Act. It indicates that the "projected population figures established herein for the County's Comprehensive Plan shall be monitored annually and may be adjusted if actual population growth or official projections indicate the need for such adjustment." Exhibit 164. The resolution does not indicate whose population projection constitutes the "official" projection. Although the Board agrees that the County's population projection can be adjusted, only OFM's twenty-year population projections can constitute the "official" projection and only OFM can make adjustments to it.

OFM is required to re-evaluate its twenty-year population projections "at least once every ten years." *See* RCW 43.62.035. OFM is not required, but may choose, to prepare new twenty-year population projections more than once every ten years. If OFM elects not to adjust its twenty-year population projection until the year 2002 (i.e., ten years after it adopted its initial projections in January, 1992), the County *cannot* adjust its projections until OFM first does so.

The Board also notes that the PCCPPs expressly address the issue of population projections. In the chapter on policies for UGAs, the PCCPPs state:

The designated county and municipal urban growth areas shall be of adequate size and appropriate permissible densities so as to accommodate the urban growth that is *projected by the State Office of Financial Management* to occur in the County for the succeeding 20-year period.... Exhibit 21 -- PCCPPs, at 47 (emphasis added).

...

2.1.1 urban growth areas must be of sufficient size to accommodate *only* the urban growth

projected to occur over the succeeding 20-year planning period.... Exhibit 21 -- PCCPPs, at 49 (emphasis in original).

...

2.1.2 The County, and each municipality in the County, shall develop and propose objective standards and criteria to *disaggregate the State Office of Financial Management's County-wide growth forecasts* for the allocation of projected population to the County and municipalities... Exhibit 21 -- PCCPPs, at 47, 49-50 (emphasis added).

Clearly, the PCCPPs anticipate using only OFM's twenty-year population projections. No mention of "adjustment" by the County of those projections is made.[\[FN11\]](#)

Although the County cannot be faulted for wanting to adjust its population projections by "updating" them to twenty years from the year 1993 (i.e., the year it actually adopted IUGAs), the Act does not permit such extrapolation, even if a straight line may make sense. Moreover, the County adjusted its figures twenty years from 1994, not 1993. The legislature required OFM to prepare twenty-year projections at least every ten years. The legislature did not require OFM to annually prepare twenty-year projections. If it wanted annual twenty-year projections, the legislature would have required them. The language of RCW 43.62.035 could not be any clearer on this point.

Moreover, the legislature implicitly acknowledged this "gap" when it amended RCW 36.70A.040 in 1993. The legislature is presumed to know that in 1992 OFM complied with the requirement to make twenty-year population projections. In 1993, the legislature amended RCW 36.70A.040(3) and (4) to give counties and cities an additional year to adopt comprehensive plans and it did not amend RCW 43.62.035.

The effect is that for Central Puget Sound counties, by the time they adopt comprehensive plans and implementing developing regulations, it will be late 1994 or early 1995 -- three years after OFM's population projections first came out. For "new" planning counties just beginning to plan under the Act, the gap is even greater--more of the ten-year planning period will have already elapsed. Nonetheless, all counties must base their UGAs on OFM's 1992 projections for the year 2012, unless OFM subsequently elects to alter them.

c. Urban Densities

The County took the position that designation of densities relates to FUGAs, not IUGAs, and that

including densities is not necessary to achieve one of the purposes of IUGAs, to forestall urban growth in rural areas. County's PHB, at 37.

RCW 36.70A.110(2) states that:

... 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 ...

As the Board ruled in *Rural Residents*, an IUGA must include densities and a county must "show its work." See *Rural Residents*, at 35. The County is not in compliance with the Act and will be ordered, on **remand**, to include densities and show its work justifying the size and configuration of its UGAs.

d. Greenbelt and Open Space Areas

RCW 36.70A.110(2) requires that:

... Each urban growth area shall permit urban densities and shall include greenbelt and open space areas ...

The Cities contend that the County failed to include greenbelt and open space areas in Ordinance 93-91S or its referenced IUGAs map. PPHB, at 21. In response, the County claims that:

Designation of densities, greenbelts, open spaces and phased growth relate to final UGAs, not interim UGAs. County's PHB, at 37.

If the legislature intended the greenbelt and open space requirement to apply only to FUGAs, it would have so specified. Instead, the requirement that urban growth areas include greenbelt and open space areas applies to both IUGAs and FUGAs.

Here, the County has admitted that it failed to include greenbelt and open space areas within its IUGAs. As the Board indicated in *Rural Residents*:

The terms "greenbelt" and "open space areas" are not explicitly defined in the GMA. However, RCW 36.70A.160 describes "open space corridors" as "...lands useful for recreation, wildlife habitat, trails and connection of critical areas." The Board holds that when the GMA does not provide a definition of a key term or phrase such as "greenbelt" or "open space areas," the local

jurisdiction must do so in order to promote consistency and provide certainty. Allowing local governments to define undefined terms is one of the factors that makes Washington's growth management legislation unique (*see also Tracy*, at 22); it is an integral part of what has been referred to as the GMA's "bottom-up" approach in which local governments are given great discretion and flexibility in implementing the Act. *Rural Residents*, at 37.

...

In order to include greenbelts and open space areas within IUGAs, a county must first define these terms and secondly show them on its IUGAs map so that the public knows precisely what is being included.... Thus, although the Board may have granted the County some discretion if it had not fully completed mapping its greenbelts and open spaces by the time its IUGAs were adopted, to not have any evidence in the record whatsoever of an effort to "include greenbelts and open space areas" or even to define the terms cannot be tolerated. For instance, the County could have named or mapped existing or planned parks, trails and critical areas; referenced a development regulation requiring provision of open space in development applications or other similar mechanisms. The County has failed to act pursuant to the requirements of RCW 36.70A.110(2) as it pertains to greenbelts and open space areas.

Moreover, the Board is not sympathetic to the argument the County could have made, that it did not have time to include greenbelts and open space areas in its IUGAs. The Board would agree that the legislature did not give counties a great deal of time between when ESHB 1761 became effective on June 1, 1993 and the date it mandated that IUGAs be adopted, October 1, 1993. However, the Board notes that the requirement to "include greenbelts and open space areas" was enacted in 1990. Therefore, the County had more than adequate advance notice of this GMA requirement, which gave it more than sufficient time to prepare something to implement the requirement. *Rural Residents*, at 39.

Ordinance 93-91S and its accompanying map will be **remanded** with instructions for the County to define and then include greenbelt and open space areas in the IUGAs.

e. Mapping

The Cities contend that the County's IUGA map (Exhibit 2) does not meet the required precision demanded by the Act and the Board's *Happy Valley* decision. PPHB, at 7.

The Board holds that the map used by the County to identify its IUGAs will be **remanded** with instructions to make fairly minor corrections. In *Black Diamond et al. v. King County*,

CPSGMHB Case No. 94-3-0004 (1994), Order on Dispositive Motion ..., the Board observed the following:

The Board first notes that nothing in RCW 36.70A.110 explicitly requires that a County prepare an IUGA map, nor will the Board absolutely require such a map for IUGAs. In lieu of a map, a metes and bound legal description of the entire IUGA is at least theoretically possible, if not very practical as a method to communicate with the general public. In contrast, RCW 36.70A.070 provides:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan.

Thus, maps are mandatory at the comprehensive plan stage. Final urban growth areas (**FUGAs**) are a part of comprehensive plans and therefore will have to be shown on a map. *See* RCW 36.70A.110(5).

In the meantime, for practical purposes, the Board strongly recommends that an IUGA map be prepared....

... Recall that an IUGA is a development regulation. *See Rural Residents*, at 20. It is therefore necessary that any map purporting to have a regulatory effect must be as detailed as a zoning map. *Black Diamond*, Order on Dispositive Motion, at 6.

Here, the County elected to show its IUGAs using a map. Section 2 of Ordinance 93-91S provides:

The interim urban growth areas for Pierce County and the cities and towns within Pierce County are hereby adopted as shown in Exhibit "A" attached hereto and incorporated herein by reference.... Ex. 118.

In place of a map included in the Ordinance, Exhibit A to the Ordinance notes:

This exhibit is a large map which indicates the interim urban growth areas using color-coding. It is not possible to reproduce the map to a mailable size and maintain the distinction of the lines and colors.

Currently, the original file and the map can be viewed in the Pierce County Council Office. In time, the file will be moved to the Executive's Office and will be available for viewing there. Pierce County's Planning & Land Services (PALS) Department at the County's Public Service

Building, located at 2401 S. 35th Street, Tacoma, WA, also has a copy for viewing.

If you would like to purchase a copy, contact Karen Trueman, PALS Department, at 591-7166. Ex. 118, attached Exhibit A.

Exhibit 2 is the actual IUGAs map, an over-sized, large scale (1/2" equals one mile), multi-colored document prepared by the PALS Department, using its geographic information system (**GIS**). It is an elaborate depiction of Pierce County that is highly useful in illustrating the general nature of urban and rural growth within the county. The map is captioned "Interim Urban Growth Areas," with a sub-caption "(Adopted: Ordinance No. 93-91S)." The map is dated October 14, 1993 and contains a legend signifying the cities within Pierce County (each city or town depicted by its own color), twenty-four "overlap" areas (diagonal hash mark pattern), "Unincorporated Urban Pierce County" [\[FN12\]](#) (pale blue color), and "Unincorporated Rural Pierce County" (uncolored). The legend indicates "Township Line, [unlabeled] State or Federal Route, Federal Boundary, Municipal Boundary, Urban ural Line [depicted by a broken red line], Forest Land Zone Boundary, and Forest Land Zone." In addition, the map shows unlabeled section lines. Exhibit 160 is a smaller version of Exhibit 2.

The Cities refer to the Board's decision in *Happy Valley* as the basis for their contention that the Exhibit 2 map is insufficient to comply with the Act. In that case, the Board reviewed a map included within King County's CPPs and noted:

... 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.

...

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. *Happy Valley*, at 21 (emphasis added).

Here, no map is attached to the Ordinance No. 93-91S. Instead, the reader is directed to various locations where one can view the map, and given the name and telephone number of the person to contact to obtain a copy of the map. Thus, an interested citizen has to take extra steps beyond simply obtaining a copy of the IUGAs ordinance before ascertaining if one's property is within or outside an IUGA. Jurisdictions should attach maps to IUGAs ordinances since many persons

living well within or outside of the IUGA boundaries would be able to ascertain that fact simply by looking at any map--even a smaller version of the map than Exhibit 160.

Once a person has obtained a copy of the County's IUGAs map (whether it were attached to the Ordinance or whether one had to make additional efforts to obtain it), there would still be a problem with the map for certain individuals. It is highly unlikely that any one county-wide map can accurately portray in sufficient detail whether specific parcels of property located at or near "the edge" of a UGA boundary line are inside or outside that UGA. It is virtually impossible for an individual residing on or owning property near the edge of the IUGA boundary to determine with any degree of certainty whether one's property is inside or outside the IUGA, if all that property owner can do is examine Exhibit 2.

As the County orally argued, it has geographic information system capabilities to produce precise maps where any property owner can ascertain the location of one's property in relationship to an IUGA boundary. *See also* Exhibit 110, at 8; and Exhibits 129 through 135. However, nothing on the face of the IUGA map, Exhibit 2, or in the narrative of Exhibit A to Ordinance No. 93-91S, Ex. 118, reveals that such precise information, other than the map itself, is available.

This problem can be easily rectified. To correct this defect, the County must inform the public that additional, more precise maps are available at a specific location or that legal descriptions of the UGA are available at a specific location, so that interested persons can make the correct determination about a specific parcel of property. The description of the location shall include at least the street and mailing address, and telephone number of the keeper of the relevant information.[\[FN13\]](#) This notice must be placed on the face of the map.

Accordingly, Ordinance 93-91S will be remanded with instructions for the County to correct its IUGA map by so notifying the public. This remand does not affect the location of the IUGA boundaries. Those lines continue to exist unless or until the line is modified in response to other portions of this order; the Board's remand simply will order the County to inform the public where to obtain more precise information about the location of the IUGAs in relation to specific parcels of property.[\[FN14\]](#)

Exhibit 2, in conjunction with Ordinance 93-91S, is also misleading. Again however, this problem can be easily solved. The second sentence of Section 2 of the Ordinance indicates that the IUGAs "... designated herein for the cities and towns are those areas originally proposed as 'urban growth study areas' by the respective cities and towns." Ex. 118, at 7. The Cities contend that the accompanying IUGAs map, Exhibit 2, is misleading because, contrary to the second sentence of Section 2, the map does not show the Gig Harbor Peninsula Narrows Airport area, even though that area was part of Tacoma's proposed IUGA. *Compare* Exhibit 2 with Exhibit 1, "the Pierce County Regional Council Recommended IUGA," and Exhibit 108, "Urban Growth

Study Areas," which do show Tacoma's proposed IUGA extending across the Narrows to a part of the Gig Harbor Peninsula.

Just as the Act requires that a comprehensive land use plan be "an internally consistent document" (*see* RCW 36.70A.070) and the Board has held that provisions of CPPs must be internally consistent (*see Snoqualmie*, at 13; and *Edmonds*, at 36), the Board now holds that the provisions of any GMA enactment must be internally consistent. Therefore, Ordinance 93-91S will be **remanded** with instructions for the County to amend the second sentence of Section 2 to accurately reflect that the IUGAs actually designated are not identical to those initially proposed by Tacoma.

f. Tiering: Availability of Public Facilities

The Cities contend that Ordinance 93-91S does not provide for "phasing" or "tiering" of growth within an IUGA in accordance with the GMA and further contend that the PCCPPs establish three tiers whose purpose is to ensure that development is properly located and extended. However, the Cities assert that because these phasing or tiering provisions have been excluded from Ordinance 93-91S, all land within an IUGA would be available for development now instead of over a twenty-year period. Such a "condition will only serve to perpetuate the existing inefficient land use development pattern" in unincorporated Pierce County, what the Cities label as a "crazy quilt" of urban level developments interspersed with rural, vacant and low density sprawling areas. PPHB, at 22. As previously indicated, the County responds that phased growth relates only to FUGAs, not to IUGAs. County's PHB, at 37.

RCW 36.70A.110(3) is the Act's relevant phasing or tiering provision. It provides:

Urban growth should be located first in areas already characterized by urban growth that have existing public facility 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 be provided by cities, and urban government services should not be provided in rural areas.

Unlike the mandatory requirements of RCW 36.70A.110(1) and (2), subsection (3) is discretionary: "urban growth *should* be located..." Thus, although this subsection of the Act encourages tiering, it does not absolutely require phasing. In examining subsection (3), the Board recently pointed out that a distinction exists between determining where to locate UGAs

(subsection (1)) and having done that, deciding where to direct new development within the UGAs. Regarding the latter:

... The Board rules that subsection (3) of RCW 36.70A.110 addresses this matter as it relates to planning for the *allocation of public resources* to provide urban governmental services. Cities are the primary providers of urban governmental services within UGAs. *See also* RCW 36.70A.210 (1).

Subsection (3) provides that first, additional urban growth should be located in areas already characterized by urban growth that have existing public facility and service capacities. Second, when these areas reach capacity, only then should growth be located in areas which will be served by a combination of both existing public facilities and services and any additional needed public facilities and services. The exact timing of this process will depend on local conditions.

Rural Residents agrees that the Act creates the first two "tiers" discussed above but also argues that a third, implied tier exists for areas adjacent to territory already characterized by urban growth. Accordingly, Rural Residents contends that urban growth should not be permitted there until the first two tiers have been fully developed. The Board agrees with Rural Residents' contention that subsection (3) does create a third tier by necessary implication.... However, the Board reiterates that subsection (3) only addresses how local governments should plan to allocate public resources in anticipation of additional projected growth.

The Board holds that the Act neither mandates nor prohibits temporal phasing of development within a UGA as urged by Rural Residents. Subsection (3) alone does not prohibit development within UGAs of the limited areas that have no existing public facilities and service capacities. Instead, if a private developer is willing and able to provide adequate facilities and services in lieu of the government doing so, nothing in the Act prevents this from happening, subject to the local government's exercise of its discretion.

The concurrency planning goal is integral in reaching this determination. Using mandatory language, planning goal twelve, entitled "Public facilities and services," provides that counties and cities must:

Ensure that those public facilities and services necessary to support development shall be adequate to serve the development *at the time the development is available* for occupancy and use without decreasing the current service levels below locally established minimum standards. RCW 36.70A.020(12) (emphasis added).

In addition, the Act's requirement that comprehensive plans contain a capital facilities plan element is crucial. RCW 26.70A.070(3). Thus, planning goal twelve and the capital facilities plan

element of a comprehensive plan are critical factors that legally and *practically* will dictate phased growth rather than permitting growth to occur anywhere within a UGA at any time. *Rural Residents*, at 46-47 (footnote omitted).

The Board reaffirms its *Rural Residents'* conclusion about the Act's requirements for phasing or tiering and will not require that it occur for IUGAs.

Here, however, the County has elected, pursuant to the PCCPPs, to impose tiering requirements. PCCPP 2.3, entitled "Tier Determination," provides:

2.3.2 The County, and each municipality in the County, shall designate "tiers" within their designated urban growth area to discourage urban sprawl and leapfrog development and encourage adequate public facilities and services concurrent with development, as follows:

- a. primary growth area (i.e., areas already characterized by urban growth that have existing public facility and service capabilities);
- b. secondary growth area (i.e., 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);
- c. tertiary growth area (i.e., areas adjacent to areas already characterized by urban growth, but not presently served with public facilities and services).

2.3.2 Upon designation of tiers, the County, and each municipality in the County, shall adopt a process as well as standards and criteria by which a shift of land from one tier to another would take place.

2.3.3 The primary growth area should relate closely to the County's or the respective municipality's 6-year capital facilities plan;... Ex. 21, at 51-52.

The Board notes that the PCCPPs, adopted pursuant to RCW 36.70A.210, are dated June 30, 1992. Therefore, the PCCPPs were enacted well before ESHB 1761's requirement to adopt IUGAs by October 1, 1993, and could not have contemplated the requirement for IUGAs. County-wide planning policies are a framework for comprehensive plans that have the force of law. They may be very general or detailed, but should be written in a clear and cogent fashion. How directive they are depends on the discretion of the local jurisdictions adopting them. *Snoqualmie*, at 13-14. To the extent possible, IUGAs should comply with CPPs. [\[FN15\]](#)

In this case, it was not possible for the IUGAs to comply with the PCCPPs. Even though the PCCPPs impose tiering requirements upon the County and its cities, Ordinance 93-91S is silent about tiering within IUGAs. Thus, at first glance, Ordinance 93-91S does not comply with the PCCPPs. However, as the Board noted in *Rural Residents*, RCW 36.70A.110(3) closely relates to the provision of public facilities and service capacities. That is a topic addressed directly by Planning Goal 12 (*see* RCW 36.70A.020(12)), and the capital facilities plan element required for comprehensive plans by RCW 36.70A.070(3). Thus, if a county elects to utilize tiering within its UGAs, it is best served at the FUGA stage, [\[FN16\]](#) when the capital facilities plan element of the comprehensive plan has been prepared. It is premature to require tiering at the IUGA level. Certainly, PCCPPs 2.3.3 does not anticipate that primary growth areas be designated until the capital facilities plan has been developed. Accordingly, the Board concludes that Ordinance 93-91S did not have to include tiering provisions. Tiering in Pierce County is not required until FUGAs are designated.

g. Written Justification

RCW 36.70A.110(2) contains the relevant provisions that describe the interactive process among a county and its cities in adopting UGAs. It provides:

...Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area ... *The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area.* A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services. (Emphasis added.)

The Cities contend that:

The County did not attempt to reach agreement with the City of Tacoma on the location of the urban growth areas [in the Peninsula area] and, even if it did, the County did not justify in writing why it designated the area ... [rural]. PPHB, at 31.

In response, the County indicated during oral argument that Ordinance 93-91S constituted the County's written justification. As previously indicated, Section 6 of the Ordinance incorporated

by reference Findings of Fact, attached to the Ordinance as Exhibit B. The following findings are relevant to the question of whether the County justified in writing why the Peninsula area was excluded from the IUGA.

...

2. The Planning Commission finds that proposed municipal urban growth boundaries have not been substantiated to be commensurate with the ability of the municipalities to provide service to areas within the county and beyond their municipal boundaries.

3. The Planning Commission finds that there is no ability nor plan for the city of Tacoma to extend all urban services to the Peninsula area currently mentioned as being within their proposed urban growth area.

4. The Pierce County Council finds that the Planning Commission recommended that Exhibit "A" to Ordinance No. 93-91 (i.e., Interim Urban Growth Area map) be amended to: ... C) delete any portion of Tacoma's Urban Growth Areas that includes the Gig Harbor Peninsula ...

...

12. The Council concurs in the recommendation and findings of the Planning Commission relating to Tacoma's extension of its Interim Urban Growth Area to the Gig Harbor Peninsula. The Council notes, however, that the area falls within the generalized Joint Planning Area as established in Resolution No. R93-127. Exhibit 118, Ex. B thereto, at 1 and 4.

The Board holds that the County failed to comply with the GMA's requirement to justify in writing why it deleted the Peninsula area from the IUGA. Although the County did include a brief description of its rationale in the Findings of Fact that it incorporated by reference in its Ordinance, that attempt is insufficient. RCW 36.70A.110(2) implicitly requires the written justification *before* a legislative action establishing UGAs is taken so that the dissatisfied city can decide whether to formally object to DCTED. If, as here, the written justification is in the form of an adopting ordinance, it is too late to seek relief from the state.

h. Unincorporated Urban Growth Areas

The Cities question whether there can be such a thing as an "Unincorporated Urban Growth Area" that is not associated with cities. The Board finds no absolute prohibition in the Act against the inclusion of land in a UGA that cannot be associated with an existing or potential future city.

Nevertheless, the act is clear that the long term future of urban growth areas is for them to have urban governmental services provided primarily by either existing or potential future cities (such as a Lakewood, Silverdale or Shoreline in Pierce, Kitsap and King Counties, respectively.)

This "primary" role for cities can be expressed as either land mass (i.e., acres of land served by urban governmental services) or population (i.e., the number of new population to be served with urban governmental services) but in both cases, the result must be that the cities are the primary providers of urban governmental services in the UGA. Thus, while theoretically possible, in practice, and following the Act's direction, it is unlikely that there would be an unincorporated urban growth area of long term duration or significant size. As the Board has previously articulated, the Act expresses a legislative preference that "... that which is urban should be municipal." *Poulsbo*, at 26.

3. County-wide Planning Policies

Although the Cities claim that the County failed to comply with the PCCPPs when it adopted Ordinance 93-91S, the Cities fail to cite to any specific violations in this portion of their brief other than those already discussed by the Board. Therefore, the Board will not examine this portion of Legal Issue No. 1 any further.

4. Chapter 365-195 WAC

The Cities did not brief their claim that the County violated Chapter 365-195 WAC. Therefore, this portion of Legal Issue No. 1 is abandoned and the Board will not examine it further. *See Twin Falls, et al. V. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), at 17-18.

Conclusion No. 1

1. RCW 36.70A.020

Because the Cities did not allege that specific sections of RCW 36.70A.020 had been violated and since the Board is remanding Pierce County Ordinance No. 93-91S because it fails to comply with RCW 36.70A.110, the Board will not determine whether the Ordinance complies with RCW 36.70A.020.

2. RCW 36.70A.110

a. IUGAs as Development Regulations

The County did adopt a development regulation that has a regulatory effect when it adopted the IUGAs boundary line. Simply drawing an IUGA boundary line has a regulatory effect of

prohibiting annexations or urban growth beyond it. However, counties must do more than draw boundary lines. Counties must also give meaning to IUGA boundary lines by adopting interim development regulations that indicate what urban development can occur inside IUGAs and what nonurban development can occur outside IUGAs. These interim development regulations that effectuate IUGAs boundary lines remain in effect until replaced by permanent development regulations that implement the comprehensive plan, which includes the FUGAs.

Because the Board is remanding Ordinance 93-91S because it fails to comply with the GMA, it is not determining at this time whether the array of other ordinances the County has adopted constitute appropriate interim development regulations. The Board does recognize the possibility that they could suffice. Before the Board can reach a final conclusion on this point, the County must first adopt IUGAs that comply with the Act. As for Ordinance 93-84S2, the Board concludes that, in general, it complies with the Act and constitutes an interim development regulation that effectuates the IUGAs outside the boundary line. A density of one unit per ten acres is a rural density. The Board has serious concerns that the County excluded "rural activity centers" but will reserve judgment until the County complies with this Order. The County is reminded that additional urban growth is not permitted beyond a UGA.

b. OFM Population Projections

OFM's growth management planning population projections for the year 2012 are the exclusive projections that all UGAs must be based upon. A county does not have discretion to modify OFM's projections in any manner, including extrapolating them beyond the year 2012. Accordingly, Pierce County did not comply with the Act when it adjusted OFM's population projections. Instead, the County must base its UGAs solely on OFM's numbers. However, counties do have discretion in determining the actual size of UGAs.

c. Urban Densities

Pierce County failed to include areas and densities sufficient to permit its projected urban growth. Contrary to the County's assertions, including densities is a requirement of RCW 36.70A.110 that applies to both types of UGAs.

d. Greenbelt and Open Space Areas

Pierce County also failed to include greenbelt and open space areas in its IUGAs. Counties must include such areas within their IUGAs as this is a requirement of RCW 36.70A.110 that applies to both types of UGAs. The County must define "greenbelt and open space areas" and then include those applicable areas within its IUGAs.

e. Mapping

Although maps are not mandatory to show IUGAs, they are strongly recommended. If a county elects not to prepare an IUGAs map, the narrative portion of its IUGAs ordinance must notify the public where interested persons can ascertain whether specific parcels of property are located inside or outside of designated IUGAs. If counties do elect to use IUGA maps with their ordinances, the map must provide similar notice to the public. Pierce County's IUGAs map must provide such notice to the public.

f. Tiering: Availability of Public Facilities

RCW 36.70A.110(3) is the Act's tiering subsection. It is not mandatory and therefore phasing is not required for IUGAs. Ordinance 93-91S does not contain any tiering provisions. To the extent possible, counties should comply with their CPPs if that document contains any tiering provisions. The Pierce County CPPs do have tiering provisions. However, those provisions relate tiering to the adoption of the capital facilities plan element of the comprehensive plan. Accordingly, the FUGAs best serve the PCCPPs' tiering requirements, not the IUGAs. Therefore, it was unnecessary for Ordinance 93-91S to contain any tiering provisions.

g. Written Justification

The Act requires that counties give cities written justification of any variance between the as-adopted UGAs from the proposed UGAs. In order to allow cities to protest such a variance to DCTED in order to obtain relief aside from appealing to a growth management hearings board, sufficient time must be given to cities. Here, the County's asserted written justification was solely contained in the ordinance adopting the IUGAs. Therefore, the County did not give the cities sufficient opportunity to protest to DCTED. Accordingly, the County's justification of its decision to alter the IUGAs from that proposed by the various cities is not in compliance with the Act.

h. Unincorporated Urban Growth Areas

The GMA does not absolutely prohibit a county from designating as part of a UGA, territory that is not associated with an existing or potential future city. Therefore, such territory in a UGA is theoretically possible. However, the Act does require in the long term that even this portion of a UGA must have urban governmental services provided primarily by cities. Because the County has not justified why it permitted UGAs to be extended beyond existing city limits, the Board reserves further discussion of this issue until the County first complies with the goals and requirements of the Act.

3. County-wide Planning Policies

The Board will not reach a determination about the PCCPPs other than already discussed above because it has determined that the County failed to comply with the requirements of RCW 36.70A.110 and because the Cities did not make specific allegations of violations of the PCCPPs in this legal issue.

4. Chapter 365-195 WAC

The Cities abandoned their allegation that the County failed to comply with Chapter 365-195 WAC; therefore, that portion of the Cities claim is dismissed with prejudice.

Legal Issue No. 2

Did the County in its adoption of Ordinance 93-91S violate the procedures of RCW 36.70A.110 and did it improperly designate certain areas characterized by urban growth as rural and rural areas as urban contrary to the requirements of the GMA, including RCW 36.70A.020 and .110; the PCCPPs; and Chapter 365-195 WAC, including WAC 365-195-335?

Discussion

The Board concluded in Legal Issue No. 1 that the County failed to adopt its IUGAs based upon OFM's year 2012 population projections, failed to include greenbelts and open space areas in its IUGAs, failed to designate densities in its IUGAs, and failed to show why the IUGAs should be extended beyond existing city limits. Accordingly, the Board will remand Ordinance 93-91S. Since those listed steps are prerequisites to designating IUGAs, the Board cannot determine at this time whether the County improperly designated certain areas characterized by urban growth as rural and rural areas as urban.

Conclusion No. 2

The Board's conclusions regarding Legal Issue No. 1 make it impossible for the Board to make a determination regarding Legal Issue No. 2.

Legal Issue No. 3

Did the IUGAs adopted by the County pursuant to Ordinance 93-91S designate certain areas not characterized by urban growth and/or not zoned for development at an urban level as urban contrary to the GMA, including RCW 36.70A.020 and .110; the PCCPPs; and Chapter 365-195 WAC, including WAC 365-195-335?

Discussion

The Board concluded in Legal Issue No 1 that the County failed to adopt its IUGAs based upon OFM's year 2012 population projections, failed to include greenbelts and open space areas in its IUGAs, failed to designate densities in its IUGAs, and failed to show why the IUGAs should be extended beyond existing city limits. Accordingly, the Board will remand Ordinance 93-91S. Since those listed steps are prerequisites to designating IUGAs, the Board cannot determine at this time whether the County improperly designated certain areas not characterized by urban growth as urban.

Conclusion No. 3

The Board's conclusions regarding Legal Issue No. 1 make it impossible for the Board to make a determination regarding Legal Issue No. 3.

Legal Issue No. 4

Does the overlap of community plans on municipal IUGAs established by Ordinance 93-91S comply with the requirements of the GMA, including RCW 36.70A.020, .110, .140; the PCCPPs; and Chapter 365-195 WAC, including WAC 365-195-335 and -825(3)?

Positions of the Parties

a. The Cities

The Cities' arguments about Legal Issue No. 4 focus on Findings of Fact 1 and 10 in Exhibit "B" to the Ordinance. These provide:

1. The Planning Commission finds that citizen representation from present community plan areas should be included as part of negotiations toward establishment of urban growth boundaries.

...

10. The Council finds that the [community plan areas] should be specifically recognized on the Interim Urban Growth Area map (Exhibit "A"). Therefore, those areas are indicated as "OVERLAP." *This designation will emphasize the need for further discussions to address community concerns prior to the designation of the final Urban Growth Areas.* (Emphasis added.)

The Cities cite to an earlier Board decision:

While public participation is the cornerstone of public policy making, this does not absolve elected officials from their ultimate responsibility as the decision makers. Although it may be popular to champion the values of decision-making by citizens rather than by elected officials, the Act obliges elected officials to make decisions that will often be difficult and sometime unpopular. *Poulsbo*, Order Granting Kitsap County's Request for Reconsideration, at 13.

The Cities argue that the County violated GMA by creating "overlapping areas" where the boundaries of adopted Pierce County community plans were overlaid upon a portion of a city's IUGAs, without indicating their effect on the designation of cities' IUGAs and without ensuring that those community plans conform to the requirements of the Act, including RCW 36.70A.110. PPHB at 43. The Cities also argue that the County violated the Act by:

[e]levating citizen community advisory groups within areas designated as community plan overlap areas as equal to representatives of municipalities in discussions leading to final designations of urban growth areas. *Cities' Petition for Review*, at 7.

The Cities cite to Exhibit 111 to support their allegation that the community plan overlap designation was intended to "appease the concerns expressed by these citizens by implying their community plans would be held inviolate." PPHB, at 45. The Cities argue that the "overlap" designation by the County is unnecessary to ensure that the Cities will comply with RCW 36.70A.020(11) and RCW 36.70A.140 in joint planning efforts within the Cities' IUGAs.

The Cities also argue that the use of adopted community plans as criteria for designating an area urban or rural violates the PCCPPs. PPHB, at 47. Citing to the Board's decisions in *Happy Valley*, and *Northgate v. City of Seattle*, CPSGPHB Case No. 93-3-0009 (1993), the Cities argue that community plans may not be used to substantially affect the designations of IUGAs pursuant to the GMA. They cite to *Northgate* as follows:

they [community plans] can have no legal effect in making GMA related decisions." *Northgate*, at 18.

The Cities argue that the decisions that joint planning and the PCCPPs are to address would be thwarted if the community plans as presently constituted were "inviolate" and immune to change. They contend that the Community Plans are not GMA enactments and therefore can have no effect on IUGAs. In oral argument, the Cities stated that the adopting ordinances for the community plans show that they were adopted under the authority of RCW 36.70, the Planning Enabling Act, and that only the Lakewood Community Plan even refers to RCW 36.70A, the Growth Management Act.

The Cities ask that the overlap designation be stricken from Ordinance 93-91S because it has no legal effect on the IUGAs.

With respect to the related issue of including citizens of the "overlap" areas in the planning process, the Cities express a concern that Finding of Fact 1 to Ordinance 93-91S would result in citizens residing or owning property within unincorporated IUGAs negotiating directly with Cities, rather than through County officials. The Cities ask that the Board rule that only the County can directly negotiate with the Cities.

b. The County

The County argues that the Cities focused only upon the jurisdictional coordination element of Planning Goal 11 (Citizen participation and coordination). The full text of RCW 36.70A.020(11) provides:

Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

The County characterizes the intent and effect of Ordinance No. 93-91S as follows:

The County simply required that the Community Plan areas be discussed and their citizens be included in negotiations. County PHB, at 34.

Upon Board questioning at the hearing on the merits, counsel for the County stated that the community plans are not GMA documents but were referenced in Ordinance 93-91S "for informational purposes."

The County states that cities were apprised of County concerns that the existing community plans not be ignored, and cited to Exhibit 77 in part as follows:

[County] Council member Skinner stated the community plan areas know that the plans are temporary until a comprehensive land use plan for the county is completed. *Citizens are concerned about future development in retaining their lifestyles.* The County has to be sensitive to *their needs* and also *the concerns of the jurisdictions...* Ex. 77, at 5 quoted in County PHB, at 34-35 (emphasis added).

Finally, the County asserts that:

The County did not "elevate" citizens over city officials; Constitutional law did that. *Elected officials are to serve citizens, not the other way around.* County PHB, at 35 (emphasis added).

Discussion

The Board holds that Finding of Fact 1 and 10 comply with the requirements of the GMA.

Finding of Fact 1

Initially, the Board notes that Finding of Fact 1 is a Pierce County Planning Commission finding that the Pierce County Council incorporated by reference as a finding. Thus, it is simply a recitation of the fact that the planning commission made a finding. The Pierce County Council did not make the finding itself.

Secondly, even if the County Council itself had made the first finding, it would not violate the GMA. RCW 36.70A.110(2) provides that:

... Within one year of July 1, 1990, each county ... shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area.... The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located....

Presumably, the negotiation process discussed in Finding of Fact 1 refers to the process of attempting to reach agreement quoted above in RCW 36.70A.110(2). Another key distinction is at stake. Negotiating in an attempt to reach an agreement on the location of UGAs is an entirely different matter than making the ultimate decision required by the Act (i.e., in this instance, adopting the IUGAs). As the Board has previously ruled, only the elected legislative officials of cities and counties can make the ultimate GMA decisions. *See Poulsbo*, at 36; and Order Granting Kitsap County's Request for Reconsideration, at 13.

However, negotiating on behalf of a city or county is an entirely different matter. Elected officials can delegate the responsibility to negotiate an agreement to whomever they desire, be it permanent staff, hired consultants, or citizen activists. The ultimate responsibility for making the final decision, in this case the authority to approve or reject a negotiated agreement, remains with the elected officials. It does not matter whom the County uses to attempt to reach agreement with the cities. Accordingly, the Board holds that Finding of Fact 1 to Ordinance 93-91S does not violate the GMA.

Finding of Fact 10

The Board agrees with the County's characterization of the overlap areas as "for informational purposes" and agrees with the Cities' argument that non-GMA planning documents, including the Pierce County community plans in question, have no binding or directive legal effect on GMA enactments.

As the Board observed in *Twin Falls*, the principle that the public should provide input to legislative bodies is one of the most basic precepts of the comprehensive planning process. Likewise, pre-existing policies and regulations, such as the community plans in question, should be inventoried as part of the comprehensive planning process. *See Twin Falls*, at 78, fn. 27. To the extent that the overlap designation

merely alerts both the Cities and the County to that earlier body of policy and citizen comment, it is consistent with comprehensive planning under the Act.

Nevertheless, the Cities sound a valid caution when they argue that community plans are not inviolate. The values and opinions expressed as part of those earlier planning processes may be expressed again as part of the joint planning undertaken by the County and the Cities pursuant to the GMA, including the desire that citizens of unincorporated Pierce County expressed about "retaining their lifestyles." County PHB, at 34-35. However, as the Board cautioned in *Happy Valley*:

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. *Happy Valley*, at 19-20 (emphasis added).

The above emphasized text is particularly salient in the present case. As the County proceeds with its comprehensive plan, including any subarea plans, it must coordinate its policies with those of the adjacent cities as well as respond to other regional and state interests. It should be noted that the County's designation of such overlap areas within UGAs settles the policy question of whether these areas will be urban in nature. In view of the purpose of both CPPs and UGAs to result in a transformation of local governance over the 20 year life of the population forecasts, that urban area must then ultimately have its urban governmental services primarily provided by cities. *See Poulosbo*, at 22; *see also Rural Residents*, at 14.

Therefore, the coordination with the "plans of adjacent jurisdictions" will largely focus on such specifics as development standards, levels of service and identification of service providers. It is incumbent upon both the County and the affected cities to include the citizens and property owners of these areas in a joint planning process to identify the appropriate standards for such urban development and their subsequent implementation by the County and the city or cities.

Conclusion No. 4

Pierce County can delegate the responsibility to negotiate an agreement with each city on the location of UGAs to whomever it decides is best suited for the task. However, only the Pierce County Council can make the ultimate decision to adopt UGAs as required by the Act. Therefore, Finding No. 1 that was incorporated by reference to Ordinance 93-91S does not violate the GMA. The Board also concludes that Finding No. 10 does not violate the Act. The County is not prohibited from referring to pre-existing community plans that were adopted under authority other than the GMA. Referring to such plans is a recognition of the hours of effort and community involvement that went into the development of those plans. However, if the County elects to utilize such community plans as subarea plans of its comprehensive plans, they must comply with the Act, including the requirement that

they are consistent with the County's comprehensive plan, the plans of adjacent jurisdictions and the PCCPPs.

Legal Issue No. 5

By imposing prerequisite steps upon cities in Ordinance 93-91S at Sections 3 and 5 as preconditions for designation of final UGAs, did the County fail to comply with the requirements of the GMA, including RCW 36.70A.020 and .110; the PCCPPs; and Chapter 365-195 WAC, including WAC 365-195-335 and -825(3)?

Discussion

Sections 3 and 5 of Ordinance 93-91S do not comply with the requirements of the GMA because, under certain specified circumstances, as here, they may operate to deprive the County of the exercise of discretion when adopting UGAs. Section 3 of the Ordinance provides:

The Pierce County Council recognizes that the interim urban growth areas are for an interim period only and that they may change when the UGAs are designated upon adoption of the Pierce County Comprehensive Plan. *It is the intent of Pierce County to designate final municipal urban growth areas beyond existing municipal limits that include areas of unincorporated Pierce County only after all the following steps are accomplished:*

A. Negotiation and execution of interlocal joint planning agreements between Pierce County and its municipality(ies) at least delineating joint planning areas (pursuant to Resolution No. R93-127; County-wide Planning Policies [CWPP] -- UGA Policy No. 4, pp. 59-60, and WAC 365-195-335(3)(k); and

B. Preparation by the municipality of at least a draft comprehensive plan, specifically the capital facilities element, including "tiers" (pursuant to RCW 36.70A.070 and CWPP--UGA Policy Nos. 2 and 3, pp. 49-59); and

C. Environmental review of the proposed municipal comprehensive plans, including proposed municipal UGAs prepared by the municipalities (pursuant to RCW 43.21C); and

D. Preparation of a fiscal analysis assessing the relative costs of providing public facilities and services with the public revenue expected to be derived from any service area or municipal boundary change (pursuant to WAC 365-195-335(3)(k), PCPP [sic], Fiscal Policies Nos. 1-7, pp. 26-27, and *Snoqualmie*); and

E. Preparation of a proposed urban growth area map clearly delineated on a map of appropriate scale, including a legal description of the proposed municipal urban growth area boundary. The

proposed municipal urban growth area shall be adopted by legislative action of the respective cities and towns and include findings of fact indicating the type of governmental services the municipality provides or intends to provide within the proposed municipal urban growth area (pursuant to CWPP--UGA Policy Nos. 2 and 3, pp. 49-58, specifically UGA Policy No. 2.4, p. 52); and

F. County review of the proposed municipal urban growth area including, but not limited to, consideration of items B., C., D., and E. above (pursuant to WAC 365-195-335(3)(c-k) and CWPP--UGA Policy No. 1, pp. 48-49); and

G. Initiation of negotiations addressing allocation of financial burdens within municipal UGAs, provision of urban facilities and services, and coordinated land use regulation (pursuant to WAC 365-195-335(3)(k) and CWPP--Fiscal Impact Policy Nos. 1-7, pp. 26-27. Exhibit 118, at 7-9 (emphasis added).

Section 5 of Ordinance 93-91S provides:

The steps set forth in Section 3 are required by state laws, regulations, Central Puget Sound Growth Hearings Board decisions, County-wide planning policies, and will expedite the designation of final urban growth areas by the County. *Therefore, if a municipality fails to complete those steps by April 15, 1994, the County must designate municipal urban growth areas at the municipality's existing jurisdictional limits.* Once the steps set forth in Section 3 are complete, the County will designate final municipal urban growth areas during the annual plan amendment process as authorized by RCW 36.70A.130(2). Exhibit 118, at 10 (emphasis added).

In an Order on Dispositive Motions previously entered in this case, the Board ruled only on the language emphasized above from Section 5, what the Board referred to as "the consequences provision." The Board did not determine whether Section 3 complied with the Act.

The Board concludes that the second sentence of Section 5 of Pierce County Ordinance No. 93-91S does not comply with the Growth Management Act. Therefore, the Board will not reach the questions of whether or not Section 5 of Pierce County Ordinance No. 93-91S complied with the Procedural Criteria or the PCCPPs. Order on Dispositive Motions, at 20.

...

On its face, the consequences provision in Section 5 violates the requirements of the Act. As drafted, Section 5 is designed to operate as a purely mechanical default judgment. If a city fails to

complete the seven steps specified in Section 3 of Ordinance 93-91S by April 15, 1994, the County automatically must designate municipal urban growth areas at the municipality's existing jurisdictional limits. This provision, as adopted, leaves absolutely no room for the County to employ discretion.

... The Act requires a county to employ discretion in adopting UGAs, not just to mechanically use existing corporate limits to derive such a boundary.... Order on Dispositive Motions, at 21-22 (footnotes omitted).

...

The second sentence of Section 5 of Ordinance 93-91S fails to comply with the GMA because it precludes the County from employing any discretion in designating final UGAs. As a result, a municipal UGA boundary would automatically be drawn at existing corporate limits if a city were to fail to complete any one of the seven steps specified in Section 3 of the ordinance--even where a UGA should extend beyond those boundaries.

Although the County has yet to designate final UGAs, it is the *process* for doing so (i.e., the consequences provision) that is violative of the Act. Had the second sentence enabled the County to use discretion, it would comply with the GMA.

Ultimately, the County may decide that the UGAs should be drawn precisely at municipal boundaries based on the requirements of RCW 36.70A.110. Such a decision necessarily must involve the use of discretion in light of the particular facts specific to the area in question. It cannot be done automatically. *Tacoma et al. V. Pierce County*, Order on Dispositive Motions, at 23.

The Cities claim that Section 3 facially fails to comply with the GMA because:

... the County would limit a city's final UGA to its current municipal boundaries as a form of sanction or penalty for not meeting all seven County requirements set forth as Section 3, A-G. PPHB, at 53.

The second sentence of Section 3, emphasized in the quote above, is especially troublesome to the Cities because it "preempts" County discretion unless the County finds 100% compliance with steps A through G by the cities. PPHB, at 56.

Since entering the Order on Dispositive Motions in this case, the Board has issued its *Rural Residents* decision, previously discussed, where the Board held that as a general rule, UGAs should be limited to existing municipal boundaries and can be extended beyond city limits only in

particular circumstances. Therefore, the Board rejects the Cities' contention that limiting "... a city's final UGA to its 'existing municipal limits' is an oxymoron, an absurdity under the intent and purpose of the GMA and the PCCPP." PPHB, at 56.

Quite the contrary, the Board expects counties to initially draw UGAs at existing city boundaries and proceed beyond city limits only with sufficient justification to permit such expansion. Although the Board has indicated that extending UGAs into territory covered by the first exception to the general rule (i.e., that UGAs may go beyond city limits only if the additional territory is land already having urban growth on it) will be less difficult to justify than is the case with the second, third and fourth exceptions, even with the first exception cities and counties must "show their work" to justify the extension beyond existing city limits.

The Board does not have difficulty with the concept behind Section 3. In order for counties to make their decisions adopting UGAs, they must rely on detailed information provided by cities. The only fault the Board can find with Section 3 is similar to what the Board criticized with Section 5 -- both eliminate County discretion. In this instance, the County is entitled to draw UGAs at existing city limits. It must employ discretion in deciding whether UGA boundaries should extend beyond those limits.

The final outcome may be the same as anticipated by Section 3, if the cities provide insufficient information or if the County concludes that existing cities can accommodate the projected population. However, the County must use discretion. For instance, if the County determines that a city has not provided enough information or unsatisfactory information to justify a request to have its UGA extend beyond the city's existing boundaries, the County can elect to draw the UGA boundary identically to the city limits. In such an instance, as in any other, it must provide written justification to the affected jurisdiction(s) explaining its decision before it takes action. Presumably, the County's justification would refer to the Act's general rule and the amount and quality of information available to the County prior to making its decision.

Accordingly, the Board holds that Section 3 does not comply with the GMA because it eliminates the County's use of discretion and therefore will be **remanded**.

Conclusion No. 5

The second sentence of Section 3 of Ordinance 93-91S does not comply with the GMA because it eliminates any discretion by the County in deciding whether to extend UGAs beyond existing city limits. Therefore, it is remanded and must be either deleted or re-worded to allow for the use of discretion. However, as a general rule, UGAs should be drawn at existing city limits. Therefore, the intent of Section 3 is appropriate: to require cities to provide adequate data and analysis so that the County can determine whether existing cities can accommodate the projected

additional population growth or whether UGAs should be extended beyond existing city limits.

Legal Issue No. 6

Do the provisions of Section 5 of Ordinance 93-91S, relating to designating the final UGAs, comply with the GMA, including RCW 36.70A.020 and .110; the PCCPPs; and Chapter 365-195, including WAC 365-195-335 and -825(3)?

Discussion

The Board determined this issue when it issued its Order on Dispositive Motions in this case on March 4, 1994, at pages 17-23.

Conclusion No. 6

Section 5 of Ordinance 93-91S, particularly the second sentence, does not comply with the GMA because it precludes the County from employing any discretion in designating FUGAs. Although the County may elect to draw FUGAs precisely at municipal boundaries, it must employ discretion in making that decision rather than automatically doing so based on the seven steps listed in Section 3 of Ordinance 93-91S.

Legal Issue No. 7

Does the Board have jurisdiction to determine the validity of estoppel defenses?

Discussion

The Board responded to this legal issue when it entered its Order on Dispositive Motions, dated March 4, 1994, at 3-11.

Conclusion No. 7

The Board does not have jurisdiction to determine legal issues based upon equitable doctrines including estoppel defenses. Therefore, the Board cannot determine cases based on equitable principles.

Legal Issue No. 8

If the Board has estoppel jurisdiction, after contributing to the development of, and later recommending that the County Council adopt the interim urban growth areas recommended by the Pierce County Regional Council (PCRC), are the Cities estopped from now making claims against the County's adopted IUGAs, which claims are inconsistent from their earlier contributions and approval and hinder the County in its efforts to comply with the GMA?

Discussion

The Board responded to this legal issue when it entered its Order on Dispositive Motions, dated March 4, 1994, at 3-11.

Conclusion No. 8

Since the Board concluded in Legal Issue No. 7 that it does not have subject matter jurisdiction to determine whether equitable doctrines have been violated, the Board cannot resolve Legal Issue No. 8.

E. ORDER

Having reviewed the file and record in this case, having considered the parties' and amici briefs and the arguments of counsel, and having entered the foregoing Findings of Fact and Conclusions, the Board finds that Pierce County Ordinance No. 93-91S is **not in compliance** with the requirements of the Growth Management Act. The Board therefore orders that:

1) Pierce County Ordinance No. 93-91S is **remanded** to the County with instructions to bring it into compliance with the Growth Management Act, specifically RCW 36.70A.110, and with the Board's holdings and conclusions in this case:

A. Pierce County's IUGAs must be based exclusively upon OFM's growth management planning population projection for the year 2012;

B. Pierce County's IUGAs must include densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period.

C. Pierce County's IUGAs must include greenbelt and open space areas, and these terms must be defined.

D. Either Pierce County's IUGAs ordinance must include a notice indicating where interested persons can ascertain whether specific parcels of property are located within or outside the IUGAs, and/or Pierce County's IUGAs ordinance must contain an IUGAs map that contains a notice providing such information.

E. On remand, if the County adopts new IUGAs that are different from the IUGAs proposed by the various cities, the County must provide written justification why it elected to adopt different IUGAs and the written justification must be provided with sufficient time for a dissatisfied city to formally object to DCTED.

F. On remand, Pierce County must "show its work" justifying the IUGAs configuration it ultimately adopts. In order to "show its work" regarding its adopted IUGAs (as opposed to work on proposed IUGAs), the County must document how it applied OFM's population projections; define terms; calculate densities; deduct for any critical areas and natural resource lands, greenbelts and open spaces; define development intensity in clear numeric terms; and specify its methods and assumptions.

2) On remand, if the County adopts IUGAs that are not identical to those proposed by the cities, it must correct Section 2 of Pierce County Ordinance No. 93-91S so that it correctly reflects the actual circumstances.

3) Section 3 of Pierce County Ordinance No. 93-91S is **remanded** to the County with instructions to bring it into compliance with the Growth Management Act and with the Board's holdings and conclusions in this case because, as written, it eliminates County discretion in determining if IUGAs should extend beyond existing city limits.

4) Pursuant to RCW 36.70A.300(1)(b), the Board directs Pierce County to comply with this Final Decision and Order no later than **5:00 p.m. on Thursday, December 1, 1994**. The Board will

hold a hearing after this date to determine whether the County has complied with this order.

5) In the event that Pierce County adopts its comprehensive plan and FUGAs prior to December 1, 1994, the County shall promptly notify the Board that such action has been taken.

So **ORDERED** this 5th day of July, 1994.

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD**

M. Peter Philley
Presiding Officer

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.

[FN1](#)

Effective June 9, 1994, the Board's name was changed to the Growth Management Hearings Board. *See* ESSHB 2510.

[FN2](#)

In 1994, DCD was merged into a new department, the Washington State Department of Trade, Community and Economic Development (**DTCED**).

[FN3](#)

The Board holds that when the Act refers to "UGAs," it is referring to both interim and final UGAs, just as when the Act refers to "development regulations," it is referring to both interim and implementing regulations. *See Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010 (1994), at 11, fn. 1, and *Tracy v. Mercer Island*, CPSGPHB Case No. 92-3-0001 (1993), at 11.

[FN4](#)

The Board takes official notice of the DCD publication "*Issues in Designating Urban Growth Areas - Part I - Providing Adequate Urban Area Land Supply*," March 1992. Citing several other national approaches, this publication discusses the concept of an excess land supply and the need to strike a balance in sizing UGAs so as to contribute neither to sprawl nor to increased housing costs. *Issues in Designating Urban Growth Areas- Part I - Providing Adequate Urban Land Supply*, at 16-17.

[FN5](#)

The Board held in an earlier case that a purpose of CPPs and UGAs is to direct urban development to urban areas and to reduce sprawl. *See Edmonds et al. V. Snohomish County*, CPSGPHB Case No. 93-3-0005 (1993), at 25. The Board also held that compact urban development is the antithesis of sprawl and that by striving to achieve a land use pattern and urban form that is compact, cities and counties will serve the explicit direction of Planning Goals 1 and 2. *See Rural Residents*, at 14, 19.

[FN6](#)

The Board notes that the Act specifically calls for innovative regulatory techniques, such as

transfer of development rights and planned unit development ordinances, both of which may entail the increasing or decreasing of localized densities within a site or even within a jurisdiction. This flexibility remains; however, it operates within a jurisdiction-wide accounting process that must still be able to demonstrate achievement of a net population allocation.

[FN7](#)

RCW 36.70A.030(7) indicates that:

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

[FN8](#)

RCW 36.70A.030(14) defines "urban growth" as:

growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

[FN9](#)

For instance, Exhibit D to Ordinance 93-84S2 is the Official Zoning Atlas; it is not contained in the record. Ex. 159.

[FN10](#)

Pursuant to the last sentence of RCW 43.62.035, OFM is charged with the following responsibility:

At least once every ten years the office of financial management shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties before final adoption.

[FN11](#)

Likewise, County planning staff failed to mention any "adjustment" by the County:

A primary requirement of the Growth Management Act is to ensure that the urban growth areas can support the additional population forecast by the Office of Financial Management. Ex. 110, at 8.

[FN12](#)

The "Unincorporated Urban Pierce County" area is referred to by the County as the "County urban growth area" and by the Cities as the land located within the urban ural line outside the cities, or "u oc." *See* PPHB, at 33.

[FN13](#)

Compare, for instance, Exhibit 159, Pierce County Ordinance No. 93-84S2. Exhibit D to that ordinance, although not providing an address or telephone number, does indicate:

Exhibit "D" is the Official Zoning Atlas. (Please note: the Official Zoning Atlas is located in the offices of the Pierce County Planning and Land Services Department.)

Compare also Exhibit 161, Pierce County Ordinance No. 91-115. Exhibit A to this ordinance contains 45 pages of detailed maps from the Pierce County Zoning Atlas. Thus, the County could attach similar maps to Ordinance 93-91S.

[FN14](#)

The Board notes that Exhibit 2 currently does not meet the County's own mapping requirements imposed upon cities at Section 3(E) of Ordinance 93-91S:

Preparation of a proposed urban growth area map *clearly delineated on a map of appropriate scale, including a legal description of the proposed municipal urban growth area boundary...* Exhibit 118 (emphasis added).

[FN15](#)

WAC 365-195-335(3)(a), effective December 18, 1992, provides:

In adopting urban growth areas, each county should be guided by the applicable county-wide (and in some cases multicounty) planning policies....

[FN16](#)

Pursuant to the last sentence of RCW 36.70A.110(4), "Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter." RCW 36.70A.110(5) indicates that "Each county shall include designations of urban growth areas in its comprehensive plan." Pursuant to RCW 36.70A.040(3), the four Central Puget Sound counties shall adopt their comprehensive plans "on or before July 1, 1994."

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