

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

VASHON-MAURY, et al.,)	
)	Case No. 95-3-0008c
)	
Petitioners,)	[<i>Bear Creek Portion</i>]
)	
and)	
)	ORDER ON SUPREME COURT
UNION HILL WATER)	REMAND
ASSOCIATION,)	
)	
Intervenor,)	
)	
v.)	
)	
KING COUNTY,)	
)	
Respondent.)	
)	
and)	
)	
QUADRANT CORPORATION,)	
et al.,)	
)	
Intervenors.)	

I. Procedural History

On October 23, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**), issued a Final Decision and Order (the **FDO**) in *Vashon-Maury, et al. v. King County, et al.*, CPSGMHB Case No. 95-3-0008c. The FDO dealt with almost sixty issues raised in nine consolidated petitions for review, all of which challenged the King County (the **County**) comprehensive plan (the **Plan**) for noncompliance with the Growth Management Act (**GMA** or the **Act**). The portion of the Plan which dealt with the Bear Creek Urban Growth Area (the **Bear Creek UGA**) was challenged by petitioner Friends of the Law and the Coalition for Public Trust (**FOTL**). In the FDO, a majority of the Board found in favor of the County.

On December 1, 1995, the Board issued an Order on Motions to Reconsider and Motion to

Correct (the **Order on Reconsideration**). As to the Bear Creek UGA, a new majority of the Board found in favor of Petitioners.

The County and intervenor Quadrant Corporation (**Quadrant**) appealed the Order on Reconsideration to King County Superior Court. The Superior Court reversed the Board and reinstated the FDO's conclusions regarding the Bear Creek UGA. The trial court was affirmed by the Court of Appeals, and the decision was appealed to the Washington Supreme Court.

While the County challenged the Board's holding regarding CPPs, it also took steps to comply with the remand portion of the Order on Reconsideration by adopting Ordinances 12170 and 12171 on March 11, 1996. The County retained the Bear Creek UGA designation and also designated the Bear Creek Fully Contained Community.

On May 26, 1996, the Board concluded that this action constituted procedural compliance with the Order on Reconsideration and issued a Finding of Compliance. The Board did not reach the question of the County's substantive compliance. Finding of Compliance, at 11.

On June 10, 1999, the Washington State Supreme Court issued its opinion in *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161, 186 (1999). In addressing the matter of the Bear Creek UGA, the Supreme Court reversed the Court of Appeals, reinstated the Board's Order on Reconsideration, and remanded the matter to the Board for a determination of substantive compliance.

On November 19, 1999, the Board received an "Order on Remand" from King County Superior Court in Case No. 96-2-16705-3.

On December 17, 1999, the Board issued the "First Pre-Compliance Hearing Order."

On January 13, 2000, the Board issued the "Statement of Compliance Issues" which listed three issues to be briefed by the parties and decided by the Board in this matter.

On January 24, 2000, the Board issued the "Second Pre-Compliance Hearing Order," which set forth the applicable law in this compliance matter, the time and location for the compliance hearing and a schedule for oral argument.

On February 4, 2000, the Board issued the "Order on King County's Motion Requesting Official Notice or Alternatively to Supplement the Record and Order on FOTL's Motion to Correct Index."

On February 18, 2000, the Board received "Friends of the Law and Coalition for Public Trust's Prehearing Brief" (**FOTL PHB**). On this same date, the Board received "The Quadrant Corporation's Motion to Dismiss and Motion for Board to Take Official Notice."

On March 7, 2000, the Board received “King County’s Opening Brief” and “Friends of the Law’s Response to Quadrant’s Motion to Dismiss.”

On March 8, 2000, the Board received “The Quadrant Corporation’s Compliance Hearing Response Brief” (**Quadrant Response**). On this same date, the Board received “King County’s Corrected Opening Brief” (**County Response**).

On March 10, 2000, the Board issued an “Order Revising Dates for Compliance Hearing and Submittal of Reply Briefs, and Schedule for Oral Argument.”

On March 21, 2000, the Board received “Friends of the Law’s Reply Brief” (**FOTL Reply**).

On April 4, 2000, the Board issued an “Order on Quadrant’s Motion to Dismiss and to Take Official Notice” which denied both the Quadrant Motion to Dismiss and the Quadrant Motion for the Board to Take Official Notice.

On April 10, 2000, the Board issued a “Notice of Board Questions for Compliance Hearing.”

On April 17, 2000, the Board held a hearing on the merits in Suite 1022 of the Financial Center, 1215 Fourth Avenue, Seattle, Washington. Present for the Board were Edward G. McGuire and Lois H. North, Board Members, and Joseph W. Tovar, Presiding Officer. Also present for the Board was the Board’s law clerk, Andrew Lane. Representing Petitioners was David A. Bricklin. Representing the County was H. Kevin Wright and Michael Sinsky. Representing Intervenor, Quadrant, was George A. Kresovich. The court reporter was Robert H. Lewis of Tacoma, Washington.

II. MOTION TO STRIKE

In the FOTL Reply, the Petitioner, at pages 3-5, included a Motion to Strike portions of the County Response and the Quadrant Response (**FOTL Motion to Strike**). The FOTL Motion to Strike moved to strike the following portions of the County’s brief:

1. Page 17, lines 18-19;
2. Page 19, lines 4-6;
3. Page 19, lines 8-12 and attachment 95;
4. Page 22, line 17 through Page 25, line 3;
5. Page 37-38, note 25;
6. Exhibit 92;
7. Exhibits 97, 98, 100, and 101.

The FOTL Motion to Strike also moved to strike Page 10, lines 6-19 of the Quadrant Response.

The FOTL Motion to Strike is **granted** with respect to the portions of the County's Response listed above in items 1, 2, 3, 5, 6 and 7 and with respect to the cited portion of the Quadrant Response; the FOTL Motion to Strike is **denied** with respect to item 4 above, the text of the County's Response on Page 22, line 17 through Page 25, line 3. It is true that the Board has previously ruled that it will review the County's compliance for all UGA requirements in the GMA. The cited portion of the County Response simply sets forth the County's position that its compliance with these provisions of the Act's UGA requirements has previously been answered by the Board.

III. Introduction

This case has its genesis in King County's 1994 adoption of its comprehensive plan. In its Plan, the County designated urban growth areas (**UGAs**), including the Bear Creek urban planned development UGA located between the cities of Redmond and Duvall in the north-central part of the County. The Bear Creek UGA is a freestanding "island UGA," separate from the contiguous UGA in the western portion of King County. The Bear Creek UGA is within the Bear Creek community planning area. That portion of the planning area at issue here is the area designated UGA *and* FCC (hereinafter, **Bear Creek island**). The boundaries of the Bear Creek UGA and the Bear Creek Fully Contained Community (**FCC**) are coterminus. Within the Bear Creek island are the proposed developments of Northridge (now known as Redmond Ridge) and Blakely Ridge.

Numerous petitioners, including FOTL, appealed the UGA adoption to the Board. The Board issued a Final Decision and Order (**FDO**) and determined that the Bear Creek island UGA complied with the GMA. The Board reluctantly reached this conclusion by noting that the County-wide Planning Policies (**CPPs**) were adopted prior to the County's adoption of its UGAs and included a requirement to designate the Bear Creek island as a UGA. In addition, because the CPPs were not appealed, the policy requiring designation of the Bear Creek island as a UGA bound the County's actions. The Board was reluctant to find the Bear Creek island UGA in compliance with the GMA because the record contained a paucity of justification to create an island UGA; the record was insufficient to show that the Bear Creek island UGA satisfied the locational criteria of RCW 36.70A.110. FDO, at 37 – 41.

On reconsideration, the Board identified internal inconsistencies within the CPP directing establishment of the Bear Creek UGA. Because of this inconsistency, the Board determined that this CPP provided only general guidance and did not require the County to designate the Bear Creek UGA. The Order on Reconsideration discussed the locational criteria in the context of the CPPs and readopted the FDO's discussion of the locational criteria of RCW 36.70A.110. Order

on Reconsideration, at 7 and 9-12. Ultimately the Board remanded the Bear Creek UGA to the County, stating:

The Bear Creek island UGA portion of the [comprehensive] Plan is **remanded** to the County with instructions to either: (a) delete it; or (b) adopt it as a fully contained community if it meets the requirements of RCW 36.70A.350; or (c) justify it pursuant to the requirements of RCW 36.70A.110, and the rank order requirements for including lands in the UGA as set forth in the *Bremerton v. Kitsap County* decision [95-3-0039c, Final Decision and Order (Oct. 6, 1995)], at 38-41.

Order on Reconsideration, at 16.

In response to the Order on Reconsideration, the County took three actions: (1) it sought to justify the UGA; (2) it amended its Plan and maps to designate the Bear Creek area as an FCC; and (3) it sought judicial review of the Board's decision. *See* Ex. 104, Justification of the Urban Designation of the Bear Creek UPD Sites, at 1-4. At the same time as the County was responding to the Board's remand, FOTL and other parties also appealed the remand order to Superior Court.

The Superior Court reversed the Board's Order on Reconsideration and reinstated the FDO. The Court of Appeals upheld the superior court. The Supreme Court reversed the Court of Appeals, reinstated the Order on Reconsideration and remanded the case to the Board "for a determination of whether the County has adequately complied with the terms of the Board's Order on Reconsideration by justifying the Bear Creek urban designation under the terms of the GMA or by redesignating the area as an FCC." *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161, 186 (1999).

The questions before the Board in this compliance proceeding are:

1. Does the King County (the **County**) action redesignating the Bear Creek Urban Planned Development (**UPD**) as a Fully Contained Community (**FCC**) meet the FCC requirements of the Growth Management Act (**GMA**), including, but not limited to, RCW 36.70A.350?
2. Does the County's justification for the designation of the Bear Creek Urban UPD as a non-FCC urban growth area (**UGA**) meet the UGA requirements of the GMA, including, but not limited to, RCW 36.70A.110?
3. If compliance issues 1 and 2 above are answered in the negative, will the continued validity of the County's FCC designation and/or non-FCC UGA designation of the Bear Creek UPD substantially interfere with the fulfillment of the GMA's goals at RCW 36.70A.020?

The Board will first address the UGA issue (Issue No. 2), followed by the FCC issue (Issue No. 1). Finally, the Board will address the question of invalidity (Issue No. 3). In the discussion that follows, the phrase “Bear Creek island” is used to characterize the Bear Creek UGA and Bear Creek FCC. The Board notes that the Bear Creek island includes two distinct master planned communities or urban planned developments. The Blakely Ridge project is located in the northern portion of the Bear Creek island; and the Northridge or Redmond Ridge project is located on the southern portion of the Bear Creek island.

IV. Standard of Review/Burden of Proof

Pursuant to RCW 36.70A.320(1), King County’s actions in response to the Board’s Order on Reconsideration are presumed valid. The burden is on Petitioners to demonstrate that the actions taken by the County are not in compliance with the requirements of the GMA. RCW 36.70A.320 (2).

Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless it determines that the action taken by [the County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” For the Board to find the County’s actions clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

The County characterizes the “clearly erroneous” standard as requiring “considerable” deference from the Board. County PHB, at 22. Quadrant characterizes the deference owed to the County as “substantial.” Quadrant PHB, at 4. The Board has previously heard and rejected such characterizations.^[1] FOTL correctly points out that the Legislature had the opportunity to use “substantial” or “considerable” to describe the degree of deference owed local governments in view of the clearly erroneous standard. It did not do so. Transcript, at 105.

V. General Discussion

Prior to the enactment of the GMA, before state planning goals, when comprehensive planning was optional and development regulations were not required to implement plans, local governments were primarily “reactive participants” in the urban development process. Passage of the Act changed local government’s role from one of reactive participant to proactive manager of urban growth and development. Now GMA plans define what type of growth may occur, when it may occur, and where it may occur. This is unlike local government’s role in the pre-GMA reactive participant world.

In the pre-GMA world, local government reviewed privately initiated proposals, wherever they were located, on an ad hoc basis without the benefit of a well conceived, enforceable

comprehensive plan to guide growth. Many local governments learned to negotiate with project proponents and became adept at implementing what were to become GMA planning goals^[2] within the limited confines of the proposal area. But there was no GMA context to guide these negotiations or decision-making. With this as background, a brief review of RCW 36.70A.110 and .350 is needed for further context.

RCW 36.70A.110 was part of the original GMA legislation enacted in 1990. RCW 36.70A.110 requires counties, in collaboration with their cities, to apply locational criteria^[3] and decide *where* new growth and development will be accommodated and physically located. The locational criteria of .110 codify the GMA's predilection for compact urban growth and a gradual or incremental expansion of existing urban development within the boundaries of the designated UGA. This process is anticipatory and proactive and is an essential prerequisite for effectively managing growth. Once land is designated as being within a UGA, it is, in effect, "pre-approved" for future urban development. This UGA designation provides a degree of certainty for any urban development project, regardless of type or size, that any proponent chooses to pursue, so long as the proposed urban development is consistent with the jurisdiction's land use classifications, zoning designations, and other development regulations within the UGA.

In 1991, the Legislature authorized an "exception"^[4] to the UGA designation process of .110 by adding RCW 36.70A.350 to the GMA. The FCC provisions of .350 do not contain explicit locational criteria like those found in .110. RCW 36.70A.350 does not require, but *authorizes counties to establish a process for reviewing proposals for FCCs*. In lieu of the specific locational criteria found in .110, .350 statutorily sets forth FCC review criteria that may be characterized as minimum performance criteria to be used during review. Counties electing to utilize the GMA's FCC provisions must adopt a process for reviewing proposals for FCCs that includes the criteria contained in .350.^[5] If proposals successfully negotiate the FCC process established by a county, an FCC may be approved for an FCC area. Pursuant to RCW 36.70A.350, by operation of law, an approved FCC proposal automatically becomes a UGA.

Unlike the "pre-approved" urban development scheme for UGAs in RCW 36.70A.110, "pre-approved" urban development does not automatically attach if a county designates an *FCC area* pursuant to .350. Authorization for urban development, and subsequent UGA designation, occurs only *after review and approval* of a specific FCC proposal by a county.

Nonetheless, RCW 36.70A.350 also adheres to the anticipatory and proactive nature of responsible growth management by requiring the reservation of population as well as the reservation of land area for potential new fully contained communities. These actions must occur prior to embarking on the established FCC review process.

While RCW 36.70A.350 embodies anticipatory and proactive actions, it recognizes private initiatives, but includes detailed requirements that must be met for a proposal to be approved by the local government. These *reactive* review components combine the *proactive* reservation of population and land area components to provide a reasonable means of accomplishing effective growth management. The Board now turns to the Remand Issues.

VI. discussion of remand issues

A. RCW 36.70A.110 – Urban Growth Areas (Issue No. 2)

Does the County’s justification for the designation of the Bear Creek Urban UPD as a non-FCC urban growth area (UGA) meet the UGA requirements of the GMA, including, but not limited to, RCW 36.70A.110?

Applicable Law and Discussion

The Act’s direction for UGA designation requires counties to consider locational criteria and OFM population projections for the county. RCW 36.70A.110. FOTL argues that the Bear Creek island UGA does not satisfy the GMA’s UGA designation criteria because (1) the County has not shown why the Bear island Creek UGA is needed, given the excess capacity in the whole of the County’s UGA; (2) the Bear Creek island UGA is not “based upon” the OFM population forecast; and (3) the Bear Creek island UGA does not satisfy the locational criteria of RCW 36.70A.110.

The Board discussed the question of excess capacity in the FDO and concluded that the County’s Plan “utilizes a 25 percent land supply market factor which complies with RCW 36.70A.110.” FDO, at 22. This determination was not affected by the Court’s remand and will not be disturbed in this compliance proceeding.

Similarly, the Board also addressed the issue of whether the County’s UGAs were based upon the OFM population forecast. In the FDO, the Board concluded that “the urban growth areas designated in the King County Comprehensive Plan, including the Bear Creek island UGA, were based upon OFM’s population projections for the year 2012. Accordingly, the Plan complies with the Act’s requirement at RCW 36.70A.110(2) that UGAs must be sized based exclusively upon OFM’s projections.” FDO, at 13. This determination was also not affected by the Court’s remand and will not be disturbed in this compliance proceeding.

Although the FDO and Order on Reconsideration contained some discussion of the locational requirements for UGA designation, the Board has not previously applied the locational requirements of .110 to the Bear Creek island UGA. Therefore, in this compliance proceeding, the Board must determine whether the Bear Creek island UGA meets the locational requirements of RCW 36.70A.110(1), which provides:

Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

...

(Emphasis added.) In other words, all UGAs need not contain a city, but lands to be included in such UGAs must be lands that are: (1) already characterized by urban growth; (2) adjacent to lands already characterized by urban growth; or (3) designated as a new FCC pursuant to the requirements of RCW 36.70A.350. The first two factors are the locational criteria discussed below. The last factor is discussed in the Board’s discussion of RCW 36.70A.350, relating to FCCs (Issue No. 1).

“Urban growth” is defined 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 land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170.

RCW 36.70A.030(17). “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.” *Id.* Significantly, these definitions speak to the built environment and are in the present tense (e.g., “growth that makes intensive use of land,” “having urban growth located on it”); these definitions do not speak in the future tense (e.g., “undeveloped lands that, if fully developed as presently platted, would have urban growth located on it”). In other words, these definitions used in the context of designating urban growth areas, pursuant to the locational criteria, do not contemplate prospective urban development. *See Order on Reconsideration*, at 7.

The first question, whether the Bear Creek island was characterized by urban growth when the County designated it as a UGA, was discussed by the Board in the FDO. Although the Board’s decision did not turn on this discussion, the Board concluded that the Bear Creek island “do[es] not constitute ‘land having urban growth located on it.’” FDO, at 39; *Order on Reconsideration*,

at 11. This conclusion was not disturbed by the Order on Reconsideration or the subsequent court decisions.

The County argues that the Bear Creek island was characterized by urban growth by having urban growth located on it, because the County has approved development permits for an Urban Planned Development and an FCC on the site. The County relies on publications of the Department of Community Development (now, the Department of Community, Trade and Economic Development (**DCTED**)), which provided the following guidance to local governments for complying with the GMA: “Note that you will probably want to treat land which is committed to a future use similarly to land already developed,” Att. 102, at 5 (Issues in Designating Urban Growth Areas, Part I); and “In addition to actual urban development on the ground, extensive subdivision platting at urban densities may have already occurred. . . . It probably makes sense to recognize and plan for these vested developments.” Att. 103, at 4 (The Art and Science of Designating Urban Growth Areas, Part II).

These DCTED publications constitute less persuasive authority than the DCTED guidelines, which are contained in the Washington Administrative Code. ^[6] Even the DCTED’s guidelines are not binding. The GMA definition of “characterized by urban growth” presents the question of whether the Bear Creek island had urban growth on it when the County designated the Bear Creek island as a UGA, not whether the area might have urban growth on it in the future.

At the time of UGA designation, the Bear Creek island consisted of generally vacant, undeveloped lands. The Bear Creek island is adjacent to the City of Redmond’s watershed, an area that, although incorporated, is undeveloped. The Bear Creek island is approximately two miles from the City of Redmond (excluding the City’s watershed). The intervening land between Redmond and the Bear Creek island includes the salmon-bearing namesake for the Bear Creek island and is acknowledged by the County as “too environmentally constrained to support urban growth and too valuable as an environmental resource to lose to intensive urban development.” FDO, at 39-41 (quoting the 1994 Plan, Technical Appendix D, at D-14).

After considering the oral and written arguments of the parties, the Board concludes that FOTL has shown that the Bear Creek island is not “characterized by urban growth” and the County has not justified its designation as a UGA by meeting this locational criterion. Also, the Board affirms its previous discussions in the FDO and Order on Reconsideration and concludes that the Bear Creek island was not characterized by urban growth since there was no urban growth on it when the County designated it as a UGA.

The second question is whether the Bear Creek island was adjacent to lands already characterized by urban growth so as to be appropriate for urban growth when the County designated it as a UGA. In its FDO, the Board noted that it need not address this locational criterion. FDO, at 40. However, on reconsideration, the Board did comment on this locational factor, stating: “the

argument that that the Bear Creek MPDs are located ‘in relationship to [adjacent to] land that has urban growth on it as to be appropriate for urban growth’ is specious.” Order on Reconsideration, at 7.

FOTL points to this statement of the Board and suggests the County offers no new argument on this point. The County argues that the Bear Creek island is adjacent to lands already characterized by urban growth, because there are 450 one-acre lots in the immediate vicinity of the Bear Creek island UGA. ^[7] There is no evidence that these lots had urban growth on them when the County designated the Bear Creek island UGA.

After considering the oral and written arguments of the parties, the Board concludes that FOTL has shown that the Bear Creek island is not “adjacent to lands characterized by urban growth” so “as to be appropriate for urban growth” and the County has not justified its designation as a UGA by meeting this locational criterion. The Bear Creek island was not adjacent to lands characterized by urban growth when the County designated it as a UGA.

Because the Board finds that the Bear Creek island does not meet either of the GMA’s locational requirements for UGA designation, the Board need not address whether the Bear Creek UGA is consistent with CPP and Plan locational criteria for UGAs.

Conclusions

Regarding the market factor provisions and the OFM population requirement provisions of RCW 36.70A.110, the Board notes that the Board’s prior determinations on these issues in the FDO were not affected by the Court’s remand. Therefore, the Board declines to revisit these issues in this compliance proceeding and affirms its prior decision.

Regarding the locational criteria of RCW 36.70A.110(1), the Board concludes that FOTL has met its burden and the County has not justified that the Bear Creek island is “characterized by urban growth” nor has the County justified that the Bear Creek island is “adjacent to lands characterized by urban growth.” Pursuant to the Board’s Order on Reconsideration, the County has not justified its designation of the Bear Creek UPDs as a UGA by meeting the locational criteria of RCW 36.70A.110(1). Therefore, the County’s designation of the Bear Creek island as being within a UGA was clearly erroneous and does not comply with the locational requirements of RCW 36.70A.110(1). However, this conclusion does not resolve whether the County has complied with the FCC exception requirements authorized in .110(1). This question is addressed in the following issue.

B. RCW 36.70A.350 – New Fully Contained Communities (Issue No. 1)

Does the King County action redesignating the Bear Creek UPD as a Fully

Contained Community meet the FCC requirements of the Growth Management Act, including, but not limited to, RCW 36.70A.350?

Background

Having determined that the Bear Creek island's designation as a UGA failed to comply with the locational requirements of RCW 36.70A.110(1), the Bear Creek island is **not** part of the County's initially designated UGA. ^[8] Although the Bear Creek island does not meet the locational criteria of .110, .110 recognizes that an area may become a UGA if it "is a designated new fully contained community as defined by RCW 36.70A.350."

RCW 36.70A.110 cross-references RCW 36.70A.350. Read together, RCW 36.70A.110 and RCW 36.70A.350 provide that lands that do not have urban growth on them, that are not characterized by urban growth, and that are not adjacent to lands characterized by urban growth may become UGAs if they satisfy the FCC requirements of .350.

It is important to understand that the Board's review in this portion of the remand compliance proceeding is limited to whether the County's 1996 designation of the Bear Creek island as an FCC area and the FCC review process established by the County, in response to the Board's 1995 Order on Reconsideration, comply with RCW 36.70A.350. The Board is not reviewing subsequent Plan or development regulations adopted by the County, the adequacy of the County's road network, or the application of the County's FCC review process to any particular private sector proposal. It is within this context and framework that the Board analyzes King County's actions on remand in the present dispute.

The Board's Order on Reconsideration provided:

The Bear Creek island UGA portion of the Plan is **remanded** to the County with instructions to either: (a) . . . or (b) adopt it as a fully contained community [if] it meets the requirements of RCW 36.70A.350; or (c)

Order on Reconsideration, at 16, (emphasis in original). In response to this aspect of the Board's Order, the County adopted Ordinance Nos. 12170 and 12171. Ex. 93 and 94.

Ordinance No. 12170 amended the County's Comprehensive Plan. The relevant amendments: (1) amended Plan Policy R-104, changing the policy from expressing no need for FCCs in the County, to a policy that found no need for FCCs in the County except for the Bear Creek island FCC; ^[9] (2) added introductory text to Plan Policy U-201, regarding urban growth areas; (3) amended Plan Policy U-201, adding the Bear Creek island FCC to eligible UGA lands if the permits were approved; (4) added new introductory text and rationale for a section of the Plan

dealing with FCCs; (5) added new Plan Policy U-210, designating the Bear Creek island as an FCC on the land use and zoning maps; (6) added new Plan Policy U-211, addressing the reservation of population for the FCC; (7) added new Plan Policy U-212, articulating the .350(1) criteria for approval of FCCs and defining “fully contained”; (8) added an FCC designation to the Comprehensive Plan Land Use Map for the Bear Creek island; and (9) added an FCC Special District Overlay to the Zoning Map for the Bear Creek island. Ex. 93 (Ordinance No. 12170, Attachment A, Amendments 1-9).

Ordinance No. 12171, among other things, added new provisions to the County’s development regulations. It added an FCC Special District Overlay designation and established FCC permit requirements that correspond to the detailed requirements of RCW 36.70A.350(1). Ex. 94 (Ordinance No. 12171, Sections 7-9).

Applicable Law and Discussion

Given these actions of the County, the question for the Board is whether the County’s adoption of Ordinance Nos. 12170 and 12171 regarding the Bear Creek island FCC satisfies the requirements of RCW 36.70A.350. The Board now turns to the GMA’s provisions for establishing new fully contained communities. RCW 36.70A.350 provides:

A county required or choosing to plan under RCW 36.70A.040 may establish a process as part of its urban growth areas, that are designated under RCW 36.70A.110, for reviewing proposals to authorize new fully contained communities located outside of the initially designated urban growth areas.

(1) A new fully contained community may be approved in a county planning under this chapter if criteria including but not limited to the following are met:

- (a) New infrastructure is provided for and impact fees are established consistent with the requirements of RCW 82.02.050;
- (b) Transit-oriented site planning and traffic demand management programs are implemented;
- (c) Buffers are provided between the new fully contained communities and adjacent urban development;
- (d) A mix of uses is provided to offer jobs, housing, and services to the residents of the new community;
- (e) Affordable housing is provided within the new community for a broad range of income levels;
- (f) Environmental protection has been addressed and provided for;
- (g) Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas;
- (h) Provision is made to mitigate impacts on designated agricultural

lands, forest lands, and mineral resource lands;

(i) The plan for the new fully contained community is consistent with the development regulations established for the protection of critical areas by the county pursuant to RCW 36.70A.170.

(2) 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.

Final approval of an application for a new fully contained community shall be considered an adopted amendment to the comprehensive plan prepared pursuant to RCW 36.70A.070 designating the new fully contained community as an urban growth area.

(Emphasis supplied.) [\[10\]](#)

The Board's analysis of the question of the County's compliance with RCW 36.70A.350 is organized as follows: (1) Initially designated UGA; (2) Reservation of OFM population; (3) FCC review process; and (4) Locational criteria or constraints.

Initially designated UGA:

The first paragraph of RCW 36.70A.350 provides:

A county required or choosing to plan under RCW 36.70A.040 may establish a process as part of its urban growth areas, that are designated under RCW 36.70A.110, for reviewing proposals to authorize new fully contained communities located outside of the initially designated urban growth areas.

In answering the previous question, the Board concluded that the County's designation of the Bear Creek island as a UGA did not comply with the locational requirements of RCW 36.70A.110 (1). In other words, the Bear Creek island is *located outside of the initially designated urban growth area*. Consequently, it is eligible for consideration as an FCC pursuant to .350.

Reservation of OFM population:

RCW 36.70A.350(2) also 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.*

The question here is whether the County reserved “a portion of the twenty-year population projection and offset the UGA accordingly” for allocation to the Bear Creek island FCC. Ordinance No. 12170 includes a new Plan Policy U-211. This policy provides:

U-211 The population, household, and employment growth targets and allocations for the County’s UGA in this plan include the Northridge and Blakely Ridge sites. Accordingly, the requirements in RCW 36.70A.350(2) that the County reserve a portion of the 20-year population projection for allocation to new Fully Contained Communities has been satisfied.

Rationale: Policy U-211 has been added to clarify that the population and growth targets for the County’s UGA (contained in Policy U-209) include the Bear Creek UPD sites, and that these allocations offset other urban growth areas accordingly. This is consistent with RCW 36.70A.350 which requires the County to offset population allocations within the UGA to accommodate the urban growth within the FCC. Therefore it is not necessary to further reserve population in the County’s UGA.

Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 6, at 10).

The County clarifies that the same population allocated to the Bear Creek island UGA by the County, is allocated to the Bear Creek island FCC designation. Transcript, at 80-81. Petitioners never directly challenge whether the County reserved a portion of the twenty-year population projection for the FCC and offset the UGA accordingly. Instead, Petitioners challenge whether the UGA or FCC was *ever* based upon the OFM forecast. FOTL PHB, at 26-29. As the Board has already noted in the discussion of the UGA, the Board concluded in its FDO that the County’s Plan was based on OFM’s 2012 population projections. The Board concludes that the County’s addition of Plan Policy U-211 satisfies .350’s requirement that the County reserve a portion of the twenty-year population projection and offset the UGA accordingly.

FCC review process:

The question for the Board here is whether the County adopted an FCC project review process that complies with the detailed requirements of .350. The criteria for the FCC review process are found at RCW 36.70A.350(1), and provide:

- (1) A new fully contained community may be approved in a county planning under this chapter if criteria including but not limited to the following are met:
 - (a) New infrastructure is provided for and impact fees are established consistent with the requirements of RCW 82.02.050;
 - (b) Transit-oriented site planning and traffic demand management programs are implemented;
 - (c) Buffers are provided between the new fully contained communities and adjacent urban development;
 - (d) A mix of uses is provided to offer jobs, housing, and services to the residents of the new community;
 - (e) Affordable housing is provided within the new community for a broad range of income levels;
 - (f) Environmental protection has been addressed and provided for;
 - (g) Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas;
 - (h) Provision is made to mitigate impacts on designated agricultural lands, forest lands, and mineral resource lands;
 - (i) The plan for the new fully contained community is consistent with the development regulations established for the protection of critical areas by the county pursuant to RCW 36.70A.170.

Ordinance No. 12170 added new Policy U-212, which provides:

U-212 The review and approval process for a Fully Contained Community (FCC) permit shall be the same as that for an Urban Planned Development (UPD) permit, except the following additional criteria shall be met, pursuant to the provisions of RCW 36.70A.350:

- a. New infrastructure (including transportation and utilities infrastructure) is provided for and impact fees are established and imposed on the FCC consistent with the requirements of RCW 83.02.050;
- b. Transit-oriented site planning and traffic demand management programs are implemented in the FCC. Pedestrian, bicycle, and high occupancy vehicle facilities are given high priority in design and management of the FCC.
- c. Buffers are provided between the FCC and adjacent non-FCC areas. Perimeter buffers located within the perimeter boundaries of the FCC delineated boundaries, consisting of either landscaped areas with native vegetation or natural areas, shall be provided and maintained to reduce impacts on adjacent land;

- d. A mix of uses is provided to offer jobs, housing, and services to the residents of the new FCC. No particular percentage formula for the mix of uses should be required. Instead, the mix of uses for an FCC should be evaluated on a case-by-case basis, in light of the geography, market demand area, demographics, transportation patterns, and other relevant factors affecting the proposed FCC. Service uses in the FCC may also serve residents outside the FCC, where appropriate;
- e. Affordable housing is provided within the new FCC for a broad range of income levels, including housing affordable by households with income levels below and near the median income for King County;
- f. Environmental protection has been addressed and provided for in the new FCC, at levels at least equivalent to those imposed by adopted King County environmental regulations;
- g. Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas. Such regulations shall include but are not limited to rural zoning of adjacent rural areas, FCC permit conditions requiring sizing of FCC water and sewer systems so as to ensure urban growth will not occur in adjacent nonurban areas; and/or FCC permit conditions prohibiting connection by property owners in the adjacent Rural Area (excepting public school sites) to new FCC sewer and water mains or lines;
- h. Provision is made to mitigate impacts of the FCC on designated agricultural lands, forest lands, and mineral resource lands; and
- i. The plan for the new FCC is consistent with the development regulations established for the protection of critical areas by King County pursuant to RCW 36.70A.170.

For purposes of evaluating a FCC permit the following direction is provided: The term “Fully contained” is not intended to prohibit all interaction between a FCC and adjacent lands but to limit impacts on adjacent lands and contain them within the development site as much as possible. “Fully contained” should be achieved through the imposition of development conditions that limit impacts on adjacent and nearby lands and do not increase pressures on adjacent lands for urban development. “Fully contained” is not intended to mandate that all utilities and public services needed by an urban population both start and end within the property (since sewer, water, power, and roads, are of such a nature that the origin and/or outfall cannot reasonably both exist within the property boundaries), but that the costs and provisions for those utilities and public services that are generated primarily by the FCC (schools, police, parks, employment, retail needs) be reasonably accommodated within its boundaries and not increase pressure for more urban development on adjacent properties.

Rationale: Policy U-212 has been added to set forth the specific development criteria

an FCC must meet prior to final County approval. The nine criteria listed are consistent with criteria for FCC approval specified in RCW 36.70A.350. One of the shortcomings of the FCC provisions contained in the RCW is that no description of “FCC” is provided. Policy U-212 does provide a description of what is meant by FCC.

Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 7, at 11-12). The County’s development regulations contain similar language. *See* Ex. 94 (Ordinance No. 12171, Section 8, at 5).

The County contends: “FOTL/CPT make absolutely no argument that the Bear Creek FCC designation violates any of RCW 36.70A.350(1) criteria.” County Response, at 45. The County misreads FOTL’s brief. While FOTL does not challenge *all* of the .350(1) criteria, FOTL specifically attacks the County’s compliance with the provisions of the FCC review process required by .350(1)(g). FOTL characterizes .350(1)(g) as a “containment” requirement. [\[11\]](#) FOTL PHB, at 11, 31-32; FOTL Reply, at 17-18. Additionally, at the compliance hearing, FOTL questioned whether the County has provided for the containment of the Bear Creek FCC. Transcript, at 39-42.

Issues not briefed are abandoned. WAC 242-02-570(1). But for FOTL’s challenge to the County’s compliance with RCW 36.70A.350(1)(g), all other challenges to compliance with RCW 36.70A.350(1) have been abandoned by FOTL and are deemed **abandoned** by the Board. The Board now addresses FOTL’s .350(1)(g) “containment” argument.

FOTL’s focus on this issue is directed at Plan Policy R-104 and the following text, shown in amendatory form, which provides:

R-104 (~~King County finds no need to establish new “fully contained communities” within the Rural Area, as provided for by the Growth Management Act.~~) *Except for the Blakely Ridge and Northridge Fully Contained Community designations in Policy U-210, no new Fully Contained Communities are needed in King County.*

Rationale: [Explains the Board Order on Reconsideration and the County’s options, including FCC designation] . . . The proposed amendment to Policy R-104 recognizes that only one area within King County, i.e., the ~~adjoining~~ Blakely Ridge and Northridge sites [Bear Creek island], is recognized and designated as a FCC within the Plan. The proposed amendment maintains current R-104 policy direction that no new FCCs are needed within the Rural Area, and extends the FCC exclusionary language to all other areas of King County. Therefore, the proposed amendment confines the FCC designation to one area and prevents the establishment or proliferation of other FCCs in King County.

Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 1, at 1-2).

The “following text”, that FOTL relies upon was not amended by Ordinance No. 12170. The “following text” provides:

Policy R-104 establishes King County’s position that new “fully contained communities” should not occur within the Rural Area. The King County Rural Area’s land base is so small, and its road network and housing market are so integrated into those of the metropolitan area and its economy, *that “containment” would not be possible.*

FOTL PHB, at 11; County PHB, at 38 (emphasis supplied).

FOTL argues that this text documents an admission by the County that it cannot contain growth within an FCC. FOTL PHB, at 11, 31-32. The County responds that FOTL misreads Plan Policy R-104 and the unamended following text regarding containment and ignores the explanation given with the amendment to R-104. The County argues that the text does not apply to the Bear Creek island FCC, but the need for *other* FCCs in the rural area. Also the County notes that other Plan Policies with explanatory text, and development regulations that govern review of FCCs (i. e., Ordinance No. 12171) describe how the Bear Creek FCC area will be contained. County Response, at 37-38, 42-43. FOTL counters that the County cannot “reverse course and claim that some FCCs can be contained, [without pointing] to substantial evidence in the record that its prior . . . conclusion of no containment was in error. The County’s prior . . . conclusion that FCC containment is not possible in King County must stand.” FOTL Reply, at 17-18.

At the compliance hearing, FOTL asserted that rural zoning in areas adjacent to the FCC would not contain the FCC, that “rural zoning doesn’t hold.” Transcript, at 40. The Board then asked the Petitioners: “Other than regulations for land surrounding a designated FCC, what could the County do to ensure [containment]?” FOTL replied: “They touch on it in their second and third [requirements of U-212(g)], they provide for [these measures] as options but not requirements that utility systems be sized, especially types that are hard to expand later on, that they be sized to not accept more water or sewage than would be generated by the urban development, to preclude hook-ups to those systems. There may be other things. [e.g., King County’s four-to-one program].”^[12] Transcript, at 40-41.

RCW 36.70A.350(1)(g) requires the County to have “development regulations that ensure urban growth will not occur in adjacent nonurban areas.” FOTL’s statement that “rural zoning doesn’t hold” is unsubstantiated. Also, what degree of FCC containment FOTL is advocating is unclear from briefing and oral argument. Must such a community be “fully contained” so as to be an isolated-walled community, or a totally independent self-sufficient community, or something

else? How independent or interdependent must it, or can it, be? Petitioners never explain. Nor did the Legislature explain the meaning of “fully contained.”

The GMA, unfortunately, does not define “new fully contained community.” The WACs define an FCC as “a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses and services and meets the criteria of RCW 36.70A.350.” WAC 365-195-210. However, this definition provides little guidance on what “fully contained” means, other than compliance with .350. It may well be that *if* the undefined concept of “fully contained” is interpreted to mean “total independence or complete self-sufficiency” it is a misnomer, especially in the interdependent Central Puget Sound region.

Nonetheless, to the County’s credit, it articulates *its* view of what “fully contained” means in Plan Policy U-212. To paraphrase, it does not mean that interaction between the FCC site and adjacent lands is prohibited; it means that the impacts of the FCC should be confined to the site and limited off-site. It means that containment should be achieved through permit conditions that do not increase pressure for urban development on adjacent lands. It does not mean that all public facilities and services start and end within the site, but that costs and provision of the needed public facilities and services be borne by and accommodated within the FCC. The County intends its “fully contained” explanation to provide context for evaluating FCC proposals. The County’s definition also provides context for understanding the County’s actions. The Board does not find the County’s interpretation and definition of “fully contained” to be unreasonable in the context of this case.

Regarding FOTL’s contention that the County has failed to provide for “containment” of FCCs, the Board is not persuaded that the County’s actions were in error. Petitioners have not demonstrated that rural zoning does not “ensure urban growth will not occur in adjacent nonurban areas.” Further, the rationale that accompanies the amendment to R-104 explains what was intended by the amendment.

The Board concludes that, in addition to rural and resource land zoning, *Plan Policies* (U-210, 211, 212 and accompanying explanatory text to the Plan’s section on FCCs) and *new development regulations* (Ordinance No. 12171 - K.C.C. 21A.39.200(B)(3) and (7)) provide for “containment” of FCCs. Specifically, Plan Policy U-212 (c) and (g) deal with containment. Plan Policies U-212 (c) and (g) make provision for:

(c) Buffers are provided between the FCC and adjacent non-FCC areas. *Perimeter buffers* located within the perimeter boundaries of the FCC delineated boundaries, consisting of either landscaped areas with native vegetation or natural areas, *shall be provided and maintained to reduce impacts on adjacent land;*

...

(g) *Development regulations are established to ensure urban growth will not occur in*

adjacent nonurban areas. Such regulations *shall include* but are not limited to *rural zoning of adjacent rural areas, FCC permit conditions requiring sizing of FCC water and sewer systems so as to ensure urban growth will not occur in adjacent nonurban areas; and/or FCC permit conditions prohibiting connection by property owners in the adjacent Rural Area (excepting public school sites) to new FCC sewer and water mains or lines*

Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 7, at 1-2) (emphasis supplied); *see also*, Ex. 94 (Ordinance No. 12171, Section 8(B)(3) and (7)).

These Plan Policies specify the use of existing rural zoning and other new *development regulations* as a means of “ensuring urban growth will not occur in adjacent nonurban areas.” Also, the Plan Policies and review requirements noted above include specific *FCC permit conditions* regarding prohibitions on connections and the sizing of water and sewer systems to discourage growth on lands adjacent to an FCC. While these are case-specific and site-specific FCC permit conditions, not jurisdiction-wide regulations or requirements as advocated by FOTL, these are the *same measures* suggested by Petitioners at the compliance hearing that would *ensure* containment. Transcript, at 40-41.

Finally, the Board notes that if a proposed FCC fails to gain County approval or is not pursued by the proposal applicant the designation of the Bear Creek island as an FCC shall be *changed to a rural* designation. Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 3, at 2 (Plan Policy U-201)). However, if the County approves an FCC proposal pursuant to RCW 36.70A.350(2), the approved FCC becomes a UGA by operation of law. Therefore, all the “containment” protections associated with UGAs attach. These include, for example, rural zoning, prohibition of urban growth outside the UGA, limitations on extending urban governmental facilities and services, and in King County, the four-to-one program.

To summarize, Petitioners have not demonstrated that the County’s development regulations do not ensure urban growth will not occur in the nonurban areas adjacent to the Bear Creek island. The County’s interpretation and definition of “fully contained” is not unreasonable and provides a context for reviewing the County’s actions. Plan Policy R-104, as amended, complies with .350(1)(g) as do the other FCC Plan Policies, specifically U-212. The County’s nine requirements for the FCC project review process contained in Plan Policy U-212 (a)-(i) and the same requirements contained in the County’s development regulations at KCC 21A.39.200(B)(1)-(9) mirror and amplify the nine detailed requirements for project review contained in RCW 36.70A.350(1)(a)-(i). The FCC Plan Policies and development regulation provisions protect nonurban areas adjacent to FCCs from encroachment by urban growth. Therefore, the County’s adoption of Ordinance Nos. 12170 and 12171 complies with the FCC project review process requirements of .350(1), including .350(1)(g).

Locational criteria or constraints:

The Board anticipated the significance of locational criteria in this compliance hearing and posed the following questions to the parties prior to the Compliance Hearing:

1. What is the Legislative history of RCW 36.70A.350?
2. What does RCW 36.70A.350 mean in relation to RCW 36.70A.110, including, but not limited to, the UGA locational criteria set forth in RCW 36.70A.110?
3. Are there any locational constraints on the designation of a fully contained community designated pursuant to RCW 36.70A.350?

Notice of Board Questions for Compliance Hearing, at 2. The parties were asked to respond orally to these questions at the compliance hearing.

In response to question 1, FOTL provided “bill reports,” but all parties agreed that the legislative history was not particularly illuminating as to .350.

In response to question 2, FOTL stated:

[O]ur reading of the FCC amendments is that *FCCs may be located in areas that are not already characterized by urban growth* and that seemed by the language of .110 which specifies that *urban growth areas may be designated* in certain areas and one of them is *wherever there is an FCC*. So we read that to create an *exception* from the general limitation that UGAs may not occur . . . , unless . . . [the area] is already characterized by urban growth.

[U]nlike the carve out for the locational criteria in Section .110 which says that you don't have to be characterized by urban growth to be an FCC, there is no similar carve out for FCCs regarding consistency with the OFM population forecast accounting requirements.

Transcript, at 15-16, and 33, respectively (emphasis supplied).

In response to question 2, the County stated:

The second [question] had to do with the relationship between Section .110 and Section .350 and that relationship is set forth largely in Section .110 which explicitly says that land outside of the city may be included within an urban growth area if it meets the locational criteria in .110 *or* if it is a new fully contained community pursuant to .350. *So those locational criteria found in .110 of the Act do not apply to*

siting new fully contained communities.

Transcript, at 57 (emphasis supplied).

In response to question 3, FOTL replied:

[T]here is a locational constraint in that [an FCC] can't be located in an area where *containment* is not possible, so that would be one locational constraint. And . . . Section .350 doesn't rule out the local jurisdiction from adopting its own locational constraints and here in those policies the County, *King County adopted additional locational constraints*, . . . and those are legitimate under the Act and should be recognized.

Transcript, at 50 (emphasis supplied).

In response to question 3, the County said:

[A]re there any locational constraints on fully contained communities and I agree with what Mr. Bricklin says, that *there are not any explicit locational constraints on locating fully contained communities other than complying with the nine criteria that are listed in Section .350[1]* which in a given context may or may not have an effect on the County's ability to locate a fully contained community. The development needs to be contained, it needs to be buffered from adjacent urban development, there needs to be protection for natural resource lands, protection for sensitive areas, critical areas, and those criteria might in a given context indirectly limit where you could put a fully contained community but *the Act doesn't contain any explicit direct locational requirements for fully contained communities.*

Transcript, at 57 (emphasis supplied).

The parties do not dispute that RCW 36.70A.110 provides a statutory *exception* for FCCs from the UGA locational criteria contained in .110. The Board agrees, the locational criteria contained in .110 of the Act do not apply to the identification and designation of potential FCC areas. Additionally, the parties agree that the Act does not contain any explicit locational requirements for FCCs, other than those factors enumerated in .350(1), including .350(1)(g) "containment" which could affect location. The Board also concurs in this conclusion. Additionally, the Board agrees with FOTL's contention that a jurisdiction has discretion to adopt its own locational criteria or constraints for identifying and designating potential FCC areas.

The Board now turns to FOTL's assertion that the County has adopted its own locational criteria in the County Comprehensive Plan, with which the Bear Creek island must comply. FOTL PHB, at 9, 34 and 41-42; Transcript, at 22-26 and 49-50. The Board has addressed FOTL's first

argument regarding the containment question in the discussion above, under FCC review process, and will not discuss it further here. Thus, FOTL's remaining argument relates to the County's own Plan provisions.

FOTL contends that Plan Policy U-201, which contains language similar to that of CPP LU-26, contains locational criteria, such as consideration of natural boundaries and topographical features, that apply to the Bear Creek island FCC. Additionally, FOTL argues that inclusion of the Bear Creek island site among U-201's locational criteria is an arbitrary exception to the criteria that is not supported by any rationale. FOTL PHB, at 9, 41-42; FOTL Reply, at 8; and Transcript, at 22-26. The County disputes that the language of CPP LU-26 or U-201 precludes the designation of the Bear Creek island as an FCC, since Washington's courts have affirmed that the CPPs directed the County to include the Bear Creek island as a UGA. County PHB, at 39-42.

Plan Policy U-201, as amended in 1996, provides:

U-201 The Urban Growth Area designations shown on the official Land Use Map includes enough land to provide the capacity to accommodate growth expected over the period 1992-2012. These lands:

- a. Do not include land or unincorporated agriculture or forestry lands designated through the Countywide Planning Policies plan process;
- b. Include only areas already characterized by urban development which can be efficiently and cost effectively served by roads, water, sanitary sewer and storm drainage, schools and other urban governmental services within the next 20 years;
- c. Do not extend beyond natural boundaries, such as watersheds, which impede provision of urban services;
- d. Respect topographical features which form a natural edge such as rivers and ridge lines; ~~and~~
- e. Include only areas which are sufficiently free of environmental constraints to be able to support urban growth without major environmental impacts unless such areas are designated as an urban separator by interlocal agreement between jurisdictions; and
- f. Include the Bear Creek Urban Planned Development (UPD) sites, unless the applications for a UPD permit or a Fully Contained Community (FCC) permit are denied by King County or not pursued by the applicants.

Further, this policy recognizes [certain specified acreages are identified as eligible for the four-to-one program unless plat approval is denied, in which case, the lands convert to a rural designation]

In addition, this policy recognizes that the Bear Creek Urban Planned Development (UPDs) are subject to an ongoing review process under the adopted Bear Creek Community Plan and that these properties are urban under the Countywide Planning Policies. If the applications necessary to implement the UPDs are denied by King County or not pursued by the applicant(s), then the property subject to the UPD shall be redesignated rural pursuant to the Bear Creek Community Plan. ~~((Nothing in this policy shall limit the continued review and implementation through existing applications, capital improvements, appropriations or other approvals of these two UPDs as new communities under the Growth Management Act.))~~ This policy recognizes the appropriateness of designating the Bear Creek UPD sites as a Fully Contained Community under the Growth Management Act. If the applications necessary to implement the Fully Contained Community are denied by King County or not pursued by the applicant(s), and if the sites have not been otherwise approved as a UPD, then the Property shall be designated Rural on the Land Use Map.

Rationale: The proposed amendment to Policy U-201 specifically identifies the Bear Creek UPD sites within the UGA and recognizes that these sites are also appropriately designated as a Fully Contained Community under the GMA. The designation is consistent with Countywide Planning Policies which both recognized the need for and appropriateness of urban master planned developments in the Bear Creek area. The policy directs King County to redesignate these sites as Rural should a FCC or UPD development proposal be denied or not pursued by the applicant.

Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 3, at 4-5).

Plan Policy U-210 provides:

U-210 King County finds a need to establish a new Fully Contained Community. Two sites are designated through this plan shown on the land Use Map as a Fully Contained Community; and on the Area Zoning Map as Urban Reserve: Blakely Ridge and Northridge Urban Planned Development sites located in the Bear Creek Areas. Nothing in these policies shall affect the continued validity of an approved Urban Planned Development permit for either of these sites. This FCC designation may be implemented by separate or coordinated permits for the two sites.

Rationale: Policy U-210 has been added to establish a FCC designation for the Bear

Creek UPD sites. This policy is consistent with the Growth Management Act criteria specified in RCW 36.70A.350 for a FCC. This amendment . . . provides consistency in the references to one designation of two sites.

Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 5, at 9); *see also*, Amendment 8 and 9 for the Land Use Map and Area Zoning Map designations.

The Board observes that, while Plan Policy U-201 sets forth locational criteria, those criteria apply specifically to UGA designations, not FCC designations.^[13] This construction is consistent with the structure of the statute. RCW 36.70A.110 includes UGA locational criteria, and includes the uncontested FCC “exception.” CPP LU-26 also contains UGA locational criteria and includes the FCC “exception.”^[14] Likewise, Plan Policy U-201 sets forth UGA locational criteria and again lists the recognized FCC “exception.” Plan Policy U-210 designated the Bear Creek island as an FCC and subsequent map amendments illustrated this designation. Plan Policy U-210 makes the .110’s FCC “exception” a possible outcome for the Bear Creek island. Reflecting the structure and language of the statute in a Plan Policy is not “arbitrarily picking out a specific site without regard to those [locational] criteria” or “just pluck[ing] it [the area] out of thin air.” *See* Transcript, at 24-25. The Board finds no error by the County in recognizing a statutorily created FCC “exception” to the UGA locational criteria in its Plan Policy U-201.

Since the Legislature, not the County, created the FCC “exception” in RCW 36.70A.110, it is not necessary for the County to justify, explain, or provide a rationale for, why the FCC “exception” is included in its Plan Policies. Nonetheless, the Board acknowledges that the County added the following language to the FCC section of its Comprehensive Plan:

Regardless of whether the urban designation of the Bear Creek UPD sites in the 1994 Comprehensive Plan is upheld, the GMA recognizes the FCC provisions as an independent method of designation of lands as urban and the County has determined that the Bear Creek UPD sites are appropriate for designation as an FCC.

The Bear Creek FCCs provide substantial benefits and achieve Growth Management Act goals which cannot be duplicated through the UGAs associated with cities in this part of the County. *The findings and justification for FCC designation, consistent with the criteria [in] RCW 36.70A.350(1), include the following:*

- a. Site Characteristics: These two sites are appropriate as FCCs due to a large land mass managed under two ownerships allowing for an efficient and unified planning effort. Master planning promotes GMA goals by concentrating development, locating commercial services in close proximity

to residents, provides a mix of residential, commercial, and retail uses, allows for the preservation of larger, contiguous amounts of open space, and otherwise reduces inefficient consumption of land.

b. Affordable Housing: the 1992 median household income in the Bear Creek area is 54 percent higher than the countywide median for this same period and multi-family units occupy 2 percent of the housing stock compared with 19 percent countywide in unincorporated areas. These two sites will introduce multi-family units and provide housing units for low, median and moderate-income households. This introduction of substantial affordable, and multi-family housing opportunities will allow for greater housing choices not currently available in the area and will correct an affordable housing deficiency in this portion of the County which cannot be adequately provided in other urban growth areas.

c. Environmental Protection: Environmental protection standards can exceed the highest standards in the County through clustering and state-of-the-art water quality and drainage systems. Critical areas, including wetlands, streams, and steep slopes can be protected through comprehensive site design and extraordinary surface water management measures far beyond protections that could be achieved through rural lot development. The large scale of a master plan allows for development of construction and conservation practices that could not be achieved on smaller properties, or through rural lot development.

d. Open Space and Recreation: Larger, cohesive public open space systems including public parks, recreational facilities and trails can be provided through the FCC process. Acquisitions of this magnitude cannot be achieved in existing city UGAs, but are instead dependent upon large acreage ownerships available for master planning.

e. Public Facilities and Services: The large scale of a master plan allows for efficient provision of many public services internalized within the boundaries of the new communities. Infrastructure costs can be borne by developers for transportation, sewer, water, schools, and other facilities and services consistent with the requirements of RCW 82.02.050. Site design and development conditions such as traffic demand management systems can encourage the use of transit and non-motorized means of transportation.

f. Buffers and Adjacent Lands: Perimeter buffers and development conditions can be imposed to reduce growth pressures on adjacent and

nearby lands, including designated agriculture, forest and mineral resource lands.

Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 4, at 7-8).

Although not required, these findings provide adequate rationale for the County's designation of the Bear Creek island as an FCC pursuant to the FCC "exception" from the Acts locational criteria for UGAs. These findings support the County's election, albeit at the Board's suggestion, to incorporate an FCC review process into its growth management system.

Conclusions

The Bear Creek island is located outside of the initially designated urban growth area. Consequently, it is eligible for consideration as an FCC pursuant to RCW 36.70A.350.

The County's addition of Plan Policy U-211 satisfies RCW 36.70A.350's requirement that the County reserve a portion of the twenty-year population projection and offset the UGA accordingly.

FOTL has abandoned any challenge to the County's compliance with RCW 36.70A.350(1)(a-f) and (i).

Petitioners have not demonstrated that the County's development regulations, including rural zoning, do not ensure urban growth will not occur in the nonurban areas adjacent to the Bear Creek island. The County's interpretation and definition of "fully contained" is not unreasonable and provides a context for reviewing the County's actions. Plan Policy R-104, as amended, complies with .350(1)(g), as do the other FCC Plan Policies, specifically U-212. The County's nine requirements for the FCC project review process contained in Plan Policy U-212 (a)-(i) and the same requirements contained in the County's development regulations at KCC 21A.39.200(B) (1)-(9) mirror and amplify the nine detailed requirements for project review contained in RCW 36.70A.350(1)(a)-(i). The FCC Plan Policies and development regulations provide protection for nonurban areas adjacent to FCCs from encroachment by urban growth. Therefore, the County's adoption of Ordinance Nos. 12170 and 12171 complies with the FCC project review process requirements of .350(1).

The locational criteria of .110 do not apply to FCC areas. The GMA does not contain any explicit locational requirements for FCCs other than those factors enumerated in .350(1), including .350(1)(g) "containment" which could affect location. The Board finds no error by the County in recognizing a statutorily created FCC "exception" to the locational criteria in its Plan Policy U-201. The Board acknowledges that the County provided adequate explanation and rationale in its Plan supporting its decision to adopt an FCC review process and designate the Bear Creek island as an FCC.

The County's adoption of Ordinance Nos. 12170 and 12171, which designate the Bear Creek island as an FCC and establish an FCC review process, meet the GMA's FCC provisions and comply with the requirements of RCW 36.70A.350. By enacting these Ordinances in compliance with .350, the County has activated the FCC "exception" of RCW 36.70A.110(1) for designating UGAs. Successful completion of the FCC review process will yield UGA designation.

C. Invalidity – Substantial Interference with GMA Goals (Issue No. 3)

If compliance issues 1 and 2 above are answered in the negative, will the continued validity of the County's FCC designation and/or non-FCC UGA designation of the Bear Creek UPD substantially interfere with the fulfillment of the GMA's goals at RCW 36.70A.020?

The Board has determined that the County's designation of the Bear Creek island as a non-FCC urban growth area does not comply with the *locational criteria* contained in RCW 36.70A.110 (1). The Bear Creek island cannot be designated UGA based upon .110(1)'s locational criteria. Any such designation shall be removed from the County's Plan. However, RCW 36.70A.110(1) does allow an approved FCC to become a UGA if the requirements of RCW 36.70A.350 are met. The Board has determined that the County's *designation of the Bear Creek island as an FCC, and the County's FCC project review process* ^[15] complies with the requirements of RCW 36.70A.350. Thus, the FCC "exception" is activated. The outcome of the County's FCC permit review process can yield either approval or denial of an FCC permit. FCC permit approval by the County results in UGA designation for the FCC permit area, pursuant to .110(1). FCC permit denial by the County yields designation of the FCC permit area as Rural, pursuant to County law (Plan Policy U-201). Either FCC permit review outcome complies with the requirements for UGAs as set forth in RCW 36.70A.110. Consequently, in regard to invalidity, the Board finds no need to inquire into whether there may be substantial interference with the goals of the Act.

VII. order

Having reviewed and considered the above-referenced documents and the file in this case, having considered the arguments of the parties, and having deliberated on this matter, the Board ORDERS:

1. King County's justification for the Bear Creek Island UGA fails to comply with the Board's Order on Reconsideration and the locational criteria for UGAs as found in RCW 36.70A.110(1). The Bear Creek island UGA designation, or any portion thereof, that is based upon the locational criteria of RCW 36.70A.110(1), if any, shall be removed from the County's Plan.

2. King County's adoption of Ordinance Nos. 12170 and 12171 **complies** with the Board's Order on Reconsideration and the Act's provisions for new fully contained communities, as contained in RCW 36.70A.350 and RCW 36.70A.110(1).
3. The Board directs King County to remove the Bear Creek island UGA designation, or portion thereof, if any, that is based upon the locational criteria of RCW 36.70A.110(1), by no later than **Friday, September 15, 2000**. The County shall submit to the Board a "Statement of Actions Taken to Comply" (SATC), by no later than **Friday, September 22, 2000**.

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So ORDERED this 15th day of June, 2000.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP

Board Member (Board Member McGuire concurs with Board Member North with respect to the entire order, and with Board Member Tovar with respect to RCW 36.70A.110, and files a concurring opinion with respect to RCW 36.70A.110, set out below)

Lois H. North

Board Member (Board Member North concurs with Board Member McGuire, and files a concurring opinion with respect to RCW 36.70A.350, set out below)

Joseph W. Tovar, AICP
Board Member (Board Member Tovar concurs with the majority as to compliance with RCW 36.70A.110. He dissents with respect to compliance with RCW 36.70A.350 as set forth in a separate opinion which follows.)

NOTICE: This is a final order for purposes of appeal. Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within ten days of service of this final order.

Board Member McGuire's Concurrence re: RCW 36.70A.110

I concur with the Board's analysis that, in 1994, the Bear Creek island did not have urban growth on it, nor was it adjacent to lands having urban growth on it. However, the Board provides no analysis of whether the Bear Creek island is "*land located in relationship to an area with urban growth on it as to be appropriate for urban growth.*" RCW 36.70A.030(17). This vague portion of the definition of "characterized by urban growth" could be read to authorize designation of virtually any "island" as a UGA, if a county documented and justified the "relationship" and explained why such designation would be "appropriate" for urban growth. However, in my view, the broad scope of this locational criterion was narrowed and given meaning in 1991 when the Legislature amended the GMA to add the FCC provisions (.350 and the .110 FCC "exception").

The FCC provisions recognize the possibility of noncontiguous "island" UGAs, *if certain detailed requirements are met*. Therefore, "*land located in relationship to an area with urban growth on it as to be appropriate for urban growth*" is constrained and given context in light of the authorization for a county to establish a process for reviewing FCC proposals. Approval of an FCC by a county implicitly requires a determination that the land (proposed FCC) is *appropriate* for urban growth. Such a determination has to be based on the *relationship* of the FCC to the broader context of how urban growth is managed in the county's GMA Plan (*e.g.*, reservation of twenty-year population and reciprocal land area, UGAs, etc.). This interpretation is consistent with, and supports, the linkage between .350 and .110. I would have included this interpretation in the Board's analysis and discussion of RCW 36.70A.110.

Board Member North's Concurrence re: RCW 36.70A.350

All parties and the Board concur that the Legislature created an exception to the UGA requirements of RCW 36.70A.110 when it adopted RCW 36.70A.350's FCC provisions. I write separately to clearly state my view that this exception constitutes a gaping loophole in the GMA,

whereby our rural lands can be converted to urban growth at the desire of any landowner with means. However, this legislatively created loophole cannot be remedied by the Board, as we are bound to apply the clear language of the statute. It is up to this State's Legislature to close this loophole.

Board Member Tovar's Dissent re: RCW 36.70A.350

Summary

For the reasons detailed below, I respectfully dissent from my colleagues. I do not agree with the majority's conclusion that the County's designation of the Bear Creek FCC complies with the goals and requirements of the Act, specifically and most fundamentally, with RCW 36.70A.350 (preamble). Quite to the contrary, I believe that the County's designation of the Bear Creek urban island as an FCC is a brazen flouting of the spirit of the Growth Management Act and an egregious violation of its requirements. I would have entered a determination of invalidity.

There is no dispute that the FCCs are an "exception" from the locational criteria of RCW 36.70A.110. Significantly, however, they are not an exception from the statutory requirement in RCW 36.70A.350(preamble)^[16] that they be "fully contained." Surrounded by rural areas, including environmentally constrained portions of the Bear Creek area to the west and the designated agricultural resource lands of the Snoqualmie Valley to the east, this so-called "fully contained" urban island is nothing of the sort. It is integrated with the metropolitan road network,^[17] accessible to a high-speed and high-capacity state freeway less than three miles distant which links it to the burgeoning economy and housing market of the metropolitan urban growth area. This unincorporated urban island, four square miles in size^[18], is only two miles from the City of Redmond, from which it receives its sewer service and even its name (i.e., Redmond Ridge).

To label this land use designation as a "fully contained" community is an artifice belied by the facts. At its core, this land use decision is rooted not in a sustainable future, but in an expedient past. Far from being fully contained, this is classic leapfrog sprawl on a grand scale,^[19] the likes of which has hastened the demise of rural and resource lands throughout this country over the past fifty years. In my view, the majority has interpreted the Act in a way that eviscerates the statute.

Discussion

While the Board has addressed the UGA requirements of RCW 36.70A.110 many times previously, this is a case of first impression as to the FCC provisions of RCW 36.70A.350. Although this latter provision was adopted in 1991, the Board has never before substantively reviewed alleged noncompliance with these provisions. To glean the meaning of a specific statutory provision, it is important to read it, not in isolation, but in the context of the entire statute. *See Cramer v. Van Parys*, 7 Wn. App. 584, 586 (1972). Therefore, it is appropriate to begin by recounting the GMA's history and purposes, relevant provisions of the Act, and the court-made and board-made case law that provide a legal context.

GMA's History and Purposes

A prominent scholar of Washington land use law has observed: "Until the adoption of the Growth Management Act in 1990, local land use planning and regulation was optional and, if undertaken, was subject to modest state procedural standards and virtually no substantive requirements at all."^[20] The discretion of local governments to make decisions about the location, scale and servicing of new growth was virtually unbridled, and the state role very limited.

This situation changed in a fundamental and profound way in 1990 with the adoption of the GMA. The Legislature found that perpetuation of the pre-GMA land use decision-making regime presented a threat to our state's economic and environmental future and very quality of life.^[21] Commenting on these findings and the goals and requirements of the Act, the Supreme Court described the GMA as a "sea change" in land use decision-making in Washington. *Erickson & Associates, Inc. v. McClerran*, 123 Wn.2d 864, 875-76 (1994). This Board reached a similar conclusion, stating: "the old way of doing things (i.e., non-GMA planning and decision-making) threatened [Washington's] quality of life ... [and] in order to meet this threat, new and important steps needed to be taken." *Children's Alliance v. City of Bellevue*, CPSGMHB Case No. 95-3-0011, Final Decision and Order (Jul. 25, 1995), at 4.

Ambiguity in the Statute is resolved by Discerning Legislative Intent

"Where the meaning of the statute is clear from the language of the statute alone, there is no room for judicial interpretation." *Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994) (citation omitted). However, where the meaning of the statute is ambiguous, "resort to rules of construction" is appropriate. *Id.* (citation omitted). A cardinal rule of statutory construction is to give effect to legislative intent. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 813 (1992).

It is clear from the provisions of RCW 36.70A.350(1) and (2) what the requirements are for a county to grant an FCC permit. What is unclear from the language of the statute is the meaning

of the words in the preamble of RCW 36.70A.350. It provides:

A county required or choosing to plan under RCW 36.70A.040 may establish a *process as part of its urban growth areas*, that are *designated under RCW 36.70A.110*, for reviewing proposals to authorize new *fully contained* communities located outside of the initially designated urban growth areas.

(Emphasis added.)

What is meant by the emphasized words above? It would be clearer if the preamble, or even the subsequent sections, stated that *first* there is an FCC land use designation in the comprehensive plan, and *then* there is the submittal of a project application for an FCC permit which is measured for compliance with subsections (1) and (2). However, the Act does not explicitly say that. The only use of the word “designation” in the preamble describes the urban growth areas provisions of RCW 36.70A.110. Is it a necessary implication of RCW 36.70A.350 that, prior to FCC permit approval, a threshold “FCC designation” is first required in the plan? Is such a threshold designation for FCCs a necessary implication of the Act? If the answer is yes, then is such an implied threshold designation subject only to the GMA’s procedural requirements, or is it also subject to the Act’s substantive provisions? A final and significant question is, what is the meaning of the phrase “fully contained”? [\[22\]](#)

These questions, unanswered by the explicit terms of .350 itself, create ambiguity in the statute. It is the Board’s obligation and responsibility to discern the meaning of ambiguous statutory provisions of the GMA. In so doing, it is essential to look to the context of legislative intent and how that legislative intent has been construed by the courts and the Board.

Although the Act does not explicitly state a requirement for a threshold designation as an FCC, I construe that it is necessarily implied by the structure of RCW 36.70A.350. As to the question of whether this threshold designation is subject to the Act’s substantive provisions, I again answer in the affirmative. I believe that this outcome is compelled by the statutory language requiring FCCs to be “fully contained” and the necessity to give effect to legislative intent.

Focusing on the question of the meaning of the phrase “fully contained,” both the County and Quadrant argue that the required “containment” is achieved by the action of adopting the language of subsection (1) of RCW 36.70A.350 as a local ordinance and adhering to the population accounting described in subsection (2). They argue that RCW 36.70A.350 does not mention locational criteria akin to RCW 36.70A.110. Quadrant Response, at 13; Transcript, at 57. While the parties agree that there are no explicit FCC locational criteria analogous to those found in the subsections of RCW 36.70A.110, FOTL argues that the Bear Creek island does not comply with the GMA because it cannot be “fully contained.” Transcript at 49-50.

The theory advanced by the County suggests that its up to a county to define the term “fully contained” as it sees fit and that compliance with the criteria of RCW 36.70A.350(1) and (2) constitutes, in effect, compliance with the Act. If this theory holds, the action designating an FCC could easily be shielded from any substantive state review. A county would simply adopt its own definition of “fully contained,” adopt verbatim the language of subsection (1), document that the population offsets discussed in subsection (2) have been made, and thereby grant itself sweeping license to designate FCCs of any size and number literally anywhere in the rural area. As discussed below, this cannot be the outcome contemplated by the Legislature.

Legislative Intent and the Anti-Sprawl Imperative of GMA

The first two goals of the Act are to direct urban growth to urban areas and to minimize the conversion of lands to low-density sprawl.^[23] These goals are to be achieved through the Act’s substantive requirements, beginning with the fundamental step that all lands are to be assigned one of three mutually exclusive land use designations: urban growth areas (designated pursuant to RCW 36.70A.110), resource lands (designated pursuant to RCW 36.70A.170 and conserved by regulations adopted pursuant to RCW 36.70A.060) and rural areas (designated and regulated pursuant to RCW 36.70A.070(5)).

In addition, the Act has made specific provision for three types of designations within rural areas, including Master Planned Resorts (**MPRs**) pursuant to RCW 36.70A.360 and .362, Fully Contained Communities (**FCCs**) pursuant to RCW 36.70A.350 and Limited Areas of More Intensive Rural Development (**LAMIRDs**) pursuant to RCW 36.70A.070(5). In construing the meaning of the statutory language of the 1997 GMA amendments that created the LAMIRD provisions, the Board summarized:

Since the GMA’s initial adoption ... one of its bedrock principles has been to direct urban development into urban areas and to protect the rural area from sprawl While the 1997 rural amendments made accommodation for “infill, development” of “existing” areas of “more intensive rural development,” such a pattern of such growth must be “minimized” and “contained” within a “logical outer boundary.” This cautionary language evidences a continuing legislative intent to protect rural areas from low-density sprawl.

Burrow v. Kitsap County, CPSGMHB Case No. 99-3-0018, Final Decision and Order (Mar. 29, 2000), at 18 (footnote omitted, emphasis added).

This strongly stated legislative intent of the GMA, to direct urban growth to urban growth areas and to protect the rural area and resource lands^[24] from sprawl, is one of the Act’s key imperatives.

When read together, RCW 36.70A.020(1) and (2), RCW 36.70A.070(5), RCW 36.70A.110, RCW 36.70A.350, RCW 36.70A.360 and RCW 36.70A.362 evidence a **strong legislative intent to protect rural and resource lands from sprawl**. This anti-sprawl imperative of the GMA is a central organizing concept that informs local governments, the boards and the courts when construing the Act's requirements. ^[25]

Legislative Intent requires FCCs to be “fully contained”

I agree with the majority that there are no locational criteria for FCCs analogous to those for UGAs designated pursuant to RCW 36.70A.110. However, the provisions of RCW 36.70A.350 (1) and (2) address conditions applicable to consideration of the FCC permit, rather than the threshold question of FCC designation. The Board has no authority to review a county's approval of an FCC application. ^[26] Its authority to substantively review an FCC for fidelity with the Act derives instead from the statutory language of RCW 36.70A.350(preamble). A petitioner must point to facts in the record to persuade the Board that the challenged FCC designation cannot be “fully contained.” Only if a petitioner can make this showing can the Board determine, “after a review of the entire record, in light of the goals and requirements of the Act, that the County has made a mistake” in interpreting and applying the provisions of RCW 36.70A.350.

Policy R-104, as adopted in 1994, ^[27] shows that the County appears to have grasped that FCCs would not be appropriate in all rural areas because it would not be possible to “fully contain” them in all cases. This policy also reflects the County's recognition that the ability to “fully contain” an FCC depends upon the size of the rural area and the degree of its integration with the metropolitan road network and UGA. As originally written, R-104 acknowledged that the facts in 1994 (i.e., the small rural area and its integration with the metropolitan road network) precluded the ability for FCCs in the County's rural area to achieve the “full containment” required by the Act. The 1994 version of R-104 comes very close to the mark of how to construe the statutory direction of RCW 36.70A.350(preamble). After essentially getting it right the first time, the County's error was in amending R-104 in 1996 to arbitrarily exempt the Bear Creek FCC (actually, the amendment lists Blakely Ridge and Northridge by name).

In my view, the correct statutory meaning of “fully contained” and how the FCC provisions of the GMA operate, are as follows.

The Fully Contained Communities provisions of RCW 36.70A.350 establish a two-step sequence: first, initial designation of an FCC in the comprehensive plan and second, adoption of development regulations and approval of FCC permits. The “fully contained” mandate of RCW 36.70A.350(preamble) requires counties, at the time of initial FCC designation, to consider and

adopt on the record findings about the facts and circumstances in the rural area that enable potential FCCs to protect surrounding rural and resource lands from sprawl. Included in the factors to be considered are: (1) the size of the rural area, (2) the immediate impacts on surrounding rural and resource lands, (3) the long-term service and infrastructure implications for the surrounding rural and resource lands, (4) the degree of integration of the roads serving the FCC with the regional road network and (5) the resulting relationship between the FCC and designated UGAs. After designation of an FCC pursuant to RCW 36.70A.350(preamble), the county adopts development regulations and issues an FCC permit subject to the requirements of RCW 36.70A.350(1) and (2) and any other locally adopted requirements.

The County now argues that R-104, as amended, ^[28] refers to the inability of the rural areas to contain any FCCs *other than the Bear Creek FCC*. This amended policy clearly seeks to exempt the Bear Creek FCC from the preclusive effect of this policy but what factors make the Bear Creek Island more appropriate for designation than “other” FCCs? More to the point, *what facts about the rural area around the Bear Creek FCC, or its relationship to the metropolitan road network and UGA, makes containment possible in this portion of the rural area, **but in no other**? Did the rural area’s size inexplicably increase or its integration with the road network decrease between 1994 (the adoption date of R-104) and 1996 (the amendment date of R-104)?* Significantly, the County does not differentiate between the rural area surrounding the Bear Creek FCC and any other rural areas of the County, such as those south of I-90 or those adjacent to the Pierce County line. ^[29] FOTL correctly points out that the County offers no facts or rationale to support the arbitrary decision to exempt the Bear Creek FCC from the broad sweep of this policy, namely, that the rural area itself is too small, and its road network too integrated with the metropolitan road network and UGA, to enable containment.

The inescapable facts, impervious to amendment by the County, are these. The Bear Creek urban island is four square miles in size, surrounded on all sides ^[30] by rural lands. It is two miles east of the Redmond city limits, which is also the eastern edge of the metropolitan urban growth area. The Bear Creek urban island is served by Novelty Hill Road, which connects to the west to Avondale Road in Redmond, thence south one mile to downtown Redmond and the eastern terminus of State Route 520, a high capacity, high speed freeway. Novelty Hill Road connects to county roads to the east and ultimately to SR 203 approximately 2.5 miles away on the east side of the Snoqualmie River Valley. Plainly, the Bear Creek island is “integrated with the metropolitan road network.” It is not necessary to trace the evolution and machinations of adopted County policy to reach this conclusion. Instead, all that is required is to review a scale map of the County. *See* “Transportation Service Areas Map,” Chapter 9, Plan. Far from being remote or isolated ^[31] from the metropolitan UGA and the metropolitan road network, the Bear Creek island is a four-minute drive from the former and a seven-minute drive from the latter. ^[32]

Another inescapable fact is that the Bear Creek island will have immediate and ongoing impacts on the surrounding rural area. Again, this conclusion does not depend upon adopted County policy for its source. A review of the record suffices. According to the County's own Hearing Examiner, development of this urban island would create a "devastating effect" on the quiet rural lifestyle and "severe" impacts to surrounding rural residential properties.^[33] The rural area to the west of the Bear Creek island includes the main tributary of Bear Creek, a salmon-bearing stream. The County has described this area in the Bear Creek Community Plan as too environmentally sensitive to be urbanized. To the east, between the Bear Creek island and SR 203, Novelty Hill Road and connecting county roads traverse both rural lands and County-designated agricultural resource lands in the Snoqualmie Valley. *See Agricultural Lands Map, Chapter 6, Natural Resource Lands, Plan.*

The development of this urban island would constitute leapfrog development of unprecedented proportions. I do not question the virtues of "clustered design"^[34] but the fact that the internal configuration of the challenged FCC will be clustered does not cure the fundamental problem that it cannot be contained.

I note that RCW 36.70A.350 is a statutory provision that also applies to counties outside the Central Puget Sound Region. As outlined above, determination of compliance with the provisions of RCW 36.70.350 is a fact-based inquiry. The unique facts in this case (i.e., the small size of King County's rural area, the integration of its rural and metropolitan road networks, and the resultant meshing, rather than separation, of the FCC from the economy and housing market of the metropolitan UGA) do not exist elsewhere in the state. The Central Puget Sound Region is unique. It is a metropolitan region, with four counties and eighty-two cities, containing over 56% of the state's population within less than 10% of its land area. This results in a regional density **twelve times** that of the rest of the state.^[35] It may be possible to locate an FCC in a much larger, less densely populated county, for example, in eastern Washington, where the rural area is large enough, and the rural road network and potential FCCs are sufficiently remote to practically achieve containment. Simply because the full containment required of an FCC is not practical in this fast-growing, densely populated metropolitan region does not rule it out in other parts of the state.

Conclusion

Designation of a huge unincorporated urban island that cannot be fully contained because it is inextricably linked to the metropolitan road network, and thereby the housing and employment markets of the metropolitan UGA, violates the anti-sprawl imperative of the Growth Management Act and thwarts legislative intent. It will immediately and perpetually impair rural lifestyles in the surrounding rural area, ignite real estate expectations and speculation about conversion of

those rural lands to urban designations,^[36] hasten future demand for urban level services and infrastructure in the rural area, and ultimately erode the long-term viability of rural resource lands, such as those in the Snoqualmie Valley, that depend upon viable long-term rural areas around them. It will be to the surrounding rural areas as a bonfire to a wheat field.

In my view, FOTL has pointed to facts in the record that persuade me that the challenged FCC designation cannot be “fully contained.” After a review of the entire record, and in light of the goals and requirements of the Act, I am left with the firm and definite conviction that the County has made a mistake in interpreting and applying the provisions of RCW 36.70A.350.^[37] Not only was the County’s action designating the Bear Creek FCC clearly erroneous, I believe that the continued validity of this designation will substantially interfere with the fulfillment of the goals set forth at RCW 36.70A.020(1), (2) and (6).

APPENDIX

Findings of Fact

1. King County designated the Bear Creek UGA in 1994.
2. Petitions challenging the County’s UGA designations were filed with this Board and consolidated into CPSGMHB Case No. 95-3-0008c.
3. The Board’s Final Decision and Order the Board affirmed the County’s designation of the Bear Creek island UGA because the King County County-wide Planning Policies directed the Bear Creek area designation as a UGA. FDO, at 41.
4. On reconsideration, the Board reversed its conclusion regarding the Bear Creek island UGA and remanded the issue to the County with instructions to rectify it. The Board’s Order on Reconsideration provided: “The Bear Creek island UGA is **remanded** to the County with instructions to either: (a) delete it; or (b) adopt it as a fully contained community [if] it meets the requirements of RCW 36.70A.350; or (c) justify it pursuant to the requirements of RCW 36.70A.110, and the rank order requirements for including lands in the UGA as set forth in the *Bremerton v. Kitsap County* decision, at 38-41. Order on Reconsideration, at 16.
5. The Board did not invalidate the County’s designation of the Bear Creek island as a UGA. Order on Reconsideration, at 16.
6. In response to the Board’s Order on Reconsideration the County took the following actions: (a) it did not delete the Bear Creek island UGA (Ex. 104, at 1); (b) it sought to justify its designation of the Bear Creek island UGA pursuant to RCW 36.70A.110 (Ex.

104, at 2-10); (c) it designated the Bear Creek island as an FCC pursuant to RCW 36.70A.350 (Ex. 104, at 1-2; Ex. 93 (Ordinance No. 12170); and Ex. 94 (Ordinance No. 12171)); and (d) it challenged the Board's Order in Superior Court (Ex. 104, at 2).

7. The Board found procedural compliance, but did not reach the question of substantive compliance. A new Petition for Review raised substantive compliance.
8. The King County Superior Court reversed the Order on Reconsideration and affirmed the Board's FDO.
9. In *Buckles v. King County*, CPSGMHB Case No. 96-3-0022, which followed the Superior Court decision, the substantive question was not reached due to the Superior Court decision.
10. The Court of Appeals, Division I, affirmed the Superior Court. *King County v. Central Puget Sound Growth Management Hearings Board*, 91 Wn. App. 1 (1998).
11. The Supreme Court reversed the Court of Appeals and remanded the case to the Board to determine whether the Bear Creek island UGA complied with RCW 36.70A.110 and/or whether the designation of the Bear Creek area as an FCC complied with RCW 36.70A.350. *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161 (1999).
12. The Bear Creek island is separate from, and noncontiguous to, the County's designated UGA in the western portion of King County.

[1] The Board has recently stated:

To suggest that the legislature has "expressly directed" the granting of "considerable" deference is wrong. The word "considerable" does not appear in the statute, nor was it used by the *Manke* Court . . . cited by [Kitsap] County in its brief. To characterize the degree of deference that attaches to the clearly erroneous standard codified in RCW 36.70A.320(3), the law simply uses the relative term "more" in reference to the earlier "preponderance of the evidence" standard of review.

Burrow v. Kitsap County, CPSGMHB Case No. 99-3-0018, Final Decision and Order (Mar. 29, 2000), at 5 (citations and footnote omitted).

[2] *E.g.*, compact urban development, preservation of open space, protection of the environment, concurrency, multimodal transportation and mixed use development. *See* RCW 36.70A.020 for the GMA's goals.

[3] *See* discussion of Issue No. 2, below.

[4] "Exceptions are made to the 1990 requirements regarding urban growth areas (UGAs). New Fully Contained Communities . . . are allowed outside UGAs if certain criteria are met Once approved, a new fully contained community becomes a separate urban growth area." 1991 Final Legislative Report, Fifty-Second Washington State

Legislature, ESHB 1025 (Ch. 32, Laws of 1991, 1st Ex. Sess.), at 5. The Board also recognized this UGA exception. *See Rural Residents v. Kitsap County*, CPSGPHB Case No. 93-3-0010, Final Decision and Order (Jun. 24, 1994), at 44 (“A reiteration of the Act’s exceptions is helpful in light of the definition of ‘characterized by urban growth.’ . . . six exceptions actually exist: First, UGAs can be adopted outside existing city limits if the detailed requirements for a new fully contained community are met. RCW 36.70A.350”); *see also, Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order (Oct. 9, 1995), at 38-41.

[5] Counties may supplement these criteria with additional requirements when designing their FCC review process.

[6] DCTED was directed by the Legislature to adopt rules “to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of this chapter.” RCW 36.70A.190(4)(b).

[7] Whether these one-acre lots are vested is disputed by the parties. However, the question of vesting is not relevant to the Board’s analysis.

[8] The status of the Bear Creek island UGA designation has been at issue since the Board’s Order on Reconsideration. From the date the County adopted its GMA Comprehensive Plan in 1994 until the date of *this Order*, the County’s designation of the Bear Creek island as a UGA has been valid. The Board’s Order on Reconsideration never *required* deletion of the UGA designation, nor was the UGA designation invalidated for causing substantial interference with the goals of the Act.

[9] The Board notes that the Bear Creek island was still also designated as UGA when this amendment was adopted.

[10] Note that nothing in RCW 36.70A.350 requires an FCC area to be identified, designated or physically located on a map at the time of Plan adoption. RCW 36.70A.350 speaks entirely of a review process.

[11] RCW 36.70A.350(1)(g) states: “Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas.”

[12] The County’s four-to-one program allows the addition of 1 acre to the UGA for each 4 acres dedicated as open space. *See Plan Policy I-204* (quoted in the FDO, at 43-44).

[13] The new FCC Plan Policies appear to be U-210, U-211 and U-212. They do not indicate that FCC’s shall be subject to the locational criteria contained in U-201.

[14] *See Order on Reconsideration*, at 4 for the text of CPP LU-26.

[15] Recall that the Board did not review the County’s application of the FCC permit review process to any particular proposal.

[16] The term “preamble” refers to the portion of a section that precedes the numbered subsections. Some of the most important mandates in the GMA appear in “preambles.” For example, the substantive requirement that comprehensive plans must be internally consistent appears at RCW 36.70A.070(preamble) which provides in part:

The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

[17] Herein, the term “metropolitan road network” refers to federal and state highways. State Route 520 is approximately 3.5 miles from the westerly edge of the Bear Creek Urban Island. State Route 203 is approximately 2.5 miles from its easterly edge. These distances are scaled from maps in the record, including the “Transportation Service Areas” Map, Chapter 9, Plan.

[18] The Bear Creek island is 2,586 acres (approximately four square miles) in size and includes the developments

called Blakely Ridge and Northridge (a/k/a Redmond Ridge). Northridge Final EIS, January 1996, portion, Index 2076.

[19] The Bear Creek island is larger than 35 percent (fourteen of the thirty nine) of the incorporated cities in the County. Washington State Data Book, Office of Financial Management, 1999 edition, “Population, Land Area, and Density for Cities and Towns, April 1, 1999.”

[20] Richard L. Settle, *Washington’s Growth Management Revolution Goes to Court*, Seattle University Law Review, Volume 23, No. 1 (1999), at 6.

[21] The Legislative Findings for the GMA are set forth at RCW 36.70A.010 which provides:

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

(Emphasis added.)

[22] While the County has supplied its own definition of “fully contained,” there is none in the statute. With all due respect to the County, in discharging its duty the Board is obliged to consider a broader context when discerning the meaning of statutory language.

[23] RCW 36.70A.020 provides in part:

- (1) Urban growth. Encourage economic development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

[24] Although resource lands designations are not at issue in the present case, it is important to note that resource lands (designated agricultural lands and forest lands) are typically adjacent to and frequently encompassed by rural lands. At a regional scale, rural lands serve to ‘buffer’ resource lands from land use conflicts with more intensive (i. e., urban) uses. Therefore, actions that undermine the viability of the rural area can also undermine the viability of adjacent resource lands.

[25] This Board has previously identified the negative consequences of sprawl and the Act’s many mechanisms to combat it. *See Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0008c, Final Decision and Order (Oct. 6, 1995), at 25-32. My use of the word “imperative” to describe the strong anti-sprawl intent of the Act is deliberate. It rises to the status of the “agricultural conservation imperative” that this Board construed from various other provisions of the GMA. *Green Valley, et al. v. King County*, CPSGMHB Case No. 98-3-0008c, Final Decision and Order, July 29, 1998, at 16, currently on review by the Washington State Supreme Court in *King County v. Central Puget Sound Growth Management Hearings Board*, Case No. 68284-4.

[26] The Board concurs with the parties that it has no jurisdiction over the FCC permit approval, because permits are beyond the scope established by the Legislature and the courts. *See* ch. 36.70B RCW; *and Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 868 (1997).

[27] R-104 reads as follows:

King County finds no need to establish new “fully contained communities” within the Rural Area, as provided for by the Growth Management Act.

Policy R-104 establishes that new “fully contained communities” should not occur within the Rural Area. The King County Rural Area’s land base is so small, and its road network and housing market are so *integrated into those of the metropolitan area* and its economy, that “containment” would not be possible.

(Bold emphasis in original. Underlined *bold italics* emphasis added.)

[28] R-104, as amended in 1996 provides:

Except for the Blakely Ridge and Northridge Fully Contained Community designations in Policy U-210, no new Fully Contained Communities are needed in King County.

(Emphasis added.)

[29] At the compliance hearing, the County was asked whether the term “rural area” in Policy R-104, as amended, applied to all of the rural area in the County, or if anywhere a distinction was made subdividing the rural area into smaller components. The County answered in the negative. Transcript, at 87-89.

[30] The sole exception is the City of Redmond watershed, which abuts the northwestern edge of the FCC. However, as noted above, this watershed does not constitute urban development nor provide a rationale for urbanization of the Bear Creek urban island as a UGA.

[31] At least one observer has commented on the presumed “isolated” nature of FCCs:

Isolated UGAs are authorized for “new fully contained communities” as a narrow exception to the general requirements that UGAs be contiguous to existing urban areas to preclude leapfrog development... .”

Richard L. Settle, *Washington’s Growth Management Revolution Goes to Court*, Seattle University Law Review, Volume 23, No. 1 (1999), at 13 (emphasis added).

[32] This assumes driving at a somewhat leisurely 30 miles per hour average on Novelty Hill Road. Applying simple math, the two mile drive to the Redmond city limits (a/k/a/ UGA boundary) will take about four minutes, while driving another one and a half miles via Avondale Road to SR 520 will add another three minutes. This of course assumes that future traffic from this urban island will not noticeably degrade travel times along Novelty Hill and Avondale Roads. Interestingly, the County’s Plan maps Novelty Hill Road, from Avondale to the Bear Creek FCC, as having “Arterial Capacity Needs.” Chapter 9, Plan. If significant traffic impacts on these local roads were to occur as a result of this FCC designation and subsequent development, resulting in longer travel times for these two and three and a half mile segments, it would further buttress the conclusion that the Bear Creek urban island is not, and cannot be, fully contained.

[33] FOTL PHB, Ex. 15 – (County Hearing Examiner’s Report, June 28, 1996), at 9.

[34] Clustered development is not a new concept, nor is it a panacea curing all manner of urban planning malaise. See *KCRP v. Kitsap County*, CPSGMHB Case No. 94-3-0005, Final Decision and Order (Oct. 25, 1994), at 18, fn. 15. The primary purpose of clustering, at whatever scale, is to configure and locate improvements on site in such as way as to enhance preservation of natural amenities. The primary beneficiaries of clustered development are those who live on site. Those who live off site will be recipients of off-site impacts, primarily traffic, regardless of whether the buildings generating those vehicle trips are clustered or not. In this case, the 3,750 dwelling units planned for clustered developments in this FCC will have traffic impacts indistinguishable in scale from that of a “non-clustered” project of similar unit count.

[35] *Bremerton, et al. v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order (Oct. 9, 1995),

at 29, fn. 12.

[36] Designation of this FCC, and its ultimately build-out, will create the factual precedent necessary to enable the County to re-designate rural land around the perimeter of the Bear Creek urban island to an urban designation by virtue of being “adjacent to territory already characterized by urban growth.” RCW 36.70A.110(1).

[37] RCW 36.70A.350 is not the only violation I see with the County’s FCC action. For example, I also believe that the County’s action fails to comply with RCW 36.70A.070(preamble) because it creates internal inconsistency. However, because the most fundamental violation is a statutory one, I have focused herein on the latter.