

**CENTRAL PUGET SOUND**

**GROWTH MANAGEMENT HEARINGS BOARD**

STATE OF WASHINGTON

VASHON-MAURY, et al., )  
 )  
 Petitioners, )  
 )  
 and )  
 )  
 UNION HILL WATER ASSOCIATION, )  
 )  
 Intervenor, )  
 )  
 v. )  
 )  
 KING COUNTY, )  
 )  
 Respondent, )  
 )  
 and )  
 )  
 PORT BLAKELY TREE FARMS, et al., )  
 )  
 Intervenor. )  
 )

**Consolidated  
Case No. 95-3-0008**

**FINAL DECISION AND ORDER**

**TABLE OF CONTENTS**

**I. PROCEDURAL HISTORY.....**

**II. RULINGS ON MOTIONS AND OBJECTIONS.....**

**III. FINDINGS OF FACT.....**

**A. GENERAL FINDINGS OF FACT.....**

    1. 1995 LEGISLATIVE ACTION.....

    2. PLAN ORDINANCES.....

- 3.IMPLEMENTING REGULATIONS ORDINANCES.....
  - a)Specific Implementing Regulations Ordinance Provisions.....
  - b)Public Involvement.....

**B.SPECIFIC FINDINGS OF FACT.....**

**IV.DISCUSSION OF SPECIFIC LEGAL ISSUES AND CONCLUSIONS.....**

**A.URBAN GROWTH AREA ISSUES.....**

1.OFM POPULATION PROJECTIONS.....

UGA Conclusion No. 1.....

2.USE OF TECHNICAL APPENDIX D.....

UGA Conclusion No. 2.....

3.CONVERSION TO NET NEW HOUSEHOLDS.....

UGA Conclusion No. 3.....

4.MARKET FACTOR.....

UGA Conclusion No. 4.....

POLICY U-210 AND UGA DESIGNATIONS GENERALLY.....

5.EAST SAMMAMISH PLATEAU.....

UGA Conclusion No. 5.....

6.RURAL CITIES.....

UGA Conclusion No. 6.....

7.BEAR CREEK PLANNED DEVELOPMENTS.....

UGA Conclusion No. 7.....

Board Member Tovar’s Dissent.....

8.FOUR-TO-ONE PROGRAM.....

UGA Conclusion No. 8.....

**B.CAPITAL FACILITIES:WATER SUPPLY ISSUES.....**

Conclusion.....

**C.FOREST LAND ISSUES.....**

**D.PLAN OR ZONING CODE AMENDMENTS ISSUES.....**

1.DUWAMISH LEGAL ISSUE NO. 3.....

Discussion.....

2.KEESLING LEGAL ISSUE NO. 5.....

Discussion.....

3.O’FARRELL II LEGAL ISSUE NO. 1.....

Discussion.....

4.TOLT LEGAL ISSUE NO. 7.....

Discussion.....

Conclusions Re: Zoning Amendments Raised inKeesling Legal Issue No. 5 and Plan Amendments Raised inLegal Issues Duwamish No. 3, O’Farrell II No. 1 and Tolt No. 7.....

**Finding of Fact, Reasons for Invalidity,Conclusions of Law and Determination of**

**Invalidity Regarding Plan Amendments 89, 90 and 101 and Zoning Amendments 81 and 81A.....**

- a. Findings of Fact.....
- b. Reasons for Invalidity.....
  - Planning Goal 6.....
  - Planning Goal 11.....
- c. Conclusions of Law.....

**E. PERMITTED USES IN THE RURAL AREA.....**

- 1. FOTL IV LEGAL ISSUE NO. 1.....
  - Discussion.....
  - FOTL IV Conclusion No. 1.....
- 2. CARKEEK LEGAL ISSUE NO. 2.....
  - Discussion.....
  - Carkeek Conclusion No. 2.....

**F. VASHON-MAURY LEGAL ISSUES.....**

- 1. VASHON-MAURY LEGAL ISSUE NO. 1.....
  - Discussion.....
  - Vashon-Maury Conclusion No. 1.....
- 2. VASHON-MAURY LEGAL ISSUE NO. 2.....
  - Vashon-Maury Discussion and Conclusion No. 2.....
- 3. VASHON-MAURY LEGAL ISSUE NO. 3.....
  - Discussion.....
  - Vashon-Maury Conclusion No. 3.....
- 4. VASHON-MAURY LEGAL ISSUE NO. 4.....
  - Discussion.....
  - Vashon-Maury Conclusion No. 4.....
- 5. VASHON-MAURY LEGAL ISSUE NO. 5.....
  - Vashon-Maury Discussion and Conclusion No. 5.....

**G. O'FARRELL I LEGAL ISSUES.....**

- 1. O'FARRELL I LEGAL ISSUE NO. 1.....
- 2. O'FARRELL I LEGAL ISSUE NO. 2.....
  - Discussion.....
  - O'Farrell I Conclusion No. 1 and 2.....
- 3. FOTL IV LEGAL ISSUE NO. 5.....
  - FOTL IV Discussion and Conclusion No. 5.....

**H. OTHER KEESLING LEGAL ISSUES.....**

- 1. KEESLING LEGAL ISSUE NO. 1.....
  - Discussion.....
  - Keesling Conclusion No. 1.....
- 2. KEESLING LEGAL ISSUE NO. 2.....

Discussion.....	
Keesling Conclusion No. 2.....	
3.KEESLING LEGAL ISSUE NO. 3.....	
Discussion.....	
Keesling Conclusion No. 3.....	
4.KEESLING LEGAL ISSUE NO. 4.....	
Discussion.....	
Keesling Conclusion No. 4.....	
5.KEESLING LEGAL ISSUE NO. 5.....	
Discussion.....	
Keesling Conclusion No. 5.....	
6.KEESLING LEGAL ISSUE NO. 6.....	
Discussion.....	
Keesling Conclusion No. 6.....	
7.KEESLING LEGAL ISSUE NO. 7.....	
Discussion.....	
Keesling Conclusion No. 7.....	
8.KEESLING LEGAL ISSUE NO. 8.....	
Discussion.....	
Keesling Conclusion No. 8.....	
9.KEESLING LEGAL ISSUE NO. 9.....	
Discussion.....	
Keesling Conclusion No. 9.....	
10.KEESLING LEGAL ISSUE NO. 11.....	
Discussion.....	
Keesling Conclusion No. 11.....	
11.KEESLING LEGAL ISSUE NO. 12.....	
Discussion.....	
Keesling Conclusion No. 12.....	
12.KEESLING LEGAL ISSUE NO. 15.....	
Discussion.....	
Keesling Conclusion No. 15.....	
13.KEESLING LEGAL ISSUE NO. 16.....	
Discussion.....	
Keesling Conclusion No. 16.....	
14.KEESLING LEGAL ISSUE NO. 17.....	
Discussion.....	
Keesling Conclusion No. 17.....	
15.KEESLING LEGAL ISSUE NO. 18.....	
Discussion.....	

**VI. ORDER.....**

**I. PROCEDURAL HISTORY**

On December 6, 1994, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from Friends of the Law (**FOTL**). This was the third appeal filed by FOTL in 1994. To distinguish this case from the prior two (CPSGMHB Case Nos. 94-3-0003 and 94-3-0009), this case was named “**FOTL III**”. FOTL III challenged King County's (the **County**) adoption on November 18, 1994 of its Final Urban Growth Area (**FUGA**) and 1994 comprehensive plan (the **Plan**) as not complying with the Growth Management Act (**GMA** or the **Act**).

On January 6, 1995, the Board entered an “Order Granting Intervention to Port Blakely Tree Farms and Quadrant Corporation and Prehearing Order.”

On January 27, 1995, the Board entered an “Order of Consolidation and Notice of Hearing” (the **Order of Consolidation**) in the case *Vashon-Maury, et al., v. King County*, CPSGMHB Case No. 95-3-0008. The **Order of Consolidation** combined nine petitions for review which challenged the adoption by the County of its Plan and implementing development regulations pursuant to the requirements of the GMA. Among the nine petitions were the FOTL III petition cited above and petitions from the Vashon-Maury Island Community Council and Citizens for Rural Oriented Government (**Vashon-Maury**); the Duwamish Valley Neighborhood Coalition (**Duwamish**); Paul P. Carkeek (**Carkeek**); Maxine Keesling (**Keesling**); the Tolt Community Club (**Tolt**); two petitions filed by Mary O'Farrell (**O'Farrell I** and **O'Farrell II**); and another petition for review from FOTL, which was named “**FOTL IV**”. The Order of Consolidation noted that Port Blakely Tree Farms (**Port Blakely**) and the Quadrant Corporation (**Quadrant**), both of which had been granted Intervenor status in the FOTL III case, would retain that status in this consolidated matter. It also noted that the due date for the Board's Final Decision and Order would be July 24, 1995, which was 180 days after the filing of the last petition for review.

On February 23, 1995, the Board entered an “Order Establishing Hearing on Motions for Intervention and Amicus.” This Order established that the Motions for Intervention and Amicus received from the City of Snoqualmie (**Snoqualmie**), the King County School Coalition (the **School Coalition**) and the Union Hill Water Association (**Union Hill**) would be heard at the prehearing conference.

On February 27 and 28, 1995, the Board conducted a prehearing conference at the Bellevue Regional Library, at which time a hearing was held on the motions to intervene. All motions to intervene were orally granted by the presiding officer, while Snoqualmie's motion for amicus was denied. Subsequently, Snoqualmie presented a motion for intervention, which was orally granted. The legal issues in the case were reviewed and a schedule for briefing and the filing of exhibits and motions was discussed.

On March 1, 1995, the Board entered a “Continuation of Prehearing Conference” attached to

which was a “Notice of Withdrawal” of Board member Chris Smith Towne from the Keesling Case. On this same date, the Board received a letter from the County which identified the final ordinance numbers for amendments to the County's zoning map and comprehensive plan. The prehearing conference continued telephonically on March 3, 1995 and was concluded on that date.

On March 6, 1995, the Board entered a “Prehearing Order and Order Granting Enlarged Intervention to Port Blakely Tree Farms and Quadrant Corporation, and Granting Intervention to King County Schools Coalition, Preston Industrial Associates, City of Snoqualmie and Union Hill Water Association” (the **Prehearing Order**). The Prehearing Order set forth the legal issues in this consolidated case, identified which intervenors would be permitted to address which legal issues and established a schedule for the submittal of additional motions to intervene, preliminary and optional stipulated exhibit lists, motions to supplement the record, exhibits and briefs. The Prehearing Order also clarified the mechanics and conditions under which Board Member Towne's withdrawal could be remitted.

On March 29, 1995, the Board entered an “Order Granting Enlarged Intervention to King County School Coalition and Limited Intervention to FOTL in Keesling Issue 5 and Denying Keesling's Motion to Add New Issue.”

On April 21, 1995, the Board entered an “Order on Motions to: Supplement the Record: Remit Withdrawal of Board Member from the Keesling Case; Amend Carkeek Legal Issue No. 2 and Extend the Due Date for Prehearing Briefs by Tolt and Carkeek.”

On May 25, 1995, the Board entered an “Order Granting Motion for Amicus Status by the Washington State School Directors’ Association and Amending Due Date for Amicus Brief (the **WSSDA Amicus Order**).” The WSSDA Amicus Order granted amicus status to the Washington State School Directors Association (**WSSDA**) and limited its participation to the submittal of a prehearing brief on FOTL IV legal issue #2 by June 23, 1995.

On June 16, 1995, the Board entered an “Order Granting Motion for Amicus Status for the K-2 Corporation.”

On June 26, 1995, the Board received “FOTL’s and BCCGM’s Motion Requesting a Two-Part Order from the Board following the Hearing on the Merits” (the **Motion for a Two-Part Order**).

On July 12, 1995, the Board received “Stipulated Partial Exhibit List”; “Addendum 1 to Stipulated Partial Exhibit List” and “Addendum 2 to Stipulated Partial Exhibit List.” On this same date, the Board received a letter from the County requesting that, at the hearing on the merits, FOTL speak immediately following Keesling rather than after the County’s response.

On July 18, 1995, the received “King County School Coalition Response to FOTL’s Motion to Strike Argument in Brief” and “Motion of the Washington State School Directors’ Association to Amend Order Granting Amicus Status” (**WSSDA’s Motion to Amend**).

On July 19, 20 and 21, the Board held the Hearing on the Merits at Kirkland City Hall. Present were Board members M. Peter Philley, Chris Smith Towne, and Joseph W. Tovar, presiding officer. Court reporting services were provided on July 19 and 20 by Cynthia J. LaRose of Robert H. Lewis & Associates, and on July 21 by Nancy A. Poppe of Robert H. Lewis & Associates.

The July 19 hearing began with several preliminary matters. The first case argued was FOTL III. Joseph Elfelt represented FOTL III, Charles Maduell represented the County, Pat Anderson represented Snoqualmie, and Richard Wilson represented Port Blakely and Quadrant. The next matter was the Keesling case. Appearing were Maxine Keesling, Joseph Elfelt on behalf of FOTL as intervenor in Keesling Legal Issue No. 5, Charles Maduell for the County, and Katherine Laird for Port Blakely.

On July 20, 1995, the continued hearing began with argument on the FOTL IV case. Appearing were Joseph Elfelt for FOTL IV, Kevin Wright for the County, Katherine Laird for Port Blakely and Quadrant, and Eric Laschever and Grace Yuan for the School Coalition. As a preliminary matter, the presiding officer acknowledged in FOTL IV's Reply Brief a Motion to Strike (**FOTL's Motion to Strike**) the "Prehearing Brief of Amicus Curiae Washington State School Directors' Association" and its attached "Declaration of Lorraine L. Wilson in support of Motion for Amicus Status and Leave to File Amicus Brief." The presiding officer orally denied FOTL's Motion to Strike and orally granted WSSDA's Motion to Amend. During the School Coalition's argument, Mr. Laschever submitted a photocopy of a portion of an appellate court decision *Boise Cascade v. Toxics Coalition*, 68 Wn. Ap. 447, 843 P.2d 1092 and a copy of the first page of Chapter 180-26 WAC entitled "State Assistance in Providing School Plant Facilities - Educational Specifications and Site Selection." The next matter was the O'Farrell I case.

Appearing were Mary O'Farrell, Jeff Eustis for Union Hill Water District, Kevin Wright for the County and Sarah Mack for Port Blakely and Quadrant. The next matter was the Vashon-Maury case. Appearing were David Vogel for Vashon-Maury and Kevin Wright for the County.

On July 21, 1995, the continued hearing began with argument on the O'Farrell II case. Appearing were Mary O'Farrell and Robert Rosenberger on behalf of O'Farrell II and Kevin Wright for the County. The next matter was the Tolt case. Appearing were Steve Hallstrom for Tolt, David Allnut for the County, and Pat Anderson for Snoqualmie. The next matter was the Carkeek case.

Appearing were David A. Bricklin for Carkeek, Kevin Wright for the County and Allan Wallace for Preston Industrial Associates. During his argument, Mr. Bricklin submitted to the Board pages from the Preston Industrial Park Expansion Final Environmental Impact Statement (**EIS**), including Figure 31 entitled "Trip Distribution - Proposal", pages 3-138 and 3-142 which discuss traffic distribution, and figure 33, which is a site map of the site entitled "Pedestrian Routes." Mr. Bricklin also used for illustrative purposes a color aerial oblique photograph labeled "Photo taken approximately 1993" and which depicts the Preston Industrial Park, the Preston townsite and Interstate 90. During his argument, Mr. Wallace submitted to the Board two perspective sketches entitled "Conceptual Sketch 2 - Parcel B" and "Conceptual Sketch 3 - Parcel C" and a building elevation sketch entitled "Preston Industrial Park CC&Rs Exhibit "D". The next matter was the Duwamish case. Appearing were Tim O'Brian for Duwamish and David Allnut for the County. During his argument, Mr. O'Brian handed in a document entitled "A Chronology of the Significant Events Leading to King County's Adoption of Amendment 89 to the 1994 Comprehensive Plan." At the close of the hearing, the presiding officer thanked the parties for their patience and courtesy, and indicated that the Board would subsequently rule on the Motion

for a Two-Part Order.

On July 21, 1995, the Board received “King County’s Response to FOTL and BCCGM’s Motion Requesting a Two-Part Order”; on July 24, 1995, the Board received from Port Blakely “The Transportation Concurrency Certificates for the Blakely Ridge and Northridge Projects” and color maps captioned “Service and Finance Strategy”; and “Tolt Community Club Response to FOTL’s Motion Requesting Two-Part Order.” On July 27, 1995, the Board received “King County’s Objections to Petitioner Duwamish Valley Neighborhood Coalition’s Reliance on Evidence Outside the Record” (the **County Objection**). The County Objection cited three exhibits attached to the Duwamish Prehearing Brief and 22 exhibits attached to the Duwamish Reply Brief, and argued that these items are not properly before the Board. The County Objection also stated an objection to a document handed in by Duwamish at the hearing on the merits entitled “Chronology of Significant Events Leading to King County’s Adoption of Amendment 89.” (**Duwamish’s Chronology Document**). On August 1, 1995, the Board received “Petitioner Duwamish Valley Neighborhood Preservation Coalition’s Rebuttal to King County’s Objections to Evidence Offered.”

On September 15, 1995, the Board received from Duwamish a letter transmitting the map that was used by Mr. O’Brian as an illustrative exhibit at the hearing on the merits. The map is a spliced set of assessor’s maps of the South Park area with the notations “Orange = residential” and an area colored pink with the notation “triangle of proposed industrial rezone from residential - .9 acres.”

## **ii. rulings on motions and objections**

WSSDA’s Motion to Amend is **granted**. FOTL’s Motion to Strike and Motion for a Two Part Order are **denied**. The County Objection is noted and the Board will exclude from its consideration the Duwamish exhibits to which the County has objected. As to Duwamish’s Chronology Document, the Board will exclude from its consideration any editorial comments.

## **iii. FINDINGS OF FACT**

### **a. General FINDINGS OF FACT**

#### **1. 1995 LEGISLATIVE ACTION**

1. The Washington State Senate and House of Representatives passed Engrossed Substitute House Bill 5876 (**ESHB 5876**) on March 15, 1995, and April 13, 1995, respectively. This bill was approved by the Governor on April 27, 1995. ESHB 5876 amended the GMA concerning Population Determinations and Projections by the Office of Financial Management (**OFM**).

2. The Washington State Senate and House of Representatives passed Engrossed Substitute House Bill 1724 (**ESHB 1724**) on April 11, 1995, and April 23, 1995, respectively. With the exception of Sections 103, 302, and 903, this bill was approved by the Governor on May 15, 1995. ESHB 1724 amended several statutes, including the GMA, in a variety of sections.

3. The Washington State Senate and House of Representatives passed Engrossed House Bill 1305 (**EHB 1305**) on April 14, 1995, and April 20, 1995, respectively. With the exception of Section 5, this bill was approved by the Governor on May 16, 1995. EHB 1305 amended several sections of the GMA, including RCW 36.70A.110 concerning Urban Growth Areas and RCW 36.70A.070(5) concerning the rural element of county comprehensive plans.

4. The Washington State Senate and House of Representatives passed Engrossed Senate Bill 5019 (**ESB 5019**). With the exception of Section 2, the bill was approved by the Governor on May 1, 1995. ESB 5019 amended the GMA by creating a process to site major industrial development outside UGAs.

## 2. PLAN ORDINANCES

1. The Metropolitan King County Council (the **Council**) enacted Ordinance 10405, adopting the Phase I County-wide Planning Policies (**CPPs**), on July 6, 1992. Stipulated Exhibit (**St. Ex.**) 7.

2. The Council enacted Ordinance 10450, adopting Phase I CPPs, on July 6, 1992. St. Ex. 7.

3. The Council enacted Ordinance 11446, adopting the Phase II CPPs, on August 18, 1994. St. Ex. 8.

4. The Council enacted Ordinance 11575, adopting the Plan on November 18, 1994. St. Ex. 51.

5. The Council enacted Ordinance 11653, adopting Area Zoning, on January 9, 1995. St. Ex. 20.

6. The Council enacted Ordinance 11481, adopting aquifer protection measures, on September 12, 1994. St. Ex. 52.

## 3. IMPLEMENTING REGULATIONS ORDINANCES

On December 19, 1994, the County Executive transmitted a proposed Zoning Atlas to the Council. St. Ex. 24.

The Council adopted a series of ordinances to implement the Plan on December 19, 1994. This group of documents are referred to as **the Implementing Regulations Ordinances**. They consist of eleven ordinances that adopt, amend or add titles to the King County Code (**KCC**) “ ... to be consistent with and implement the comprehensive plan as required by the Washington State Growth Management Act; ...” Each ordinance adopts and amends one or more KCC Titles, as follows:

Ordinance No. 11615, Title 9, Surface Water Management.

Ordinance No. 11616, Title 13, Sewer and Water Utilities.

Ordinance No. 11617, Title 14, Transportation.

Ordinance No. 11618, Title 16, Clearing and Grading.

Ordinance No. 11619, Title 19, Subdivision of Land.

Ordinance No. 11620, Title 20, Comprehensive Planning and Zoning.

Ordinance No. 11621, Title 21A, Zoning.

Ordinance No. 11622, Titles 7, 16, 19, 21A, 23 and 25;

Ordinance No. 11623, Titles 14 and 27, Development Permit Fees,

Ordinance No. 11624, Titles 8 and 9, Water Quality,

Ordinance No. 11625, Title 17, Fire Code,

Of particular importance to this case is Ordinance 11653, adopted on January 9, 1995. It adopted zoning, zoning maps and development conditions to implement the Plan (**Ordinance 11653**). Ordinance 11653 was based on the County Executive's proposed Ordinance No. 94-737. St. Ex. 20.

The legislative finding for Ordinance 11653 states that:

The changes to the area zoning maps and text are required to bring this Title into compliance with the 1994 Comprehensive Plan and to fully implement Title 21A. KCC. St. Ex. 20, at 2.

Ordinance 11653, at section 1, states that it was adopted "as a development regulation to be consistent with and implement the comprehensive plan in accordance with RCW 36.70A.120." St. Ex. 20, at 2.

#### **a) Specific Implementing Regulations Ordinance Provisions**

Ordinance 11621, one of the series of Implementing Regulations Ordinances discussed above, modified Title 21A, the County Zoning Code. Among the sections amended was 21A.38.030, which sets forth the nature, purpose of, and limitations on, P-Suffix development standards. St. Ex. 15.

KCC Chapter 21A.04, Zones, Maps and Designations, establishes map symbols for each of 16 zoning designations at KCC 21.A.04.010. St. Ex. 15.

KCC 21A.12.030(B) establishes development conditions for residential zones, including a requirement that residences have a setback of at least 100 feet from any property line adjoining A, M or F zones or existing extractive operations. St. Ex. 15.

## **b) Public Involvement**

The public involvement process for adoption of the Implementing Regulations was a continuation of the process used for adoption of the Phase I and Phase II County-wide Planning Policies (CPPs), including the SEPA process and each proposal. The process utilized a 500-member stakeholders' group; media relations campaign; use of libraries; a telephone hotline; mailing to resident; forums, meetings, and hearings; open houses; interpretive displays; speakers' bureaus; and provision of informational material. See Keesling County Brief, citing Ex. 5, 2, 15, 35, 34, 2, 20, 19, 18, 12, 28, 27, St. Ex. 2 at App. L., 62, 65, 67, 68. 44. 31. 66. 91. 90, 61, 75, 72, 83, 74, 80, 78, 76, 79.

## **B. specific FINDINGS OF FACT**

Findings of Fact with application to specific issues are cited below under the respective discussion headings.

### **iv. DISCUSSION OF SPECIFIC LEGAL ISSUES AND CONCLUSIONS**

Six pages of the Board's Prehearing Order list the 64 legal issues to be determined in this case. In order to save space, the Board incorporates by reference the Prehearing Order's recitation of the legal issues, and will not repeat them in the text of this document. Where a number of legal issues are answered by one or a group of related Board discussions and holdings, they are referenced by a footnote in the relevant discussion headings.

#### **A. URBAN GROWTH AREA ISSUES**

##### **1. OFM POPULATION PROJECTIONS**

RCW 36.70A.110(2) states:

Based upon the growth management population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period....

In *Association of Rural Residents v. Kitsap County (Rural Residents)*, CPSGPHB Case No. 93-3-0010, Final Decision and Order (June 3, 1994), the Board first held that, when determining the population component of UGAs, counties must use only OFM's population projections. Counties cannot add to nor deduct from OFM's projections. These projections are both a floor and a ceiling. *Rural Residents*, Final Decision and Order, at 33-34, and Order Denying Kitsap County's Petition for Reconsideration, at 2-3; see also *Tacoma, et al., v. Pierce County*, CPSGMHB Consolidated Case No. 94-3-0001, Final Decision and Order (1994), at 25. The 1995 legislative amendments that require OFM to prepare a range rather than a single population projection did not change this

holding, but simply moved the ceiling. *Bremerton v. Kitsap*, CPSGMHB Consolidated Case No. 95-3-0039 (*Bremerton*), Final Decision and Order (October 6, 1995), at 52 and 54.

The question in this case is whether the UGAs designated in the County's Plan were based upon OFM's projections, not whether earlier UGA drafts were. A summary of the County's and OFM's projections are provided here.

	King County	
<u>Year</u>	<u>Population/Plan</u> <sup>[1]</sup>	<u>Population/OFM</u> <sup>[1]</sup>
2012	1,857,000	1,857,618
1992	1,564,500	1,564,486 <sup>[1]</sup>
Increase	292,500	293,132

Policy U-201 provides in part that:

The Urban Growth Area designations shown on the official Land Use Map include enough land to provide the capacity to accommodate growth expected over the period 1992-2012.... Plan, at 27.<sup>[1]</sup>

Consequently, the Plan was based upon OFM's population projections for the year 2012. **The Board holds that the UGAs included in the comprehensive plan adopted by King County were based upon OFM's projections for the year 2012. Therefore, the County has not violated the requirement of RCW 36.70A.110(2) to base UGAs upon OFM's projections.**

#### UGA Conclusion No. 1

The Board concludes that the urban growth areas designated in the King County Comprehensive Plan 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.

#### **2. USE OF TECHNICAL APPENDIX D<sup>[1]</sup>**

FOTL contends that the County Council not only failed to incorporate by reference Technical Appendix D into the Plan, but also failed to consider the information in it.

On November 18, 1994, the King County Council passed King County Ordinance No. 11575 which adopts the King County Comprehensive Plan in accordance with the GMA. The Plan itself is contained in one bound volume. Two additional volumes of "Technical Appendices" complete the Plan package. All three documents are bound with the same cover page. Technical Appendices Volume 1 was "attached" to Ordinance No. 11575. Stip. Ex. 51, at 4.

The Plan, at 15, states the following about the Technical Appendices (emphasis added):

Integral to the vision and goals of the Comprehensive Plan are the detailed inventories, forecasts, finance plans and Urban Growth Area analysis required by the Growth Management Act. Three technical appendices (Volume I) are adopted by reference as part of the plan to implement these Growth Management Act requirements (RCW 36.70A.070, 36.70A.110):

Volume I

Technical Appendix A. Facilities and Services

Technical Appendix B. Housing

Technical Appendix C. Transportation

Additional important information also supports the plan vision and goals. Nine technical appendices (Volume II) have been prepared to provide supporting documentation to the plan and are available to the public:

Volume II

Technical Appendix D. Growth Targets and the Urban

Growth Area

...

The Table of Contents page of Volume 1 of the Technical Appendices states:

The following Technical Appendices have been adopted by reference in the 1994 King County Comprehensive Plan. These appendices implement requirements of the Growth Management Act, RCW 36.70A.070 and RCW 36.70A.110.

In contrast, the introductory Table of Contents page of Volume 2 of the Technical Appendices, which contains Appendix D, states:

The following Technical Appendices are supporting documentation to the 1994 King County Comprehensive Plan. They provide important background information supporting policies of the Comprehensive Plan.

Technical Appendix D itself is undated. However, Table 1 within it is dated November 18, 1994.

Plan, Technical Appendix D, at D-17.<sup>[1]</sup> The Abstract to Technical Appendix D states:

This appendix provides an analysis of the size and location of the King County Urban Growth Area (UGA). The appendix discusses the factors that determined the drawing of the UGA to accommodate population growth by 2012 pursuant to the state Growth Management Act (GMA). The relevant information for this study came from reports of the various technical committees assigned to provide data for the UGA, the Countywide Planning Policies, the Environmental Impact Statements of the Countywide Planning Policies and the King County Comprehensive Plan, recent Community Plans, and a review of the work of other jurisdictions developing similar policies throughout the country. Plan, Technical Appendix D, at D-1.

In *Rural Residents*, the Board first held that counties must “show their work” when designating UGAs:

...Accordingly, counties must specify how many acres (or some other common measurement of land) are within a UGA so that, in the event of an appeal, the Board can determine whether the selected UGA is indeed “sufficient.” In undertaking this requirement, counties must distinguish between gross acres and net (or buildable) acres. For instance, undevelopable critical areas, open spaces, rights of way, etc. should be deducted from the gross acreage. See also WAC 365-195-335(3). Counties have great deal of discretion in how

they achieve this requirement. The Board only demands that counties “show their work” so that both the general public and the Board (if a UGA is appealed) know how the county derived its UGAs and established the appropriate densities. *Rural Residents*, at 35. (Emphasis added.)

In another IUGA case, the Board held:

Finally, when counties formally adopt their UGAs, they must document that final action to show how it complies with the requirements and goals of the Act. Counties cannot rely on prior documentation for proposed UGAs if the adopted UGAs substantially vary from the earlier proposal. *Tacoma*, at 12. See also *Tacoma*, at 13,<sup>[1]</sup> and at 19.<sup>[1]</sup>

Clearly, Technical Appendix D was not incorporated by reference into the Plan even though Technical Appendices A through C were. However, the introductory paragraph in the Plan (at 15) that discusses the technical appendices states that “... Urban Growth Area analysis required by the Growth Management Act” is “integral” to the Plan. This statement not only acknowledges a legal reality but leads one to expect that Technical Appendix D (dealing with UGAs) will be listed within those appendices found in Volume 1.<sup>[1]</sup>

Given the fact that Technical Appendix D was not incorporated by reference into the Plan, the question that remains is whether the County was required to so act. **The Board holds that cities and counties are not required to incorporate by reference in their adopted comprehensive plans documents prepared pursuant to SEPA [the State Environmental Policy Act] nor must documentation supporting adopted county-wide planning policies be so incorporated into comprehensive plans.** The Board’s admonition to jurisdictions to “show their work” can be accomplished in many ways. The key is that it is done somewhere in the record. Technical Appendix D accomplished this, coupled with the CPPs and SEPA analysis for the CPPs and the Plan. Ideally, the Board would prefer to see the land use capacity analysis for designated UGAs in the comprehensive plan itself in order to provide “one-stop reading” to all readers. However, this is not mandatory. How a jurisdiction elects to show its work remains in its discretion. Importantly, if a jurisdiction fails to show its work, its UGAs will be remanded. Likewise, even if a jurisdiction “hides” its work in a myriad of documents, potential petitioners remain protected since they can bring an appeal to this Board if they were unable to ascertain a jurisdiction’s analysis.

**The Board holds that the record need not prove that a legislative body has considered the land use capacity analysis performed by staff regarding designated UGAs.** This holding is consistent with prior decisions where the Board has held that it will not attempt to determine what individual elected officials have or have not considered. Under the GMA, legislative actions are presumed valid. RCW 36.70A.320. Because this presumption can be overturned, a heavy responsibility rests with staff to ensure that the analysis conducted supports the legislative policy decisions made by elected officials. Moreover, if a policy decision is made that cannot be substantiated by sound land use capacity analysis, staff has the duty to so notify the legislative body that created the policy.

The County was not required to incorporate Technical Appendix D into its Plan nor must the record prove that members of the County Council actually considered that document.

### **3. CONVERSION TO NET NEW HOUSEHOLDS**

As prior Board decisions indicate, the Board expects local jurisdictions to conduct land use capacity analysis in the process of designating UGAs. Integral to this analysis is a review of available acreage in order to meet the Act’s requirement for UGAs to “include areas and densities sufficient to permit urban growth” RCW 36.70A.110(2). However, the Plan’s analysis and Technical Appendix D deal with sizes and numbers of households rather than acres. This was done pursuant to King County CPPs LU-51 and LU-52 which require jurisdictions to target projected growth in dwelling units. Stip. Ex. 7, at 25.<sup>[1]</sup> FOTL argues that the County violated the GMA by converting OFM’s population projections into household amounts.

The Plan’s household analysis is discussed immediately below. The Board has reviewed the record and discovered numerous documents that contain acreage information on which the Plan’s household information was based.<sup>[1]</sup>

The Plan reviews the average household sizes in King County in 1980 and 1990 and contains Puget Sound Regional Council estimates for the years 2000 and 2010. According to these forecasts, by the year 2010, average household size for King County will be 2.2 persons per household, a decrease from the 2.4 average in 1990. Plan, at 5.

In designating UGAs, the County followed this projection of average household size in the year 2012 as 2.2 persons per household. Plan, Technical Appendix D, at D-2. Applying this to the OFM forecast (1,857,600 persons in the year 2012), the County derived a projected growth target of 195,700 new households. Plan, Technical Appendix D, at D-2. See also Plan, at 25 and 29.

The Board has independently calculated the projected household growth target as follows:

Year	Population <sup>[1]</sup>	Avg. Household Size	Households <sup>[1]</sup>	New Households (Difference between 2012 and year shown)
2012	1,857,618	2.20 <sup>[1]</sup>	844,372	-----
1994	1,599,500 <sup>[1]</sup>	2.368 <sup>[1]</sup>	675,465	168,907
1992	1,564,500	2.384 <sup>[1]</sup>	656,250	188,122
1990	1,507,300	2.40 <sup>[1]</sup>	628,042	216,300
<b>TOTAL NEW HOUSEHOLDS (1990-2012)</b>				<b>573,329</b>

The total “new households” is 573,329. That amount, divided into three incremental periods, equals an average of 191,110 households. If one adds just the “new households” for the year 1990 and 1992 (216,300 + 188,122), the result is 404,422. That total, divided by two incremental periods, equals an average of 202,211 new households. The Plan, adopted in 1994, relies on

195,000 new households, which falls within this range.

Technical Appendix D points out that, with projected population for the year 2012 remaining constant, if average household size is different, the number of new households will change.

Therefore:

King County has analyzed a range of possible household projections based on different estimates of potential household size, as part of its analysis of the UGA. King County has looked at three possible scenarios for household sizes: 2.4, 2.2 and 2.0 people per household. The growth target in the Countywide Planning Policies is based on an average of 2.2 people per household. This is consistent with the forecast made by the Puget Sound Regional Council. Average household size in King County is forecast by the Puget Sound Regional Council to decline over the next 20 years, although at a slowed rate, from 2.4 persons per household in 1990 to slightly more than 2.2 persons per household in 2010. Plan, Technical Appendix D, at D-2 and D-3 (footnotes omitted).

Using the three different possible average household sizes in the year 2012, the County expects between 126,500 (low range at 2.4 persons/household), 195,700 (mid range at 2.2 persons/household) and 278,000 new households (high range at 2.0 persons/household). Plan, Technical Appendix D, at D-3 and Table 4, at D-20.

The County then compiled targets, i.e., estimates of the number of new households that individual jurisdictions expect to receive by the year 2012. "The targets for each of the cities and the unincorporated area are expressed as ranges to reflect the uncertainties of each jurisdiction's ability to accommodate its growth targets." Plan, Technical Appendix D, at D-3. By 2012, the County projects the following growth to occur:

*Countywide New Net Household Target Range*

	Low	Medium	High
Cities	131,768	150,803	172,558
Unincorporated <sup>[1]</sup>	40,048	44,897	50,000
TOTAL <sup>[1]</sup>	171,816	195,700	222,558

The new net household growth for just the unincorporated portion of King County, rounded off, is (Plan, at 29):

*Unincorporated Area Household Growth Target*

34,200 to 41,800 net new households within unincorporated portion of the UGAs

5,800 to 8,200 net new households within rural area (i.e., outside UGAs)

40,000 to 50,000 net new households within unincorporated King County.

The Board has held that counties may allocate population and employment to the cities within them. *Edmonds and Lynnwood v. Snohomish County*, CPSGPHB Consolidated Case No. 93-3-

0005, Final Decision and Order (October 4, 1993) (*Edmonds*).<sup>[1]</sup>

**The Board holds that the process of converting total population into household size does not violate the Act, provided that the County clearly and credibly demonstrates how the household figures are derived from the population projection.**

Urban growth area designations must be based upon OFM projections. However, in order to quantify the necessary land supply for the UGA (i.e., the area sufficient to accommodate that projected growth) and identify which lands, at what densities, are needed to achieve that land supply, a county must be able to disaggregate the OFM projection (i.e., the population to be accommodated) into sub-county units. This exercise can be done by simply disaggregating the county-wide population figures (e.g., so many thousand persons to cities, so many to various unincorporated portions of UGAs and so many outside UGAs). Several counties have, in fact, done this. However, nothing in the Act prohibits counties from converting population allocations into household calculations, either before or after disaggregation into smaller geographic units. In fact, by anticipating expected household sizes, and accounting for sub-county differences in persons per household (PPH) (e.g., Seattle's PPH may be much lower than Redmond's PPH), counties may be capable of more accurately predicting community-specific traits and, as a result, may more effectively carry out their GMA responsibilities to manage growth.

#### UGA Conclusion No. 3

The Plan does not violate the Act by referring to household capacity rather than population.

#### **4. MARKET FACTOR**

RCW 36.70A.110(2) permits counties to include a "reasonable land market supply factor" in determining the sufficient size of UGAs. In *Bremerton*, the Board adopted a "bright line" standard of 25 percent excess or less as being reasonable; any amount above 25 percent must contain an adequate justification for its usage. *Bremerton*, at 42-43, 64-65. The Plan indicates that a 25 percent market factor allowance was utilized. Plan, at 29. See also, Plan, Technical Appendix D, at D-4, D-5 which shows a five to 25 percent market factor.

FOTL contends that the County's actual market factor is 81.93%. FOTL's Prehearing Brief, at 37-40. The Board has reviewed FOTL's calculations and concludes that FOTL is incorrect that the market factor is this large. FOTL bases its claim on Tables 1 and 2 as shown in Technical Appendix D. Table 1 is entitled "Proposed Growth Target Ranges for Households and Employment." It lists all the cities within King County and the unincorporated portion of King County. The table does not distinguish between unincorporated areas inside and outside UGAs. New low and high ranges for the number of new households — and a mid-range, entitled "Net New Households" — are shown for each city.

Table 2 is captioned "Countywide Capacity — Twenty Year Dwelling Unit Capacity on Land Zoned for Residential Use in King County." It shows the amount of dwelling unit capacity on vacant and redevelopable lands per city and for the unincorporated portions of the county (both inside and outside the UGAs). In essence, Table 2 illustrates the total theoretical dwelling unit

capacity of King County. In contrast, Table 1 shows the new households and employment that the County and its cities will plan for in the next 20 years, based upon policy decisions. Although FOTL is correct that Table 1 indicates that the total theoretical dwelling unit capacity shown on Table 2 is 81.93 percent higher than needed to accommodate new households shown on Table 1, this does not mean that the County is using an 81.93 percent market factor. Contrary to FOTL's allegation that the UGAs excess household capacity (81.93 percent) is a violation of the Act, the Board concludes that this excess capacity furthers the Goals of the Act. A comparison of Tables 1 and 2 shows that cities have a far greater household capacity (282,250) than their policy targets (150,803). Thus, the cities alone have approximately 87 percent more household capacity than is allocated to them by the Plan. However, this circumstance is consistent with the Board's holding in *Aagaard v. Bothell*, CPSGMHB Case No. 94-3-0011 (1995), at 14, that cities may have such excess capacity, absent a CPP to the contrary. Furthermore, the Board also held that such excess city capacity serves the goals of the Act by reducing sprawl and lessening the near term need to increase the land supply in the UGA. To the extent that this excess capacity exists in the unincorporated rural areas, it reflects existing parcelization. In any event, the CPPs have established the allocations of growth among jurisdictions as well as the locations of the FUGAs.

**Nonetheless, the Plan contains no more than a 25 percent land supply market factor, which the Board holds complies with RCW 36.70A.110.**

#### UGA Conclusion No. 4

The Plan utilizes a 25 percent land supply market factor which complies with RCW 36.70A.110.

### **POLICY U-210 AND UGA DESIGNATIONS GENERALLY**

Policy U-210 sets forth the criteria for designating UGAs.

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 rural land or unincorporated agricultural 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. Plan, at 27.

The Plan's Land Use Map (Plan, between pages 24 and 25) shows three general types of UGAs: one large contiguous UGA in the western half of King County (excluding Vashon Island); the "Rural City" UGAs in the middle of the county which are surrounded by rural and natural resource lands; and the Bear Creek urban planned development UGA between the cities of Redmond and Duvall in the north-central part of the county. Each of these UGAs is discussed separately below.

## **5. EAST SAMMAMISH PLATEAU<sup>[1]</sup>**

Except for Vashon Island, the entire western portion of King County has been designated one contiguous UGA. Within this large UGA, FOTL has questioned one specific area. The Land Use Map shows that all lands immediately to the east of Lake Sammamish are designated within the contiguous UGA. FOTL contends that this area, the East Sammamish Plateau, should not be included within the UGA. The narrative in Technical Appendix D describing the UGAs states:

Sammamish Plateau: The UGA boundary proceeds southeast from Redmond's city limits, including sewer, urban residential land in the Sahalee neighborhood. The boundary then takes in land adjacent to Sahalee to the east which is designated for urban growth by the 1993 East Sammamish Community Plan and planned for urban services: the Mystic Lake area includes land platted at urban densities and in a clustered pattern in anticipation of future urban development, the portion of the Beaver Dam property which is unconstrained and planned for urban services, and three properties committed to urban development by virtue of vested development applications. Sewer and other urban governmental services can be cost-effectively provided to all these properties.

The Aldarra Farm property is also included within the UGA as the property owners have incurred substantial costs in pursuing urban development based on the 1985 King County Comprehensive Plan urban designation for the site. The majority of the site is planned for urban services, and sewer service can be provided efficiently and cost-effectively. This property is adjacent to the urban areas of the Sammamish Plateau. The boundary then follows Duthie Hill Road and Issaquah-Fall City Road to the southwest, including within the UGA, the intensively developed Klahanie neighborhood. Plan, Technical Appendix D, at D-14-15.

The area contains urban residential densities. Most of the area is in the 4-12 du/acre range while some of it is in the one du/acre range. Plan, Land Use Map, following 24.

The entire area is a "Service Planning Area" as denoted on the Land Use Map. The Plan describes the types of service planning areas in part <sup>[1]</sup> as follows:

These priorities are accomplished through the Service and Finance Strategy which designates Full Serve Areas with transit (dark green), Full Service Areas without transit (light green) and Service Planning Areas (yellow). The Service and Finance Strategy Map at the end of Chapter One, Plan Vision, shows the locations of these designations. The Transportation Service Areas outlined in Chapter Nine, Transportation, are consistent with this Service and Finance Strategy.

The Service and Finance Strategy concentrates on water, sewer and transportation services, which are most linked to land use, and the requirements of GMA. King County recognizes that there are many other essential services needed, such as health, human and public safety services. New growth will bring about an increased demand for these services throughout the Urban Growth Area. Therefore, health, human services and public safety needs for new growth should be a priority within the Full Service Areas. (Refer to Chapter Eight, Facilities and Services, policies F-101 through F-204 for further discussion and policy direction for health, human services and public safety.)<sup>[1]</sup>

...

Development can occur within both Full Service Areas and Service Planning Areas. The significant difference between the Service Planning Areas and the Full Service Areas is that the latter has water supply to serve development uses and densities consistent with the plan, public sewers now or within six years to serve development uses and densities consistent with this plan, and transportation funding for new growth. Plan, at 34-36.

The entire area is served by Metro utilities. Plan, Technical Appendix A, "Major Interceptor System and Treatment Facilities." Plan, map following A-14.

The entire area is a groundwater service area. Plan, Technical Appendix A, "Ground Water Service Areas and Well Sites" map, following A-30. The northern portion of the area has water supply sufficient to meet projected demand through the year 2000 while the southern portion has water supply sufficient to meet projected demand through the year 1995. Plan, Technical Appendix A, "Water Utilities Water Supply Needs." Plan, map following A-36.

A portion of the area has existing sewers. Plan, Technical Appendix A, "Sewer Facilities" map following A-38.

In addition, the area falls completely within the potential annexation areas of either the cities of Redmond or Issaquah. Plan, Technical Appendix J, "Proposed Potential Annexation Areas" map following J-1. See also disclaimer, at J-2, notes 6 through 9.

As a general rule, RCW 36.70A.110 requires that all cities be included within UGAs. Six exceptions to this general rule exist for permitting counties to designate UGAs beyond existing city limits.<sup>[1]</sup> See *Rural Residents*, at 44; see also *Bremerton*, at 33-34. The Sammamish Plateau area falls within the third exception since it is territory that already contains "land having urban growth located on it." The Board recently concluded that the portion of RCW 36.70A.110 from which the six exceptions were derived was not changed by 1995 legislative amendments. However, the Board did conclude a new holding was in order regarding that the application of the six exceptions when a county draws its UGAs:

Specifically, the Board now adopts a new holding to interpret and apply the general test and six exceptions set forth in *Rural Residents*. For purposes of comparison, the Board repeats

below language from *Rural Residents*, showing new language with underlining and deleted language with strike-throughs as follows:

Once Regardless of whether a satisfactory showing has been made that existing cities cannot can accommodate the projected population growth, and that the area meets the legal test of the third exception, counties will be permitted to extend IUGAs designate FUGAs beyond existing incorporated areas in on lands covered by the third exception. However, this does not give counties carte blanche permission to designate as UGAs all urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both UGAs and CPPs must serve: to achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve compact urban development. See *Tacoma*, at 12. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical to now blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted.<sup>[1]</sup> *Bremerton*, at 39-40.

As the Board held in *Bremerton* regarding the third exception, just because unincorporated lands today contain urban growth on them does not necessarily mean that they should be included within a UGA. Instead, counties must examine how a UGA designation of lands falling within the third exception will achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services, and will achieve compact urban development. *Bremerton*, at 39-40. The Plan recognizes this:

Most future growth and development is to occur within the Urban Growth Area to limit urban sprawl, enhance open space, protect rural areas and more efficiently use human services, transportation and utilities. Most of the cities of King County fall within this portion of the Urban Growth Area. The balance of the Urban Growth Area surrounds the seven rural cities. Ultimately, the idea is to reduce the taxpayer's costs by encouraging concentrated development in those areas where services are already provided. This can be accomplished by changing development patterns and zoning, and by offering incentives to direct growth within the Urban Growth Area. Plan, at 2.

With the 1994 Comprehensive Plan, the focus of the County's implementation framework will shift so that detailed planning in the Urban Growth Area is oriented around cities and their Potential Annexation Areas. Countywide and rural planning will continue to be done by the County. The 1985 Comprehensive Plan assumed that unincorporated communities and neighborhoods would remain unincorporated for the long term. This meant that the County continued to serve as a local, as well as countywide government. However, the Countywide Planning Policies, adopted in 1992, envision that all urban unincorporated portions of the County will be annexed by or incorporated as cities within twenty years.

Following this vision, the County will move over time to become a regional and rural government, without responsibility for service, infrastructure, and land use planning on a local level within the Urban Growth Area. This transition will be gradual, depending on the desires of local communities and the ability of cities to provide services to newly annexed areas. Plan, at 214-215.

**The Board holds that the County did not violate RCW 36.70A.110 by designating the Sammamish Plateau portion of unincorporated King County within the contiguous UGA, an area already characterized by urban growth. The UGA designation is consistent with the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services and it achieves compact urban development.**

This case gives the Board the opportunity to examine objective ways for counties to show they are planning for the transformation of local governance and compact urban development.

The Plan indicates as follows:

U-203 King County should encourage most population and employment growth to locate in the contiguous Urban Growth Area in western King County, especially in cities and their Potential Annexation Areas.

Planning between the County and cities is underway to designate Potential Annexation Areas. A Potential Annexation Area is an area in unincorporated King County adjacent to a city that is expected to annex to the city and to which that city will be expected to provide services and utilities within the next two decades. Cities must propose Potential Annexation Area boundaries and the County officially designates them. Under the GMA, newly incorporated cities have three years to complete adoption of their comprehensive plans. As part of their comprehensive plan development process, they may designate future annexation areas. These areas may include areas outside the Urban Growth Area. Unofficial Potential Annexation Areas are shown on the Potential Annexation Area Map contained in Technical Appendix J. The Potential Annexation Area planning process is described in Chapter Thirteen, Planning and Implementation, Section II(C).

According to Technical Appendix J, the East Sammamish area is planned as a Potential Annexation Area by either the cities of Redmond or Issaquah. Plan policies V-306, V-307, U-304, and I-210 are therefore directly applicable. Further, the Plan states (Plan, at 223):

Potential Annexation Area plans will become the most prominent examples of subarea planning....

By designating the Sammamish Plateau as a Potential Annexation Area, the County has explicitly acknowledged the transformation of governance the Act mandates. Being prepared for annexation is the appropriate county response required by the GMA for unincorporated areas that already contain urban growth. Designating the East Sammamish Plateau within a UGA also promotes compact urban development since the area is contiguous to existing incorporated areas of the

county.

## UGA Conclusion No. 5

The Plan does not violate RCW 36.70A.110 by including within the contiguous UGA those lands in the East Sammamish Plateau.

### **6. RURAL CITIES<sup>[1]</sup>**

Tolt contends that the UGAs for King County's "Rural Cities" do not comply with the Act because the cities' expansion areas lie within them. The County responds that it was required by the King County CPPs to designate all expansion areas as within a UGA. The County has included the "expansion areas" for the relevant Rural Cities within its designated UGAs pursuant to King County CPPs LU-26 which provides:

LU-26. The lands within Urban Growth Areas (UGAs) shall be characterized by urban development. The UGA shall accommodate the 20-year projection of household and employment growth with a full range of phased urban governmental services. The Countywide Planning Policies shall establish the Urban Growth Area based on the following criteria:

a. Include all lands within existing cities, including cities in the rural area and their designated expansion areas;...Stip. Ex. 8, at 29.<sup>[1]</sup>

King County defines seven "Rural Cities," or incorporated areas within the Plan's Rural Area, as follows:

King County's rural cities are incorporated areas within the Rural Area whose local governments are involved in the region's planning processes on an equal legal basis with the suburban cities and Seattle. The incorporated rural cities are Black Diamond, Carnation, Duvall, Enumclaw, North Bend, Skykomish and Snoqualmie. (See Chapter Three, Rural Land Use). Plan, at 247.

The Plan's Land Use Map shows the existing city limits for each of the "Rural Cities" (light pink) and it shows where the UGA for the Rural Cities has been expanded beyond existing city limits (light brown with a red line designating the UGA boundary).

The Plan contains a specific discussion about Rural Cities that states in part (Plan, at 69-70):<sup>[1]</sup>

The Growth Management Act stipulates that rural cities and their Urban Growth Areas are to be treated as part of the Urban Growth Area. The Countywide Planning Policies also provide for urban land uses and densities and urban services in those locations. Excessive growth in rural cities and Rural Towns, however, may create pressure for extending urban services (for example, roads) across the Rural Area or Natural Resource Lands, may increase conversion pressure on nearby Natural Resource Lands and adversely affect rural character. Therefore, King County views rural cities as qualitatively different from the Urban Growth Area as a whole, even though they may provide significant opportunities for residential or employment growth.

King County has worked with the rural cities to establish Urban Growth Areas to accommodate growth. These areas are shown as part of the Urban Growth Area on the Comprehensive Plan Land Use Map. In accordance with the Countywide Planning Policies, King County, the cities and other interested parties are committed to completing a joint planning process by December 31, 1995, to finalize the Urban Growth Area (see Chapter 13, Planning and Implementation).

R-301 Rural cities and their agreed-upon Urban Growth Areas shall be considered part of the Urban Growth Area for purposes of planning land uses and facility needs. King County should work with rural cities to plan for growth consistent with long-term protection of significant historic resources, the surrounding Rural Area and Natural Resource Lands

Policy R-111 provides in part:

... New public roads and capacity increases for existing roads should be built only within the Urban Growth Area and the Urban Growth Areas for rural cities....Plan, at 63.

Policy R-112 provides in part:

... Sewers needed to serve ... rural cities ... shall be tightlined and have access restrictions precluding service to the Rural Area.Plan, at 64.<sup>[1]</sup>

The Plan also provides that:

...Neighborhood shopping, gas stations, libraries, high schools and feed and grain stores are examples of activities that also provide services to nearby residents, but are encouraged to locate within rural cities...Plan, at 67.

Consequently, Policy R-211 states in part that:

Churches and high schools in the Rural Area are encouraged to locate in rural cities or unincorporated Rural Towns....Plan, at 67.

The Plan explains that “[P]lacing churches and schools in rural cities or Rural Towns allows them to be served with urban-level utilities and fire protection and to be used efficiently for other community activities.”Plan, at 67.

Although the Plan contains the above-referenced policies regarding Rural Cities, it does not contain specific information regarding the size of the Rural Cities’ UGAs except for the City of Black Diamond which was designated a “Joint Planning Area” since the County could not reach agreement with Black Diamond on the size of its UGA.<sup>[1]</sup> See Plan, at 220-221. For more specific information on each city within a rural area, one must turn to the Plan’s Technical Appendix D. Table 2 of Technical Appendix D shows the theoretical dwelling unit capacity of each city within King County. Footnote 4 of the table indicates:

The estimates in the tables are for current boundaries, except for the five Rural Cities with which King County has concluded Urban Growth Area negotiations (Carnation, Duvall, Enumclaw, North Bend and Snoqualmie — marked with a diamond ♦. Estimates for these

cities include a factor for unincorporated expansion areas as estimated by County staff. Plan, Technical Appendix D, Table 2, footnote 4, at D-18.

The following information for just the seven Rural Cities was obtained from Tables 1 and 2:

Rural City	20-Year Dwelling Unit Capacity <sup>[1]</sup>		TOTAL CAPACITY	Proposed Target <sup>[1]</sup>
	Vacant	Redevelopable		Mid-Range
	Land	Land		Net New Households
Black Diamond	974	NA	974	1,033
Carnation	433	50	483	404
Duvall	2,215	200	2,415	1,886
Enumclaw	2,434	100	2,534	2,626
North Bend	2,255	100	2,355	1,527
Skykomish	45	0	45	27
Snoqualmie	4,477	100	4,577	2,784
<b>TOTAL</b>	<b>12,833</b>	<b>550</b>	<b>13,383</b>	<b>10,287</b>

According to this information, the total capacity (13,383 dwelling units) of cities in the rural area is larger than the total mid-range net new household target (10,287 dwelling units).<sup>[1]</sup> Nonetheless, the proposed target mid-range of net new households exceeds total capacity for the cities of Black Diamond, Enumclaw and Snoqualmie. The Rural Cities' vacant land capacity (12,833) constitutes 16.5 percent of capacity for all cities' vacant lands (77,964 dwelling units) listed on Table 2 of Technical Appendix D. The Rural Cities' total capacity (13,383) constitutes five percent of the total capacity for all cities (282,250 dwelling units) listed on Table 2 of Technical Appendix D. The total proposed mid-range target for all Rural Cities (10,287) constitutes nearly seven percent of the proposed mid-range target capacity for all cities (150,803) listed on Table 1 of Technical Appendix D.

Aside from the above-referenced data, the Plan's Technical Appendix D is basically silent as to Rural Cities. Although Technical Appendix D contains a general narrative description of all designated UGAs, "Rural Cities" are addressed by a footnote only, which provides:

The record of decisions which describe the Urban Growth Area for Rural cities is within the Rural Cities Urban Growth Areas Report, dated April 20, 1994. Plan, Technical Appendix D, footnote 28, at D-13.

In turn, the Rural Cities UGAs Report, prepared seven months before the Plan and its FUGAs were adopted, states in part:<sup>[1]</sup>

Capacity for Growth

The seven rural cities in King County together have room for approximately 6,500 new dwelling units within existing city limits. The figures for each city's room for growth, or capacity, were supplied by the cities to the Data Resources Technical Forum, an interjurisdictional staff team reviewing land capacity. The figures are based on the residential zoning which currently exists. Within the expansion areas established in King

County Community Plans for the rural cities of Snoqualmie, North Bend, Enumclaw, Carnation and Duvall, there is capacity for another 6,500 dwelling units according to calculations by King County planning staff. Within the rural cities and their expansion areas, the total capacity is 13,000 dwelling units. The entire expansion areas of all rural cities except North Bend are included within the recommended Urban Growth Areas discussed in this report. North Bend's recommended UGA does not include all of the expansion area in the Community Plan. Stip. Ex. 27, at 7. (Emphasis added.)

Tolt also contends that the County allowed resource and rural lands to be included with the UGAs for Rural Cities that are not already characterized by urban growth or do not contain existing urban governmental services. Tolt claims that CPP LU-26 is internally inconsistent. RCW 36.70A.320 provides in part that comprehensive plans and development regulations, and any amendments to them, are presumed valid upon adoption. When comprehensive plans or development regulations are not appealed within the statutory period, this presumption becomes irrefutably valid unless the enactment is challenged on constitutional grounds. *Twin Falls*, at 55. Unlike comprehensive plans and development regulations, RCW 36.70A.320 does not explicitly grant a presumption of validity to county-wide planning policies adopted pursuant to RCW 36.70A.210. However, RCW 36.70A.210(6) provides that:

Cities and the governor may appeal an adopted county-wide planning policy to the growth management hearings board within sixty days of the adoption of the county-wide planning policy.

This is the same length of time petitioners have for appealing comprehensive plans or development regulations. RCW 36.70A.290(2). **The Board holds that when an adopted county-wide planning policy is not appealed within sixty days of adoption, it is presumed valid.** Although the Act limits appeals of a county-wide planning policy to cities or the governor only, an individual, association or corporation, for instance, could persuade the governor that an appeal was appropriate. An alternative remedy would have been to have sought a writ of certiorari or review from a superior court.<sup>[1]</sup> In any case, phase two of the CPPs was not appealed to the Board. Therefore, Policy LU-26 is now presumed valid. The Board has previously held that comprehensive plans must be consistent with county-wide planning policies. *Snoqualmie v. King County*. **Accordingly, the Board holds that the designation of the Rural Cities' expansion areas as within a UGA is consistent with the CPPs and therefore complies with the Act.** Had the King County CPPs been appealed, the Board very likely would not have found LU-26 in compliance with the Act. The policy was based upon pre-GMA agreements and planning decisions, i.e., before the Act's definition of "urban growth" was enacted. Thus, given the dubious nature of Policy LU-26, the Board will give close scrutiny to any future extensions of the Rural Cities' UGAs.

Tolt also claims that the household allocation to the Rural Cities is disproportionate to the allocation for King County's other cities. The Board rejects Tolt's arguments that a County must allocate projected population growth proportionately to its cities. The Act requires that all cities be included within UGAs (RCW 36.70A.110); although it might make sense to distinguish by the

size, density or location of a city for it to be included within a UGA, the GMA does not do so.  
**Therefore, the Board holds that determining how to distribute projected population growth among existing cities falls within the ultimate discretion of counties, subject to the requirement of RCW 36.70A.110(2) to attempt to reach agreement with cities.**The Act does not require proportionate distributions.

Tolt specifically challenges the Black Diamond and North Bend designations.The Board notes that the adopted UGA for Black Diamond includes only the City's existing city limits.Although a 640 acre area outside existing city limits had been recommended to be included within the UGA, this did not occur when the Washington State Boundary Review Board for King County approved an annexation of approximately 783 acres in an other area.*See* Stip. Ex. 27, Rural Cities Urban Growth Area report, at 8.Because the County and Black Diamond could not reach agreement regarding the UGA, a joint planning area was established for Black Diamond.Until and unless its UGA is changed, those lands remain outside the UGA.

As for North Bend, the Board agrees with the County that simply because an area outside an incorporated city already contains urban growth, it does not have to be designated as within a UGA.If the land in question is within an expansion area, it must be included within the UGA pursuant to CPP LU-26.However, if the area in question is outside the expansion area, the County is not required to include the land within a UGA.

Finally, the Board addresses expanding UGAs beyond expansion areas into lands that are contiguous to those expansion areas.Extension of the UGA boundary beyond not only existing city limits but even beyond a cities' expansion area involves either the third exception (if these lands are already characterized by urban growth), or the fourth exception (for territory adjacent to lands already characterized by urban growth).The question becomes, given the CPPs policy requiring expansion areas to be included within the UGA, has the County justified extending its UGAs beyond city limits into areas beyond even the expansion areas?The Rural Cities Urban Growth Areas report constitutes the County's attempt at such justification.For each city, the square mileage and/or acreage is shown along with a detailed map of the area in question.

The Carnation UGA includes 25 acres of land outside the expansion area that is currently a tree farm.The rationale for including this land in the UGA is that, if annexed, the land could provide tax revenue to the City.In addition, the City would like "to own" both sides of NE 40th St.Yet the report states that only one or two homes could be built on these 25 acres due to a floodplain.Stip. Ex. 27, at 16.**The Board holds that this does not constitute adequate justification for being included within a UGA and that therefore, the extension of Carnation's UGA to these additional 25 acres does not comply with the Act.**

The extension of Duvall's UGA an additional 184 acres beyond existing city limits and that city's expansion area cannot stand either.Policy LU-26(c) provides that UGAs shall "[N]ot include "rural land or unincorporated agricultural, or forestry lands designated through the Countywide Planning Policies plan process."However, the Rural Cities Urban Growth Area report states that:

The additional 184 acres does include rural land and land in the Agriculture Production District designated through the Countywide Planning Policies."Stip. Ex. 27, at 18.

(Emphasis added.)

**The Board holds that including this additional 184 acres within Duvall’s UGA is inconsistent with CPPs’ Policy LU-26(c).Therefore, it does not comply with the Act.**

The City of Enumclaw’s UGA also extends an additional 78 acres beyond its expansion area. “However, the Rural Cities Urban Growth Area report states that:

The additional 78 acres does include rural land designated through the Countywide Planning Policies.Stip. Ex. 27, at 22.(Emphasis added.)

**The Board holds that including this additional 78 acres within Enumclaw’s UGA is inconsistent with CPPs’ Policy LU-26(c).Therefore, it does not comply with the Act.**

The North Bend UGA apparently includes 200 acres beyond the city’s expansion area.However, the Rural Cities Urban Growth Area report states that:

The additional areas include rural land designated through the Countywide Planning Policies.Stip. Ex. 27, at 26(Emphasis added.)

**The Board holds that including designated rural land within this additional 200 acres within North Bend’s UGA is inconsistent with CPPs’ Policy LU-26(c).Therefore, it does not comply with the Act.**

The City of Snoqualmie expansion area is approximately 1,455 acres.Stip. Ex. 27, at 30.In addition, 1,950 acres beyond this expansion area were included within the city’s UGA.Stip. Ex. 27, at 29 (total of all acreages listed) and 30.However, the Rural Cities Urban Growth Area report states that:

The additional 1,950 acres does include rural land designated through the Countywide Planning Policies.Stip. Ex. 27, at 30(Emphasis added.)

The report also indicates that “[M]ost of the 1,950 acres do not extend beyond natural boundaries so the UGA would respect topographical features which form a natural edge.” In addition, a portion of this property is within the floodplain. Stip. Ex. 27, at 30.

King County CPPs Policy LU-26 provides that UGAs:

e.Do not extend beyond natural boundaries, such as watersheds, which impede provision of urban services;

f.Respect topographical features which form a natural edge such as rivers and ridge lines; and

g.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.Stip. Ex. 8, at 30.

**The Board holds that including this additional 1,950 acres within Snoqualmie’s UGA is inconsistent with CPPs’ Policy LU-26(c), (e) and (f).Therefore, it does not comply with the Act.**

A policy in a CPP that establishes criteria for designating UGAs, if not appealed by the governor or a city, is presumed valid. King County CPPs LU-26 required King County to include within its UGAs for Rural Cities all their expansion areas. Therefore, the UGAs for the Rural Cities that extend beyond city limits into expansion areas comply with the Act.

The GMA does not require counties to proportionately distribute projected population growth between its cities. Determining how to distribute projection population growth falls within a county's ultimate discretion.

A county is not required to include within a UGA all lands outside existing city limits that already are characterized by urban growth.

Where the Rural Cities' UGAs extend beyond expansion areas into lands that the CPPs otherwise prohibit from being designated within a UGA, the Plan is inconsistent with the CPPs and therefore does not comply with the Act

## **7. BEAR CREEK PLANNED DEVELOPMENTS**

The County included the Bear Creek planned developments within an "island" or freestanding UGA separate from the contiguous UGA in the western portion of King County. The Bear Creek planned developments are located in the north-central portion of King County, between the cities of Redmond and Duvall. This is confirmed by three maps in the Plan: "Countywide Growth Pattern," "Land Use," and "Service & Finance Strategy." Plan, following pages 2, and 24. FOTL contends that designating this "island" UGA for the Bear Creek UPDs does not comply with the Act.

The relevant portion of the Plan is Policy U-201 which provides in part:

...

In addition, this policy recognizes that the Bear Creek Urban Planned Developments (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. Plan, at 27. (Emphasis added.)

The County contends that it was required by the King County CPPs to include the Bear Creek planned developments within a UGA by the original phase one CPPs adopted on July 6, 1992 pursuant to Policy LU-14(b). Stip. Ex. 7, at 16; see also map following page 15. Subsequently, when phase two of the CPPs was passed on August 15, 1994, the original Bear Creek language was not amended (other than re-naming LU-14 as LU-26). LU-26 still designates the Bear Creek UPDs within a UGA based on the following criteria:

...

b. The GMPC recognizes that the Bear Creek Master Plan Developments (MPDs) are subject to an ongoing review process under the adopted Bear Creek Community Plan and recognizes these properties as urban under these Countywide Planning Policies. If the applications necessary to implement the MPDs are denied by King County or not pursued by the applicant(s), then the property subject to the MPD shall be redesignated rural pursuant to the Bear Creek Community Plan. Nothing in these Planning Policies shall limit the continued review and implementation through existing applications, capital improvements appropriations or other approvals of these two MPDs as new communities under the Growth Management Act. Stip. Ex. 7, at 16 and Stip. Ex. 8, at 29-30.

**Accordingly, the Board holds that the Plan's designation of the Bear Creek UPDs as within a UGA is consistent with King County CPPs' Policy LU-26.**

However, but for the fact that the CPPs "made the County do it" and those CPPs were not challenged, the Board would have serious problems with the Bear Creek UPDs being designated within a UGA. In 1992, the Bear Creek subarea contained 100 households, while by the year 2012, the County projects the area to have 2,900 - 3,900 households. Plan, at 30. The property is adjacent to incorporated albeit undeveloped land, the City of Redmond's watershed. Plan, Land Use map, following page 24; and Plan, Technical Appendix A, Water Utilities Sources and Facilities map, following page A-30.

Other than the reference in Policy U-201 quoted above, the Plan does not contain a rationale explaining why the Bear Creek UPDs are within a UGA. However, Technical Appendix D indicates:

The Novelty Hill area, located east of Redmond, is also included in the UGA because it is located in relationship to Redmond so as to be appropriate for urban growth. In 1989, Novelty Hill was determined to be the appropriate size and location for concentrated urban growth necessary to accommodate population projections for the Bear Creek community planning area. These properties are located within the framework UGA contained in the Countywide Planning Policies. Novelty Hill is also located in close relationship to the City of Redmond as Novelty Hill Road, a minor arterial planned for an urban level of service, functions as a transportation and utility corridor connecting Redmond and Novelty Hill. Urban governmental services can be provided to Novelty Hill efficiently and cost-effectively. Further, the Novelty Hill property owners have incurred substantial costs in pursuing urban development there based on the existing Bear Creek Community Plan land use and zoning designations. Vested subdivision applications for these properties have been filed with King County under which these properties could be platted at a density of one unit per 35,000 square feet. It is far preferable from a planning perspective to develop these properties as urban planned developments than to allow them to develop as sprawling, low-density suburban subdivisions.

Land between Redmond and Novelty Hill is excluded from the UGA because it is too environmentally constrained to support urban growth and too valuable as an environmental

resource to lose to intensive urban development. This intervening land is traversed by Bear Creek, a significant salmonid habitat, and the creek valley walls are highly erosive. Plan, Technical Appendix D, at D-14 (footnote omitted).

The above-quoted narrative indicates that the subdivision applications within the Bear Creek subarea are vested, meaning that fully completed development applications have been received. The County contends that the “MPDs are the subject of vested plat applications....” County Reply to FOTL III, at 65. FOTL disputes this contention. The issue before the Board, ignoring LU-26 for the moment, would have been whether the land containing the Bear Creek UPDs should be included within a UGA, not whether these UPDs are vested. Since the vested rights doctrine is a common law doctrine, the Board does not have jurisdiction to determine whether a specific development application has vested. See *South Bellevue Partners, et al., v. City of Bellevue (South Bellevue)*, CPSGMHB Case No. 95-3-0055, Order of Dismissal (September 20, 1995), at 10. Accordingly, the Board takes no position on whether the Bear Creek UPDs are vested. Whether vested or not, these properties are generally currently vacant, undeveloped lands. Ex. 25 (FOTL Ex. 31), at 8-9. Furthermore, the area in question is unincorporated. The nearest urban growth to the site is located approximately two miles away, the City of Redmond. Therefore, unlike the Sammamish Plateau discussed earlier, these lands do not fall within the third exception since they presently do not constitute “land having urban growth located on it.” Instead, the Bear Creek UPDs fall within either the fourth or sixth exceptions set forth in *Rural Residents*:

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

...

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

Because of the significance of LU-26 discussed above, the Board need not determine whether the Bear Creek UPDs fall within the fourth or sixth exceptions. Suffice it to say that the Board necessarily must give the greatest scrutiny to areas designated within a UGA that fall within the sixth, and most remote, exception to the general rule, and virtually as much to the fourth and fifth exceptions.

Aside from the reference to the CPPs, the Plan’s justification for including the Bear Creek UPDs within a UGA is that the Novelty Hill property owners have incurred substantial costs in pursuing urban development and that 1989 planning decisions, made before the GMA was even adopted, concluded that this was an appropriate location for urban growth. These are insufficient reasons for designating the area a UGA, much less an “island” UGA totally surrounded by rural lands and a city’s watershed.

Two factors give the Board pause. The area is not shown as a potential annexation area for any

existing city. See Plan, Technical Appendix J, map following J-1. This does not meet the Act's direction of transforming local governance so that urban governmental services are to be primarily, or in general, provided by cities.

Second, the Plan contains conflicting statements about the need for or propriety of "new communities" or "fully contained communities" (FCCs). On the one hand, Policy U-201 seemingly contemplates such a possibility as it refers to "new communities under the Growth Management Act." Plan, at 27. On the other hand, the County has elected not to designate any new FCCs according to Policy R-104 which provides:

King County finds no need to establish new "fully contained communities" within the Rural Area, as provided for by the GMA. Plan, at 61.

The Act's only "new community" provisions are those for "new fully contained communities" at RCW 36.70A.350. The only portions of the Act that clearly contemplate island UGAs are these FCC provisions, Master Planned Resorts pursuant to RCW 36.70A.360, or industrial developments sited pursuant to the provisions of ESB 5019 (Chapter 190, Laws of 1995). In the case of the FCCs, the Act contains detailed mandatory safeguards in order to assure that an "island" of urban development in the rural area is a "fully-contained" entity that does not stimulate other urban growth in a rural area. This strongly infers that the anti-sprawl objectives of Planning Goals 1 and 2 require islands of urban growth in the rural area to be handled with great caution. Without sufficient safeguards, such as the FCC requirements, the Board seriously questions whether a non-FCC island UGA can meet the goals and requirements of the Act. If it were not for the fact that the unchallenged CPPs, which are now presumed valid, required the County to designate the Bear Creek UPDs as within a UGA, the Board would conclude that this "island" UGA does not meet the goals and requirements of the Act. The Board would remand the UGA containing the Bear Creek UPDs with instructions to justify, either in the Plan itself or by incorporating by reference documents that do so, why this area qualifies as a designated UGA

#### UGA Conclusion No. 7

The Plan is consistent with the King County CPPs which are presumed valid and which required the County to designate the Bear Creek UGAs within a UGA. Therefore, the Plan's designation of the Bear Creek UPDs complies with the Act but would not so comply had the CPPs been challenged.

#### Board Member Tovar's Dissent

The County argues that its FUGA decisions are bound by the CPPs because the Board has held that CPPs have substantive and directive effect on city and county comprehensive plans. *Snoqualmie*, at 14. However, in that same case, the Board held that there are limits on the substantive effects of CPPs. The third prong of the Board's test on the limits on the substantive effect of CPPs provides:

(3) A specific policy within the CPPs must be consistent with other relevant provisions in the GMA. *Snoqualmie*, at 18.

In *Edmonds*, the Board examined the population allocation to a city by a county via the CPPs:

With responsibility for regional coordination of comprehensive plans in conformance with the planning goals, a county must be capable of directing urban growth to areas that are already urban in character, including cities. Because urban growth consists of people and jobs, the county is therefore charged with authority to undertake a task that is essentially an allocation of population and employment.

....

... the County is reminded that CPPs may not “short cut” past the comprehensive plans of the cities by attempting to dictate specific regulatory features, such as building forms, localized densities or design characteristics. *Edmonds*, at 29. Footnotes omitted.

... The Board holds that the nature of planning under the GMA is interactive and iterative. It is expected that the process will entail many drafts of potential population allocations to various cities and unincorporated portions of urban growth areas, with attendant analysis, adjustments and iterations. *Edmonds*, at 31.

As the Board held in *Edmonds*, it is necessary for a county to play the regional land supply accounting role in order to connect the county-wide UGA designation task with the plans under preparation by the cities as well as the county. The Board observed that the contested population allocation set forth in “Appendix B” of the Snohomish County CPPs was a preliminary allocation that was reasonably necessary for the cities and the counties to move forward with subsequent work on their respective comprehensive plans. Policy UG-2 provided that:

a. The forecasts shown in appendix B are a starting point.

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

c. Each city will initially determine land capacity and its ability to accommodate forecasts within current city limits and the county within unincorporated areas. *Edmonds*, at 18. (Emphasis added.)

Therefore, just as the *Edmonds* holding established that CPPs were allowed to provide an *initial* or *preliminary* allocation of population to cities, subject to a final allocation when more information was available, so too in this case the Board should hold that CPPs are permitted to provide an *interim* urban growth area to provide the framework for the preparation of comprehensive plans. Further, just as Snohomish County contemplated a *final* allocation of population and employment to cities at the time of comprehensive plan adoption, so too does the

GMA reserve the FUGA decision to the comprehensive plan process. To conclude otherwise thwarts two important underpinnings of planning under the GMA.

First, to allow a CPP to bind the specific location of the FUGA uncouples the critical policy decision of what land is needed to accommodate growth from the land supply analysis and local government's ability to pay for the capital improvements that the Act requires to be set forth in comprehensive plans. In short, the requirements to "show your work" to assure that the UGA is no larger than is needed (even including the "land supply market factor" which must also be made explicit) would be "short-cut"; in effect, eliminated.<sup>[1]</sup>

Second, to allow a CPP to bind the specific location of the FUGA eviscerates the citizen participation component of FUGA plan adoption. With the location, and therefore the density, of lands set by CPPs, before plans are even adopted, would render citizen input to the FUGA portion of the comprehensive planning process meaningless. While RCW 36.70A.140 requires "early and continuous" public participation for comprehensive plans and implementing development regulations, there is no such GMA requirement applied to CPPs. This is reflected by the narrow standing at RCW 36.70A.210(6) which excludes appeals of CPPs from individual citizens.

In conclusion, just as the Board held in *Edmonds* that CPPs cannot "short-cut" past the comprehensive plans of cities, I conclude that CPPs cannot "short-cut" past the comprehensive plans of counties, particularly with regard to designation of the FUGAs. To allow a CPP to do so pre-empts the County's exercise of its discretion pursuant to RCW 36.70A.040, exempts it from the analytical rigor required by RCW 36.70A.110, and shields it from the requirements for early and continuous public participation pursuant to RCW 36.70A.140 and citizen appeals pursuant to RCW 36.70A.280. Therefore, I would find that the County has violated RCW 36.70A.040 and RCW 36.70A.110 by, in effect, prematurely adopting the policy content of its comprehensive plan, including the FUGAs, in advance of and therefore outside the scope of its authority and responsibility to adopt a FUGA and comprehensive plan.

## **8. FOUR-TO-ONE PROGRAM**

The Plan contains a Four-to-One Program regarding provision of open space, which is described as follows:

The Countywide Planning Policies (Policy FW-1, step 7) establish a program to actively pursue dedication of open space along the Urban Growth Area line to create a contiguous band of open space north and south along the UGA. Changes to the Urban Growth Area through this program will need to be processed as Land Use Map Amendments. This program implements Growth Management Act goals to reduce sprawl and to encourage retention of open space.

I-204 King County shall actively pursue dedication of open space north and south along the Urban Growth Area line.

a. Rural Area land, excluding agriculturally zoned land, may be added to the Urban Growth Area only in exchange for a dedication of

permanent open space to the King County Open Space System. The dedication shall consist of a minimum of four acres of open space for every one acre of land added to the Urban Growth Area, calculated in gross acres. The open space shall be dedicated at the time the application is approved;

b. Land added under this policy to the Urban Growth Area adopted in the Countywide Planning Policies and the King County Comprehensive Plan shall be physically contiguous to the existing Urban Growth Area and must be able to be served by sewers and other urban services;

c. The total area added to the Urban Growth Area as a result of this policy shall not exceed 4,000 acres;

d. Development of the land added to the Urban Growth Area under this policy shall be limited to residential development and shall be at a minimum density of four dwelling units per acre. Proposals shall meet the urban density and affordable housing policies of this Comprehensive Plan; ... Plan, at 218-19. (Emphasis added.)<sup>[1]</sup> See also Plan, at 219-20.<sup>[1]</sup>

The Plan refers to the Four-to-One Program in relationship to one specific property. Policy U-201 provides in part:

Further, this policy recognizes that 100 acres of the Glacier Ridge Partnership lands near Lake Desire are conditionally suitable for the 4 to 1 Program, with any remaining issues to be resolved through the subdivision process. Approximately 83 acres of these lands are designated on the Land Use Map as urban. If the applicant fails to receive plat approval, the urban and open space properties shall convert to a rural designation and rural zoning at the time of the next annual review of the King County Comprehensive Plan. Plan, at 27.

FOTL contends that the Four-to-One Program violates the Act because it permits an expanded UGA and is not based upon OFM's population projections. Although FOTL raises legitimate concerns about the precedent approval of such a program may set, the Board concludes that the program has sufficient constraints that preclude its abuse. Moreover, the program on its face strongly promotes the retention of open space (see RCW 36.70A.020(9)) and assists in complying with RCW 36.70A.160.<sup>[1]</sup> Finally, FOTL has not overcome its burden of proof to show how a program such as this violates the Act, given its built-in restraints.

RCW 36.70A.090, entitled "Comprehensive plans—Innovative techniques," provides:

A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights.

**The Board holds that King County's Four to One Program is the type of innovative land use management technique that the Act encourages. It therefore complies with the Act.**

UGA Conclusion No. 8

The Plan's Four to One Program is an innovative land use technique that complies with the GMA.

## **b. CAPITAL FACILITIES: water supply issues**<sup>[1]</sup>

FOTL contends that the Plan's capital facilities element does not comply with the RCW 36.70A.020(11), .070 .100 and King County CPPs CO-5 because it contains a flawed future water supply forecast. Noting that most of King County is served with water by the City of Seattle Water Department, which has about 1.2 million customers, FOTL argues:

The single most riveting fact about the Seattle regional water system is that **supply equals demand**. The total amount of water currently available to run the system is an annual average of 175 MGD [million gallons per day]. This is equal to the demand for Seattle water created by the existing 1.2 million customers... FOTL 4 Prehearing Brief, at 80. (Emphasis in original.)

Technical Appendix A indicates that "King County does not own or operate water systems." Instead,

Water is provided by other entities such as cities, special purpose districts, associations, and private individuals. King County's role is to coordinate with water purveyors to ensure their actions are consistent with King County land use plans and health regulations. Plan, Technical Appendix A, at A-30.<sup>[1]</sup>

FOTL points out that the County relies heavily on the 1993 Seattle Water Supply Plan. The County must rely on this plan given the fact that it does not own or operate water systems and that the Seattle Water Department is the major supplier of water in the region, serving 1.2 million people. Plan, Technical Appendix A, at A-30-31.

The Board notes that "water law" covers a myriad of federal, state and local statutes and regulations<sup>[1]</sup> the vast majority over which the Board lacks jurisdiction. Instead, the Board's jurisdiction is limited to Chapter 36.70A RCW, SEPA as it relates to that chapter, and shoreline master programs. RCW 36.70A.280.

RCW 36.70A.020(12) provides that comprehensive plans and development regulations shall:

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

**FOTL has not met its burden of proof of showing how that portion of the County's capital facilities plan element dealing with water supply has failed to comply with the Act.** See, for instance, Policy F-301<sup>[1]</sup> and F-302.<sup>[1]</sup>

RCW 36.70A.070(3) requires city and county comprehensive plans to contain a capital facilities plan element. It must be comprised of the following:

(a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected

funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

Although the County may not own or operate water systems, it is nonetheless required by RCW 36.70A.070(3) to list an inventory of existing capital facilities owned by public entities within its jurisdiction. The County has complied with this requirement. See Plan, Technical Appendix A, at A-30 through A-35. The Plan also contains a forecast of future needs and a discussion of proposed locations and capacities of expanded or new capital facilities. See Technical Appendix A, at A-30 through A-36. The Plan contains a brief discussion of a financing plan for the Seattle Water Department, and contains a statement regarding the financing plan for purveyors other than Seattle.

**The Board rejects FOTL’s argument that the County was bound to tabulate “certificates of water availability” in order to measure water supply.** Although the use of such certificates might be useful under certain circumstances, it remains within the County’s discretion whether it utilizes these certificates or relies upon other methods such as sophisticated computer modeling programs.

FOTL also argues that the County violated RCW 36.70A.100, entitled “Comprehensive plans—Must be coordinated,” which provides:

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

**The Board holds that FOTL has not met its burden of proof in showing how the County violated this provision.** The Plan provides under the heading “Regional Water Resources”:

Planning, developing and managing a new regional water supply will require the participation of many governmental entities, tribes, utilities and interested parties. The regional water resources planning process of the Chelan Agreement could be considered as one method of meeting the needs of all these groups and the citizens of King County.

King County recognizes that development of new water supply sources is vital and will be a multi-year process requiring coordination of many issues. For example, water is needed for a variety of beneficial uses. Using water for domestic drinking water supply can lessen stream flow for fish, wildlife and recreational uses.

F-304 King County supports coordination of regional water supply planning, sales of excess water supplies among municipalities in the region, water quality programs and water conservation and re-use programs.

F-305 King County will seek avenues for participating in the planning, development and management of a new regional water supply. Plan, at 148-149.

Given the multitude and complexity of water laws and water supply issues, one thing is apparent: a need for coordinated regional planning. King County has indicated its willingness to be a leader

in coordinating water supply efforts. As a regional government under the GMA, it must do so even though it is not in the business of directly supplying water. FOTL has not shown how the County has violated this obligation.

### Conclusion

FOTL has not met its burden of showing how the Plan's capital facilities element as it relates to water supply violates the GMA.

## **C. FOREST LAND ISSUES**

RCW 36.70A.170(1)(b) required cities and counties to designate forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber by September 1, 1991. RCW 36.70A.060(1) required counties and cities to adopt development regulations to assure the conservation of designated forest lands by the same date. RCW 36.70A.060(3) requires counties and cities "... to review these designations and development regulations when adopting their comprehensive plans..." and to alter them to insure consistency.

Designated forest lands are one of three "natural resource lands" discussed in the Act. The Plan provides:

Natural Resource Lands: The designated Natural Resource Lands contain regionally or nationally significant commercial forests, King County's best remaining farmlands and deposits of coal, gravel and other mineral resources, some small towns and regionally important recreational areas. Lakes and rivers within these areas support nationally important salmon fisheries. Plan, at 12.

### I. Resource Conservation Strategy

In 1985, the King County Comprehensive Plan designated Agriculture and Forest Production Districts. Subsequent planning efforts established densities and uses for these districts and their surrounding areas. These land use regulations are consistent with the requirements of the GMA to designate productive lands and to plan for adjacent and nearby land uses compatible with long-term commercial farming and forestry....

The GMA requires designation of agricultural and forest lands of long-term commercial significance.... Forest lands of long-term commercial significance are designated as Forest Production District on the Forestry Lands Map in this chapter. (The Forest Production Districts are shown as Forestry on the Land Use Map of Chapter One.)

...

RL-102 King County shall conserve farm lands, forest lands and mineral resources for productive use through the use of Designated Agriculture and Forest Production Districts and Designated Mineral Resource Sites where the principal and preferred land uses will be commercial resource management activities. Plan, at 96.

More specifically, the Plan states the following regarding forest lands:

King County forest lands provide local, regional and national benefits that are basic to the quality of life. In addition to supplying a variety of wood and other products, forests emit oxygen and supply pure water, control flooding and soil erosion, enhance ground water recharge, provide habitat for innumerable plant and animal species and offer scenic vistas and recreational opportunities. King County's forests provide employment in wood, paper, recreation, tourism and fishing industries. In sum, properly managed forests are fundamental to a healthy, diverse economy and environment.

The growth in human population, however, has resulted in the loss of forest lands through conversion to non-forest uses. Increasing demands are being placed upon the remaining forest land base to provide goods, recreational opportunities and ecological functions. To address these challenges, forest managers are embracing more broad-based management methods and strategies that encompass ecosystems, landscapes and watersheds, while continually incorporating new scientific information to improve these approaches. Their efforts, together with the collective foresight and dedication of landowners, interest groups, tribes, citizens and agencies, are needed to ensure that King County's forests continue to contribute to a sustainable way of life for present and future generations.

The first step to maintain and enhance the commercial forest industry is to protect the forest land base. Second, an ecosystem approach to forest management that provides for long-term ecosystem health and productivity and addresses cumulative impacts on non-timber resources should be explored. Third, commercial forestry must be supported and encouraged by minimizing land use conflicts and offering incentives. Finally, forest land conversions that do occur must be managed to minimize environmental degradation. See Technical Appendix H for a further discussion of forestry issues in King County.

#### A. The Forest Production District

Most of the lands managed for commercial forestry in King County are found in large contiguous blocks. The function of the Forest Production District is to prevent intrusion of incompatible uses, manage adjacent land uses to minimize land use conflicts and prevent or discourage conversion to non-forestry-based uses. A comparison of the area of forest land converted since 1987 inside the Forest Production District with the area converted outside the District indicates that landowners inside the Forest Production District are committed to long-term forestry. It also indicates that designation and zoning of commercial forest lands help to discourage subdivision and conversion.

The Forestry Lands Map illustrates the Forest Production District. This representation does not include the federal forest lands within the Mt. Baker-Snoqualmie National Forest and Alpine Lakes Wilderness because those lands are not designated by authority of King County. They do, however, bear Forest (F) zoning, which establishes standards relevant to any special use permits issued by the U.S. Forest Service.

RL-201 The primary land use within the Forest Production District should be commercial forestry. Other resource industry uses, such as mining and agriculture,

should be permitted within the Forest Production District when managed to be compatible with forest management.Plan, at 99.

A map, entitled “Forestry Lands” shows the “Forest Production District,” separate U.S. Forest Service Lands” and “Rural Forestry District Study Areas.”Plan, following page 99.

The Plan “Rural Forestry District Study Areas” is in recognition of the fact that forested lands continue to exist within King County that do not have long-term significance for commercial production:

The Rural Area contains working farms and forests which contribute to healthy resource-based industries.For example, Rural Area forest lands provide an important part of rural character, add to the diversity and self-sufficiency of local economies and contribute to open space, wildlife habitat and environmental quality.However, Rural Area land in farm and forest use has significantly diminished since 1985, mostly through the conversion of these lands to residential uses.Pressures to convert from resource use include opportunities for significant profits based on alternative uses, which may be needed to meet tax or other obligations of landowners, and the encroachment of residential and other development that conflicts with the resource use.King County should work with landowners to develop an effective incentives program to encourage the continuation of resource land uses.By retaining resource-based uses on Rural Area lands, King County’s resource-based industries can be further maintained and enhanced, in accordance with the GMA (See Chapter Three, Rural Land Use).The areas that should be evaluated for the Rural Farm and Forest District land use designation are shown on the Forestry Lands and Agricultural Lands Maps.Plan, at 97.

Accordingly, the Plan contains the following policies and narrative regarding rural forest districts:

R-102 The Rural Area designations shown on the King County Comprehensive Plan Land Use Map should include areas that are currently rural and meet one or more of the following criteria:

a. Opportunities exist for significant commercial or non-commercial farming and forestry (large-scale farms and forest lands are designated as Natural Resource Lands);Plan, at 60.

Although most of King County’s best farming and timber lands are within designated Resource Production Districts (see Chapter Six, Natural Resource Lands), there is a significant land base for agriculture and forestry in the Rural Area.The policy below establishes King County’s commitment to study this land base and designate Rural Farm and Forest Districts where farming and forestry will be enhanced and protected.

R-108 King County shall identify, in partnership with citizens and property owners, appropriate districts within the Rural Area where farming and forestry are to be encouraged and expanded through incentives and additional zoning protection.These districts shall be designated and zoned by December 31, 1995.All incentive programs created by the county and related to zoning will be available to

benefit landowners in the districts based on the zoning of their properties as of the effective date of this Plan. Areas to be considered should include lands meeting the criteria set forth in the Countywide Planning Policies. Permitted uses in Rural Farm or Forest Districts should be limited to residences at very low densities (one home per 20 acres for forest areas, one home per 10 acres for farming areas), and farming or forestry. Institutional uses or public facilities should not be permitted except as provided by Countywide Planning Policy LU-9. Plan, at 62-63.

Tolt argues that the County violated the Act in three ways by adopting the above-referenced forest land policies in the Plan. First, Tolt contends that the County failed to conduct adequate public participation as required by RCW 36.70A.140. Second, Tolt contends that the County failed to review its prior forest land designations when it adopted the Plan, in violation of RCW 36.70A.060(3). Third, Tolt contends that the County failed to include forested lands that have long-term commercial significance when it created its forest production districts.

**The Board has reviewed the record of the County's recent public participation process regarding forest land designations under the Act and holds that the County has not violated the public participation requirements of RCW 36.70A.140.**

In reviewing this same record, the Board has looked for documents indicating that the County reviewed its "interim" forest land designation before adopting its comprehensive plan. Although the Board was unable to find a document that specifically referred to RCW 36.70A.060(3), it nonetheless concludes that the entire laborious process of developing the Plan's forest land designations and policies quoted above constituted such a review. Tolt has not persuaded the Board differently. Therefore, the Board holds that the County complied with RCW 36.70A.060(3).

**Finally, the Board holds that Tolt failed to meet its burden of proof for showing that the County failed to designate all forest lands of long-term commercial significance.** The Board agrees with the County that it is required by the Act to designate only forest lands of long-term commercial significance that are not already characterized by urban growth. RCW 36.70A.170. The County is not required to designate lands that may be forested today but that do not meet the requirements for lands of long-term commercial significance.

#### **D. plan OR ZONING CODE amendments issues**

The Act's citizen participation requirements are set forth at RCW 36.70A.140, which provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive land use plan or

development regulations invalid if the spirit of the procedures is observed.(Emphasis added.)

In the present case, several parties allege that the County violated the Act's requirements for "continuous" public participation by developing and adopting revisions to the comprehensive plan and/or development regulations late in the process.The specific allegations focused on specific "Amendments" that the County adopted after the main body of the proposed Plan and proposed Area Zoning had been reviewed and the public hearing portions of the County's process had ended.<sup>[1]</sup>The amendments challenged in the present case include Amendments 81 and 81A by FOTL (Portion of Keesling Issue No. 5) which deal with area zoning amendments, and three Amendments that deal with the Plan:Amendment 89 challenged by Duwamish, 90 challenged by O'Farrell II, and 101 challenged by Tolt.

In *WSDF v. City of Seattle (WSDF I)*, the Board crafted a test to evaluate allegations that changes late in the process violate RCW 36.70A.140.The Board held that:

If a local legislative body wishes to make changes to the draft of a proposed comprehensive plan that, to that point, has ostensibly satisfied the public participation requirements of RCW 36.70A.020(11) and .140, it has the discretion to do so. However, if the changes which the legislative body wishes to make are substantially different from the recommendations received, its discretion is contingent on two conditions:(1) that there is sufficient information and/or analysis in the record to support the Council's new choice (e. g., SEPA disclosure was given, or the requisite financial analysis was done to meet the Act's concurrency requirements) and (2) that the public has had a reasonable opportunity to review and comment upon the contemplated change.If the first condition does not exist, additional work is first required to support the Council's subsequent exercise of discretion.If the second condition does not exist, effective public notice and reasonable time to review and comment upon the substantial changes must be afforded to the public in order to meet the Act's requirements for "early and continuous" public participation pursuant to RCW 36.70A.140.*WSDF I*, at 76.

The County adopted Zoning Amendments 81 and 81A, and Plan Amendments 89, 90,and 101 after the public hearings were closed.The hearing on the proposed Plan closed on November 17, 1994; the hearing on the proposed Area Zoning closed on December 9, 1994.Thus, if the change effected by any of these individual Amendments was "substantially" different from that which was subject to public review and comment, then it fails to meet the above-cited test and violates RCW 36.70A.140.Accordingly, the Board first reviews the facts and argument raised with regard to each contested Amendment in order to determine whether the change effected was "substantial."Then the Board issues a conclusion for each of the amendment issues.

### **1. DUWAMISH LEGAL ISSUE NO. 3**

*Did the County's action in adopting Amendment #89 violate the citizen participation requirements of the GMA, including RCW 36.70A.140, by failing to conduct a public meeting with effective notice of the proposed action?*

## Discussion

On January 28, 1994, the County Council passed Motion No. 9226, requesting the Department of Parks, Planning and Resources to consider a community plan revision study in the South Park portion of the Highline Planning Area, specifically the .9 acre Spencer property, which has eight rental houses. The Highline Community Plan was adopted in 1977. Land uses in the vicinity include residential, commercial and industrial. The site is surrounded by the Cities of Seattle and Tukwila, and the Duwamish River. The action to authorize a study was in response to Spencer's request for Industrial use of the property. County Brief, Exhibit 1.

On November 2, 1994, the County Planning and Community Development Division conducted a community meeting on a proposed zoning change on the Spencer property. The notice of the meeting, titled "Important Community Meeting," stated that the County was:

... conducting a study to consider revising a portion of the Highline Community Plan and Area Zoning from Suburban Residential to Industrial ... to provide additional industrial land for future expansion of Spencer Industries. ... Area property owners and residents are invited to attend this meeting to discuss the study and to obtain a schedule for the Hearing Examiner and Council public hearings.... County Brief, Exhibit 13.

In its Brief, the County notes that the proposed change in land use designation, if any:

... would take the form of an amendment to the Highline Community Plan. ... by November, 1994, however, officials at the County ... had recognized that the Comprehensive Plan was the appropriate vehicle for changes in land use designation. County Brief, at 4, footnote 2; Exhibit 4.

The Plan Amendment Study report noted that:

Property owners and tenants were notified of a public meeting planned for November 2, 1994 to be held in the Spencer Industries, Inc. training room. Flyers were sent to property owners within 500 feet of the study area and tenants were notified by word of mouth and with a sign posted on the study area. County Brief, Exhibit 1, at 6.

One nearby resident attended the community meeting. On November 4, 1994, a tenant (within the study area) "expressed concern that the [proposed] change in zoning would precipitate a change in land use." County Brief, Exhibit 1, at 6.

Amendment 89 to (proposed) Ordinance 11575 was introduced in the County Council on November 14, 1994, and was passed on November 18, 1994. It amended the land use designation on the Spencer property from Urban Residential, 4 to 12 dwelling units per acre, to Industrial. The rationale provided on the face of the proposed amendment stated:

This amendment would allow expansion of an existing industry on adjoining properties. It is consistent with Proposed Comprehensive Plan Policies ED-101, which encourage sustainable economic development and ED-202, which calls for actions to retain and expand industries within industrial areas. County Brief, Exhibit 6, at 14.

An attachment to the Amendment, entitled “Comprehensive Plan Map Amendment,” characterizes the proposed change as “Executive Proposed Technical Correction: I (Industrial),” and notes that the amendment “is proposed now to avoid waiting until 1995, the next opportunity to amend the [Plan].” County Brief, Exhibit 6, Attachment.

Ordinance 11575, at Section 2, repeals a section of K.C.C. 20.12.015 and replaces it with the following:

Relationship to previously adopted plans. Relationship of Comprehensive Plan to previously adopted plans, policies, and land use regulations. The 1994 King County Comprehensive Plan shall relate to previously adopted plans, policies and land use regulations as follows:

A. The previously adopted White Center Action Plan and West Hill Community Plan are consistent with the [Plan] and are adopted as elements of the [Plan].

B. Existing community plans for Vashon, Enumclaw, Snoqualmie, Shoreline, Highline, Federal Way, Tahoma/Raven Heights, Newcastle, East Sammamish, Northshore and Bear Creek shall continue in effect until revised to be consistent with and adopted as part of the [Plan]. Where conflicts exist between community plans and the [Plan,] the [Plan] shall prevail.

C. Pending or proposed subarea plans or plan revisions, amendments to the Sewerage General Plan, and amendments to adopted land use regulations, which are adopted on or after the effective date of this Ordinance 11575 shall conform to all applicable policies and land use designations of the [Plan]. County Brief, Exhibit 6.

## **2. KEESLING LEGAL ISSUE NO. 5**

*[With respect to adopting Amendment #81 and 81A regarding Ring Hill Estates], [D]id the County fail to comply with RCW 36.70A.140 and WAC 365-195-600 when it adopted the Plan, particularly the rural land use, natural resource lands and natural environment chapters and the implementing development regulations relating to rural areas and issues?*

### Discussion

FOTL was granted intervenor status with respect to Keesling Legal Issue No. 5. FOTL contended

that the County failed to comply with RCW 36.70A.140 by increasing the residential density of a parcel known as “Ring Hill Estates” in the Bear Creek Community Planning Area after the close of the public hearing process. See Finding of Fact 4.

Amendment 81, introduced in the County Council on December 28, 1994, was an amendment to Executive Proposed Ordinance 94-737 Relating to Area Zoning. The rationale set forth in the amendment provided:

These properties are similar in nature to other RA 5 zoned properties in the area. This change is consistent with King County Comprehensive (sic) policy R-206 which allows a residential density of one home per five acres in rural areas where land is physically suitable for development and can be supported by rural services. FOTL Ex. 54, Exhibit 2.

Amendment 81A, an “Amendment to the Amendment 81,” bears a date of January 9, 1994 (sic: 1995). It adds four P-suffix conditions to the properties described in Amendment 81. The conditions require a set-aside of four acres of open space for every one acre of developed property; the remaining conditions deal with specific site conditions. FOTL Ex. 54, Exhibit 3.

The County did not dispute the facts regarding when the public hearing was closed, nor the timing of the introduction of Amendments 81 and 81A and Council action on them. The County’s defense against FOTL’s allegation was that the amendments did not represent a “substantial” change, either relative to the prior designation or when placed in the context of the larger area. The County also argued that, although the hearing had been closed, the amendments were introduced and reviewed in public sessions of the County Council, and citizens had the opportunity to write to their elected officials even after the close of the hearing.

The Board rejects the County’s argument that the effect of Amendments 81 and 81A was not “substantial.” Reducing the minimum lot size from 10 acres to 5 acres has the result of doubling the density. While such a change, when viewed in a county-wide or even community plan context, may seem relatively “insubstantial”, it is a very different matter in the vicinity of Ring Hill Estates. As noted in Section C below, “rural character” is perceived and experienced in a very localized way. So is the land use pattern and the functional relationships and impacts between and among adjacent land uses. Therefore, **the Board holds that, when evaluating the “substantially different” portion of the West Seattle test, the context may be as small as the immediate vicinity of the affected parcel(s).** See *West Seattle Defense Fund v. City of Seattle (WSDF I)*, CPSGMHB Consolidated Case No. 94-3-0016, Final Decision and Order (1995). In the present instance, the properties adjacent to and in the vicinity of the Ring Hill site would be subject to twice the dwelling unit count and its associated effects on the functional and visual character of the area. The Board notes further that, while Amendment 81 was introduced twelve days before adoption, Amendment 81A was not introduced until the day the ordinance was adopted.

The Board holds that the change is substantially different from the prior designation. Therefore, the public needed a reasonable opportunity to comment, which it was not provided. Consequently, the Board concludes that adoption of Amendment 81, as amended by Amendment 81A, does not comply with RCW 36.70A.140 and will be remanded to the County.

### 3. O'FARRELL II LEGAL ISSUE NO. 1

Did the Plan violate GMA planning goals as outlined in RCW 36.70A.020(11) and .140 when a last-minute Map Amendment #90 was passed on November 18, 1994, granting "potential zoning" without citizen participation?

#### Discussion

O'Farrell challenges adoption of Amendment 90 to the Plan for failure to provide for citizen participation concerning the Amendment, as required by RCW 36.70A.020(11) (Issue 1) and RCW 36.70A.140 (Issue 2).

The County responds that, having determined that changed zoning on the subject property was appropriate, it was faced with a difficult question of timing, involving the interaction of a quasi-judicial and a legislative process, and opted for a course of action which avoided a year's delay in changing the zoning on the property, while respecting an ongoing quasi-judicial process involving the site. The selected action would allow the ultimate decision of whether to change the zoning on the property to be made through the quasi-judicial process. The County further argues that "the public participation provision ... does not mean that each potentially interested citizen must be personally notified of every minor change to a draft comprehensive plan proposed by a local legislative body." Further, it claims that the change was not a substantial one requiring the opportunity for comment. County Brief, at 7-9, 19, 21.

The site in question is a two-and-one-half acre parcel on the north side of Newport Way at S.E. 154th Street, owned by a church; the intended use is multi-family housing for seniors. Council Motion 91-21, September 20, 1993, directed the County to complete a community plan amendment study encompassing the subject property that had been authorized on May 27, 1993. After completion of the study, and during a SEPA appeal (of a Declaration of Non-significance for a proposed Community Plan rezoning action), the GMA Plan and area zoning were completed. The Plan, through Amendment 90, provided for urban density greater than 12 homes per acre; the area zoning added a potential R-24 zone to the current R-6 zoning. The land use in the surrounding area is R-6, urban medium density. The proposal to rezone the property continued through the hearing examiner process, and the Examiner's decision was appealed to the Council. At the Council hearing, the Hearing Examiner was asked whether the council's action [changing the Land Use designation] changed the criteria used to evaluating whether the proposed rezoning of

the property was appropriate.He responded that:

The criteria are quite different, and having a potential zone enables the examiner to consider whether or not the reclassification is appropriate in the language of the ordinance. In the absence of that potential on the property, there are different criteria with respect to changed circumstances that must be shown. Transcript of Rezone Appeal Hearing, April 17, 1995.O’Farrell II Brief, Ex. 1-E.

On November 1, 1994, a Planning and Community Development Division intradepartmental memorandum concerning pending community plan amendments states that while amendment studies, including one on the subject property, were underway, they would not be completed prior to the scheduled adoption of the Plan.However:

We know enough about each of these studies to conclude they have merit, comply with 1994 Comprehensive Plan policies and should be approved.By not amending the comprehensive Plan land use map at this time, these plan amendments will be forced to wait one year, until the 1995 comprehensive Plan amendments are acted on. This delay serves no public purpose.O’Farrell II Brief, Ex. 5.

A “Community Plan Amendment Studies Issue Paper,” unsigned and undated, identifies the problem as “five pending plan amendments that require changing the proposed KCCP land use map.”Since the studies were not expected to be completed before Plan adoption, the recommended solution was to “amend the [Plan] land use map to accommodate the five pending studies.This can be done through the ‘technical correction’ process.”O’Farrell II Brief, Ex. 5, attachment.

The proposed Land Use Atlas before the Council showed a land use for the site (Urban Residential 4-12 units) that was less intense than that proposed in the plan amendment study (Urban Residential up to 24 units.)St. Ex. 21, Map 13.

Amendment 90 was submitted to the Council on November 14, 1994, with the caption “Amendment to Executive Proposed Comprehensive Plan - Land Use Map as presented in Legislative Format.”The text provided:

Amend Land Use Map as follows:

Amend the Executive’s Proposed Land Use Map from Urban Residential, 4-12 homes per acre to Urban Residential, greater than 12 homes per acre for property in the Newcastle area.See attached map.

Rationale: This amendment will accommodate senior affordable housing.It is consistent with Proposed Comprehensive Plan Policies HO-102 and HO-103, which support providing a range of housing types for all economic segments in

the County and sufficient land with necessary infrastructure for affordable housing. Please see the attached map and issue paper for more detailed information. O'Farrell II Brief, Ex. 2.

In the attached staff report, the Recommendation provides that, subsequent to the proposed land use map change, the proposed zoning atlas should be amended to R-6, potential R-24, and the hearing examiner process should be continued to determine whether to activate the potential zoning and if development conditions are necessary. O'Farrell II Brief, Ex. 2, attachment.

#### **4. TOLT LEGAL ISSUE NO. 7**

***Did Map Amendment #101, which changed the land use designation from residential to neighborhood center at Hwy. 202 and 228th Ave. NE., fail to comply with RCW 36.70A.020 (11) and .140 by failing to include the general public in early and continuous participation in the development and amendment of the plan?***

##### Discussion

Petitioner Tolt alleges that public involvement was not encouraged as to Plan Amendment 101, as required by RCW 36.70A.020(11), stating that its first knowledge of the Amendment was on November 18, 1994, after the public hearing on the Plan had been closed. Tolt also asserts that the map attached to the Amendment incorrectly identifies land uses on surrounding properties. Tolt Brief, at 48-51.

The County responded that “more than half of the area designated Rural Neighborhood in the final 1994 Plan was designated as such in the Revised Executive Proposed Land Use Atlas published in August, 1994.” It noted that an original amendment which would have amended the UGA boundary to include two parcels on the west was withdrawn, and that the more modest effect of Substitute Amendment 101 was to increase the number of parcels in the existing rural neighborhood classification from four to six. Finally it argued that because the changes were not substantially different, and the final Plan was not substantially different than the Executive Proposed Plan, additional public participation was not required. County Brief, at 44-45, 47-48.

Substitute Amendment 101 to the Executive Proposed Comprehensive Plan Land Use Map Use Atlas, introduced to the County Council on November 17, 1994, states that:

The map titled “Land Use” shall be amended to designate the cross-hatched area shown on Exhibit A, as a “Rural Neighborhood.”

Rationale: The Banks Property is located within the designated Rural Neighborhood at SR 202/236th S.E. and is bordered by commercial, industrial and institutional uses. Designation of the Banks Property as Rural Neighborhood will reflect the existing development pattern

at this center and will complete the center designation without proposing the expansion of overall center boundaries.County Brief, Exhibit 73.

[Original] Amendment 101, with the same caption and date, would:

Amend the Executive Proposed Land Use Map by designating the following area “URBAN GROWTH AREA.”See attached Map.

Rationale: Countywide Planning Policies framework #1, Step 8. c allows King County to make minor technical changes not to exceed 300 acres to the Urban Growth Area.The parcel is surrounded by urban development and meets the criteria to be included in the urban growth boundary.County Brief, Exhibit 74.

The County Council passed Substitute Amendment 101 on November 18, 1994.County Brief, Exhibit 75, at 12.

The Plan discusses rural neighborhoods in Chapter Three, Rural Land Use, at part III. Rural Cities, Towns and Neighborhoods, stating that “[r]ural King County also contains several small Rural Neighborhoods, which provide limited, local convenience shopping.Subsection D. Rural Neighborhoods and Businesses, describes them as:

small commercial developments, or in some cases, historic towns or buildings, that are too small to provide more than convenience shopping and services to surrounding residents. They generally do not have services such as water supply or sewage disposal systems any different from those serving surrounding rural residential development.Plan, at 69, 71.

Conclusions Re: Zoning Amendments Raised in  
Keesling Legal Issue No. 5 and Plan Amendments Raised in  
Legal Issues Duwamish No. 3, O’Farrell II No. 1 and Tolt No. 7

The Board rejects the County’s argument that several of these appeals should be dismissed for failure by the petitioners to name an indispensable party.Since the hearing on the merits in the present case, the Board has heard and rejected this affirmative defense in a different King County case.See *Alberg, et al., v. King County*, CPSGMHB Case No. 95-3-0041 (1995), at 29.The Board affirms the *Alberg* holding that the indispensable party doctrine does not apply to cases before the Board.

After a review of the facts in each of the above-referenced Amendments, the Board concludes that the changes wrought were “substantially different” from the prior proposals.The difference between RA-10 and RA-5 at Ring Hill Estates is substantial.The difference between light industrial and residential in Duwamish is substantial.The difference between 4-12 dwelling units per acre and up to 24 dwelling units per acre at the Vasa Creek site is substantial.The difference

between rural residential and rural neighborhood commercial near the intersection of Hwy 202 and 228th Ave NE is substantial.

Generally speaking, doubling a residential density or changing a use from residential to commercial or industrial use is a change that is substantially different. This does not imply that such changes are not within the discretion of the legislative body to make, and the Board is not rendering a judgment about the policy merits or substantive GMA compliance of the Amendments.<sup>[1]</sup> Rather, the conclusion here focuses on the procedural requirements that must be met when a proposed change crosses the threshold of “substantially different.”

The Board further concludes that the public did not have a “reasonable opportunity to review and comment upon” the Amendments prior to the County Council’s actions. Therefore, upon application of the test set forth in *WSDFI* to the facts in the present case, the Board concludes that the County has violated RCW 36.70A.140 with regard to Plan Amendments 89, 90, and 101 and zoning amendments 81 and 81A. These Amendments will be remanded to the County with directions to provide a reasonable opportunity for public comment prior to consideration by the Council of any subsequent re-adoption of such amendments.<sup>[1]</sup>

Section 110 of ESHB 1724 (Chapter 347, Laws of 1995) creates new statutory authority for the Board to find certain enactments adopted pursuant to the GMA invalid. It amends RCW 36.70A.300 by adding new subsections (2), (3) and (4) as follows:

(2) A finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand, unless the board’s final order also:

a) Includes a determination, supported by findings of fact and conclusions of law, that the continued validity of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(b) Specifies the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(3) A determination of invalidity shall:

(a) Be prospective in effect and shall not extinguish rights that vested under state or local law before the date of the board’s order; and

(b) Subject any development application that would otherwise vest after the date of the board’s order to the local ordinance or resolution that both is enacted in response to the order of remand and determined by the board pursuant to RCW 36.70A.330 to comply with the requirements of this chapter.

(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or

regulations are determined to be invalid, the board shall determine under subsection (2) of this section whether the prior policies or regulations are valid during the period of remand.

Section 110 of ESHB 1724 took effect on July 23, 1995.

**Finding of Fact, Reasons for Invalidity,  
Conclusions of Law and Determination of Invalidity  
Regarding Plan Amendments 89, 90 and 101  
and Zoning Amendments 81 and 81A**

The Board concludes that the continued validity of Zoning Amendments 81 and 81A and Plan Amendments 89, 90, and 101, and any site specific development regulations that implement them (whether specifically appealed to the Board or not), will substantially interfere with the fulfillment of the Act's planning goals (6) and (11). Therefore, the Board issues a **determination of invalidity** finding Zoning Amendments 81 and 81A and Plan Amendments 89, 90, and 101 and any site specific development regulations that implement them, are invalid.

**a. Findings of Fact**

The Board's findings of fact are included within the relevant portion of Part C — Plan or Zoning Code Amendment Issues, and are not repeated here, to save space.

**b. Reasons for Invalidity**

The adopted Zoning Amendments 81 and 81A and Plan Amendments 89, 90, and 101 substantially interfere with Planning Goals 6 and 11 which are discussed below.

Planning Goal 6

RCW 36.70A.020(6) provides:

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions. (Emphasis added.)

The emphasized portion of the second sentence of RCW 36.70A.020(6) requires that the property rights of landowners shall be protected from arbitrary and discriminatory actions. The Amendments substantially changed the development potential on the subject parcels without providing an opportunity for nearby property owners to evaluate the impact of such action on their own property rights and to address the County prior to its action. This constitutes arbitrary action on the County's part.

Planning Goal 11

RCW 36.70A.020(11) provides:

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts. (Emphasis added.)

The goal, in addition to encouraging citizen involvement, uses the very directive verb “ensure” to require that coordination in the planning process occur between communities and their respective jurisdictions. This conveys that communities, which consist of citizens, must be involved in the planning process that leads to adoption of plans and implementing regulations. Further, the importance of this goal is amplified and underscored by RCW 36.70A.140 which provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the procedures is observed.

### **c. Conclusions of Law**

During the period of remand (*see* below), the continued validity of Zoning Amendments 81 and 81A, and Plan Amendments 89, 90, and 101 and any and all development regulations adopted to implement said Amendments to the Plan — whether specifically appealed to the Board or not — will substantially interfere with the fulfillment of Planning Goals 6 and 11 found at RCW 36.70A.020. Therefore, pursuant to the authority conferred by RCW 36.70A.300(2) as amended by ESHB 1724, the Board declares Zoning Amendments 81 and 81A, and Plan Amendments 89, 90, and 101, and any site-specific development regulations that implement the Plan Amendments are **invalid**.

### **E. PERMITTED USES IN the RURAL AREA**

Several parties have argued that certain non-residential uses are prohibited in the rural area. The Board has been asked to specifically rule on whether K-12 schools, golf courses, industrial uses and theme parks are permitted uses in the rural area. In so doing, we necessarily must review what the Act and prior Board decisions have said on the subject.

The Board previously answered the question of what patterns of residential lot sizes are permitted in the rural area. *See Bremerton*, at 51. However, lot sizes alone are not determinative of whether other uses, such as industrial, commercial and public facilities, are permitted in the rural area. The Board first examines the statute’s requirements for the content of a county comprehensive plan rural element, then looks at the broad regional policy context first acknowledged by the Board in the *Bremerton* case.

Among the mandatory elements in a county comprehensive plan is the “rural element.” Legislative amendments made to this section in 1995 (Chapter 400, Laws of 1995; EHB 1305) are noted below in underlining.

Counties shall include a rural element including lands that are not designated for urban

growth, agriculture, forest or mineral resources. The rural element shall permit appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses and may also provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth. RCW 36.70A.070 (5).

The Board reviewed the above-cited section, including the underlined text, in its first county comprehensive plan case.

The addition of the word “appropriate” reinforces the premise that not all types of growth should be permitted in the rural area. The phrase “and uses” underscores that uses other than residential are appropriate in a rural area. The reference to “clustering, density transfer, design guidelines, conservation easements, and other innovative techniques” appears to encourage a kind of compact rural development. *Bremerton*, at 47.

The Board now observes that, in addition to a variety of rural densities, the specific language and sentence structure of RCW 36.70A.070(5) requires that the rural element include “a variety of rural densities and uses” (emphasis added), and that “appropriate” land uses will be ones “that are compatible with the rural character of such lands” (emphasis added). **The Board holds that the requirements for “variety” and “compatibility with rural character” apply to non-residential uses as well as to residential uses.**

In addition, the Board agrees with the description of “rural” that was adopted by the Central Puget Sound Regional Council’s<sup>[1]</sup> 1994 Rural Workshop:

Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource based activities. *Vision 2020 — 1995 Update*, at 27. Quoted in *Bremerton*, at 51.

This vision of a “rural and resource lands landscape” comports with the original language of RCW 36.70A.070(5), as well as the 1995 legislative amendments. It is also consistent with the Board’s conclusion regarding one of the GMA’s central organizing concepts and required outcomes:

The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. *Bremerton*, at 29. Footnote omitted. (Emphasis added.)

The Act likewise contemplates that urban areas and rural areas will be distinct from one another. The most obvious requirement to establish that distinction is the drawing of the UGA boundary, with urban densities and uses on one side and rural on the other. The Act requires a more problematic, but equally significant, distinction to be made between non-residential uses that are appropriate in a rural area and those that are not.

The Board begins its analysis of appropriate non-residential uses in rural areas with the premise

that “urban growth” is not permitted in the rural area. *See Rural Residents*, at 20.RCW 36.70A.030

(14)<sup>[1]</sup> provides that:

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

This definition focuses on the intensity of the use of land, specifically naming such physical improvements as “buildings, structures and impermeable surfaces.” Thus, the net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted or if it crosses the threshold into impermissible urban growth. Measures of development intensity traditionally include building height, setbacks, parking requirements, impervious surface coverage, and the extent of grading and its consequent removal of existing vegetation.

This would appear to be a useful screen to prohibit inappropriate growth in the rural area. Because “the production of food, other agricultural products, or fiber, or the extraction of mineral resources” is essential to the nature and character of rural areas, it is important that new growth not be “incompatible” with it. However, there are two problems with a literal and solitary application of this definition as the test of what is permitted in a rural area.

First, when the definition uses the phrase “such land”, is it referring to the individual parcel on which development is proposed; to the individual parcel and its immediate vicinity; or to an even larger area, such as a neighborhood or drainage basin? Second, certain uses that by their very nature depend upon a rural setting also meet the definition of urban growth (i.e., the intensity of physical improvements or activities on the ground) and would thus be excluded from the rural area.

Regarding the first problem, FOTL argued that the correct reading is to read the words “such lands” as describing the individual parcel on which development is proposed. This may work well with respect to residential uses, particularly in light of the Board’s prior holdings regarding minimum lot sizes in rural areas. However, such a rigid reading, when applied wholesale to all non-residential uses, achieves an absurd result. For example, if a rural fire station were proposed on a 2-acre parcel, it most certainly would have “buildings, structures and impermeable surfaces” on a portion of the land that would preclude the balance of the parcel from being primarily devoted to “the production of food, other agricultural products, or fiber, or the extraction of mineral resources.” The Board concludes that such a reading is far too narrow.

At the other extreme, the County pointed out that the definition does not speak of individual parcels and that “such lands” must therefore refer to a much broader area. While the County is closer to the mark than FOTL, the Board cannot agree that the scope of “area-wide” means, as the County infers, an entire drainage basin or community planning area of many square miles. To

measure the “incompatibility” of a proposed site development with the rural character of such a large area looks too far afield. Functional and visual rural character is perceived at relatively close quarters (e.g., within the view shed, “just up the road”, or across the fence line) rather than beyond the immediate vicinity. While the County’s proposed broad reading of “such lands” might eliminate very large projects, such as theme parks in the rural area, it would permit uses that, in close proximity, would be incompatible with “low-density residential development, recreation uses, small-scale farming, forestry, and cottage industries as well as other natural-resource based activities.”

To paraphrase the County, the GMA does not require every non-residential use in the rural area to also accommodate a cornfield in the backyard; however, the Act does require that such uses be compatible with the cornfields nearby. The Board concludes that the definition of urban growth found at RCW 36.70A.030(14) which, by its own terms, addresses urban uses, must be harmonized with equally clear direction provided by RCW 36.70A.070(5), which explicitly addresses rural uses. The latter section provides:

Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest or mineral resources. The rural element shall permit appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses and may also provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth. (Emphasis added.)

The above-emphasized language suggests that, in the context of rural areas, the legislature intended the words “such lands” to refer to a *land use pattern* rather than solely the use of an individual parcel. Thus, when weighing the apparent limiting effect of the words “such lands” contained in the definition of RCW 36.70A.030(14), it is necessary to consider the meaning and intent of those same words as used at RCW 36.70A.070(5). Therefore, the **Board holds that, for purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, we will consider “such lands” to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity.**

Turning to the matter of “rural character” **the Board holds that “rural character” has both a functional and a visual component.** The functional component describes land put to uses dependent on a rural setting (for example, small farms, forestry, and a YMCA camp are functionally rural because they depend on a rural setting.) If rural lands and/or rural uses on those lands will be interfered with by the traffic, light, noise, etc., from a proposed use, then that use is incompatible with “such lands.”

The visual component describes the visual attributes of the traditional rural landscape.<sup>[1]</sup> If the visual character of the rural landscape is unduly disrupted or altered by a proposed use, then that use is also incompatible with “such lands.” Site and building design and development have a great deal to do with the degree to which any given use blends in with the rural landscape rather than

sticks out.<sup>[1]</sup> This, in turn, is largely a function of how intensively the land must be developed in order to accommodate the fundamental nature and needs of a given use.

The second problem mentioned above is that there appear to be legitimate rural uses that unfortunately meet the literal reading of the definition of “urban growth.” The Board has concluded that this would be an absurd result.

In order to harmonize the Act’s problematic definition of “urban growth” with the clear direction that a variety of non-residential uses are required in the rural area, the Board adopts a general rule and two specific exceptions.

**The Board holds that, as a general rule, proposed uses that meet the definition of urban growth will be prohibited in a rural area unless:(1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility.** A more specific discussion of this rule and its exceptions follows.

Certain uses, of necessity, must be in a rural area or near resource lands, which are typically adjacent to or surrounded by rural lands. For example, a sawmill should be close to forest lands. Certain recreational uses, such as campgrounds, golf courses without ancillary uses, and small airfields, are dependent upon the type of open and relatively undeveloped settings that exist on rural lands. Likewise, localized commercial or public facility uses that serve a rural population or other activities in the rural area are dependent upon a rural location close to their constituencies. On the other hand, an industry that has no orientation to rural or resource based activities is not dependent upon a rural location. Likewise, a commercial operation that is oriented to a larger than rural market or service area is not dependent upon a rural location. Recreational activities that are not dependent upon such a location are not permitted. Thus, theme parks or mixed recreational uses (e.g., a combination of golf course, restaurant, office, or residential uses) are not permitted in a rural area. These uses would, however, potentially be permitted as “master planned resorts” pursuant to RCW 36.70A.360.

The “functional” portion of this analysis requires an evaluation of whether the functions traditionally found in the rural area would be unduly and negatively impacted. Such an “impact” assessment is traditionally associated with SEPA, including traffic, noise, light, air, runoff, and growth inducing impacts. Such an assessment may result in appropriate and necessary mitigating measures.

The “visual” portion of this test requires an assessment of the visual character of the rural area. Certain classes of uses may fit within the rubric of the “rural visual landscape” regardless of their specific location with the rural area. Campgrounds, parks, grange halls, churches, sawmills, small scale retail and other uses and activities fall into this category. They would easily fit into the visual context of any rural landscape. Still other potential uses would require a more location-specific and site-specific assessment. This could be administered through some combination of design guidelines and discretionary permit approval and would focus on the view shed<sup>[1]</sup> in which the proposed development is located.

The second class of exceptions to the rule is the essential public facilities that the Act specifically

acknowledges are difficult to site.RCW36.70A.200provides:

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

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

(Emphasis added.)

RCW 36.70A.200 is not limited to urban areas.Any use specifically named in subparagraph (1) or on the list maintained by OFM, as referenced in subparagraph (2), is permitted in the rural area.<sup>[1]</sup> One example would be a state transportation facility, such as a highway.By its linear nature, such an essential public facility might very well have to traverse the rural area.However, the mere presence of an essential public facility in a rural area does not provide a rationale for or authority to place non-rural uses adjacent or nearby.

Turning to the issues in this consolidated matter that turn on the question of permitted uses in the rural area, the Board below addresses FOTL IV legal issue No. 1 and Carkeek legal issues Nos. 2 and 3.Following each is a discussion, which applies the Board’s above-adopted general rules to the facts in each case.

### **1. FOTL IV LEGAL ISSUE NO. 1**

*Do Policies R-209, R-211 and F-313 allow urban growth in a rural area, and, if so, do these policies fail to comply with RCW 36.70A.020(1), .110, and CPPs FW-9, LU-15 and LU-23?*<sup>[1]</sup>

#### *Discussion*

R-209 provides:

*Accessory and non-residential uses appropriate for the Rural Area include raising livestock, sale of agricultural products produced on-site and small-scale cottage industries. Except for uses requiring a rural location or those related directly to farming, forestry, fisheries, mining, or kindergarten through twelfth grade public schools and facilities, the Zoning Code should not permit primary non-residential uses such as golf courses and churches on lands in the Rural Area designated for a residential density of one home per 10 acres or lower.*

R-211 provides:

**Churches and high schools in the Rural Area are encouraged to locate in rural cities or unincorporated Rural Towns. In reviewing proposals for siting churches and schools outside cities or Rural Towns, King County should assure that any approved project will not stimulate local demand for urban-level services and that any sewer service permitted is designed only to serve the approved project. To ensure safe walking conditions for students, King County should continue the School Walkway Program.**

F -313 provides:

**Public sewer expansions shall not occur in the Rural Area and on Natural Resource Lands except where needed to address specific health and safety problems threatening structures permitted before the effective date of this Plan or the needs of public facilities such as schools. Public sewers may be extended only if they are tightlined and only after a finding is made that no reasonable alternative technologies are feasible. Public sewers which are allowed in the Rural Area pursuant to this policy shall not be used to convert Rural Area land to urban uses and densities or to expand permitted non-residential uses.**

#### **FOTL IV Conclusion No. 1**

The County, by allowing K-12 schools in the rural area, is permitting a form of growth in the rural area that meets a narrow reading of the Act's definition of "urban growth". Nevertheless, K-12 schools meet the above-articulated exceptions to the general rule prohibiting urban growth in a rural area. The Board concludes that, by their nature, some schools may be in the rural area in order to serve the school children who live there. Schools can be compatible with rural character, depending largely on how they are designed and configured on the site. It is the County's duty and prerogative to adopt and enforce such policies and regulations as are necessary to keep K-12 schools in the rural area from being incompatible with the character of the rural land use pattern.

**Further, the Board notes that, while schools are a primary duty of state government, and receive construction funding through the state, they are not a unit of state government. Rather, they are special districts and thus outside the ambit of RCW 36.70A.200. Therefore, within the meaning of the GMA, schools are not essential public facilities.**

The Board concludes that the contested policies do not allow urban growth in the rural area. Therefore, the Board need not and will not address the portion of this issue that alleges inconsistency with the cited CPPs.

## **2. CARKEEK LEGAL ISSUE NO. 2<sup>[1]</sup>**

**Does the Plan create internal inconsistencies between Policies R-208, R-209, R-307, R-308, R-309, R-311 and the aforementioned Plan policies R-314, R-315 and R-316, thereby rendering**

**the Plan in non-compliance with RCW 36.70A.070?**

R-208 provides:

**Accessory and non-residential uses in predominantly residential portions of the Rural Area should be limited to those that:**

- a. Provide convenient local services for nearby residents; or
- b. Require location in a Rural Area (for example, some utility installations);
- or
- c. Support natural resource-based industries or adaptive reuse of significant historic resources.

**These uses should be sited and designed to ensure protection or enhancement of rural character and the components of the Rural Area listed in policy R-101.**

R-209 was previously quoted.

R-307 provides:

**Convenience shopping and services for Rural Area residents should be provided by existing Rural Neighborhoods and Businesses, the boundaries of which shall not be expanded. No new Rural Neighborhoods or Businesses shall be designated.**

R-308 provides:

**Currently designated Rural Neighborhoods are: (Bear Creek) Cottage Lake, Redmond-Fall City Road/236th NE; (East King County) Clearwater, Timberlane Village; (Enumclaw) Cumberland; (Newcastle) East Renton Plateau; (Snoqualmie) Preston, Stillwater; (Tahoma/Raven Heights) Hobart, Ravensdale, North Cedar Grove Road; (Vashon) Burton, Dockton, Tahlequah, Portage, Heights Dock, Jack Corner, Valley Center, Vashon Heights, Maury Island Service Center. Boundaries of Rural Neighborhoods existing on the effective date of this plan shall not be significantly changed, except to facilitate relocation of existing structures to sites out of the 100-year floodplain or away from other severely hazardous or environmentally sensitive conditions. Minor adjustments to boundaries shall not permit an increase in commercial floor area, or location of commercial uses closer to environmentally sensitive areas than would be permitted by the existing neighborhood boundaries.**

R-309 provides:

**Small, isolated commercial developments which are currently legal uses in the Rural Area and in Natural Resource Production Districts should be given the same land use map designation as surrounding rural or resource properties, but recognized as Rural Businesses with neighborhood-scale business zoning. Any such development should not**

be expanded beyond the limits of the existing zoning of the specific parcel on which it is currently located, and if the use is abandoned the zoning should revert to a rural or resource based zone consistent with that applied to surrounding prop-erties

R-311 provides:

King County should adopt commercial development standards for Rural Neighbor-hoods that facilitate economic reuse of existing structures, minimize increases in impervious sur-faces and encourage retention of historic character. For example, urban-level parking, landscaping and street improvement standards are not appro-priate for Rural Neighbor-hoods.

R-314 provides:

The industrial area adjacent to the Rural Neighborhood of Preston shall be recognized with appropriate zoning for industrial uses, provided that any industrial development or redevelopment shall be conditioned and scaled to maintain and protect the rural character of the area and to protect sensitive natural features. The boundaries of this industrial area shall be those properties within the Preston Industrial Water system, as set by King County Ordinance No. 5948, with the exception of the northeast parcel that is upland of the existing industrial development.

R-315 provides:

Sites within the Rural Neighborhood of Preston that were designated in the Snoqualmie Valley Community Plan and Area Zoning for future consideration for industrial uses, based on existing site uses or proximity to industrially-used sites shall be given potential industrial or community business zoning based on designations agreed upon in the Preston Village Community Plan submitted to the King County Council in November, 1993 and subject to appropriate environmental review. Any application for potential zoning actualization, however, shall be extensively condi-tioned to maintain the rural character and scale of the adjacent Rural Neighborhood and to protect sensitive natural features of the environment. Such sites may be denied actualization of industrial or mixed use zoning where such sites are found to be too sensitive or too near a sensitive area to permit adequate mitigation, even where mitigating conditions are proposed.

R-316 provides:

Development regulations for non-vested industrial development in Rural Areas shall require the following:

- a. Greater setbacks, and reduced building height, floor/lot ratios, and maximum imper-vious surface percentage standards in comparison to standards for urban industrial development.
- b. Maximum protection of sensitive natural features, especially salmonid

habitat and water quality.

c. Building and landscape design that respects the aesthetic qualities and character of the Rural Area, and provides substantial buffering from the adjoining uses and scenic vistas.

d. Building colors and materials that are muted, signs that are not internally illuminated, and site and building lighting that is held to the minimum necessary for safety.

e. Heavier industrial uses, non-vested industrial uses producing substantial waste by-products or wastewater discharge, or non-vested paper, chemical and allied products manufacturing uses in the urban industrial zone shall be prohibited.

f. Industrial uses requiring substantial investments in infrastructure such as water, sewers or transportation facilities shall be scaled to avoid the need for public funding of the infrastructure.

#### Discussion

The County asserts that “Policy R-316 provides that all industrial development in the rural area must be rural in nature” and that “Significantly, this policy does not allow industrial development anywhere. It simply imposes mandatory conditions on industrial development in the rural area that is otherwise authorized.” County Prehearing Brief, at 16-17. The Board disagrees with the County’s statement that Policy R-316 provides that uses will be “rural in nature”. Rather, by its own terms, this policy deals with “building and landscape design that respects the aesthetic qualities and character of the Rural Area” and directs that building setbacks, dimensions, colors and materials are to be selected that minimize visual impacts. While these are laudable objectives aimed at achieving compatibility with the visual character of the rural area, they do not speak to the nature, or essence of the use as appropriate for the functional character of a rural setting. Subparagraphs “e” and “f” do identify as inappropriate “heavier industrial uses” (heavier than what?) and uses that are capital improvement intensive. Yet, even these limiting subparagraphs leave an overly broad range of potentially industrial uses that, pursuant to the above-identified holdings, are not dependent upon a rural location. The County further argues that Policies R-314, R-315 and R-316 do not create urban growth in a rural area. County Prehearing Brief, at 28. The Board rejects this contention. Policies R-314 and R-315 impermissibly create urban growth in the rural area, and R-316 simply limits some of the more potential egregious types of industrial development.

#### Carkeek Conclusion No. 2

The types of design treatments that are identified in R-316 are appropriate when addressing how to help any industrial development to be compatible with the visual character of the rural area. Nevertheless, the Board has concluded that, in order to be permitted in a rural area, uses that meet the Act’s definition of “urban growth” must also be compatible with the functional character of the rural area and, due to their very nature, require a rural setting. The Board is also unpersuaded that the presence of a freeway off-ramp somehow alters the rural character

of this land beyond the UGA. To so conclude would invite leapfrog development, islands of non-rural uses scattered throughout whatever portions of the rural area a highway traverses. The Board concludes that R-314 and R-315 must be remanded to the County with direction to render them consistent with the requirements of the Act and this Order. Policy R-316, in and of itself, is not in violation of any requirement of the Act, but it alone is inadequate to preclude industrial uses in the rural area from constituting impermissible urban growth. Because the Board answers Legal Issue No. 2 in the affirmative, it need not and will not answer Carkeek Legal Issues Nos. 1, 3 and 4.

F. vashon-maury LEGAL issues

1. Vashon-Maury Legal Issue No. 1

Does Plan Policy R-104B setting rural growth targets for new households comply with RCW 36.70A.070(5) and .110 which require encouraging growth in urban areas and restricting rural area growth to that which is non-urban in nature?

At page 59, the Plan provides:

While the GMA requires most new growth to be accommodated in Urban Growth Areas, growth may be permitted outside the UGA provided it is not urban in character. In view of the supply of existing lots created before enactment of the GMA and the potential lots in vested subdivisions (“pipeline”) located in the Rural Area, it is reasonable to allocate a range of 5,810 to 8,200 net new households over the 1992-2012 period to the Rural Area. For modeling purposes, this growth was distributed among community planning areas as follows:...

The Plan then indicates that in 1992, Vashon contained 4100 households while by the year 2012 an additional 300 to 500 are expected.

Discussion

Vashon-Maury argues that the island relies on a sole-source aquifer and cites the Vashon Community Plan as evidence that the quantity and quality of the water supply is at risk. Vashon Prehearing Brief, at 3. Further, it argues that the allocation of growth targets to the Rural Areas is, on its face, in direct conflict with the GMA. Vashon Prehearing Brief, at 7. The County argues that no evidence has been presented to demonstrate that the 300 to 500 new households ‘targeted’ for Vashon would harm the water supply. County Prehearing Brief, at 8. Further, the County argues that, as long as appropriate mitigation measures are applied, even urban densities would not be inconsistent with aquifer protection. County Prehearing Brief, at 12.

Vashon-Maury Conclusion No. 1

The Board rejects Vashon’s argument that allocating growth to rural areas is, on its face, a violation of the GMA. The Board has previously held that growth may be allocated to rural

areas, provided that it does not constitute urban growth. See Bremerton, at 50. While the simple allocation of population or employment to a rural area does not, on its face, violate the Act, how that rural growth is manifested on the ground is a separate matter. See Kitsap Citizens for Rural Preservation and Kitsap Audubon Society v. Kitsap County (KCRP I), CPSGMHB Case No. 94-3-0005, Final Decision and Order (1994), at 16.

## 2. Vashon-Maury Legal Issue No. 2

If the answer to issue #1 is yes, does Policy R-104B setting a target of 300-500 families for Vashon violate RCW 36.70A.070(5) and .110 by providing for urban growth in a rural area, and RCW 36.70A.020(10) and .070(1) by failing to provide protection of groundwater quality and quantity?

### Vashon-Maury Discussion and Conclusion No. 2

Because the Board answers Legal Issue No. 1 in the negative, the Board need not and will not answer the portion of Legal Issue No. 2 dealing with the allocation of growth to a rural area. The portion dealing with groundwater protection will be addressed in Issues No. 3 and 4.

## 3. Vashon-Maury Legal Issue No. 3

Does Plan Policy R-205 describing the application of 10-acre zoning violate RCW 36.70A.070 (5) and .110 by providing for urban growth, and RCW 36.70A.020(10) and .070(1) by failing to provide for groundwater protection?

Policy R-205 provides:

A residential density of one home per 10 acres shall be used in the Rural Area where the pre-dominant lot size is 10 acres or larger and:

- a. the lands are adjacent to or within one-quarter mile of a designated Agricultural Production District, Forest Production District or legally approved long-term mineral resource extraction site; or
- b. the lands contain significant environmentally constrained areas as defined by County ordinance or federal or state law. Plan, at 65.

### Discussion

Although not framed as an allegation of noncompliance in the body of a legal issue, Vashon-Maury cites Policy R-107 as indicative of the County's alleged error in allowing, or directing, rezoning from 10-acre lots to five-acre lots.

Policy R-107 provides:

King County should monitor the quantity and quality of the water supply for the Vashon Community Planning area, along with building permit and subdivision data, and reassess the Vashon Community Plan's allowable growth capacity, if warranted. If

new information indicates an immediate and severe water shortage, the County should apply a complete moratorium on construction of new dwelling units while it updates the Vashon Community Plan and Area Zoning Plan, at 62.

Vashon-Maury Conclusion No. 3

In the present instance, the County's use of 10 acre zoning comports with the Board's holding below that 10-acre lots are clearly rural, not urban. As noted below, the Board notes the serious concern regarding groundwater protection, yet cannot conclude that the creation of further 10-acre lots poses a serious threat.

The Board concludes that Policy R-205 does not violate the GMA.

4. Vashon-Maury Legal Issue No. 4

Does Policy R-206 describing the application of five-acre zoning violate RCW 36.70A.070(5) and .110 providing for urban growth, and RCW 36.70A.020(10) and RCW 36.70A.070(1) by failing to provide for groundwater protection?

R-206 provides:

A residential density of one home per 5 acres shall be used in portions of the Rural Area where the land is physically suitable for development and can be supported by rural services. Plan, at 66.

Discussion

The Board has previously held that 10 acre residential lots are rural and therefore do not constitute urban growth. See Tacoma, at 21. The Board has held that 1- and 2.5-acre parcels constitute urban growth and are thus prohibited in a rural area. Bremerton, at 51. In the present case, the Board must determine whether a five-acre lot size is appropriate in a rural area. In answering this question, we must first address the more fundamental question of whether, and under what circumstances, such a lot size is allowed in a rural area. Policy R-205 applies to all of the County's rural area. Then, we turn to the matter of whether the County's policies relative to five-acre lots on Vashon Island violates the Act's direction to protect groundwater.

At first blush, a five-acre lot size appears more rural than urban in functional and visual character. It is also less likely than, for example, a 2.5 acre lot, to constitute urban growth and generate use conflicts with nearby resource lands. However, the experience in Florida suggests that five- parcels can also constitute a form of sprawl. See Bremerton, at 50, fn. 33. Further, the experience in Oregon indicates that, when located immediately adjacent to urban growth boundaries, five-acre parcels can foreclose the opportunity for future expansion of the UGA. See Achen, et al., v. Clark County, WWGMHB Case No. 95-2-0067, at 33. Either of these outcomes would thwart fundamental objectives of the GMA.

Therefore, rather than adopt a minimum rural residential lot size, the Board instead adopts as a general rule a “bright line” at 10 acres. The Board holds that any residential pattern of 10 acre lots, or larger, is rural. Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not present an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act.

Applying this test to the present facts, the Board finds the evidence unpersuasive that five- lots on Vashon Island will contribute to sprawl or thwart the future expansion of a UGA. There is no UGA on the island. Nevertheless, the Board is troubled by two things.

First is the potential threat that further development at any density, but especially in five-acre lots, presents to the island’s sole source aquifer. The County’s response that such problems must be documented before revisiting the fundamental land use issue does not give sufficient regard to the importance of such water supplies nor the difficulty of lowering development intensity after parcelization and vesting has resulted in five- lots.

Second is the prospect that all lots larger than five acres and not subject to the limitations in Policy R-205 would be platted down to five acres, thereby jeopardizing, if not eliminating, the Act’s required range of densities. Accordingly, the Board holds that the pattern of five-acre lots on Vashon Island does not comply with the Act given the County’s admission that Vashon Island has a history of water quantity and quality problems.

Vashon-Maury Conclusion No. 4

Policy 206 violates the Act and is remanded to the County with direction to either delete or justify the five-acre lot option. If the County chooses the latter, it must show how a range of lot sizes on Vashon-Maury Island will be maintained and how the prospect of a catastrophic water shortage and/or ground water contamination can be dealt with proactively rather than after the fact. Policy R-107 is not before the Board.

5. Vashon-Maury Legal Issue No. 5

Does Policy R-208 which sets standards for accessory uses in residential portions of rural areas violate RCW 36.70A.070(5) which places limits on the types of land uses allowed in rural areas?

Vashon-Maury Discussion and Conclusion No. 5

The petitioners abandoned this issue. See Vashon-Maury Prehearing Brief, at 2, fn. 1.

G. O’FARRELL I LEGAL ISSUES

1. O’Farrell I Legal Issue No. 1

Does the Plan, including but not limited to policies NE-331 through NE-335, fail to comply with RCW 36.70A.020(10), .060(3), .070(1) and .170(1)(d) by failing to designate and protect critical aquifer recharge areas and by failing to protect the quality and quantity of ground water?

## *2. O'Farrell I Legal Issue No. 2*

Is the Plan's designation of the sites of the Blakely Ridge and Northridge Master Plan Developments as parts of the UGA consistent with the requirement set forth at RCW 36.70A.070(1) to protect the quality and quantity of ground water?

[1]

O'Farrell I raises two issues concerning the protection of the quality and quantity of ground water in the Plan: the designation and regulation of critical aquifer recharge areas, and designation of the Bear Creek UPD site as a UGA. O'Farrell asserts that the County has failed to protect ground water quality and quantity, and that its designation of the UPD site, together with its failure to designate a known aquifer recharge area on the site, results in an internal inconsistency in the Plan, in violation of the Act.

The County responds that it has designated critical aquifer protection areas and protective regulations, and that the Act does not require that all potential recharge areas receive a rural land use designation. It notes that the County did not classify or identify an aquifer recharge area where the UPDs are located; therefore, an urban designation for the UPDs does not violate the ground water protection requirements of the Act.

RCW 36.70A.020(10), Environment, provides:

Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

RCW 36.70A.170(1)(d), Natural resource lands and critical areas — Designation, directs the County to designate critical areas, where appropriate.

RCW 36.70A.060(3), Natural resource lands and critical areas — Development, regulations directs the County to:

... review these [previously adopted] designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

RCW 36.70A.070(1), Comprehensive plans—Mandatory elements, directs the County to

provide in the land use element of its Plan “... for protection of the quality and quantity of ground water used for public water supplies.”

WAC 365-190-030(2), a part of the minimum guidelines prepared by the Department of Community, Trade and Economic Development (CTED) to assist counties in classifying and designating critical areas, provides that:

Areas with a critical recharging effect on aquifers used for potable water are areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water.

WAC 365-190-040(2)(d) provides that:

Mapping should be done to identify ... known critical areas. Counties and cities should clearly articulate that the maps are for information or illustrative purposes only unless the map is an integral component of a regulatory scheme.

Noting that the Act does not have a specific requirement for inventorying or mapping either natural resource lands or critical areas, WAC 365-190-040(2)(d) provides that:

For critical areas, performance standards are preferred, as any attempt to map wetlands, for example, will be too inexact for regulatory purposes. Standards will be applied upon land use application. Even so, mapping for critical areas for information but not regulatory purposes, is advisable.

The Procedural Criteria for Adopting Comprehensive Plans and Development Regulations, adopted by CTED, WAC 365-195-410, discusses a county’s obligation to reexamine its earlier designation of critical areas when it prepares its comprehensive plan:

(1) Requirements. Prior to the development of comprehensive plans, cities and counties ought to have designated critical areas and adopted regulations protective of them. Such areas are defined to include... (b) areas of critical recharging effect on aquifers used for potable water ... The previous designations and regulations shall be reviewed in the comprehensive plan process to ensure consistency.

(2) Recommendations for Meeting Requirements. Much of the analysis which is the basis for the comprehensive plan will come later than the initial identification and regulation of critical areas. The result may be plan features which conflict with the previous critical area provisions.

...

(c) The review of existing designations should, in most cases, be limited to the question of consistency with the comprehensive plan, rather than a revisiting of the

entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account.

The County Council passed Ordinance No. 11481, relating to the protection of critical aquifer recharge areas pursuant to Chapter 36.70A RCW, on September 12, 1994. The findings state that: the Ordinance constituted the County's actions to comply with the Board's order to designate and adopt regulations to protect critical aquifer recharge areas; the County is the lead agency for development of a ground water management program for the area;...St. Ex. 52, at 1.

Ordinance 11481 defines Critical Aquifer Recharge Areas as:

... areas that have been identified as sole source aquifers, areas that have a high susceptibility to ground water contamination, or areas that have been approved pursuant to WAC 246-290 as wellhead protection areas for municipal or district drinking water systems. Areas with high susceptibility to ground water contamination occur where aquifers are used for drinking water and there is a combination of permeable soils, permeable subsurface geology, and ground water close to the ground surface. St. Ex. 52, at 5.

Ordinance 11481 includes two maps, entitled "Areas Highly Susceptible to Ground Water Contamination" and "Sole Source Aquifers." These were adopted as the designation of critical aquifer recharge areas in King County pursuant to RCW 36.70A.170. The Bear Creek UPDs are not identified, in whole or in part, as a critical aquifer recharge area. St. Ex. 52, Section 2, at 5.

Ordinance 11481 states that:

King County will evaluate and implement, as appropriate, ground water management plans and wellhead protection programs to further protect ground water resources. King County will also, revise, as appropriate, the map of critical aquifer areas, adopted in Section 2, to include areas of high recharge to ground water as identified in ground water management plans and wellhead protection programs. St. Ex. 52, Section 7, at 6.

The Redmond-Bear Creek Valley (RBC) is one of five areas in the county designated in 1986 as ground water management areas by the Department of Ecology. The County issued a draft ground water management plan (GWMP) for Redmond-Bear Creek Valley on November 4, 1994, two weeks prior to adoption of the Plan. Union Hill participated in preparation of the GWMP. The Plan characterizes the planning area; discusses land use impacts on ground water; describes the hydrogeology of the area; presents management strategies, and

recommends an implementation process for the management program.St. Ex. 40.

The GWMP describes an aquifer as:

... a saturated underground soil or rock formation that yields water in sufficient quantity to be economically useful. ... Ground water provides most of the water used in the RBC-GWMA for private, municipal, industrial, and agricultural needs.St. Ex. 40, at 1-1.

In a discussion of ground water recharge, the GWMP notes that:

Aquifer recharge areas occur where permeable geologic materials and other physical conditions allow water to percolate down to the water table and into an aquifer system. These areas are said to have “infiltration potential,” indicating that not only can precipitation easily reach an underlying aquifer, but contaminants also may reach an aquifer.St. Ex. 40, at 2-48.

The GWMP includes an infiltration potential map, showing moderate recharge potential through a major portion of the study area, including the UPD sites.St. Ex. 40, Figure 2.6.19.

The GWMP describes future development in the planning area, including the UPDs at issue in this case.The UPDs are “planned to have moderate density single-family (3-6 dwelling units/acre) and multifamily (18-dwelling units/acre) units on sewers” and “will provide a major employment center based on retail and business/office park uses.”St. Ex. 40, at 2-15-16.

The GWMP, in a discussion of implementation of wellhead protection, notes that:

[The Seattle-King County Health Department] will propose to the King County Council that the following be considered as critical areas for purposes of compliance with the Growth Management Act: Ground Water Management Areas, Sole Source Aquifers, and Wellhead Protection Areas.St. Ex. 40, at 3-21.

Union Hill attempted without success to have areas of high and moderate potential recharge, identified by a geological report and coinciding in part with the UPD boundaries, designated on the County’s map as areas highly susceptible to ground water contamination.O’Farrell Brief,at 13;Brief, Ex. 7, Figure 20.

The Plan discusses ground water in Chapter Seven, Natural Environment, at section I. G, noting that:

...the natural hydrologic system can be altered by development practices and overuse of the aquifer.The result may be depletion of aquifers.

Ground water is also subject to contamination from human activity. Once a source of ground water is contaminated it may be lost forever. The cost of protection is considerably less than the cost of remediation and replacement. Plan, at 125.

After citing the GMA's requirement to designate areas with a critical recharging effect on aquifers used for potable water, the Plan notes that "... it is very difficult to map, designate, and define aquifer recharge areas."

King County recognizes the need for aquifer protection and is developing ground water management plans. The protection of ground water requires an understanding of (1) the quantity of water replenishing aquifers relative to the quantity being withdrawn from them, and (2) the potential for contamination. These issues are functions of related, but different factors and cannot adequately be addressed by the same designation. The County is choosing to focus first on the contamination issue. Plan, at 125.

The Plan provides a map entitled "Areas Highly Susceptible to Ground Water Contamination," which:

... shows areas most susceptible to such contamination, using geologic characteristics with depth from ground surface to water table, and sole source aquifers in and around the City of Renton and all of Vashon-Maury Island. Plan, at 125 and Map following 125.

The Map shows three small areas of the Bear Creek UPD Urban Growth Area as being highly susceptible to ground water contamination, on the southwest, south and southeast edges of the area. Plan, map following 125.

[1]

Plan Policy NE-332 provides:

In unincorporated King County, areas identified as sole source aquifers or as areas with high susceptibility for ground water contamination where aquifers are used for potable water are designated as Critical Aquifer Recharge Areas as shown on the map ... Since this map focuses primarily on water quality issues, the County shall work in conjunction with cities and ground water purveyors to designate and map recharge areas which address ground water quantity concerns ... Updating and refining the map shall be an ongoing process. Plan, at 125.

Plan Policy NE-333 lists four steps that the County should take to protect ground water quantity and quality, including implementation of adopted GWMPs; appropriate implementation of wellhead protection programs; development of best management practices for new development as recommended in the above plans and programs; and refining regulations as appropriate to protect critical aquifer recharge areas when information is

evaluated and adopted by the County Plan, at 126.

The text preceding Policies NE-334 and 335 states that:

Preserving ground water recharge means creating a balance between the need to allow growth in ground water recharge areas and the potential decrease in recharge associated with that growth. Land use decisions should be made using knowledge of potential impacts on aquifers used for water supplies. Plan, at 1256.

NE-334 provides that:

King County should protect ground water recharge quantity in the Urban Growth Area by promoting methods that infiltrate runoff where site conditions permit, except where potential ground water contamination cannot be prevented by pollution source controls and stormwater pretreatment.

NE-335 provides that:

In making future zoning and land use decisions which are subject to environmental review, King County shall evaluate and monitor ground water policies, their implementation costs, and the impact upon the quantity and quality of ground water. The depletion or degradation of aquifers needed for potable water supplies should be avoided or mitigated, and the need to plan and develop feasible and equivalent replacement sources to compensate for the potential loss of water supplies should be considered.

In text preceding NE-336, the County recognizes the rural areas' significance in ground water recharge and storage; NE-336 provides that:

King County should protect ground water in the Rural Area by:

a. Preferring land uses that retain a high ratio of permeable to impermeable surface area and that maintain or augment the infiltration capacity of the natural soils; and

b. Requiring standards for maximum vegetation clearing limits, impervious surface limits, and where appropriate, infiltration of surface water. These standards should be designed to provide appropriate exceptions consistent with Policy R-216 [rural development standard to protect the natural environment.] Plan, at 126.

#### Discussion

The Board begins its analysis by examining what the Act required the County to do, with

regard to critical areas, when it adopted its Plan.

O'Farrell summarizes the requirements of the Act and the recommendations of the Guidelines as requiring that designations and development regulations for critical areas be reviewed during comprehensive plan adoption, when there is an opportunity to "correct errors and fill gaps that may have existed during the initial process of adopting critical areas." O'Farrell argues that the Union Hill proposal to add its proposed aquifer protection areas to the Plan should have been accepted by the County, and that the previously enacted portions of the King County Code referenced in Ordinance 11481 were not adopted with the protection of groundwater or aquifer recharge areas as their chief purpose.

The County argues that O'Farrell has not identified a GMA duty the County has violated; the County has designated and adopted regulations to protect critical aquifer recharge areas, and the Act does not require that all designated areas receive a rural land use designation. It cites WAC 365-190-030(2) to support its position that the County correctly focused on ground water quality, rather than quantity, in its designations and regulations.

The County points out that the designations of Critical Aquifer Recharge Areas in Plan Policy NE-332 (and Map following page 125) are the same as the designations made in Ordinance 11481, and that NE-332 and the challenged policies do, in fact, address ground water quantity as well as quality.

The Board holds that the designations of Critical Aquifer Recharge Areas made in Ordinance 11481, adopted September 12, 1994, are presumed valid; the only issue before the Board is the extent of the County's duty, at the time of Plan adoption, to reexamine those designations to determine whether any changes were necessary, and if so, to take appropriate action in the Plan.

O'Farrell's objection as to the County's failure to designate the recharge area Union Hill had identified is addressed in NE-332:

[T]he County shall work in conjunction with cities and ground water purveyors to designate and map recharge areas which address ground water quantity concerns as new information from ground water and wellhead protection studies adopted by County or state agencies becomes available. Updating and refining the map shall be an ongoing process. Plan, at 125.

Similarly, Policy NE-333, protection of ground water quality and quantity, addresses regulations for areas with adopted plans and programs. Plan, at 126.

Where, as here, a ground water study was not adopted as required by NE-332, an aquifer identified by that study was not included on the map.

O'Farrell has not met its burden of showing that the emphasized portions of those policies violate the Act, or that the County abused its discretion when it did not modify the designations or regulations. However, the Board notes that it interprets that provision in NE-332 to mean that, at such time as Union Hill's proposal is adopted by the County or a state agency with jurisdiction, the map showing Critical Aquifer Recharge Areas must be amended at the earliest opportunity to include the areas proposed, and that regulations and programs developed under Policy NE-333 will address such new areas.

Even if the recharge area proposed by Union Hill were to have been included as a Critical Aquifer Recharge Area, O'Farrell has not met its burden to prove that the GMA requires that land uses in such areas be limited to rural uses.

Neither has O'Farrell met its burden to show that the County violated the Act when it elected to control and regulate developments, whether rural or more intensive uses, to avoid or mitigate potential impacts to ground water, rather than severely limit permissible land uses in designated areas.

O'Farrell I Conclusion No. 1 and 2

O'Farrell I has failed to meet its burden to show how the Plan violates the requirements of the GMA.

### 3. FOTL IV LEGAL ISSUE NO. 5

Does the Plan fail to comply with RCW 36.70A.070 by lacking consistency between the capital facilities element and the future land use map as to water supply?

FOTL IV Discussion and Conclusion No. 5

FOTL IV abandoned this issue. FOTL IV Prehearing Brief, at 1.

### H. OTHER KEESLING LEGAL ISSUES

#### 1. Keesling Legal Issue No. 1

Did the County's process adopting the Plan (adopted by Ordinance 11575) and development regulations (adopted by Ordinances 11615 through 11625) fail to comply with RCW 36.70A.020 (6), .160 and .370?

RCW 36.70A.020(6) provides:

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

RCW 36.70A.160 provides:

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources.

RCW 36.70A.370 provides:

(1) The state attorney general shall establish by October 1, 1991, an orderly, consistent process, including a checklist if appropriate, that better enables state agencies and local governments to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. It is not the purpose of this section to expand or reduce the scope of private property protections provided in the state and federal Constitutions. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in case law.

(2) Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.

(3) The attorney general, in consultation with the Washington state bar association, shall develop a continuing education course to implement this section.

(4) The process used by government agencies shall be protected by attorney client privilege. Nothing in this section grants a private party the right to seek judicial relief requiring compliance with the provisions of this section.

In February, 1992, the Attorney General issued the "State of Washington Attorney General's Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to

Avoid Unconstitutional Takings of Private Property.” The Board takes official notice that this document was updated in March, 1995.

Discussion

Keesling argues that the County has violated the property right goal at RCW 36.70A.020(6). The Board observed in Gutschmidt v. Mercer Island, CPSGPHB Case No. 92-3-0006 (1992) that the Board’s jurisdiction is limited to whether the local government considered the goal.

... the Board holds that cities and counties planning under the Act must consider the planning goals listed at RCW 36.70A.020 before adopting comprehensive plans and development regulations. Gutschmidt, at 14. (Emphasis in original.)

The Board has consistently held that its jurisdiction does not include authority to adjudicate alleged constitutional violations or alleged noncompliance with any statutes other than

[1]

Chapter 36.70A RCW or Chapter 43.21C RCW. See, Gutschmidt, Order on Dispositive Motions (1992). See also Twin Falls, Order on Dispositive Motions (1993).

More recently, in Alberg, the Board was asked to interpret the property rights planning goal 6 to mean that the imposition of zoning, which limits the uses on a property, gives rise to a county duty to compensate for the uses which are not allowed. The Board rejected that argument and continues to do so. Takings claims must be processed by the Superior Courts.

Keesling Conclusion No. 1

Keesling has failed to carry her burden of proof that the County violated RCW 36.70A.020(6) and RCW 36.70A.370. The property rights goal, while an important cornerstone of the GMA, is not supreme among the 13 goals. The Act requires local governments to balance all 13 goals and to consider the process recommendations of the Attorney General’s Office. The record demonstrates that, in view of the many parcels of property affected, the difficult issues and volumes of often conflicting citizen opinion before it, the County did an exemplary job of giving the careful regard to property rights that the Act requires.

2. Keesling Legal Issue No. 2

Do Policies RL-109, RL-111, RL-113, text preceding R-213, R-216, NE-225, NE-502, NE-504 and the text preceding NE-504 file to comply with RCW 36.70A.020(5), (8), and RCW 43.31.035 (4) and .097, and RCW 43.210.010, by hampering and eliminating financially viable farming and forestry?

Discussion

Keesling asks the Board to consider Issue No. 2 together with Issue No. 4. Issue No. 2 alleges that certain resource lands and natural environment policies and text in the County's Plan have the effect of hampering and eliminating financially viable farming and forestry, contrary to the requirements of Goals 5 and 8 of the GMA, and provisions of Chapter 43.31 RCW, Department of Community, Trade, and Economic Development and Chapter 43.210 RCW, Small Business Export Finance Assistance Center.

Issue No. 4 alleges a violation of provisions of SEPA for the contents of an EIS. Keesling alleges that the County's policies never received analysis in SEPA documents, and constitute a "rural-land lockup" contrary to the other above-cited statutes. She claims that the County allowed environmental considerations to predominate over all other considerations, "... including traditional farming and forestry, which have been the past mainstays of economically healthy rural cities." Keesling Brief, at 6.

RCW 36.70A.280(1) provides an exclusive list of matters subject to Board review. Those matters are limited to the GMA; SEPA as it relates to actions taken under the GMA; master programs adopted pursuant to the Shoreline Management Act; and the OFM's population projections. The Board holds that it does not have jurisdiction to consider alleged violations of Chapters 43 RCW except for SEPA.

RCW 36.70A.020, Planning Goals, provides:

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations ...

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

SEPA directs the State Department of Ecology to prepare rules for implementation of the Act, including the scope of coverage and contents of EISs. RCW 43.21C.110(1)(d). RCW 43.21C.110(1)(f) directs preparation of a list of elements of the environment, limited to the natural and built environment. The latter consists of:

Public services and utilities (such as water, sewer, schools, fire and police protection), transportation, environmental health (such as explosive materials and toxic waste), and land and shoreline use (including housing, and a description of the relationships with land use and shoreline plans and designations, including population).

The Rules prepared in response to those instructions are found at Chapter 197-11, Washington Administrative Code. Part Four provides detailed instructions for preparation of an EIS, including: EIS contents, WAC 197-11-440; contents of an EIS on nonproject proposals, WAC 197-11-442; EIS contents when prior nonproject EIS, WAC 197-11-443; and Elements of the environment (natural and built), WAC 197-11-444.

WAC 197-11-448, Relationship of EIS to other considerations, provides:

(1) SEPA contemplates that the general welfare, social, economic, and other requirements and essential considerations of state policy will be taken into account in weighing and balancing alternatives and in making final decisions. However, the EIS is not required to evaluate and document all of the possible effects and considerations of a decision or to contain the balancing judgments that must ultimately be made by the decision makers. Rather, an EIS analyzes environmental impacts and must be used by agency decision makers, along with other relevant considerations or documents, in making final decisions on a proposal. The EIS provides a basis upon which the responsible agency and officials can make the balancing judgment mandated by SEPA, because it provides information on the environmental costs and impacts. SEPA does not require that an EIS be an agency's only decision making document.

(2) The term "Socioeconomic" is not used in the statute or in these rules because the term does not have a uniform meaning and has caused a great deal of uncertainty. Areas of urban environmental concern which must be considered are specified in RCW 43.21C.110(1)(f), the environmental checklist (WAC 197-11-960) and 197-11-440 and 197-11-444.

(3) Examples of information that are not required to be discussed in an EIS are: Methods of financing proposals, economic competition, profits and personal income and wages, and social policy analysis (such as fiscal and welfare policies and nonconstruction aspects of education and communications). EISs may include whether housing is low, middle, or high income. (Italics in original; underlining added.)

Accordingly, the County was not required to analyze social and/or economic impacts in its EIS for the Plan.

As to the planning goals cited by Keesling, the County addressed economic development in Chapter Four of the Plan, stating that "[t]his chapter satisfies the Growth Management Act's Goal 5 to foster economic development." The text notes that the Central Puget Sound region accounts for 61 percent of the state's jobs, and King County provides 68 percent of the region's jobs. The chapter and its policies were guided by the 1989 King County Economic Development Plan, local and national research on "home-grown business," and the County's Fiscal Analysis and Economic Development Task Force report. The resulting policies emphasize a balance between the environment and the economy of the County; retention, expansion and diversification of the regional economic base; meeting the needs of minorities and the

economically disadvantaged; maintaining a supply of land and infrastructure; and private/public partnerships to implement its policies.

Chapter Six, Natural Resource Lands, "... satisfies the Growth Management Act's Goal 8..."The chapter contains the County's "... strategy for conservation of these valuable Natural Resource Lands and for encouraging their productive and sustainable management.Policy RL-102 directs that:

King County shall conserve farm lands, forest lands and mineral resources for productive use through the use of Designated Agriculture and Forest Production Districts and Designated Mineral Resource Sites where the principal and preferred land uses will be commercial resource management activities. Plan, at 96.

Designated Forest Production Districts are characterized by large contiguous blocks and landowners committed to long-term forestry; they are shown on the "Forestry Lands" map following page 99, together with U. S. Forest Service Lands and Rural Forestry District Study areas. Plan, at 99-103.

Designated Agricultural Lands are comprised of parcels large enough (35 - 60 acres, depending on use) for commercial agriculture, with suitable farm soils, labor, and supplies and with market systems in place.Two areas, one in the Lower Green River Valley and one in the Sammamish Valley, were first designated in the County's 1985 Comprehensive Plan.All Designated Districts, as well as Rural Farming District Study Areas, are shown on the "Agricultural Lands" map following page 104.Plan, at 103-7.

Keesling Conclusion No. 2

Keesling has not shown that the County failed to be guided by Planning Goals 5 and 8 when it adopted the Plan policies cited in Issue No. 2 for resource lands, rural land use, and natural environment.

### **3. KEESLING LEGAL ISSUE NO. 3**

Do Policies R-208 and R-209 fail to comply with RCW 36.70A.020(5) and (8) by forbidding golf courses, gun clubs, parks and tourist attractions in rural areas?

#### Discussion

Keesling asserts that Policies R-208 and -209, read together, would forbid the siting of golf courses, gun clubs, parks and tourist attractions in rural areas, and that such a restriction is not cured by the narrative text following policy R-209.She contends that the failure to allow such facilities violates Planning Goals 5 and 8 of the Act.

Policy R-208 provides:

Accessory and non-residential uses in predominantly residential portions of the Rural Area should be limited to those that:

- a. Provide convenient local services for nearby residents; or
- b. Require location in a Rural Area (for example, some utility installations); or
- c. Support natural resource-based industries or adaptive reuse of significant historic resources.

These uses should be sited and designed to ensure protection or enhancement of rural character and the components of the Rural Area listed in policy R-101. Plan, [1] at 66-67.

Policy R-209 provides:

Accessory and non-residential uses appropriate for the Rural Area include raising livestock, sale of agricultural products produced on-site and small-scale cottage industries. Except for uses requiring a rural location or those related directly to farming, forestry, fisheries, mining, or kindergarten through twelfth grade public schools and facilities, the Zoning Code should not permit primary non-residential uses such as golf courses and churches on lands in the rural Area designated for a residential density of one home per 10 acres or lower. Plan, at 66-7.

In text immediately following Policy R-209, the Plan notes that:

Compatible non-residential uses in rural residential areas might include schools, small day care centers, small churches, home occupations and cottage industries. Neighborhood shopping, gas stations, libraries, high schools and feed and grain stores are examples of activities that also provide services to nearby residents, but are encouraged to locate within rural cities or Rural Towns and neighborhoods. Policy R-209 does not preclude consideration of public schools or new public or commercial recreational facilities, such as golf courses, gun clubs, parks or tourist attractions, in portions of the Rural Area designated for one home per five acres. Plan, at 67.

The preamble to RCW 36.70A.070 requires a comprehensive plan to be internally consistent. The narrative text following Policy R-209 indicates that Policy R-209 does not preclude golf courses in Rural Areas designated for one du/five acres. Yet Policy R-209 specifically excludes golf courses in Rural Areas designated for one du/10 acres or less. The Board holds that this is an internal inconsistency the County will have to cure.

Despite the inconsistency, Keesling has not shown how a policy that limits golf courses in the Rural Area violates RCW 36.70A.020(8) which encourages the enhancement of natural resource industries. Moreover, Keesling has not met her burden of showing how a golf course preclusion in a portion of the Rural Area violates RCW 36.70A.020(5) which encourages

economic development throughout the state consistent with adopted comprehensive plans.

Keesling Conclusion No. 3

Although the narrative text immediately following Policy R-209 is inconsistent with Policy R-209, Keesling has not shown how policies R-208 and R-209 fail to comply with RCW 36.70A.020(5) and (8).

4. Keesling Legal Issue No. 4

Did the County fail to comply with the requirements of SEPA Chapter 43.21C RCW, including WAC 197-11-440, -442, -444 and -448, by failing to include in the EIS on the Plan and the development regulations (Ordinance 11653 with respect to zoning and Ordinance 11619 with respect to subdivision code), an analysis of the economic and social impacts of these actions on rural property owners?

Discussion

The Board has reviewed the question whether a petitioner has SEPA standing in several prior

[1]

decisions. Under SEPA, any “aggrieved” person has standing to assert a claim. To determine whether a person is sufficiently “aggrieved,” the Board has applied the two-part SEPA standing test found in *Leavitt v. Jefferson County*, 74 Wn. App. 668, 875 P.2d 681 (1994) and *Trepanier v. Everett*, 64 Wn. App. 380, 824 P.2d 524, review denied, 119 Wn.2d 1012 (1992).

First, the petitioner must be within the zone of interests protected by SEPA. Second, the petitioner must allege an injury in fact. To meet the evidentiary burden when alleging an injury in fact, the petitioner must show that the government action will cause him or her “specific and perceptible harm” and that the injury will be “immediate, concrete, and specific.” *Leavitt*, at 679 citing *Trepanier*, at 382-83; *Bremerton*, at 11.

Crucially, to assert SEPA standing, petitioners must show that they are within the zone of interests protected by SEPA and allege an injury in fact in the petition for review. *Robison v. Bainbridge Island*, CPSGMHB Case No. 94-3-0025, Order on Dispositive Motions.

... petitioners who fail to make a satisfactory evidentiary showing of injury initially in their petition for review are subject to having the Board dismiss their SEPA claims for lack of standing. *WSDF v. Seattle*, Order Denying WSDF’s Motion for Reconsideration of Order Granting Seattle’s Motion to Dismiss, at 4.

The County argues that Keesling lacks standing to bring a SEPA challenge because she cannot satisfy the “injury in fact” or “zone of interest” tests necessary to confer SEPA standing.

Keesling concedes that the County’s statements regarding her lack of standing “may be

true.”Keesling Reply, at 5.She cites to her extensive involvement in the county planning processes, including EIS and Supplemental Environmental Impact Statement (SEIS) scoping.

Keesling Conclusion No. 4

The Board holds that Keesling has not met the SEPA standing test. Therefore, the Board will not examine this issue further.

5. Keesling Legal Issue No. 5

Did the County fail to comply with RCW 36.70A.140 and WAC 365-195-600 when it adopted the Plan, particularly the rural land use, natural resource lands and natural environment chapters and the implementing development regulations relating to rural areas and issues?

Discussion

The County recites its public involvement process, beginning with the CPPs and Comprehensive Plan, and throughout the process of developing its Implementing Regulations. In particular, it points out Ms. Keesling’s appearance at many of the meetings as evidence that she availed herself of the many opportunities the County afforded for public involvement. The County further details its broad dissemination of information on how to comment on the proposed regulations; mailings to property owners potentially affected by zoning changes; and public hearings with public notice.

The Board is impressed by the great scope and variety of efforts that the County made to involve the public in the development of the Plan and implementing regulations. With the notable, but limited, exceptions of the Amendments addressed in Section IV. D of this decision above, the County did an excellent job of providing early and continuous public participation. It is inevitable that some of those involved in the public participation will disagree not only with the ultimate choices made by the policy makers, but even the breadth and comprehensiveness of the method employed to engage the public. Except for the Amendments noted above, the Board concludes that, on the whole, the County met or exceeded the Act’s public participation requirements.

Keesling has failed to carry her burden of proof to show, by a preponderance of the evidence, specifically how and why the County violated RCW 36.70A.140.

Keesling Conclusion No. 5

With the exception of the Amendments noted in IV.D of this decision, the County did not violate RCW 36.70A.140 when it adopted the Plan, particularly the rural land use, natural resource lands and natural environment chapters and the implementing development regulations relating to rural areas and issues.

6. Keesling Legal Issue No. 6

Did the County's action in adopting Policies R-105, R-106, R-108, R-204 and R-207 for rural

areas and issues fail to comply with RCW 36.70A.070(5), WAC 365-190-040, .050, .060 and CPP LU-12e?

Discussion

Keesling argues that the policies listed in this legal issue improperly result in the downzoning of rural properties consuming rural residential inventory. Keesling Prehearing Brief, at 16. Keesling also questions how the “rural phasing” policies in question can result in “metering” over 20 years only 5,800 to 8,200 net new households from a total of about 19,000 presently existing building sites. Keesling Reply, at 6. She contends that this will result in some sort of moratorium. The County responds that Keesling’s objections to the designation of agricultural and forest lands are misplaced, because both the Forest Production District and the Agricultural Production District were established in other sections of the Plan than the ones cited in this issue.

Keesling Conclusion No. 6

Keesling fails to meet her burden of proof to show, by a preponderance of the evidence, how or why the cited policies fail to comply with the Act’s requirements for the rural element and cited countywide planning policy.

**7. Keesling Legal Issue No. 7**

Did the County adopt into the Plan and/or its implementing development regulations (ordinance 11653 with respect to the zoning map amendments and Ordinance 11619 with respect to the subdivision code amendments), previously adopted non-GMA community plans, and if so, did that fail to comply with RCW 36.70A.140?

Discussion

Keesling cites to Happy Valley Associates, Inc., et al., v. King County (Happy Valley), CPSGMHB Consolidated Case No. 93-3-0008 (dismissed, 1993), for the proposition that a pre-GMA community plan may only become a part of a GMA enactment if it complies with the Act’s requirements. Keesling Prehearing Brief, at 17. The County asserts that it did not adopt non-GMA community plans into the Plan or its implementing development regulations. County Brief, at 58. Rather, Ordinance 11653 amends only area zoning within the Bear Creek planning area, but not the Bear Creek Plan itself.

Keesling Conclusion No. 7

Keesling has failed to carry her burden of proof to show, by a preponderance of the evidence, why or how the County’s action with respect to Ordinance 11653 fails to comply with RCW 36.70A.140.

**8. Keesling Legal Issue No. 8**

Did the County's use of public advisory committees fail to comply with RCW 36.70A.020(11) and .140 and with WAC 365-190-040(2) and WAC 365-190-040(2)?

RCW 36.70A.140 establishes the specific requirements for that citizen involvement cited above, directing planning jurisdictions to:

... establish procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the procedures is observed.

#### Discussion

In an early case involving County-wide Planning Policies (CPPs), City of Poulsbo, et al., v. Kitsap County, CPSGPHB Case No. 92-3-0009 (1993), the Board first discussed the role of citizens in planning activities under the Act. The specific issue was whether a planning policy could delegate to a group of citizens a decision on annexation that would otherwise be solely the responsibility of the County's Commissioners. In holding that such delegation was contrary to the Act, the Board observed:

... the "public participation" that is one of the hallmarks of the GMA, does not equate to "citizens decide." The Act requires the elected legislative bodies of cities and counties, not individual citizens, to ultimately "decide" on the direction and content of policy documents such as county-wide planning policies and comprehensive plans. The Act assigns that policy making authority to city and county elected officials, who are accountable to their citizens at the ballot box. Poulsbo, at 36.

In Twin Falls, one of the issues decided by the Board was whether the county had taken public input into consideration when it took action to designate and regulate natural resource lands — in that instance, forest lands. One of the petitioners alleged that " ... the public's input was not properly considered because the hearing, indeed the entire public participation process, was manipulated." In determining that the County had met the Act's requirements for public participation, the Board explained that:

... 'consider public input' does not mean 'agree with' or 'obey' public input. ... The Board notes that participation is one of the cornerstones of the GMA and encourages local governments to consider public input, even when such consideration, as here, is not

explicitly required by the Act. The principle that the public should provide input to legislative bodies is one of the most basic precepts of the comprehensive planning process - that a variety of inputs (data, values, public opinion) must be solicited and weighed and then a decision rendered. Public participation is one of many critical inputs that the Act recognizes as indispensable to comprehensive planning (RCW 36.70A.140, RCW 36.70A.020(11)); however, the Act reserves to city and county legislative bodies the authority to ‘adopt’ or ‘enact’ or ‘designate’ plans and regulations pursuant to RCW 36.70A.040(1), RCW 36.70A.060, RCW 36.70A.120 and RCW 36.70A.170. (Footnote omitted.) Twin Falls, at 77.

The Board holds that the above-cited rulings, made in cases involving CPPs and designation of forest lands respectively, are equally applicable to the adoption of the comprehensive plans and implementing regulations at issue here. The County undertook significant efforts to encourage public involvement generally, and property owner involvement specifically, as directed by RCW 36.70A.020(11) and through use of the procedures mandated by RCW 36.70A.140. Keesling did not meet the burden of demonstrating that Planning Goal 6, Property rights, obligated the County to undertake a participation process different from that taken under RCW 36.70A.140.

#### Keesling Conclusion No. 8

The County's use of public advisory committees does not violate the requirements of RCW 36.70A.020(11) and .140.

#### 9. Keesling Legal Issue No. 9

Do Plan Policies RL-109, RL-111, RL-208, RL-301 and NE-103 fail to comply with RCW 36.70A.020(11) and WAC 365-190-040(2) by giving unbalanced oversight authority to Native American tribes?

#### Discussion

The Natural Resource Lands and Natural Environment Policies cited by Keesling, or in some cases the text following the policies, provide for Tribal participation and consultation concerning resource management issues; they fail to specifically provide for the involvement of “small affected rural landowners.” Keesling asks that the resulting imbalance be rectified by adding those landowners, rather than eliminating the Tribal representation.

RL-109 directs the County to “work cooperatively with cities, tribes, other public agencies, resource managers and citizens” in the provisions of facilities and services in the rural areas. RL-111 directs the County to “establish written agreements with agencies, tribes and other affected parties” concerning resource management responsibilities. RL-208 directs the county to work with the public and its federal, state, local, tribes, landowners and other private

partners” concerning forest practices.RL-301 directs the County to establish an Agricultural Commission; in the following text, “... the Commission also would solicit input from agricultural agency technical advisors and other with land use and technical expertise, as well as other affected groups such as the Dairy Federation, Native American Tribes, and project proponents.”Policy NE-103 directs the County to “coordinate with local jurisdictions, federal and state agencies, tribes, special interest groups and citizens” in protecting and restoring the natural environment. Plan, at 98, 102, 104, and 115.

In the text introducing the Agricultural Lands section of Chapter Six, Natural Resource Lands, the Plan states that:

In addition to the previous steps, farmers need to take an active role in land use decisions and in the development and evaluation of policies, regulations and incentives that may significantly affect commercial agriculture.Farmers need an opportunity to work with their neighbors, King County government and others to address complex and difficult issues associated with maintaining working farms near urban areas.Plan, at 104.

RCW 36.70A.020(11), Citizen participation and coordination, directs governments planning under the Act to encourage citizen involvement in planning, and to ensure coordination between communities and jurisdictions.

In each of the Policies cited above, the County has gone beyond the adoption of policies required to be included in a comprehensive plan, and has focused on the steps needed in the future to assure full implementation of its Plan.While tribal trust lands are not subject to the County’s land use policies and regulations, Tribes constitute a unique form of government, with a special role in resource management as a result of provisions of federal treaties.The County cannot be faulted for including tribes in its implementation efforts.

Keesling Conclusion No. 9

“Small affected rural landowners” are not specifically included among intended participants named in the above-cited policies — like “citizens,” “landowners,” “affected groups,” and “special interest groups.”Further, a single rural landowner without a group affiliation may find it more difficult to participate as an individual.Still, nothing in the policies can be construed as limiting or barring rural landowners’ participation.The Board holds that the County has not violated Goal 11 in its adoption of the cited Plan policies.

Plan Policies RL-109, RL-111, RL-208, RL-301 and NE-103 do not violate RCW 36.70A.020 (11) by virtue of the participation they afford to Native American tribes.

Do Policies RL-401 and RL-411 fail to comply with RCW 36.70A.060(1) by protecting adjacent lands from mining activities, rather than the reverse?

Discussion

Keesling asserts that important mining site classes were not identified and protected by the County. The County disputes the contention.

Keesling Conclusion No. 11

The compliance of the County's mineral resource lands designations and regulations was the subject of a recent case. The Board concluded in Alberg that the County's implementing regulation ordinances were in compliance with the requirements of the Act. Keesling has presented no new or persuasive evidence in the present case to persuade the Board otherwise relative to either the Plan or the implementing regulations.

11. Keesling Legal Issue No. 12

Does the Growth Management Hearings Board have jurisdiction to determine whether or not King County complied with the requirements of Chapter 36.70 RCW, the Planning Enabling Act, and/or the King County Charter?

Discussion

Keesling argues that the Board's jurisdiction is over a broader web of land use law than Chapter 36.70A. RCW and RCW 43.62.035 as it relates to GMA enactments. She contends that the Board's jurisdiction under RCW 36.70A.280 does not conflict with WAC 242-02-660.

RCW 36.70A.280 provides:

(1) A growth management hearings board shall hear and determine only those petitions alleging either:

(a) That a state agency, county, or city is not in compliance with the requirements of this chapter, or chapter 43.21C RCW as it relates to plans, regulations, or amendments, adopted under RCW 36.70A.040; or

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

WAC 242-02-660 provides:

A board or presiding officer may officially notice:

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(1) Federal law. The Constitution; congressional acts, resolutions, records, journals, and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders, and notices published in the Federal Register.

(2) State law. The Constitution of the state of Washington; decisions of the state courts; acts of the legislature, resolutions, records, journals, and committee reports; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; and all rules, orders, and notices filed with the code reviser.

(3) Counties and cities. Ordinances and resolutions enacted by cities, counties, or other municipal subdivisions of the state of Washington.

(4) Governmental organization. Organization, territorial limitations, officers, departments and general administration of the government of the state of Washington, the United States, the several states, federally recognized Indian tribes, and foreign nations.

(5) Growth planning hearings boards. Orders and decisions of any board.

(6) Joint boards. Rules of practice and procedure.

Keesling argues that land use laws are intricately webbed and cited to a Washington State Supreme Court decision that commented on the relationship between RCW 36.70 and RCW 36.70A:

The Planning Enabling Act, RCW 36.70, was enacted ‘to provide the authority for, and the procedures to be followed in, guiding and regulating the physical development of a county ...

... The Planning Enabling Act and the Growth Management Act are two related statutes which should be ... read together to determine legislative purpose to achieve a harmonious total statutory scheme ... which maintains the integrity of the respective statutes.”Whatcom County v. Brisbane, 125 Wn. 2d 345, Dec. 1994, at 354.(Footnote omitted.)

Keesling argues that:

... since there was an important intent of setting up hearings boards where ordinary citizens can petition for redress, the Board should give the benefit of the doubt to the citizens and the webbing of WAC 242-02-660. Otherwise, the door was opened to citizen petitioners, only to be shut by restricting the Board from connecting 1 and 1 to equal 2

and thereby preventing citizen petitioners from assembling effective arguments to obtain the needed relief.If the WAC 242-02-660 panoply is not “officially noticed” by hearings boards, then those boards are making blindered decisions with few connections to the reality of interwoven laws.”Keesling Brief, at 2.

Taking official notice of a law, enactment, document or decision does not equate to having jurisdiction to render a judgment regarding compliance with same.The Board has no authority to expand its jurisdiction beyond its statutory charge.The adoption of WAC 242-02-660 was not intended to expand the Board’s authority and could not have done so.Rather, it was intended to clarify that the Board, in a fashion similar to a court, may take official notice of certain documents if such action would be of assistance in discharging its statutory duty.

The legislature did, in fact, expand the Board’s jurisdiction in the 1995 session.ESHB 1724, at Sec. 108, amended RCW 36.70A.280 as follows:

(1)A growth management hearings board shall hear and determine only those petitions alleging either:

(a)That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or...(New text is underlined).

In addition, ESHB 1724, at Sec. 110, amended RCW 36.70A.300 to add a new paragraph(4) as follows:

If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (2) of this section whether the prior policies or regulations are valid during the period of remand.(Emphasis added.)

In the above-cited paragraph, “this chapter” refers to Chapter 36.70A RCW, the GMA, while “prior policies or regulations” refers to non-GMA enactments. Thus, the Board would have jurisdiction to determine whether prior policies and regulations adopted under the authority of, for example, Chapter 36.70 RCW, would substantially interfere with the fulfillment of the goals of Chapter 36.70A RCW and, if such was the case, could determine them to be invalid for the period of remand.It is important to note, however, that this is not the same as finding an enactment or action to be in compliance with the internal requirements of that other statute.

Thus, the legislature is aware of how to expand this Board's jurisdiction over other statutes and has recently done so in a limited fashion. This bolsters the Board's historical view of its jurisdiction as narrowly drawn.

Keesling Conclusion No. 12

The Board does not have jurisdiction to determine whether or not King County complied with the requirements of Chapter 36.70 RCW, the Planning Enabling Act, and/or the King County Charter.

[1]

12. Keesling Legal Issue No. 15

Did the County violate WAC 197-11-400 et seq. by using its own department-engendered science to prepare the EIS for the Plan?

Discussion

The Board will not review this issue since Ms. Keesling lacks SEPA standing.

Keesling Conclusion No. 15

Keesling does not have standing to raise SEPA issues. Therefore, the Board will not address this issue.

13. Keesling Legal Issue No. 16

Did the County violate the preamble to RCW 36.70A.070 by failing to include definitions of "degraded" and "best management practices"?

Discussion

Keesling alleges that the County violated RCW 36.70A.070 (Preamble) by failing to provide definitions of "degraded" and "best management practices" in its Plan, where there is disagreement as to the meaning of those terms as applied to agricultural practices.

RCW 36.70A.070, Comprehensive plans — Mandatory elements, provides in the Preamble:

The comprehensive plan of a county ... shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document ...

The Plan defines Best Management Practices (BMPs) in the Glossary:

These [BMPs] are defined by the Washington State Department of Ecology as physical,

structural, and/or managerial practices that, when used singly, or in combination, prevent or reduce pollution of water. The types of BMPs are source control, runoff treatment, and streambank erosion control. Plan, at 225.

The term “degraded” is not defined.

In the introductory text in Chapter Six, Natural Resource Lands, at part III. Agricultural Lands, the County sets forth four steps necessary to maintain and enhance commercial agriculture. Step four provides that “farming practices that conserve soils and protect water quality, fisheries and wildlife, but are balanced with the needs of the agricultural industry, should be encouraged.” Plan, at 104.

At Section C, Part III, Chapter 6, the Plan notes that:

Agricultural practices modify the natural environment in order to produce food or fiber or maintain livestock for human use. Ideally, practices that maintain the productivity of the lands also protect environmental quality. Farmers, technical advisors and environmental regulators must work together to understand the relationships between production practices, environmental protection and profitability. These practices, referred to as Best Management Practices, are designed to prevent erosion, retain riparian vegetation, avoid stream bank collapse, properly dispose of animal wastes, safely use and dispose of pesticides and prevent excessive surface water runoff. Plan, at 107.

Policy RL-311 immediately following that text provides:

On an on-going basis, King County should develop incentives, educational programs and other methods to encourage agricultural practices which maintain water quality, protect public health, protect fish and wildlife habitat, protect historic resources and prevent erosion of valuable agricultural soils. Plan, at 107.

While achieving and maintaining an appropriate balance between agricultural production practices and protection of environmental quality presents a long-term challenge, the County has identified the problem, as well as potential means to address the problem, in the Plan. Its failure to define “degraded” does not constitute a violation of RCW 36.70A (Preamble).

Keesling Conclusion No. 16

Keesling has failed to demonstrate that the County’s failure to provide a definition of “degraded” in the Plan is a violation of the specified provision of RCW 36.70A.070

14. Keesling Legal Issue No. 17

Is policy ET-107, a solar-access-protection policy, in the Plan consistent with the Plan's maximum tree-retention policies and thus in violation of the preamble to RCW 36.70A.070?

Discussion

Keesling fails to show by a preponderance of the evidence that these Plan policies are inconsistent. She fails to carry her burden of proof.

Keesling Conclusion No. 17

Policy ET-107 is not inconsistent with the Plan's tree-retention policies and thus does not violate the preamble to RCW 36.70A.070.

**15. KEESLING LEGAL ISSUE NO. 18**

Does the Plan's Chapter Nine, Transportation, Policy T-501.5 and Chapter VI Finance text comply with RCW 43.21C.060 and with RCW 82.02.050 through 82.02.090 which is referenced in RCW 43.21C.065?

Discussion

The Board lacks jurisdiction to review allegations of noncompliance with Chapter 82.02 RCW. See Robison, Final Decision and Order.

Keesling Conclusion No. 18

Because the Board lacks jurisdiction, we can not and will not answer this question.

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**V. ORDER**

Having reviewed and considered the above-referenced documents, having considered the

arguments of the parties, and having deliberated on the matter, the Board finds that the 1994 King County Comprehensive Plan and those implementing development regulations before the Board comply with the requirements of the GMA except for the following:

1. Comprehensive Plan Map Amendments 89, 90, and 101 and Zoning Map Amendments 81 and 81A are remanded to the County with direction to delete them and provide a reasonable opportunity for public comment prior to consideration by the Council before subsequent readoption.
2. The UGAs for the following Rural Cities that extend beyond their expansion areas are remanded with instructions either to repeal the UGA designation to these areas or to amend the CPPs:
  - a. Carnation
  - b. Duvall
  - c. Enumclaw
  - d. North Bend
  - e. Snoqualmie
3. Plan Policy R-206 is remanded with instructions for the County to repeal it or provide adequate justification for it consistent with the requirements of the Act and this decision.
4. Plan Policies R-314 and R-315 are remanded with instructions for the County to make them consistent with the requirements of the Act and this decision.

Pursuant to RCW 36.70A.300(1)(b), the County is given until 5:00 p.m. on Wednesday, January 31, 1996, to comply with this Final Decision and Order. The County shall file by 5:00 p.m. on Friday, February 9, 1996, one original and three copies with the Board and serve a copy on each of the other parties of a statement of actions taken to comply with the Final Decision and Order. The Board will then promptly schedule a compliance hearing to determine whether the County has complied.

So ordered this 23rd day of October, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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M. Peter Philley  
Board Member

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Joseph W. Tovar, AICP  
Board Member

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Chris Smith Towne  
Board Member

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

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Plan, at 25. The Plan also indicates that King County will have 1,857,600 residents in 2012 based upon 1994 OFM projections or a 293,100 person increase (i.e., 600 more persons than indicated at page 25). Plan, at 3. The May 1994 Final Supplemental EIS for the King County CPPs uses exactly OFM's year 2012 population projection Stip. Ex. 5, Appendix, Table 4A. The June 1994 Supplemental EIS for the Plan uses OFM's projection for the year 2012 rounded off to 1,857,600 people, or an expected 293,114 additional people by the year 2012. Stip. Ex. 30.

[1]

The Board takes official notice of the "Washington State County Population Projections for 1990-2010, 2012" issued in January of 1992 by the OFM Forecasting Division "County Population Forecasts — 1990 to 2012," at page 11.

[1]

The Board takes official notice of an OFM document entitled "April 1 Populations of Cities, Towns and Counties — Used for the Allocation of State Revenues — State of Washington — July 6, 1995, Correction Release" (1995 OFM Correction).

[1]

See also Plan, Technical Appendix D, at D-1.

[1]

This section addresses FOTL III Legal Issues Nos. 10 and 11.

[1]

The appendix also refers to an August 15, 1994 action by the King County Council. Plan, Technical Appendix D, footnote 3, at D-3.

[1]

Tacoma, at 13 (footnote omitted):

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

[1]

Tacoma, at 19:

... it is nonetheless imperative that the County base its UGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and specify the methods and assumptions used to support the IUGA

designation. In essence, the County must "show its work" so that anyone reviewing a UGAs ordinance, can ascertain precisely how the County developed the regulations it adopted.

[1]

Ironically, as of September 15, 1994, that also appears to have been County staff's intent (FOTL Ex. 48):

... Attached are the revised Technical Appendices and related amendments....

Of the thirteen Technical Appendices, four need to be adopted by reference as part of the Comprehensive Plan. They are: A. Facilities and Services, B. Housing, C. Transportation and D. Growth Targets and Urban Growth Area.

These four Technical Appendices, which will be published as Technical Appendices Volume One, need to be adopted by reference in the Comprehensive Plan because they provide information required by the Growth Management Act, RCW 36.70A.070 and RCW 36.70A.110....

[1]

The Board treats "households" and "dwelling units" the same unless otherwise noted.

[1]

For instance, the following documents are examples such as the Draft Supplemental EIS for the CPPs, Land Use Appendix B, Tables B-1, B-2 (Stip. Ex. 4); Supplemental EIS for the Plan, Table 13, at 180 and Appendix E, Tables 1 through 5 (Stip. Ex. 30); Final Supplemental EIS for the Plan, at 16 (Stip. Ex. 31); County Exhibits 16, 19, 29, 31, 33, 57, 308, 314 (King County Housing Densities 1993-2013 table), 316, and Ex. 327.

[1]

Population numbers are from the Plan or OFM's 20-year forecast unless otherwise indicated.

[1]

Households were calculated by dividing the population by the average household size.

[1]

Plan, Technical Appendix D, at D-2.

[1]

1995 OFM Correction.

[1]

The Plan indicates that the average household size in King County in 1990 was 2.40 persons and 2.32 in the year 2000. Plan, at 5. It does not indicate what average household size was in 1994. The Board has divided the .08 average household size difference between 2000 and 1990 by 10 years which equals an average household size reduction of .008 persons per household per year in the 1990s. Accordingly, the average household size for 1994 would be 2.368 (2.400 - .032)

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Using the same formula as above, the average household size for 1992 would be 2.384 (2.400 - .016).

[1]

Plan, at 5.

[1]

The narrative in Technical Appendix D rounds off the relevant figures. It indicates that the household range for the unincorporated areas in King County is 40,000 (low), 45,000 (mid), and 50,000 (high). In contrast, Table 1 does not round off. Compare Plan, Technical Appendix D, at D-4, and Table 1, at D-17.

[1]

The total household range for the entire county is based upon information in the Plan, Technical Appendix D, at D-3 and Table 1, at D-17.

[1]

The Board stated:

The Board therefore holds that the County may allocate population and employment to cities. CPPs that include this allocation are not in violation of the land use powers of cities. A major rationale for this holding is the GMA's clear direction regarding the legislatively preferred roles of counties and cities. With responsibility for regional coordination of comprehensive plans in conformance with the planning goals, a county must be capable of directing urban growth to areas that are already urban in character, including cities. Because urban growth consists of people and jobs, the county is therefore charged with authority to undertake a task that is essentially an allocation of population and employment. Edmonds, at 28-29 (footnotes omitted).

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

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

Cities and the County are operating under an entirely new statutory scheme under Chapter 36.70A RCW. The newly clarified roles for cities and counties, and the careful balancing of obligations and prerogatives, will require ongoing dialogue, flexibility and adjustments by all parties. The Board agrees with the argument of 1000 Friends that allocating growth (and its constituent parts, population and employment) is a regional policy exercise rather than a local regulatory exercise. Edmonds, at 31. (Emphasis in original.)

[1]

This matter addresses FOTL III's Legal Issue No. 5, at 51.

[1]

The Plan introduces this statement as follows, at 34-36:

King County's growth strategy encourages efficient use of urban land and maximizes the benefits of public facility spending. The growth strategy designations established in this chapter will help the County concentrate its limited funds by designating priority areas for spending on transit and road improvements. The County's priorities are as follows:

FIRST PRIORITY: Alleviate existing safety and maintenance and pipeline transportation, health, human and public safety needs within the entire Urban Growth Area (shown in green and yellow on the Service and Finance Strategy map contained in Chapter One, Plan Vision).

SECOND PRIORITY: Fund transportation improvements which support new growth in the green area. Funds are prioritized this way because the County does not have the resources to fund new growth throughout the entire Urban Growth Area while meeting the funding needs of the first priority, above.

[1]

The quotation continues:

The following factors support the Service and Finance Strategy designations:

- Proximity to designated Urban Centers;
- Proximity to cities;
- Public sewer availability, defined as the presence of sewers now or within six years through extensions included in adopted sewer comprehensive plans;
- Water supply availability, defined as the presence of a water source with applicable water rights that can serve the projected demand through the year 2000, as shown by adopted water comprehensive plans, and
- Areas highly susceptible to ground water contamination.

The following definitions are used in this chapter and Chapter Nine, Transportation, for transportation needs associated with the Service and Finance Strategy:

- Existing transportation needs are associated with households and businesses which are in existence at the time of plan adoption.
- Pipeline transportation needs are associated with growth that is pending through the County's development review process.
- Transportation needs for new growth are associated with growth that has been planned for 2012 in this Comprehensive Plan.

King County has limited financial resources. Alleviating existing and pipeline transportation needs and existing health, human and public safety needs will consume a major portion of the County's limited financial resources. The majority of the County's transportation funds through 2012 will be spent on these existing and pipeline needs unless substantial new revenue sources are developed. The County is committed first and foremost to meeting existing and pipeline transportation needs and existing health, human and public safety needs. The funds needed for new growth are limited and therefore, the County must develop a priority strategy to fund new growth....

U-407 Within Service Planning Areas, water supply or public sewers may be deficient, locally or areawide, to serve development uses and densities consistent with this plan. King County will invest only in road improvement needs for existing and pipeline development.

[1]

The six exceptions are as follows:

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.

Second, UGAs can be adopted outside existing city limits if the detailed requirements for master planned resorts are met. RCW 36.70A.360.

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

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

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

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

[1]

The Board has noted that the long term future of unincorporated urbanized communities is to have their urban governmental services primarily provided by existing or future cities. See Tacoma, at 37.

[1]

This discussion addresses Tolt's Legal Issue Nos. 4, 5 and 6.

[1]

Policy LU-14(a) in phase one of the CPPs contained the same language. Stip. Ex. 7, at 16.

[1]

The full text runs as follows:

Existing unincorporated Rural Towns, incorporated rural cities and unincorporated Rural Neighborhoods are sufficient to accommodate the growth contemplated by Policies R-301 to R-304 through reasonable expansion. No new Rural Towns or Rural Neighborhoods will be designated.

A. Growth of Rural Cities

King County's rural cities are incorporated areas whose local governments are involved in the region's planning processes on an equal legal basis with the suburban cities and Seattle. The incorporated rural cities are Black Diamond, Carnation, Duvall, Enumclaw, North Bend, Skykomish and Snoqualmie. For purposes of recognizing its land use authority and the need for intergovernmental cooperation, the Muckleshoot Indian Tribe is recognized, even though it is not subject to the requirements of the Growth Management Act.

[1]

The Plan defines "tightlined" as:

"Tightline" means a sewer line designed and sized specifically to serve only a particular facility or place. Plan, at 64.

[1]

Only Black Diamond's existing city limits and a 783 acre approved annexation area are included within the UGA. Plan, at 220.

[1]

Information from Table 2 of Technical Appendix D, at D-18.

[1]

Information from Table 1 of Technical Appendix D, at D-17.

[1]

The Board assumes that the total capacity of the Rural Cities includes incorporated and expansion areas. See Rural Cities Urban Growth Areas report, Stip. Ex. 27, at 7 which indicates that the cities in rural areas have room

for approximately 6,500 new dwelling units within existing city limits and an additional 6,500 dwelling units within their expansion areas.

[1]

The paragraphs preceding the quote run as follows:

Highlights:

By working together, five cities and King County staff have reached agreement on the size and location of the UGAs. Following discussions and public workshops, King County and the cities of Enumclaw, Carnation, Duvall, Snoqualmie and Skykomish have developed recommended preliminary UGAs. The joint recommendations are included in this report

The cities of Black Diamond and North Bend were not able to reach agreement with King County staff... Stip. Ex. 27, at 3.

...

Supplemental Environmental Impact Statement Scenarios

A Draft Supplemental Environmental Impact Statement (SEIS) on changes to the Countywide Planning Policies was published in January 1994. That document includes an analysis of the environmental impacts of five different scenarios for managing growth in King County. For each scenario, a different amount of household growth is allocated to the rural cities.

For example, if most growth is directed to 14 urban centers (downtown-like areas) in the western part of the County over the next 20 years, about 6,450 new households total would likely be built in the seven rural cities. Under the scenario, the rural cities would get the smallest growth increase. However, if growth were to follow trends of the past 10 to 20 years, about 12,800 new households would likely be built in all the rural cities. Under this scenario, the rural cities would get the largest growth increase.

The sum of the individual rural cities growth projections is 10,980 households. While this number falls within the range of the growth scenarios reviewed in the Countywide SEIS, it may be interpreted to be contrary to the vision of growth established in the Countywide Planning Policies adopted in 1992. The policies call for the vast bulk of residential growth to be built in the western part of the County, either in urban centers or other urban areas, not in the rural cities. Stip. Ex. 27, at 6-7.

...

[1]

The 1995 legislature enacted ESHB 1724 which replaced the writ of certiorari process on June 1, 1995. Chapter 347, Laws of 1995, § 704.

[1]

The record shows that there is much data and analysis supporting the County's CPPs. I do not offer a judgment as to whether that documentation is sufficient to support the FUGAs that the County adopted in the CPPs.

[1]

Policy I-204 continues as follows:

e. Open space areas shall retain their rural area designations and should generally be configured in such a way as to connect with open space on adjacent properties. Open space areas should generally parallel the Urban Growth Area line, but the criteria set forth in I-204(k) below shall be controlling;

f. The minimum depth of the open space buffer between the proposed addition to the Urban Growth Area and the Rural Area shall be at least one-half of the property width;

g. The minimum size of property to be considered will be 20 acres, which includes both the proposed addition to the Urban Growth Area and land proposed for open space dedication. Smaller properties may be combined to meet the 20-acre threshold;

h. Initial proposals for open space dedication and redesignation to Urban Growth Area must be received between July 1, 1994 and June 30, 1996. Review by King County shall conclude by June 30, 1997;

i. Where applications are adjacent to city boundaries or Potential Annexation Areas, King County shall consult with and solicit recommendations from the city;

j. Proposals shall be evaluated for quality of both open space and urban development. The highest quality proposals shall be recommended for adoption as amendments to the Urban Growth Area, in accordance with the procedural requirements of the Growth Management Act. If the 4,000-acre limit on land to be added to the Urban Growth Area is not reached in the time limits set forth in I-204(h), above, because of either insufficient number of proposals or proposals of insufficient quality, King County may set a time period for additional proposals;

k. Criteria for evaluating proposals shall include:

1. Quality of fish and wildlife habitat areas;

2. Connections to regional open space systems;

3. Protection of wetlands, stream corridors, ground water and water bodies;

4. Unique natural, cultural, historical, or archeological features;

5. Size of proposed open space dedication and connection to other open space dedications along the Urban Growth Area line, and

6. The ability to provide efficient urban facilities and services to the lands proposed to be redesignated as part of the Urban Growth Area;

l. Proposals which add 200 acres or more to the Urban Growth Area shall include affordable housing consistent with King County regulations for urban planned developments, which require a mix of housing types and densities, including 30 percent below-market-rate units affordable to low, moderate and median income households;

m. As an incentive for additional affordable housing development under this program, the required open space dedication shall be reduced from four to 3.5 acres for each acre added to the Urban Growth Area for 1) proposals smaller than 200 acres that provide 30 percent affordable housing units, or 2) larger developments that exceed 30 percent affordable housing units;

n. Development on land added to the Urban Growth Area under this policy shall be subject to the same growth phasing policies applicable to all other urban development; and

o. Where a contiguous band of publicly dedicated open space currently exists along the Urban Growth Area line, the above program shall not be utilized. Plan, at 218-219 (Emphasis added.)

[1]

That passage reads:

I-205 King County shall amend the Urban Growth Area to add rurallands to the UGA consistent with policy I-204. Comprehensive Plan Land Use Map amendments pursuant to this policy shall occur each year as part of the annual review of the Plan, and shall consist of a rural to urban redesignation and a reclassification to an urban residential zone. Detailed site suitability and development conditions for both the urban and open space portions of the proposal shall be established through the pre-

liminary formal plat approval process. Open space dedication shall occur at final formal plat approval. If the applicant fails to actively pursue and receive preliminary formal plat approval during a reasonable period of time the urban and open space properties shall convert to a rural designation and rural zone classification during the next yearly review of the King County Comprehensive Plan. Plan, at 219-220.

[1]

RCW 36.70A.160 provides:

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources.

[1]

This discussion addresses FOTL IV Legal Issues Nos. 3 and 4.

[1]

The Plan specifically incorporates by reference Technical Appendix.

[1]

For instance, the Federal Safe Drinking Water Act, the state Water Resources Act and Public Water System Coordination Act.

[1]

F-301 provides:

F-301 In the Full Service Areas of the Urban Growth Area, Group A water systems are preferred for new construction on existing lots and shall be required for new subdivisions. In the Service Planning Areas of the Urban Growth Area, private wells and Group B water systems may be allowed for new construction and subdivisions. However, for all new construction in the Urban Growth Area, eventual connection shall be required with the water purveyor identified in a County-adopted Coordinated Water System Plan as the service provider for the area of the construction or, where a purveyor has not been identified through such a Plan, with the most logical existing Group A purveyor. If this designated purveyor cannot provide direct service to the development at the time of construction, the County shall require all known and projected costs for anticipated connection to be funded at the permitting stage and the designated purveyor should provide satellite management of any new public system until it can provide direct service. Rates charged for satellite management should be consistent with policies included in the comprehensive water system plan of the purveyor. Existing private wells and other systems in service at the effective date of this Plan may continue operation only if they are managed in compliance with federal, state and County health regulations. Plan, at 147.

[1]

The Plan indicates:

Those locations in the Rural Area that can meet the criteria of Countywide Planning Policy CO-15 are to be clearly mapped by individual utilities for their respective service area and incorporated into individual water system comprehensive plans and the Coordinated Water System Plans. Coordinated Water System Plans for east and south King County and Vashon Island have assigned large areas in rural King County to water purveyors to plan for service. This has been done with the understanding that such service, which could be provided directly or through satellite management, would not provide justification for any increase in the densities approved for these areas. This assignment is intended to provide professionally managed water service to the Rural Area as well as the Urban Growth Area in south and east King County, reducing the proliferation of small water systems, consistent with RCW 70.116, the Public Water System Coordination Act.

F-302 All new Group A public water systems should be operated by a certified water system operator. If the area for a new public water system is included in the planning area of an existing water purveyor as identified in a Coordinated Water System Plan, the water system should be operated by the purveyor through either satellite management or direct service. Rates charged for satellite management should be consistent with policies included in the comprehensive water system plan of the purveyor. Plan, at 148.

[1]

The Board notes that Amendments 89, 90 and 101 were amendments to the County Executive's proposed Plan, not to an adopted plan; Amendment 81, as amended by Amendment 81A, was an amendment to the County Executive's proposed Area Zoning (Proposed Ordinance 94-737).

[1]

The Board is troubled by the confusion in the Duwamish matter attributable to notice that made reference to the Highline Community Plan, a prior non-GMA enactment, when what subsequently followed was action on the County's GMA comprehensive plan. The Board has previously cautioned the County about the importance, in such circumstances, of being clear and consistent in its communications with the public. See Happy Valley, et al. v. King County, CPSGPHB Case No. 93-3-0008 (1993), at 19.

[1]

Because the Board is answering Duwamish Legal Issue No. 3 in the affirmative and remanding Amendment 89, the Board need not and will not answer Duwamish Legal Issues Nos. 1, 2, 4, and 5. Because the Board answers Tolt Legal Issue No. 7 in the affirmative, and remands Amendment 101, the Board need not answer Tolt Legal Issue No. 8. Because the Board answers O'Farrell II Legal Issue No. 1 in the affirmative, and remands Amendment 90, the Board need not and will not answer O'Farrell II Legal Issues Nos. 2, 3 and 4.

[1]

The four county members of the Puget Sound Regional Council are King, Kitsap, Pierce and Snohomish.

[1]

The Board notes that the numeration of definitions in the Act was revised by Section 103 of ESHB 1724.

[1]

The King, Kitsap and Pierce County Plans have all adopted "rural character" policies. Much work has been done in these counties to identify what physical attributes of the existing landscape should be preserved and what design characteristics of new development can help achieve compatibility with the rural context. The Board takes official notice of the South Kitsap Rural Community Design Report, Kitsap County Department of Community Development, July, 1993. See also, King County Plan Policy R-101, at 59. The Board also takes official notice of Rural by Design, Randall Arendt, American Planning Association, Chicago, Illinois (1994). The latter text

provides examples from other parts of the United States of design techniques to preserve rural character.

[1]

The above cited documents are replete with examples of how the specifics of building and site design can make a difference. For example, buildings so large in scale that they dwarf nearby buildings or that employ materials, shapes and colors alien to a rural setting, disrupt the visual character of the rural landscape. Visual disruption can also result from the injudicious placement of the structure(s) on a site and the degree to which existing topography and vegetation must be altered to accommodate the use. Placing a building on high ground for better views not only destroys a key element in the rural visual landscape (forested ridgelines), it calls attention to the new structure by making it so visually prominent. Likewise, the wholesale grading away of a prominent landform and its mature vegetation, degrades visual rural character. Because such outcomes are, in large measure, the consequence of intensive land uses (i.e., those that require extensive grading and lot coverage) it follows that such uses are incompatible with the visual character of the rural landscape.

[1]

A “view shed” is simply that portion of the landscape that is visible from a given point, terminating at the horizon. It is somewhat analogous to a watershed, generally defined by a ridgeline, treeline or other prominent linear physical feature.

[1]

The Board has held that these two subparagraphs must be read together in order to discern what the Act defines as “essential public facilities.” See Children’s Alliance, et al., v. City of Bellevue, CPSGMHB Case No. 95-3-0011 (1995), at 7.

[1]

FOTL IV abandoned Legal Issue No. 2. See FOTL IV Prehearing Brief, at 1.

[1]

This Legal Issue was originally worded differently in the Prehearing Order. It was amended to this policy numeration by an April 21, 1995 Board Order on Motions.

[1]

O’Farrell relies on the brief submitted by Intervenor Union Hill; references to the latter’s brief will be cited as “O’Farrell. Issue 3 in O’Farrell I’s Petition for Review was abandoned by Intervenor Union Hill. Union Hill Brief, at 8, footnote 1.

[1]

The Plan policies were renumbered in the bound publication of the Plan, Stipulated Exhibit 2 in this case; policies numbered in the November 18, 1994 text as NE-331 through -335 will be referred to as NE 332 through -366, respectively.

[1]

The Board notes that the legislature has expanded the Board’s jurisdiction to hear and decide upon appeals of Shoreline Master Programs pursuant to Chapter 90.58 RCW. EHB 1724 (Chapter 347, Laws of 1995).

[1]

Policy R-101 is a list of the criteria used to draw the boundaries of the Rural Area in the Plan. Plan, at 66.

[1]

See RCW 43.21C.075(4).

[1]

Because Keesling Legal Issues No. 13 and 14 were predicated on an affirmative Board answer to Legal Issue

*No. 12, the Board will not further address them.*