

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

VASHON-MAURY, et al.,	)	Consolidated
	)	Case No. 95-3-0008
Petitioners,)	
)	
and	)	ORDER ON MOTIONS
TO)	
	)	RECONSIDER AND MOTION
UNION HILL WATER ASSOCIATION,	)	TO CORRECT
	)	<i>incorporating first and second Scriveners'</i>
Intervenor,	)	<i>Error Corrections (see those orders</i>
	)	<i>appended to this order)</i>
v.)	
)	
KING COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
PORT BLAKELY TREE FARMS, et al.,)	
)	
Intervenors.)	
)	

I. PROCEDURAL BACKGROUND

The Central Puget Sound Growth Management Hearings Board (the **Board**) issued a Final Decision and Order in the above referenced consolidated case on October 23, 1995. The Final Decision and Order noted that it constituted a final order as specified by RCW 36.70A.300 unless

a party filed a Petition for Reconsideration pursuant to WAC 242-02-830.

On October 26, 1995, the Board received “City of Snoqualmie’s Motion for Correction of Decision and Order” (**Snoqualmie’s Motion to Correct**).

On November 2, 1995, the Board received “King County’s Motion for Reconsideration” (the **County’s Motion**); “Petitioner Keesling’s Motion for Reconsideration of Final Decision and Order” (**Keesling’s Motion**); “Motion for Reconsideration and Imposition of Invalidity Finding Pertaining to Carkeek Appeal” (**Carkeek’s Motion**); and “Motion for Reconsideration by Tolt Community Club” (**Tolt’s Motion**).

On November 3, 1995, the Board received “Intervenors Port Blakely Tree Farms and the Quadrant Corporation’s Motion for Reconsideration” (**Motion by Port Blakely and Quadrant**). On this same date, the Board received a “Notice of Appearance” from David A. Bricklin on behalf of Friends of the Law (**FOTL**); “FOTL’s Motion for Reconsideration” (**FOTL’s Motion**); and a “Declaration of Joseph Elfelt.”

On November 6, 1995, the Board received a letter from David A. Bricklin. The letter also transmitted “FOTL’s Statement of Additional Authorities and Corrections Pertaining to FOTL’s Motion for Reconsideration.”

On November 7, 1995, the Board issued an “Order Requesting Responses to Motions” (the **Order Requesting Responses**). The Order Requesting Responses invited any party to submit a response to the above named motions by November 15, 1995 and directed the makers of those motions to file any reply briefs by November 21, 1995.

On November 15, 1995, the Board received the “King County Response to Petitioner Keesling Motion for Reconsideration;” the “Response of King County to Tolt’s Motion for Reconsideration;” the “Response of King County to FOTL’s Motion for Reconsideration;” and the “Response of King County to Carkeek’s Motion for Reconsideration.” On this same date, the Board received the “Port Blakely Tree Farms Response to FOTL’s Motion for Reconsideration;” the “Response of Friends of the Law to Motions filed by King County, Port Blakely Tree Farms, and the Quadrant Corporation;” the “Response of City of Snoqualmie to Motions for Reconsideration;” “Carkeek’s Response to King County’s Motion for Reconsideration;” and from Preston Industrial Associates (**Preston**) the “Response in Opposition to Carkeek’s Motion for Reconsideration.”

On November 21, 1995, the Board received the “Reply of King County Regarding Motion for Reconsideration;” the “Reply of Tolt Community Club to Response of King County and City of Snoqualmie to Motions for Reconsideration;” the “Joint Reply of Intervenors Port Blakely and the Quadrant Corporation to FOTL’s Response to Motion for Reconsideration;” “FOTL’s Reply in Support of Motion for Reconsideration;” and a “Correction to Carkeek’s Reply in Support of Motion for Reconsideration and Imposition of Invalidity Finding.”

II. DISCUSSION

A. CARKEEK’S MOTION

Carkeek Basis for Reconsideration No. 1

The Board should reconsider its decision not to address Carkeek Legal Issue No. 4 and, upon reconsidering, the Board should find the implementing regulations inconsistent with the Act.

Carkeek Basis for Reconsideration No. 2

The Board should enter a Finding of Invalidity Pertaining to Plan Policies R-314 and R-315 and the Implementing Regulations.

Discussion of Carkeek's Motion

Because Plan Policies R-314 and R-315 were found to be not in compliance with the requirements of the Act and were remanded, it follows that development regulations to implement those non-complying policies should also be remanded for deletion or correction.

Conclusions regarding Carkeek's Motion

The portion of Carkeek's Motion identified above as Basis for Reconsideration No. 1 is **granted**. The portion of Carkeek's Motion identified above as Basis for Reconsideration No. 2 is **denied**.

B.FOTL's MOTION

FOTL Basis for Reconsideration No. 1

The Board should reconsider its decision concerning FOTL's legal issues Nos. 5 and 6 as they relate to the Bear Creek "island" UGA only, and find that the "island" UGA's inconsistency with the GMA is not excused by its alleged consistency with the King County Countywide Planning Policies (CPPs).

FOTL Basis for Reconsideration No. 2

Upon finding the Bear Creek Island UGA inconsistent with the GMA, the Board should also find that the Bear Creek Island UGA is invalid.

Discussion of FOTL's Motion

FOTL argues that CPPs cannot bind a county's designation of its UGA, and even if they could, the County's CPPs do not do so, particularly with regard to the Bear Creek "island" UGA.

FOTL's most persuasive arguments focus on:(1) what did the CPPs themselves describe as their intended effect on the UGA designation? and (2) are the CPPs, particularly LU-26(b), internally inconsistent and ambiguous, and, if so, does this mean that they cannot bind the County's exercise of discretion in designating the UGA?

Our discussion begins by first setting forth the relevant portions of the County's CPPs, including the prefatory sections, or Findings; narrative which precedes LU-26 entitled "Urban Growth Area" and Policy LU-26 itself.LU-26 was adopted by the Phase II CPPs, via Ordinance 11446 (Stip. Ex 8).It re-adopted and amended LU-14, which was adopted as part of the Phase I CPPs via Ordinance 10450 (Stip. Ex. 7.)LU-26, and the preamble entitled "Urban Growth Areas" that precedes it, showed the modifications made in the Phase II CPPSs to LU-14, with underlining of new language and strike-throughs indicating deleted language:

1.Urban Growth Area

The GMA requires King County to designate an Urban Growth Area (UGA) in consultation with cities.The Countywide Planning Policies must establish an Urban Growth Area that contains enough urban land to accommodate at least 20 years of new population and employment growth.The GMA states:"based upon the population forecast 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 urban growth that is projected to occur in the county for the succeeding twenty-year period.Each Urban Growth Area shall permit urban densities and shall include greenbelt and open space areas."A UGA map is attached as Appendix 1, which guides the adoption of the 1994 Metropolitan King County Comprehensive Plan.

LU-~~(14)~~26. The lands within ~~((the))~~ Urban Growth Areas (UGA) shall be characterized by urban development.The UGA shall accommodate ~~((at least))~~ the 20-year projection of ~~((population))~~ 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;

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.

c. Not include rural land or unincorporated agricultural, or forestry lands designated through the Countywide Planning Policies plan process;

d. 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;

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.

(1) What did the CPPs describe as their intended effect on UGA designation?

The most explicit statement by the County Council of how it intended the CPPs to be used is set forth in Section 1 of the adopting ordinance. Ordinance 11446, Finding E (Stipulated Exhibit 8) provides:

The urban growth area contained in these policies is a dynamic policy line which provides general guidance to the Metropolitan King County Council when it adopts the final Urban Growth Boundary in its 1994 Comprehensive Plan. (Emphasis added.)

Thus, the County Council differentiated between the two discrete decision-making actions (adopt CPPs pursuant to RCW 36.70A.210, then adopt a comprehensive plan, including FUGAs pursuant to RCW 36.70A.110). Most importantly, the words cited above carefully described the nature of the relationship between those two discrete actions. These words tell us that the “urban growth areas contained in the CPPs”^[1] are a “dynamic policy line” that “provides general guidance” to the later designation of the UGA line at the time of and in the Plan. *See* RCW 36.70A.110(5).

In sharp contrast, Finding E did not say that “the urban growth areas contained in the CPPs” are a “rigid policy line”, as opposed to a dynamic one, and that “they provide specific designation,” as opposed to general guidance. If such alternative wording, or similar language, appeared in Finding E, the County would have a more credible argument that the County Council intended the CPPs to bind the location of all FUGAs at the time of Comprehensive Plan adoption. Instead, the language that the County did adopt in Finding E to explain its intentions is consistent with the notion of CPPs as a *framework* that guides subsequent decisions, but does not pre-determine them. The word “guides” also appears prominently in the preamble immediately above LU-26. That language provides:

A UGA map is attached as Appendix 1, which guides the adoption of the 1994 Metropolitan King County Comprehensive Plan (emphasis added.)

It is difficult to construe the word “guides” to be as directive and binding as the County now suggests. The common meaning of the verb “guide” can be discerned by consulting a dictionary. The transitive verb “guide” is defined there as:

to point out the way for; direct on a course; conduct; lead. *Webster’s New World Dictionary of the American Language* 621 (2nd College Ed. 1984).

Relying on this definition, and an analysis done by the Attorney General, the Board has concluded that, within a GMA, context, “guides” is synonymous with “consider.” *See Gutschmidt v. Mercer Island*, CPSGPHB Case No. 92-3-0006 (1993), at 12.

Significantly, that portion of the sentence that contains the “guides” language was added to the CPPs as part of the Phase II amendments, an action taken subsequent to the explanation that the

County gave during the *Happy Valley* case that the CPPs did not draw the UGA. ^[1]

(2) LU-26(b) is internally inconsistent and ambiguous and therefore can provide only flexible guidance to UGA designation, but cannot constitute a rigid template that binds the County’s exercise of discretion.

There are several inconsistencies within LU-26(b) and between LU-26(b) and other provisions of the CPPs.

First, there is an internal inconsistency between the very first sentence of LU-26 and the specific language in LU-26(b) that speaks to the Bear Creek MPDs. Specifically, the opening sentence provides that “The lands within the Urban Growth Areas shall be characterized by urban development” (Emphasis added). Then, LU-26(b) talks about an “island” UGA that we know not to be presently characterized by urban development. *See Vashon-Maury*, Final Decision and Order, at 39. The phrase “characterized by urban development” is quoted directly from the

definition of “urban growth” in the GMA. ^[1] The Board has previously held that local governments cannot use verbatim GMA language and assign it a different meaning. *See Robison, et al., v. Bainbridge Island* CPSGMHB Case No. 94-3-0025 (1995), at 32. In the present instance, the County cannot argue it is trying to describe the future status of land within the UGA, because the definition in the Act is not prospective.

In the alternative, the argument that the Bear Creek MPDs are located “in relationship to land that has urban growth on it as to be appropriate for urban growth” is specious. To suggest that “in relationship to” is as minimal as a two-lane blacktop with no curb, gutter or sidewalk, and water and sewer pipes connecting a project to a city two miles away stretches credibility. If “in relationship to” equates to “well, you can’t see it or easily walk there, but you can drive it in under fifteen minutes at the legal speed limit,” then why is ten miles or even twenty miles not within the rubric of “in relationship to”? Using such a spindly connection, both figuratively and literally, to justify urban development in an unincorporated rural area constitutes “leapfrog development” that flies in the face of the Act’s direction that CPPs and UGAs must help achieve “compact urban development” and a “transformation of local governance.” *See Tacoma*, at 12. *See also Bremerton*, at 28.

All of the “criteria” in LU-26, with the glaring exception of subsection (b) dealing with the Bear Creek MPDs, are truly criteria. Each of them provides useful principles or priorities to be considered at the time that the County subsequently wields its discretion in adopting a Plan and FUGAs. In contrast, subsection (b) is not a criterion. Rather, it is a conclusion inserted into a sequence of what otherwise, on their face, are criteria consistent with and in concert with the general rule. Subsection (b) is not even discussed as an exception to the general rule. The Board

has previously held that exceptions to general rules are permitted, provided that they are explicitly stated and explained. *See Alberg v. King County*, CPSGMHB Case No. 95-23-0041 (1995), fn. 6 at 23. Absent a clearly articulated exception, something as incongruous as subsection (b) is simply an inconsistency with the general rule.^[1] Thus, LU-26(b) constitutes an internal inconsistency within LU-26.

When, such inconsistencies exist, the CPPs send mixed messages, subject to different interpretations. In short, they are ambiguous. The resulting effect is that these CPPs cannot be a directive and rigid template binding the Council's future exercise of its discretion in adopting its Plan and FUGA. *Snoqualmie v. King County* provides:

... CPPs that are written in a clear and cogent fashion, with key terms and phrases defined, will be less open to varying interpretations. Finally, all CPPs should be internally consistent to avoid sending conflicting messages. The more internally inconsistent the CPPs are, the less consistent comprehensive plans will have to be. *Snoqualmie*, at 13. (Emphasis added).

LU-26(b) is an internally inconsistent CPP and is inconsistent with other provisions of the CPPs. The most telling evidence of the facial inconsistencies cited above are in the two conflicting views about the directive effect of CPPs on UGAs that were expressed by the County in its *Happy Valley* brief vs. its brief in this case. This underscores the ambiguity of LU-26(b). This language was obviously subject to varying interpretations even by the County itself. Such inconsistency and ambiguity may or not have been fatal to LU-26(b) had it been appealed to this Board. Because it was not appealed, it is presumed valid.

Nevertheless, even a valid policy can be ambiguous as a result of internal inconsistency. As the Board determined in *Snoqualmie*, the degree to which a Plan (or, as here, its FUGA) must be consistent with a CPP is a function of the degree to which the CPP is internally consistent/inconsistent. Applying the above emphasized holding in *Snoqualmie* to the present facts reveals that, while LU-26(b) can provide only general guidance to the County's exercise of its discretion in designating UGAs, it cannot be used as a rigid template to dictate the final location of the UGA.

On reconsideration, the Board now concludes that LU-26(b) did not "make the county do it" with respect to the Bear Creek island UGA.

The Board concludes that the cumulative effect of the terms of Finding E, the preamble to LU-26, and the inconsistency and ambiguity of LU-26(b) is that the CPP's guide rather than dictate the final UGA with respect to the Bear Creek "island" UGA. Even were the Board to conclude that the intent of LU-26(b) specifically was to be as directive as the County now claims, its internal ambiguity and inconsistencies with other portions of LU-26, and even other portions of the Plan prevent it from achieving that end. For these reasons, LU-26(b) does not rise above the status of the *general guidance* that Finding E of Ordinance 11446 tells us the CPPs are intended to be. LU-26(b) does not declare that the Bear Creek MPDs are within the UGA nor suggest that the County's discretion to include the Bear Creek MPDs within the UGA is specifically bound as a matter of law rather than generally guided as a matter of policy.

Instead, the literal language of LU-26(b) names the GMPC, rather than the County, as the body

that “recognizes ...the Bear Creek Master Plan Developments... as urban...”To try to imbue this language with directive meaning, one first has to pretend that the term “GMPC” actually means “GMPC and the County” and to read the verb “recognize” to equate to “adopt” or “designate,” or even “include” as that verb is used in LU-26(a) immediately above.^[1]The Board rejects this interpretation.

Moreover, the last sentence of LU-26(b) is inconsistent with Plan 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 Growth Management Act.

Policy R-104 establishes King County’s position that new “fully contained communities” should not occur within the Rural Area. The King County Rural Area’s land base is so small, and its road network and housing market are so integrated into those of the metropolitan area and its economy, that “containment” would not be possible. See Chapter Six, Natural Resource Lands, for policies on the Snoqualmie Summit recreation area and its relationship to the Growth Management Act’s provisions for “master planned resorts”.

Having concluded that CPP LU-26(b) did not bind the County to include the Bear Creek MPD sites as an island UGA, we now turn to the portion of the FOTL Motion that asks that the Board find it inconsistent with the GMA and to remand it for deletion.

The County UGA as a whole has 81.93 percent more capacity than is required to accommodate the 20 year population projection from OFM. See *Vashon-Maury*, at 21. The cities alone have approximately 87 percent more household capacity than is allocated to them by the Plan. See *Vashon-Maury*, at 22. The Bear Creek UGA is an island detached from the main body of the metropolitan UGA, the nearest point of which is two miles to the west. Stipulated Exhibit 2, page 17, is a scale map showing the “island” UGA as well as the Redmond and Duvall UGAs and the road system in the vicinity. A review of this exhibit reveals that the Bear Creek “island” UGA is not connected to any rural city UGA, the nearest of which is Duvall’s, approximately three miles to the east, nor the main body of the metropolitan UGA, the nearest point of which is approximately two miles to the west in Redmond. A review of all of the pages in Exhibit 2 indicates that there are no other unincorporated “island” UGAs in King County.

The County has made no attempt to show how the Bear Creek island UGA meets the rank order for inclusion of land to be included within the UGA as required by RCW 36.70A.110. As the Board held in *Bremerton, et al., v. Kitsap County*, in meeting the requirements of RCW 36.70A.110, counties must show their work, including this rank order. See *Bremerton*, at 38-41. The Board stands by and readopts the following portions of its analysis and determinations from the Final Decision and Order:

....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).

....

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. ...*Vashon-Maury*, at 39-41.

Conclusions regarding FOTL’s Motion

The Board concludes that CPP LU-26(b) is internally inconsistent and subject to varying interpretations and is, therefore, ambiguous. Consequently, LU-26(b) did not bind the County to include the Bear Creek MPD sites within the FUGA. The portion of FOTL’s Motion identified above as Basis for Reconsideration No. 1 therefore will be **granted** and the Bear Creek island UGA will be remanded to the County with instructions to delete it, or to make it a fully contained community provided that it meets the requirements of RCW 36.70A.350, or to justify it consistent with the requirements of RCW 36.70A.110 and consistent with the Board’s Final Decision and Order in this case and with this Order.

The portion of FOTL’s Motion identified above as Basis for Reconsideration No. 2 is **denied**. The Bear Creek “island” UGA is not declared invalid.

Board Member Tovar’s dissent

I agree that the Bear Creek “island” UGA should be remanded to the County for deletion or justification; however, I conclude that the continued validity of the Bear Creek “island” UGA portion of the Plan will substantially interfere with the fulfillment of the Act’s planning goals, particularly Goals (1), (2) and (12). I would therefore have found the Bear Creek “island” UGA portion of the Plan invalid.

Board Member Towne’s Dissent

I do not concur with the majority as to FOTL's Basis for Reconsideration No. 1. I stand by the Board's original conclusion in this matter as set forth in the Final Decision and Order.

C.TOLT'S MOTION

Tolt Basis for Reconsideration No. 1

The Board should reconsider its decision that the rural cities UGAs are bound by the locations contained in the CPPs.

Discussion of Tolt's Motion

Tolt asks the Board to reconsider the issue of the rural cities' UGAs, particularly the Board's conclusion that the King County CPPs required the County to designate the expansion areas for rural cities as within a UGA. Tolt contends that as a matter of policy, CPPs cannot designate UGAs. However, if the Board rules to the contrary, Tolt points out that if CPPs do have that capability, then all expansion areas shown in the CPPs must be designated as within the UGA in the Plan, and the Plan cannot add additional expansion areas.

CPP Policy 26(a) is one of the criteria for establishing a UGA. It provides:

Include all lands within existing cities, including cities in the rural area and their designated expansion areas.

Notably absent from this policy statement is a reference to the GMPC, as opposed to the County. Also absent are any ambiguous or equivocal verbs such as "recognize." Instead, the very directive and unambiguous verb "include" and its derivative "including" leave no doubt about the County's desired intent in its adoption of the Phase II CPPs.

Conclusions regarding Tolt's Motion

Unlike CPP Policy 26(b) dealing with the Bear Creek Master Plan Developments previously discussed, Policy 26(a) is clear and unambiguous on its face. Although Finding E to King County Ordinance 11446 indicates that the UGAs contained within the CPPs are simply a dynamic policy line that provides general guidance, the Board concludes that where a specific policy of now valid CPPs is clear on its face, and does not suffer from facially internal inconsistency (as opposed to "as applied" inconsistency) and ambiguity, it controls over a more general policy. This conclusion is consistent with the requirement of RCW 36.70A.210(1) which indicates that a purpose of CPPs is to "ensure" that city and county comprehensive plans are consistent. The County and the cities within it reached agreement in the CPPs as to how the UGAs for cities in the rural area would be designated. This agreement was not appealed. Thus, Policy 26(a) does control the designation of UGAs for rural cities -- all designated expansion areas must be included within the UGA.

Tolt's motion is **partially granted**. To the extent that the Plan's UGAs for Rural Cities exclude expansion areas designated by the CPPs, these areas must be included in the UGAs. To the extent that the Plan adds further expansion areas to the Rural Cities' UGAs not designated for inclusion by the CPPs, these areas must be removed from the UGAs because they are inconsistent with the CPPs.

D. COUNTY'S MOTION

County Basis for Reconsideration No. 1

The Board should uphold the final urban growth areas for rural cities in King County.

County Basis for Reconsideration No. 2

The Board's Order should include language specifying that Order No. 3 on p. 106 of the Board's Final Decision and Order applies only to Vashon Island.

County Basis for Reconsideration No. 3

King County requests additional time to comply with the Board's Order.

Discussion of County's Motion

The County asks that the Board uphold the UGAs for rural cities, clarify that the language in the Order addressing five acre lots applies only to Vashon Island, and allow more time to comply with the Board's Order.

Conclusions regarding County's Motion

By partially granting Tolt's Motion, the Board has determined that the UGAs for rural cities are bound by LU-26(a). Therefore, the Board **grants** the portion of the County Motion set forth in County Basis for Reconsideration No. 1, to the extent it is consistent with the Board's conclusions above in response to Tolt's Motion.

Second, the Board agrees that the only facts and scope of arguments regarding five acre lots that were before it in this case dealt with Vashon-Maury Island. Therefore, the Board **grants** the portion of the County Motion set forth in County Basis for Reconsideration No. 2.

Third, the Board recognizes the logic of linking the update of the County's comprehensive plan to the timing of the annual budget process. The Growth Management Act (GMA or the Act) inextricably links major county-wide policy matters of land use, capital facilities, finance and governance. Likewise, we support the public policy objective of a sufficient opportunity for public

involvement in crafting alternatives to the County's GMA enactments that the Board has remanded. The legislature amended the Act in the 1995 session to explicitly clarify that local governments responding to a Board remand are to undertake "appropriate public participation ... whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court." RCW 36.70A.130(2)(b). The Board interprets the "emergency" provisions of this section to include actions by a local government to comply with the specific remand instructions of a Board Order.

While the Board agrees that additional time is appropriate to comply with the requirements of the Final Decision and Order, including the provisions of this Order, we are unpersuaded that the full 180 days requested is necessary. Accordingly, the portion of the County's Motion set forth in Basis for Reconsideration No. 3 is **partially granted**. However, rather than give the County the full 180 days that it had requested, instead, the County is ordered to comply with the requirements of the Final Decision and Order, including the provisions of this Order, by 5:00 p. m. on Friday, March 15, 1995.

E.SNOQUALMIE'S MOTION TO CORRECT

Snoqualmie asks the Board to make a correction to the recitation of facts in Tolt Issue No. 6, found at pages 36 and 37 of the Order. The fact in question is the number of acres beyond the City of Snoqualmie's expansion area which were included within the City's Final UGA. The Board relied on the Rural Cities Urban Growth Area Report, Stip. Ex. 27, in finding that the number was 1,455 acres. In its Motion for Correction, the City explained that the Phase II CPPs, Stip. Ex. 8, on which the County's Final UGAs were based, included only 750 acres beyond the expansion area in the City's UGA. That acreage is shown on Map No. 6, facing p. 82 of the Phase II CPPs. Stip. Ex. 8.

The Board **grants** the City's motion to correct. The challenged text on pages 36 and 37 of the Order shall be modified to change the references to 1,950 acres to 750 acres, and to remove references from the Rural Cities Urban Growth Area Report as to the amount of acreage at issue here.

III. ORDER

Having reviewed the above-referenced documents and the file in this case, and having deliberated on the matter, the Board enters the following Order:

1. Keesling's Motion and the Motion by Port Blakely and Quadrant are **denied**.
2. Snoqualmie's Motion to Correct is **granted**.

The challenged text on pages 36 and 37 of the Final Decision and Order shall be modified to change the references from 1,950 acres to 750 acres, and to remove references from the Rural Cities Urban Growth Area Report as to the amount of acreage at issue here.

3. Carkeek's Motion is **partially granted**.

The light industrial and P-suffix zoning in the Preston area that implement Policies R-314 and R-314 are **remanded** with instructions for the County to repeal them or otherwise make them consistent with the requirements of the Act, the Board's Final Decision and Order, and this Order on Motions.

4.FOTL's Motion is **partially granted**.

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

5.Tolt's Motion is **partially granted**.

To the extent that the Plan's UGAs for Rural Cities exclude expansion areas designated by the CPPs, these areas must be included in the UGAs.To the extent that the Plan adds further expansion areas to the Rural Cities' UGAs not designated by the CPPs, these areas must be removed from the UGAs because they are inconsistent with the CPPs.

6.The County's Motion is **partially granted**.

Plan Policy R-206 is **remanded** with instructions for the County to repeal it as it pertains to Vashon-Maury Island, or provide adequate justification for it consistent with the requirements of the Act, the Board's Final Decision and Order, and this Order on Motions.

Pursuant to RCW 36.70A.300(1)(b), the County is given **until 5:00 p.m. on Friday, March 15, 1996**, to comply with this Final Decision and Order.The County shall file by 5:00 p.m. on Friday, March 22, 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 1st day of December, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

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

VASHON MAURY, et al.,	)	Consolidated
Petitioners,	)	Case No. 95-3-0008
v.	)	SCRIVENER'S ERROR
KING COUNTY,	)	CORRECTION TO ORDER ON
Respondent.	)	MOTIONS TO RECONSIDER AND
	)	MOTION TO CORRECT
)	
)	
)	

Due to scrivener's errors, please note that the following corrections have been made to the **Order on Motions to Reconsider and Motion to Correct**:

- * Page 8, line 25 - replace the "period" with a "comma." Should read "26, and even..."
- * Page 15 line 23 - replace "fully" with "full." Should read "the full 180 days..."
- * Page 15 line 25 - replace "1995" with "1996." Should read "March 15, 1996."
- * Page 16 line 23 - replace "it it" with "if it." Should read "community if it..."

Copies of the corrected pages are enclosed.

So ordered this 4th day of December, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP
Board Member

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

VASHON MAURY, et al.,	)	Consolidated
Petitioners,	)	Case No. 95-3-0008
v.	)	SECOND SCRIVENER'S ERROR
KING COUNTY,	)	CORRECTION TO ORDER ON
Respondent.	)	MOTIONS TO RECONSIDER AND
	)	MOTION TO CORRECT
)	
)	
)	

Due to scrivener's error, please note that the following correction has been made to the **Order on Motions to Reconsider and Motion to Correct**:

* Page 16, line 19 - replace "R-314" with "R-315." Should read "and R-315..."

A copy of the corrected page is enclosed.

So ordered this 5th day of December, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP
Board Member

[1]

Note that in describing the UGAs ostensibly drawn by the CPPs, the language of Finding E does not say "adopted" or "enacted" or "designated", but instead the rather equivocal "contained."

[1]

In *Happy Valley, et al., v. King County*, CPSMPHB Case No. 93-3-0008 (1993), the Board concluded that the map and text included in the Phase I CPPs were not sufficiently definitive to constitute a UGA. In part, the Board relied upon the County's argument that it had not yet drawn the IUGAs or FUGAs:

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

King County has not yet adopted interim or final urban growth areas under the GMA but is still in the process of doing so. Aff. of Jim Reid, at 2,3 (emphasis added).

Moreover, the County's brief pointed out that:

Until King County designates its interim and final urban growth areas as required by the GMA, which it has not yet done, any petition alleging noncompliance with the GMA provisions regarding designation of urban growth areas is premature. Respondent King County's Reply Brief, at 7-8 (emphasis added). *Happy Valley*, at 22.

The CPPs in question in the *Happy Valley* case were the Phase I CPPs, specifically LU-14. None of the changes between LU-14 in the Phase I CPPs and LU-26 in the Phase II CPPs substantively altered the basis upon which the County relied in its earlier position.

[1]

RCW 36.70A.030(15) provides:

"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.)

[1]

Subsection (b) is also internally inconsistent, as applied, with several other subsections of LU-26, most notably (d), (e) and (f). The evidence in the record demonstrates that the MPDs are not already characterized by urban growth, do extend beyond natural boundaries and do not respect a major topographical feature, i.e., the forested ridgeline separating the Snoqualmie and Sammamish River basins.

[1]

Even if one were to make these jumps, to confer some "urban status" on the Bear Creek island MPD sites, even this would not bind the County's subsequently exercise of discretion in UGA designation. This Board has previously held that the Act does not require that all lands that are presently urbanized (let alone completely undeveloped but simply dubbed "urban") be included within a UGA. See *Tacoma, et al., v. Pierce County*, CPSGMHB Case No. 94-3-0001 (1994), at 11. See also *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No. 95-3-0039 (1995), at

71. Therefore, it follows that even lands that are “recognized” as urban, as opposed to actually developed as urban, need not be included within an FUGA.