CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

CITY OF GIG HARBOR, et al.,	)	
	)	**Consolidated**
Petitioners,	)	**Case No. 95-3-0016**
	)	
v.	)	**FINAL DECISION AND ORDER**
	)	
PIERCE COUNTY,	)	
	)	
Respondent.	)	
	)	

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I. PROCEDURAL HISTORY

On January 27, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) received the first of seven petitions for review, each challenging one or more of the following documents adopted by Pierce County (the **County**):

- County Ordinance No. 94-82S, adopting the Pierce County Comprehensive Plan (the **Plan**).

- County Emergency Ordinance No. 94-167, adopting Pierce County Emergency Interim Development Regulations (**Interim Regulations**).

- County Resolution No. R94-153 (the **Resolution**), regarding population allocations.

On February 7, 1995, the Board entered an Order of Consolidation that consolidated the seven petitions into one case as captioned as above. A prehearing conference was held on March 6, 1995. On March 8, 1995, the Board entered a Prehearing Order that set forth a statement of legal issues raised by the Petitioners.

Subsequently, five of the seven petitions were dismissed with prejudice after the County and the individual petitioners reached settlement agreements. Consequently, only the petitions for review from Nell Batker (**Batker**) (Case No. 95-3-0012) and the Peninsula Neighborhood Association (**PNA**) (Case No. 95-3-0015) remain before the Board.

On May 1, 1995, Batker filed "Petitioner's Prehearing Brief" (**Batker's Brief**) with the Board along with ten exhibits.

Also on May 1, 1995, PNA's "Prehearing Brief" (**PNA's Brief**) and six exhibits were filed with

the Board.

On May 22, 1995, the County filed two response briefs, "Pierce County's Prehearing Brief Responding to Petition of Nell Batker" (**County's Response to Batker**) and "Pierce County's Motion to Strike and Memorandum in Response to PNA's Prehearing Brief" (**County's Response to PNA**). The County filed numerous exhibits, labeled pursuant to a Stipulated Exhibit List, also filed on the same date.

On May 30, 1995, PNA's "Reply to Pierce County's Response Memorandum" (**PNA's Reply**) was filed with the Board. It contained one exhibit. PNA's Reply duplicated PNA's Brief except that references to exhibits were updated to refer to the numbering set forth in the Stipulated Exhibit List rather than the County's Index of Record. Therefore, PNA's Reply replaces PNA's Brief. PNA's Reply also contained new material in rebuttal to the County's Response to PNA.

Mrs. Batker elected not to file a reply brief.

The Board held a hearing on the merits in this consolidated case on Wednesday, May 31, 1995, at the Metropolitan Park District Headquarters at 4702 South 19th Street in Tacoma. M. Peter Philley, presiding, Joseph W. Tovar and Chris Smith Towne were present from the Board. Nell Batker appeared *pro se*; Thomas D. Morfee, *pro se*, represented PNA; and T. Ryan Durkan represented the County. Court reporting services were provided by Cynthia J. LaRose of Robert H. Lewis & Associates, Tacoma. No witnesses testified.

Supplemental Exhibits

The County's proposed exhibit, an affidavit of the County's cartographer, Karen Trueman, was Admitted as Supplemental Evidence as Exhibit 69.

In a prior order, the Board had indicated that PNA could offer three exhibits at the hearing on the merits, which it did. The Board's presiding officer then ruled as follows on those three proposed supplemental exhibits 4, 8, and 10, as follows:

> Exhibit 4 November 18, 1991 forecasting analysis zones: **Admitted** as Part of Record as Exhibit 72.
>
> Exhibit 8 February 28, 1995, memo from Dan Cardwell to Mark Truckey: **Admitted** as Supplemental Evidence as Exhibit 73.
>
> Exhibit 10 January 27, 1995, PALS "Rural Activity Center Land Use Designation Summary Sheet: **Admitted** as Supplemental Evidence as Exhibit 74.

In addition, PNA offered a portion of Chapter 18.10 of the Pierce County Code (**PCC**), of which the Board takes official notice. It is **Admitted** as Supplemental Evidence as Exhibit 75.

County's Motion to Strike

The County moved to strike references in PNA's Brief to Peninsula Light Company and Peninsula School District population projections. The Board had previously entered a "Corrected Order on Motions to Supplement the Record and Amended Prehearing Order" in which these proposed exhibits were denied. The County's Motion to Strike is **granted**; the Board strikes and will not consider the following portions of PNA's Brief:

- the last two paragraphs on page 13;
- the first incomplete paragraph at the top of page 14;
- the first full paragraph on page 14;
- and those portions of the second complete paragraph on page 14 citing the Peninsula Light Company and Peninsula School District information.

The County also moved to strike:

> ... (3) capacity data on vacant parcels prepared by PNA; and (4) the County's brief and other material submitted to the Pierce County Hearing Examiner by PNA on its appeals brought under the State Environmental Policy Act (**SEPA**). County's Response to PNA, at 1.

That portion of the County's motion was **denied** to the extent that PNA's Brief or Reply dealt with its own analysis of information from the record. To the extent that PNA's analysis involved information from outside the record, the Board will disregard the analysis. Accordingly, PNA was permitted to file "Appendix A" to PNA's Reply which is the analysis in question from PNA's Brief that had been removed from PNA's Reply.

The Board also **granted** the County's oral request to strike any reference in PNA's Reply to alleged conversations between PNA members and County staff. The Board will not consider such statements.

PNA's Motion to Take Official Notice

On October 4, 1995, PNA filed a "Motion to Take Official Notice" with the Board, asking the Board to take notice of a "Draft Supplemental Environmental Impact Statement — Pierce County Comprehensive Plan Amendments" (**the DSEIS**). The document is dated September 8, 1995 and was prepared by the County Department of Planning and Land Services (**PALS**) as

environmental analysis of proposed amendments to the Plan.

On October 13, 1995, "Pierce County's Response Opposing PNA's Motion to Take Official Notice" was filed. The County contends that the DSEIS is not a "matter of law" for official notice, that it does not meet the definition of "notorious facts," that PNA's motion is untimely since the hearing on the merits has already been held, that the DSEIS was not contained in the Plan's record and that PNA can comment upon the DSEIS directly to the County Council.

On October 19, 1995, PNA filed a "Reply to Pierce County's Response Opposing PNA's Motion to Take Official Notice." County Ordinance 95-278, passed by the County Council on April 18, 1995, was attached to the reply.

On October 25, 1995, the Board received a second "Motion to Take Official Notice" (Second Motion) from PNA, requesting the Board to note County Ordinance No. 95-79S, adopting development regulations and zoning for percent.

Having reviewed and considered the above-referenced documents**,** PNA's First Motion is **denied.** The Board's rules for taking official notice are not broad; only those documents specified may be officially noted under WAC 242-02-660. This is primarily because the Board is required to base its decisions on the record before the legislative body that took the action that is being challenged on appeal. *See* RCW 36.70A.320. A DSEIS is not one of the documents listed. Moreover, although it is debatable whether the Board could take official notice of a DSEIS pursuant to WAC 242-02-670(2), notorious facts, the condition precedent for taking such notice is that the request be made before or during a hearing. PNA's motion was filed well after the hearing on the merits in this case.

PNA's Second Motion to Take Official Notice is **granted.** The Board takes official notice of County Ordinance No. 95-79S pursuant to WAC 242-02-660(3).[1] However, the relevance of that ordinance is highly questionable, given that the Board's focus here is a review of the Plan and the fact that persons who feel Ordinance No. 95-79S fails to comply with the Act can file a petition for review challenging that document.

II. FINDINGS OF FACT

The Board makes the following findings of fact. Additional findings are included within the discussion of specific legal issues.

County Enactments and SEPA Actions

1. On April 2, 1991, the Pierce County Council (**County Council**) passed Ordinance No.

91-47S, adopting and supporting the statewide goals of the GMA. Ex. 24.

2. On July 30, 1991, the County Council passed Ordinance No. 91-100, creating the Growth Management Citizens Advisory Group (**CAG**), a 29-member body, and nine Advisory Committees on the Elements (ACES), one for each mandatory element of a comprehensive plan required by RCW 36.70A.070 plus two optional elements. Ex. 25.

3. On October 8, 1991, the County Council passed Ordinance No. 91-117S2, adopting critical area and natural resource lands regulations. Ex. 52.

4. On October 8, 1991, the County Council passed Ordinance No. 91-119S2, adopting aquifer recharge area regulations. Ex. 45.

5. On October 29, 1991, the County Council passed Ordinance No. 91-122S2, adopting agricultural lands regulations. Ex. 43. One of the criteria for designating lands as agricultural was that the parcel be ten acres in size or larger. Ex. 43, attached Exhibit A, at 2.

6. On October 29, 1991, the County Council passed Ordinance No. 91-125S2, adopting regulations for property adjacent to designated resource lands. Ex. 64.

7. On January 14, 1992, the County Council passed Ordinance No. 91-128S3, adopting wetland management regulations. Ex. 54

8. On January 21, 1992, the County Council passed Ordinance No. 91-163S, adopting interim development regulations for the Gig Harbor Peninsula. Ex. 21.

9. On March 24, 1992, the County Council passed Ordinance No. 91-120S5, adopting fish and wildlife habitat area regulations. Ex. 53.

10. On June 30, 1992, the County Council passed Ordinance No. 92-74, adopting the Pierce County County-wide Planning Policies (**PCCPPs**). Ex. 18, following 64.

11. On June 30, 1992, the County Council also passed Resolution No. R92-86, which authorized the Pierce County Executive (**the Executive**) to execute an interlocal agreement with the cities and towns of The County, ratifying the PCCPPs. Ex. 18.

12. On November 17, 1992, the County Council passed Ordinance No. 92-52S, rezoning certain agricultural property. Ex. 63.

13. On November 22, 1992, the County issued a Determination of Significance regarding its

proposed comprehensive plan. *See* Ex. 23, at 5.

14. On May 25, 1993, the County Council passed Ordinance No. R93-95, which established a 20-year planning period for comprehensive planning (1994-2014), and established the total county (812,000) and total rural (32,000) population projections for the planning period. Ex. 31.

15. In June, 1993, the first draft comprehensive plan, prepared by the Executive, was reviewed by the Pierce County Planning Commission (the **Planning Commission**). *See* Ex. 16, at 3.

16. On July 6, 1993, the Executive presented the Draft Comprehensive Plan to the County Council. *See* Ex. 23, at 2.

17. On July 28, 1993, the County released a Draft Environmental Impact Statement (**DEIS**) for its comprehensive plan. *See* Ex. 23, at 5.

18. On September 20, 1993, the County issued its Final Environmental Impact Statement (**FEIS**) for the Plan. Ex. 29.

19. On October 12, 1993, the County Council passed Ordinance No. 93-91S designating interim urban growth areas (**IUGAs**).

20. On December 21, 1993, the Draft Comprehensive Plan for Pierce County — Executive Proposal was released. Ex. 6.

21. On January 6, 1994, petitions for review were filed with the Board in *Tacoma, et al., v. Pierce County*, CPSGPHB Case No. 94-3-0001 (***Tacoma***), challenging the County's IUGAs' designations.

22. On March 29, 1994, the County Council proposed a revised draft of the comprehensive plan and forwarded it to the Planning Commission for review. *See* Ex. 23, at 4.

23. On April 5, 1994, the County Council passed Ordinance No. 94-20, which repealed the "sunset" provisions in the County's previously adopted critical areas ordinances and its natural resource ordinances. Ex. 46.

24. On April 22, 1994, the County issued a DSEIS for the Plan. *See* Ex. 23, at 5.

25. On June 10, 1994, the County issued a Final Supplemental Environmental Impact

Statement (**FSEIS**) for the Plan. Ex. 15.

26. On July 5, 1994, the Board issued its Final Decision and Order in *Tacoma*, remanding the County's designated IUGAs because they did not comply with the Act, partially because the County relied upon incorrect population projections.

27. On November 10, 1994, revisions to the March 1994 draft comprehensive plan were made and incorporated into an updated draft, the November 10, 1994 Draft Comprehensive Plan. *See* Ex. 16, at 2, and Ex. 23, at 6.

28. On November 10, 1994, the County Council held a public hearing on the Draft Comprehensive Plan dated November 10, 1994. Additional public hearings were held on November 14, 21, 22, 28 and 29, 1994. Ex. 23, Findings A-56 and 57.

29. On November 29, 1994, the County issued an "Addendum to Final Supplemental Environmental Impact Statement for Adoption of the Comprehensive Plan for Pierce County, Washington" (the **Addendum**). The Addendum evaluated the differences between the March, 1994, Draft Plan and the November, 1994, Draft Plan. Ex. 16.

30. On November 29, 1994, the County's Environmental Official under SEPA, Debora A. Hyde, sent a letter to Dennis Flannigan, Chair of the County Council, advising him that staff had reviewed proposed amendments to the November 10, 1994 draft of the comprehensive plan and concluded that "... the changes proposed to the Draft Comprehensive Plan do not alter the analysis of significant environmental impacts which was previously documented in the June 1994 Final SEIS, the April 1994 Draft SEIS, the July 1993 Draft EIS, and the September 1993 Final EIS. No additional environmental review is required." Ex. 14.

31. On November 29, 1994, the County Council passed and the Executive approved Ordinance No. 94-82S, which adopted the Pierce County Comprehensive Plan. Ex. 23. The Plan itself is Exhibit 22.

32. On November 29, 1994, the County Council also passed County Resolution No. R94-153, regarding population allocations. Ex. 32.

33. On December 13, 1994, the County Council passed Ordinance No. 94-137, which adopted the Comprehensive Park, Recreation, and Open Space Plan for the Gig Harbor/Key Peninsula. Ex. 50.

34. On December 20, 1994, the Pierce Council passed Emergency Ordinance No. 94-167, which adopted Pierce County Emergency Interim Development Regulations (**Interim**

Regulations). Ex. 34.

35. On January 1, 1995, the Plan took effect.

36. On February 21, 1995, the County Council passed Resolution No. R95-22, which adopted findings of fact for the Interim Regulations. *See* Ex. 40, at 1.

37. On March 21, 1995, the County Council passed Resolution No. R95-36, requesting that PALS and the Planning Commission prepare a final zoning code to implement the Plan. Ex. 40.

38. In July, 1995, the County Council passed Ordinance No. 95-79S, which adopted permanent development regulations and zoning to implement the Plan.

39. The County encompasses an area of 1,793 square miles. Plan, at I-6 and II-12.

40. The land categories include:

Pierce County Land Categories

Type of Land	Acres	Percent
State or federal	418,000	39[2]
Cities and towns	56,000	5
Unincorporated	578,042	54
Not described in Plan	19,958	2
TOTAL	1,072,000[3]	100%

41. Roads and reserved rights-of-way comprise approximately 18,000 acres of land in unincorporated Pierce County (Plan, at II-21), or approximately 2 percent of the county's land area.

42. Over 133,000 acres of unincorporated Pierce County (excluding state and federal lands) is vacant (Plan, Table II-2, at II-17; and at II-22) or approximately 12 percent.

43. Pierce County Population[4]

Area	1990	Percent	1992	Percent
Cities and towns	246,278	42	253,568	41
Unincorporated	339,925	58	370,432	59
TOTAL	586,203	100%	624,000	100%[5]

44. In 1980, the County had an average population density of 290 people per square mile. In 1990, the County had an average population density of 350 people per square mile.[6] Plan, at II-12.[7]

45. In 1992, the net residential density (number of dwelling units/number of acres of residential parcels) of unincorporated Pierce County was 1.37 dwelling units (**du**) per acre. The 1992 net density of what is today the Comprehensive Urban Growth Area (**CUGA**) was 2.62 dwelling units/acre. Plan, at II-19.

46. The County's 32,000 person allocation to rural areas occurred as early as May 25, 1993, when the County Council passed Resolution No. R93-95. Ex. 31. In Resolution No. R93-95, the County extrapolated OFM's 2012 projection to the year 2014. Although the County subsequently planned for the year 2012, it did not change the 32,000 person allocation to the rural parts of the County when it adopted the Plan.

Parks and Recreation Lands

1. Approximately 392,000 acres of open space and recreational lands exist in the County, including all publicly-owned lands (federal, state and local) but excluding privately-owned lands. Ex. 41, Appendix B. This constitutes approximately 37 percent of the acreage of the entire county.

2. Of the 578,042 acres of unincorporated Pierce County (excluding state or federal lands), 6,909 acres is in parks and recreation use. Therefore, 1 percent of unincorporated Pierce County is parks and recreational land. Plan, Table II-2, at II-17; and at II-22.

3. The County owns 1,421.5 acres of park land. Plan, at IX-86. Therefore, 21 percent of the total 6,909 acres of park and recreation lands in unincorporated Pierce County is owned by the County.

Agricultural Lands

1. Of the total land area in unincorporated Pierce County, 313,060 acres (over 54 percent) is devoted to natural resource-based industries, including agriculture. Plan, Table II-2, at II-17.

2. The County is the dominant producer of rhubarb in the United States. Ex. 10, at 5.

3. In 1975 the US Department of Agriculture Soil Conservation Service inventoried the soils of the County and determined that the county had 78,200 acres of prime farmland. Ex. 10, at 2.

4. Between 1982 and 1987, over 10,000 acres of farmland were converted from agricultural to non-agricultural uses in the County. Ex. 10, at 4.

5. In 1989, almost 63,000 acres in the County were being used for agriculture. Ex. 10, at 3.

6. By the time the Plan was adopted, over 62,000 acres of land in the County remained devoted to agricultural uses. Plan, at II-18.

7. Of all lands devoted to agricultural uses, 33,000 acres (53 percent) are cropland while the remaining 29,000 acres (47 percent) are used for livestock pastures. Plan, at II-18.

8. Between September and November 1991, the County classified and designated agricultural lands of long-term commercial significance not already characterized by urban growth pursuant to RCW 36.70A.170. *Compare* dates listed for when this action took place: Plan, Table I-4, at I-13 (September 1991) with II-18 (October 1991) with II-43 (November 1991).

9. In 1992, 49,148 acres of land in unincorporated Pierce County were taxed for agricultural uses. Plan, at II-18.

III. DISCUSSION

A. BATKER CASE

Legal Issue No. 1

Do the GMA's planning goals, RCW 36.70A.020(1) and (9), require that adequate parks be provided in a comprehensive plan and, if so, has the County complied with those goals?

RCW 36.70A.020 provides in part:

> The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

> (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
> ...
> (9) Open space and recreation. Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks. (Emphasis added.)

RCW 36.70A.020(1) uses the phrase "public facilities" which is defined at RCW 36.70A.030(13) to include:

> ... streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools. (Emphasis added.)

Batker insists that the Act's two planning goals cited in Legal Issue No. 1 require the County, through its comprehensive plan, to provide for adequate urban park services. Batker's Brief, at 2. Batker claims that the Plan does not address the need to increase historically minimal suburban neighborhood park levels to adequate levels for what have become, and will become, urban areas. Drawing upon evidence in the record, Batker shows how the acreage of County-owned parks has decreased from 9.29 acres per 1,000 population in 1970 to 3.71 acres per 1,000 population in 1993. Batker's Brief, at 3. Moreover, Batker contends that, although the County acknowledges the "parks problem" in its Plan:

> ... the proposed solution is naive and shirks any kind of responsibility. No action is mandated, nor is there any target ratio given of acres per 1,000 population.... Unmandated recommendations have a way of deteriorating over time. Batker's Brief, at 4.

RCW 36.70A.020(1) by itself does not require the County to provide for adequate parks. Instead, it requires the County to be guided by the planning goal to concentrate future growth into urban areas that already have public facilities or where they can someday most efficiently be developed to meet the needs of the urban area population.

RCW 36.70A.020(12)[8] states:

> (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.

When this planning goal is included in the formula, it is more readily apparent that jurisdictions

have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place "... at the time development is available for occupancy and use..." and second, adequacy is measured by "locally established minimum standards."

Contrary to Batker's contentions, the County did establish levels of service (**LOS**) in the Plan that constitute "minimum standards" for parks. Although the County arguably could have included state and federal park lands in its equation,[9] it elected instead to calculate LOS based solely upon county-owned parks. The Plan explains how the 1993 Baseline LOS was established and furthermore provides that:

> The County proposed level of service is the same as the 1993 Baseline.... Plan, at IX-86.

RCW 36.70A.020(9) employs four verbs: encourage, conserve, increase and develop. In discussing the Act's planning goals, the Board has repeatedly noted that they range from very permissive ("encourage") to strongly directive ("ensure"). The use of the word "develop" here is one of the more directive requirements. Yet the goal is silent as to what extent development should occur, and when, where and how. For instance, does "develop" mean to take an existing fully forested park and construct baseball fields there, or does it mean obtain additional park land? Moreover, the planning goal does not specify what type of park should be developed. As an example, a national park, several state parks, regional parks and neighborhood parks are located within Pierce County. *See* Plan, at II-16 and IX-86, and Exhibit 41. Although a county government is not responsible for developing a national or state park, it clearly has a regional role and may also have responsibilities for developing local, neighborhood parks.

Because of the Act's vagueness, individual jurisdictions must decide to what extent they will develop additional parks. It also falls within local discretion to ascertain when, where and how the goal of developing parks will be accomplished. Because the Act imposes no guidelines on the use of this discretion, the Board's review of a jurisdiction's action is limited to ascertaining whether a comprehensive plan was guided by the Act's planning goal to "develop parks." Complaints that insufficient numbers of a certain type of parks are proposed, or will not be developed soon enough and/or at the proper locations must be addressed locally through the legislative process or at the ballot box. *See also West Seattle Defense Fund v. Seattle*, CPSGMHB Case No. 94-3-0016 (***WSDF I)***, Final Decision and Order, at 59-60.

According to the Plan, the County owns 1,421.5 acres of park land and intends to obtain an additional 92.25 acres of parks. The Plan also includes a capital facilities plan for acquiring additional acreage, from 1994 through 1999. *See* Plan, Table IX-PR-3, at IX-92-93. In addition, the Plan calls for efforts to increase the acreage of parks by "requiring larger developments to provide neighborhood parks ... [and] by initiating school playground/County park joint use

agreements..." Plan, at IX-86. **The Board holds that the County's Plan was guided by the relevant planning goals at RCW 36.70A.020(1) to encourage development in urban areas, and at RCW 36.70A.020(9) to develop parks.**

Conclusion No. 1

The GMA's planning goals at RCW 36.70A.020(1) and (9), coupled with that at subsection (12), require the County to provide for adequate parks. However, the County has full discretion in deciding what level of service is adequate, and when, where and how parks will be developed. Because the County has established minimum level-of-service standards for its parks and addressed the need to develop additional parks in the Plan, it has complied with planning goals 1 and 9 of the Act.

Legal Issue No. 2

Are the Plan's provisions for park levels of service consistent with its locational criteria provisions and, if not, does this violate RCW 36.70A.070?

The first paragraph of RCW 36.70A.070, the preamble, provides:

> The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. <u>The plan shall be an internally consistent document</u> and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140. (Emphasis added.)

The location criterion in Policy 54.1 states:

> **LU-RC Objective 54.** Pierce County recreation areas will be located in consideration of the following:
>
> 54.1 Public land which is readily accessible and designated for public access via existing roads or where roads can be reasonably extended to access the site should be preserved for recreational opportunities. <u>Recreation areas should be located close to their prospective users and accessible to living areas by pedestrian walkways</u>. (Emphasis added.)[10]

Batker alleges that the plan is internally inconsistent. She claims that:

> [T]he levels of service for neighborhood parks in the Plan result in 2.34 acres for a city of

> 28,857 people (page IX-89). The only way that one tiny 2.34-acre neighborhood park can be located close to everyone in a 29,000 person city is for them all to live in one giant sky-scraper! Thus the 0.081 acre per 1,000 population neighborhood park ratio is not internally consistent with the location criterion 54.1.... Batker's Brief, at 6.

The County responds by noting that "recreation areas" are not synonymous with "park lands." For instance, a trail, which is a recreation area, is not necessarily a park. Therefore, trails are not included in the LOS standard for neighborhood parks. County's Response to Batker, at 18. In addition, the County argues that the purpose of LU-Rc Objective 54 is to guide siting decisions, that 54.1 is but one of several criteria to be considered and that the last sentence of 54.1 is advisory rather than mandatory since it uses the auxiliary verb "should" rather than "shall." With these distinctions noted, the County contends that the locational criterion is not inconsistent with the neighborhood park LOS, nor does the neighborhood park LOS create a roadblock to using the locational criterion in siting decisions. County's Response to Batker, at 19.

The Board holds that LU-Rc Objective 54 is not inconsistent with the neighborhood park LOS standard. Previously, the Board has discussed the Act's internal consistency requirement in the prefatory paragraph of RCW 36.70A.070:

> In *Aagaard, et al., v. Bothell*, CPSGMHB Case No. 94-3-0011 (1995) [***Aagaard***], the Board held that local jurisdictions planning under the Act must comply with this introductory paragraph. *Aagaard*, at 13. Although the Act requires comprehensive plans to be internally consistent, it does not provide any indication as to how to measure such consistency. However, the Procedural Criteria do address the meaning of internal consistency. As a general proposition, the Board agrees with the Procedural Criteria: internal consistency means that provisions are compatible with each other — that they fit together properly. In other words, one provision may not thwart another. However, the Board finds that consistency can also mean more than one policy not being a roadblock for another; it can also mean that policies of a comprehensive plan, for instance, must work together in a coordinated fashion to achieve a common goal. *WSDF I*, at 26-27 (footnote omitted).

The County's LOS standard for neighborhood parks is 0.081 acres per 1,000 population. Plan, at IX-86. The Plan recognizes that "...as Pierce County's character changes from rural to a more urbanized character, a greater requirement for neighborhood parks will be evident." Plan, at IX-86. The fact that the LOS for neighborhood parks is admittedly low and that LU-Rc Objective 54.1 seeks to locate recreation areas close to prospective users is not internally inconsistent. As the Board indicated in *Aagaard*, "recreation" is not necessarily synonymous with "parks." *Aagaard*, at 17. The Board agrees with the County that a recreation area is more broadly defined than a park. For example, a bowling alley could readily be considered a recreation area but

seldom, if ever, a park. It is not inconsistent for the County to attempt to locate recreational areas close to users while increasing neighborhood parks by only 2.37 acres in its initial implementation of the Plan. *See* Plan, at IX-86.

Conclusion No. 2

The Plan's provisions for park levels of service, particularly neighborhood parks, are consistent with its locational criteria for siting new recreation areas. Therefore, the Plan does not violate RCW 36.70A.070.

Legal Issue No. 3

Are the Plan's open space provisions consistent with PCCPPs 11.0 and 11.2, and do they comply with RCW 36.70A.020(9), RCW 36.70A.070(1), RCW 36.70A.110(2) and RCW 36.70A.160?

In the discussion of Legal Issue No. 3, Batker makes three basic arguments why the Plan violates the GMA.

RCW 36.70A.020(9), .110(2) and .160

First, Batker contends that the County violated RCW 36.70A.020(9), RCW 36.70A.110(2) and RCW 36.70A.160 because the Plan's Open Space/Greenbelts map shows "no new open space" to accommodate new growth in the unincorporated portion of the urban growth area. Batker's Brief, at 9.

RCW 36.70A.020(9) encourages the retention of open spaces. As the Board indicated above, the use of the verb "encourage" is quite permissive. Furthermore, as the County pointed out, the legislature sought retention of existing open space. If it wanted cities and counties to increase the amount of open space, it would have so specified in this policy. **Accordingly, the Board holds that the County did not violate RCW 36.70A.020(9).**

RCW 36.70A.110(2) requires cities and counties to "include greenbelt and open space areas" within urban growth areas (**UGAs**). In order to do so, counties and cities must first define what these terms mean since the Act does not define them. *Tacoma v. Pierce County*, CPSGMHB Case No. 94-3-0001, Final Decision and Order, at 28.

The Plan defines "greenbelts" as:

> ... a linear corridor of open space which often provides passive recreational and non-motorized transportation opportunities, serves as a buffer between developments and

> varying land uses, or creates a sense of visual relief from dense urban landscapes. Plan, at B-11 (emphasis added).

The Plan defines "open space" as:

> ... a landscape which is primarily unimproved. Open space areas may include: critical areas; wooded areas; parks, trails; privately owned nature reserves; abandoned railroad lines; utility corridors; and other vacant rights of way. Permanent dedication, designation or reservation of open space for public or private use may occur in accordance with Comprehensive Plan policies. Plan, at B-17.

The Plan contains a map showing existing open space and greenbelts. Plan, at opposite II-68. RCW 36.70A.110(2) does not require a county to show "new" open space**. Therefore, the Board holds that the County did not violate RCW 36.70A.110(2).**

RCW 36.70A.160, "Identification of open space corridors — Purchase authorized" 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....

As the quote above of the Plan's definition of "greenbelt" reveals, the County defines "greenbelts" as "open space corridors." The Plan contains a section entitled "Open Space/ Greenbelts Map." The narrative in this section explains:

> The Open Space/Greenbelts Map (on the following page) identifies some of the areas in Pierce County which are useful for open space purposes. The existing network of federal, state, county, and community parks are identified. Areas which have been designated for long-term commercial forestry and agricultural production are also shown. Federal lands

> such as Fort Lewis Military Reservation are displayed on the map because of the large amount of undeveloped and forested landscapes which they contain. Trail corridors proposed in the Pierce County Comprehensive Park and Recreation Plan are identified. Stream corridors are also shown because of their linear nature, the benefits they provide to fish and wildlife, and their contribution to a linked open space network. The map illustrates the types of open space linkages which could be developed within Pierce County. As stated in the principles and standards text, this Comprehensive Plan requires that an official open space map be developed. The official open space map, when developed, will be more detailed and will provide guidance on preferred areas for opens space preservation within Pierce County. Plan, at II-68 (emphasis added).

The legend to the Plan's Open Space/Greenbelts Map confirms that the map shows:

Community/Regional Parks
Pierce County Parks
Private Golf Courses
Public Golf Courses
State or National Parks/Wildlife Refuges
Forestry Uses
Private Agriculture Uses
Military/Other Federal Lands
Proposed Multi-Purpose Trail
Nisqually Delta/Foothills Trail (Under Development)
Wonderland Trail or Pacific Crest National Scenic Trail
River/Steam Corridors

The map also indicates federal and state routes and the existing boundaries of incorporated areas. The map does not show "greenbelts" *per se*. It does not show the County's designated UGAs or its critical areas. Therefore, it is impossible to examine the Plan's Open Space/Greenbelts Map to " ... identify open space corridors within and between urban growth areas" (including "the connection of critical areas") as required by RCW 36.70A.160. **Since the Plan does not refer to any other documents as specifically meeting the requirements of RCW 36.70A.160 — and since the above-quoted test from the Plan states that the official open space map is required and <u>will be developed</u> — the Board holds that the County has not complied with that provision's mandate to identify open space corridors within and between UGAs.**

Accordingly, on remand the County will be instructed to do so. The County already has a critical areas map, as a result of its critical areas ordinance, that it continually updates as more information becomes available. Ex. 27; *see also* Affidavit of Karen Trueman, Ex. 69 at 3. In addition, several maps in the Plan show the UGA boundaries. *See* Plan, following II-10 and II-

83. Moreover an updated Open Space/Greenbelts map shows UGA boundaries. Exhibit 26.[11] Therefore, compliance can be achieved by (a) superimposing over the County's most recent Open Space/Greenbelts Map the County's designated UGAs and critical areas; (b) defining "open space corridors," and (c) then identifying specific open space corridors, if any exist, within and between the UGAs. If stream and/or trail corridors constitute open space corridors, the County simply needs to so indicate.

RCW 36.70A.070

Second, Batker also contends that the Plan violates RCW 37.70A.070. Her complete complaint is as follows:

> The stream corridors are also inadequate because many sections of the streams are more like ditches, devoid of vegetation, and cannot be called corridors. There are no policies under open space that mention the stream corridors or enhancement of them to make them viable corridors, yet the stream corridors are shown on the [open space/greenbelts] map. This violates RCW 36.70A.070. Batker's Brief, at 9.

RCW 36.70A.070(1) indicates that a comprehensive plan shall contain a land use element as follows:

> (1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound. (Emphasis added.)

Batker fails to support her allegations that many streams are "ditches, devoid of vegetation" with evidence from the record below, or that stream corridors would constitute open space. **Accordingly, the Board holds that Batker has not met her burden of showing by a preponderance of the evidence that the County violated RCW 36.70A.070. Furthermore, even if the record verified such statements, Batker has failed to show how that fact alone indicates that the County has violated or erroneously interpreted or applied RCW 36.70A.070**. *See* RCW 36.70A.320.

PCCPPs 11.0 and 11.2

Third, Batker maintains that the Plan's open space policy 58.2 is inconsistent with the PCCPPs, because the latter is mandatory while the former is not. Batker's Brief, at 9.

LU-OS Objective 58 is within the Plan's "open space" section. It states:

> Preserve open spaces, natural areas, and buffer zones, wetlands, wildlife habitats, parks, and historical, geologically unique, and archeological resources.
>
> 58.1 ...
>
> 58.2 Develop a plan for the provision of open space considering the following:
>
> 58.2.1 Open space and greenbelts may also include critical areas, and
>
> 58.2.2 Open space is defined in conjunction with recreation and facilities.
>
> Plan, at II-65-66.

In contrast, PCCPP 11.0 provides in its entirety:

> The County, and each municipality in the County, shall develop a plan for the provision of open space[12] considering the following:
>
> 11.1 environmentally sensitive lands may also include open space and/or greenbelt areas;
> 11.2 open space areas are located only within urban growth areas;
> 11.3 open space is defined in conjunction with recreation and facilities.
>
> Exhibit 18, at 34 (emphasis added).

The Board rejects Batker's first contention. Although PCCPP 11.0 is mandatory because it states that the County "shall" develop a plan, the fact that LU-OS Objective 58.1 does not use an auxiliary verb at all does not make it inconsistent with the PCCPPs. The Board interprets LU-OS Objective 58.1 as being mandatory in light of the Act's open space requirements.

In addition, Batker claims that PCCPP 11.2 limits open spaces to being located only in urban areas, yet the Plan "completely ignored" that limitation. Batker's Brief, at 9. Batker's second contention is more problematic. The PCCPPs were not appealed to the Board. Although comprehensive plans and development regulations are presumed valid upon adoption, no such explicit presumption exists for county-wide planning policies (**CPPs**). *See* RCW 36.70A.320.

The Board has previously held that if comprehensive plans and development regulations are not appealed to the Board within the 60-day statute of limitations, they become irrefutably valid. *Twin Falls v. Snohomish County*, CPSGPHB Case No. 93-3-0003 Final Decision and Order, at 55. Because RCW 36.70A.210(6) provides a 60-day statute of limitations for appealing the adoption of a county-wide planning policy, the Board held in *Vashon-Maury v. King County*, CPSGMHB Case 95-3-0003 ***(Vashon-Maury***), Final Decision and Order, at 34 (October 23, 1995) that if CPPs are not appealed within the specified appeals period, they are presumed valid. Consequently, the PCCPPs are valid and cannot be appealed to the Board unless and until they are amended.

The Board's task is therefore to interpret the now presumed valid PCCPPs so that they comply with the GMA. A literal interpretation of PCCPP 11.2, indicating that open space areas are located only within UGAs, would clearly violate the GMA since the Act places no such restriction on open spaces. To the contrary, the Act contemplates open space within and outside of UGAs. *See* RCW 36.70A.160. Moreover, to require open spaces only within UGAs would violate the goal of retaining open space found in RCW 36.70A.020(9). No logical basis exists for limiting open space to just urban areas.

It must also be noted that cities and towns do not have jurisdiction to regulate outside incorporated areas. Therefore, they cannot develop a plan for the provision of open-space lands located outside their boundaries, much less outside UGA boundaries. However, they can do so in a joint planning area pursuant to an interlocal agreement with the County.

The County contends that PCCPP 11.2 was:

> ... intended to direct the *joint* open space planning efforts of the cities and county, which will focus on urban areas. The County's Comprehensive Plan provision is intended to be more broad and direct the County's independent efforts. The County designated open space in the rural *and* urban areas of the County; thus, it did not include the CPP language limiting open space efforts to the urban area. County's Response to Batker, at 26. (Emphasis in original.)

The Board adopts the County's interpretation of PCCPP 11.2 that it refers to joint open space planning within UGAs. To do otherwise would lead to an absurd interpretation. **Accordingly, the Board holds that the Plan is not inconsistent with the PCCPPs.** However, a clarifying amendment to the PCCPPs would certainly be appropriate.

Conclusion No. 3

The Plan's open space provisions are consistent with PCCPPs 11.0 and 11.2, and they comply

with RCW 36.70A.020(9), RCW 36.70A.070(1), and RCW 36.70A.110(2). However, because the Plan does not specifically discuss open space corridors nor include a map depicting them, it violates RCW 36.70A.160.

Legal Issue No. 4

Do the Plan's provisions for water quality in aquifers comply with RCW 36.70A.020(10), RCW 36.70A.030(5), and PCCPPs 5.1, 5.2, 5.8, 6.1, 6.2, 6.3, 6.7, 6.8 and 9.1?

Batker's complaint arises from the fact that the Plan does not explicitly acknowledge that the Clover/Chambers Creek Aquifer has been mapped, and that it does not recognize that recharge areas with high vulnerability to contamination, such as the Clover/Chambers Creek Aquifer, have already been identified. Batker's Brief, at 10-11.

Batker states that:

> Therefore the Plan does not protect the water quality in the most sensitive recharge areas of the Clover/Chambers Creek Aquifer and is not in compliance with RCW 36.70A.020(10). Batker's Brief, at 12.

RCW 36.70A.020(10) provides:

> (10) Environment. 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.030(5) is the definition of critical areas. It states:

> (5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. (Emphasis added.)

Batker cites to several PCCPPs in this legal issue which provide as follows:[13]

> 6. Environmentally sensitive lands, for the purpose of the Policy, shall include all designated critical areas pursuant to RCW 36.70A.030(5) including but not limited to, wetlands, aquifer recharge areas, fish and wildlife habitat, geologically hazardous lands and shall include water supply areas, shorelines, creeks, streams, lakes, rivers, deltas, frequently flooded areas, estuaries, and unique geologic features such as canyons. The County, and each municipality in the County, shall maintain the following relationship between

environmentally sensitive lands and development:

> 6.1 give priority to protection of environmentally sensitive lands;
> 6.2 develop standards and criteria for limited development if permitted in the County or in municipal comprehensive plans;
> 6.3 where development is permitted, provide protection for environmentally-sensitive lands through the provision of appropriate buffers;
> ...
> 6.7 designate environmentally sensitive lands of local, county and statewide significance;
> 6.8 educate all segments of the community concerning the importance of these Policy objectives. Exhibit 18, at 33.

...

9. The County, and each municipality in the County, as well as the other governmental entities specified in subpolicy 1 shall consider policies on environmentally sensitive lands in conjunction with other County-Wide Planning Policies, including, but not limited to, policies which address:

> 9.1 urban growth areas;... Exhibit 18, at 34.

Although Batker did not cite to it, another relevant provision of the Act related to aquifers is RCW 36.70A.070(1) which provides in part:

> ... The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies....

The Plan's fifth environmental objective states as follows:

> ENV Objective 5. Prioritize and protect important aquifers and surface waters to ensure that water quality and quantity are maintained or improved.

5.1 Identify and map important aquifers, aquifer recharge areas, and surface waters.

> 5.1.1 Complete a county-wide delineation which identifies important aquifer recharge areas. Identify aquifer recharge areas with water quality or quantity concerns.

5.2 Manage and plan water resources on a watershed basis.

5.2.1 Continue the development and implementation of watershed action plans to coordinate approaches in preventing and controlling nonpoint source pollution.

5.2.2 Complete a groundwater resource inventory for Pierce County, including an analysis of groundwater quantity and quality.

5.2.3 Manage watersheds supplying water to Pierce County residents to maintain base flows of surface waters, maintain groundwater levels, control flooding, and maintain or improve water quality.

5.2.4 Develop planning and implementation programs for protecting groundwater in areas susceptible to contamination. Pinpoint specific remedial actions for groundwater protection. Plan, at V-14.

The Plan also states the following regarding aquifers generally:

> Some areas in Pierce County are underlain by soils which are highly permeable and allow for the infiltration of surface waters into groundwater. At a depth below the surface, the infiltrating water enters the aquifer — a saturated geologic layer which can yield sufficient quantities of water to be used as a source of public or private water supply. Where these conditions exist, the areas are known as aquifer recharge areas. Besides soils, a number of other variables (e.g., depth to groundwater and hydraulic conductivity) must be analyzed in order to determine aquifer recharge areas with high vulnerability to groundwater contamination.
>
> Aquifers provide the primary source of domestic and industrial water for most of Pierce County. Land uses which contaminate surface stormwater can eventually cause contamination of groundwater in aquifer recharge areas. Any activity which degrades the water quality of an aquifer can detrimentally impact the health of local citizens. Plan, at V-3.
>
> ...
>
> ... Regulations for protection of geologically hazardous areas, aquifer recharge areas, and frequently flooded areas were adopted in October of 1991.... Plan, at V-6.

More specifically, the Plan indicates the following about the Clover/Chambers Creek Aquifer:

> A study of public water system adequacy was commissioned by the Pierce County Council in 1982. The study investigated concerns over drinking water quality, water quantity and the lack of coordination among water utilities for resource development, service area

boundaries, and water system designs. The Pierce County Council declared the entire County a Critical Water Supply Service Area (CWSSA) in 1983, a first step in the development of a Coordinated Water System Plan (CWSP) under the Public Water System Coordination Act of 1977.

...

The [Federal] Safe Drinking Water Act established the Sole Source Aquifer Program in 1977 to prevent federal financially assisted projects from contaminating aquifers that are the sole or principal source of drinking water for an area. The Chambers Creek-Clover Creek Basin aquifer is the sole source of drinking water for over 169,000 Pierce County residents and a partial supply of water for approximately 268,000 residents. WDOE [Washington Department of Ecology] has declared the Chambers Creek-Clover Creek Basin and the Gig Harbor Peninsula to be Groundwater Management Areas. Plan, at VIII-57.

Furthermore:

<u>Clover/Chambers Creek Groundwater Management Area</u>

Water rights have been issued for about 96 [million gallons per day] mgd of Chambers Creek-Clover Creek Basin groundwater. About 77 mgd are for public water supplies, 16 mgd are for industrial usage, and the remaining three (3) mgd for irrigation, fish propagation, stock watering and heat exchange. The total production of all individual domestic wells that are exempt from water right requirements is 4 mgd.

Groundwater of the Chambers Creek-Clover Creek Basin provide drinking water for about 268,000 residents of Pierce County. For about 169,000 of those residents, it represents the only viable source of drinking water. On an average day residents use about 48 million gallons of water, of which nearly 32 million gallons is supplied by Chambers Creek-Clover Creek Basin groundwater. During periods of peak demand, such as hot summer days, Chambers Creek-Clover Creek Basin residents use as much as 125 million gallons of water each day. Of that amount, 109 mgd must be supplied by Chamber Creek-Clover Creek Basin groundwater. The remainder comes from purveyors with other water sources. Plan, at VIII-59.

...

<u>Chambers Creek-Clover Creek Basin Groundwater Management Area</u>

The Pierce County CWSP indicates that the average non-industrial demand for potable water in the areas of the County served by groundwater from the Chambers Creek-Clover Creek Basin may increase to 54 mgd by the year 2000, 60 mgd by 2010, and 80 mgd by 2030. By the year 2030, peak demand could rise to over 200 million gallons per day.

Based on estimates provided in the Pierce County CWSP, a maximum of about 35 mgd of

> unallocated Chambers Creek-Clover Creek Basin groundwater may be available to meet the anticipated increase in future demand. The range of estimated unallocated resources is 15 to 35 mgd. In order to avoid eventual depletion of the aquifer and to support future growth, either additional sources of water must be obtained or demand must be significantly cut. Plan, at VIII-61.

-

> **UT-Wa Objective 27** Review the following previously adopted plans, correct deficiencies and inconsistencies which appear, and adopt and amend portions of such plans which are consistent with the Comprehensive Plan:
>
> *27.1 Pierce County Coordinated Water System Plan, 1988*
> *Gig Harbor Groundwater Management Plan*
> *Clover Chambers Creek Groundwater Management Plan.*
> Plan, at VIII-81.

The Plan also refers indirectly, to the Clover/Chambers Creek Aquifer by indicating that the Pierce County Department of Public Works and Utilities has primary responsibility for managing sewer systems and wastewater treatment for the Chambers Creek-Clover Creek Basin. Plan, at VIII-30 and VIII-33. Batker's brief acknowledges that the area is sewered. Batker's Brief, at 11. [14]

The County takes the position that the Plan includes environmental policies designed to protect all aquifer recharge areas. The Board agrees. ENV Objective 5 is precisely such a policy, designed to "protect" important aquifers.

The County also contends that County Ordinance 91-119S2 was passed on October 8, 1991, in response to the GMA's requirement to designate aquifer recharge areas and adopt regulations to protect them. The ordinance was never appealed to the Board. Therefore, it is irrefutably valid. Exhibit A to this ordinance, at Pierce County Code (**PCC**) 21.16.030(B), provides:

> For the purposes of this Chapter, the boundaries of Pierce County's aquifer recharge areas are:
> ...
> (2) The Clover/Chambers Creek Aquifer Basin boundary, as identified in Draft Clover/ Chambers Creek Basin Ground Water Management Program and Environmental Impact Statement, Brown and Caldwell for Washington State Department of Ecology. Ex. 45.

The Plan does not contain an aquifer map. The County argues that Batker has failed to cite any legal authority requiring an aquifer recharge map to be included in a comprehensive plan. **The**

Board agrees, and holds that although including such a map in a comprehensive plan would certainly be appropriate, given the broad-based policy nature of a comprehensive plan, it is not required. The County prepared an aquifer map of the Clover/Chambers Creek Basin and referenced it in the Plan; it simply did not include it within the Plan. The record before the Board contains Exhibit 65, an "Aquifer Recharge Areas" map. According to the Affidavit of Karen Trueman, a Geographic Information System (**GIS**) specialist for PALS:

> The aquifer recharge areas depicted on the map were adopted as part of the Pierce County Critical Areas Ordinance, pursuant to the Growth Management Act. The revision date [i.e., the date the County last updated the subject data used to originally generate the map] on Exhibit 65 ... is May 12, 1995. Additional information that was not adopted in the Critical Areas Ordinance, shown as "Vulnerable Deep Aquifers" has been added to Exhibit [65] in response to Nell Batker's petition in this appeal. All other data contained on the map is the same as was available in 1994 when the Pierce County Comprehensive Plan was adopted. Ex. 69, at 2.

In addition, the Aquifer Recharge Areas map depicts the UGA and municipal boundaries. It reveals that most of the Chambers-Clover Creek Basin is indeed within a UGA.

Finally, Batker argues that without the aquifer recharge area map in a comprehensive plan, a county cannot properly designate its UGAs or adopt regulations to protect that aquifer.

The FEIS for the Plan recognizes that:

> ... Pierce County's urban growth area will likely include much of the land over the County's major groundwater source for drinking water, the Clover-Chambers Creek Aquifer. Concentrated growth and development over this critical resource could provide increased opportunities for contamination. Ex. 29, at 21.

However, as indicated above, the County adopted Ordinance 91-119S2 to protect the aquifer. That document is now irrefutably valid. One must assume it does what it was created to do. Aside from that fact, County officials were well aware of their own documents regarding the Chambers-Clover Creek Basin. Just the references in the Plan to the area confirms that assumption. Moreover, the GMA does not prohibit designating UGAs where critical areas are located. The first requirement the GMA placed on cities and counties was to designate critical areas and adopt development regulations to protect them by September 1, 1991. RCW 36.70A.170 and .060. As Batker acknowledges, much of the Chambers-Clover Creek Basin is already characterized by urban growth despite the fact that it is a sole source aquifer. The fact that the area is a sole source aquifer does not mean that development is absolutely prohibited there. It does mean, however, that the County has a crucial obligation to protect this aquifer.

Both Ordinance 91-119S2 and the Plan itself are evidence of the County's intent to fulfill its duty.

The Board holds that Batker has not met her burden of showing how the Plan is inconsistent with PCCPPs 6 and 9. The Plan does contain policies to protect environmentally sensitive lands such as aquifer recharge areas.

Conclusion No. 4

Batker did not discuss PCCPPs 5.1, 5.2 and 5.8. Consequently, they are treated as abandoned. In addition, Batker has not met the burden of showing how the Plan is inconsistent with PCCPPs 6 and 9 or how it violates RCW 36.70A.020(10) and RCW 36.70A.030(5). Whether a county or city elects to include critical areas maps that it has prepared in other documents within its comprehensive plan is left to the jurisdiction's discretion. A comprehensive plan does not violate the Act simply because it does not contain a critical areas map. Nevertheless, the Board notes that the Procedural Criteria suggest inclusion of an optional Environmental Protection Plan Element. WAC 365-195-345(3)(b). Local governments can use such an element to embody the policy component of critical area and resource designations. Moreover, counties are not precluded from including designated critical areas within UGAs, so long as they protect them as required by RCW 36.70A.060.

Legal Issue No. 5

Does the Plan's land use element comply with RCW 36.70A.070, regarding protection of the quality and quantity of groundwater used for public water supplies, RCW 36.70A.170, and PCCPPs 5.1, 5.2, 5.8, 6.1, 6.2, 6.3, 6.7, 6.8 and 9.1?

Batker voluntarily elected to withdraw Legal Issue No. 5. Batker's Brief, at 1.

Conclusion No. 5

Because Batker has withdrawn Legal Issue No. 5, it is abandoned and the Board will not review it.

Legal Issue No. 6

Do the Plan's agricultural lands and agricultural industry provisions comply with RCW 36.70A.020(8), RCW 36.70A.070 and PCCPPs 2.1, 2.8, 3.1, 6.3 and 10?

Batker contends that three specific policies in the Plan regarding agricultural lands fail to comply with the Act. The Board examines each separately.

RCW 36.70A.170(1)(a) requires cities and counties to designate, where appropriate, agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products. RCW 36.70A.060(1) requires cities and counties to adopt development regulations that "assure the conservation" of designated agricultural lands.[15]

On October 29, 1991, the County Council passed Ordinance No. 91-122S2 that created an agricultural lands chapter in the Pierce County Code. Ex. 43. The ordinance was adopted in order to meet the requirements of RCW 36.70A.170 and .060. Ordinance No. 91-122S2 was not subsequently appealed to the Board. Therefore, it is irrefutably valid as a matter of law. It classified agricultural lands meeting several requirements including "lands in parcels which are ten (10) acres or larger in size..." Ex. 43, Exhibit A, PCC 21.30.030 (B)(1)(a), at 2.

On June 30, 1992, the PCCPPs were ratified. Policy 10 in the agricultural lands section states:

> The County, and each municipality in the County, shall ensure that prime agricultural lands presently in the unincorporated County or within a municipality are preserved and protected by the enactment of appropriate land use controls; or by including the land in the urban growth area boundary of a municipality only if the municipality has delineated standards and criteria relating to preserving agricultural lands. Ex. 18, at 18.

<u>LU-Ag Policy 15.4.1</u>

The Plan indicates that agricultural land in Pierce County is land meeting the Act's definition of agricultural land at RCW 36.70A.030(2). Plan, LU-Ag Policy 15.1, at II-43. Policy 15.2 lists the purposes of agricultural land conservation.[16] Policy 15.4 states "Maintain large minimum lot sizes." LU-Ag Policy 15.4.1 provides:

> The agricultural land use designations shall <u>have a density of one dwelling unit per ten acres</u>. Clustering of dwelling units is encouraged, but no density incentives will be provided. Plan, at II-44. (Emphasis added.)

Batker contends that Policy 15.4.1:

> ... is an invitation to chop all agricultural land into little ten-acre pieces. This will insidiously eliminate agricultural lands because ten acres is simply not adequate for a viable farm. Consequently 15.4.1 will also eliminate the agricultural industry.... Batker's Brief, at 13.

Batker contends that Policy 15.4.1 is internally inconsistent with Policy 15.2 because ten-acre lots are too small to preserve or maintain the purposes listed in the latter policy. Batker cites to an Issue Paper on Resource Lands, dated August 27, 1991, prepared by PALS that states:

> Large lot zoning for the purpose of farmland conservation typically requires up to 640 acres per residential unit. Using a lot size this large is of course impractical in Pierce County. Programs that use 640 acres are more typical in the midwest, and to a lesser extent, eastern Washington. <u>In Pierce County, something along the line of 20 acres would be more reasonable. Anything less than that, five acres for instance, has proven elsewhere to result in sprawling, inefficient land use development patterns</u> that make the cost of delivering public services prohibitive. In other jurisdictions intending to conserve farmlands that have used 5-10 acres as the minimum lot size requirement have not prevented suburban intrusion into agricultural districts, and overall have been ineffective. (Mantell, Harper and Propst, 1990). Ex. 10, at 15. (Emphasis added.)

Batker also cites to an excerpt from the Pierce County Land Use Advisory Committee on Elements (**ACE**) paper indicating that the maximum rural density should be one dwelling unit per ten acres (1du/10 acres), and one dwelling unit per 20 acres in agricultural zones. Ex. 2, at 1. According to minutes of a September 2, 1992 meeting, the Land Use ACE unanimously recommended one unit per 20 acres in the agricultural designations. Ex. 2, at 2.

The County responds by stating that:

> ... Batker confuses the density provision of the County Plan, with the minimum lot size approach of other jurisdictions. The Council chose not to adopt a minimum lot size. In order to avoid sprawl and encourage the conservation of farmland, it chose a density approach with clustering.... County's Response to Batker, at 35.

It does not appear that Batker was confused. LU-Ag Policy 15.4 unequivocally states:

> Maintain large minimum lot sizes. Plan, at II-44.

LU-Ag Policy 15.4.1, quoted above, immediately follows this statement. If "a density of one dwelling unit per ten acres" is not a "minimum lot size," the Board does not know what is. The Board acknowledges that LU-Ag Policy 15.4.1 does "encourage" clustering. However, the policy explicitly states that "no density incentives will be provided."

Apparently, the County has concluded that one dwelling unit per ten acres is a "large minimum lot size" for lands designated agricultural. The question is whether this lot size complies with the

requirements of the Act.

The County points out that the ACE subcommittee recommendation cited by Batker (i.e., 1 du/20 acres) was not approved by the full Citizen Advisory Group (**CAG**). Instead, the CAG and Executive recommended 1 du/10 acres. This was an increase from 1 du/5 acres that had been recommended in the prior draft. *See* Ex. 6, at II-89. The County Council obviously adopted the Executive's recommendation.

The County urges the Board to deny Batker's request of establishing a "bright line" of 1 du/20 acres for agricultural lands, claiming that the Board cannot substitute its judgment for the County Council's.

The Board declines Batker's invitation to establish a bright line for agricultural parcel sizes. This does not convey that the Board, given the requisite circumstances, would not employ the device of a bright line to indicate to local governments the range within which discretion may be exercised. In two recent cases the Board has established bright lines, not as absolutes that can never be crossed, but as clear demarcation points that cities and counties should cross only with sufficient justification. *See Bremerton, et al., v. Kitsap County*, CPSGMHB Consolidated Case No. 95-3-0039 ***(Bremerton)***, at 42 and 65 (adopting a 25 percent market factor bright line) and at 50 (four dwelling units per acre or more constitutes an urban density; *see* also *Vashon-Maury*, at 79 (1 du/10 acres or more is a rural residential density).

In this case, the only relevant document in the record before the Board is Exhibit 10, a County-generated issue paper on resource lands, including agricultural lands. Although it states that 20-acre lots would be more reasonable than 640-acre lots found in other parts of the country, and that anything less than 20 acres would result in sprawl, it also notes that "... many farm operations are already operating on land that has been subdivided into lots smaller than 20 acres." Ex. 10, at 16.

Moreover, this paper, like LU-Ag 15.4.1 itself, does not distinguish between types of agricultural uses. For instance, should there be a different lot size depending on the crop grown? Clearly, the greater the minimum lot size, the lower the risk of conflicts between agricultural uses and residences. However, the Board will not determine what that threshold is in this case. **Consequently, the Board holds that Batker has failed to meet her burden of showing by the preponderance of the evidence that LU-Ag Policy 15.4.1 does not comply with the Act.**

<u>LU-Ag Policy 20.3</u>

Batker also contends that:

> The conservation of prime agricultural lands is **mandated** in PCCPP 10 page 18. Policy 20.3 page II-47 in the Plan is very similar but it is **not** mandated. To be consistent with PCCPP 10, the Plan's policy must be mandated also. Batker's Brief, at 15. (Emphasis in original.)

LU-Ag Policy 20.3 states:

> Ensure that prime agricultural lands are conserved and protected by the enactment of appropriate land use controls, or by including the land in an Urban Growth Area of a municipality that has delineated standards and criteria relating to preserving the agricultural lands. Plan, at II-47.

In contrast, PCCPP agricultural Policy 10, quoted at the beginning of this legal issue, uses the phrase "shall ensure."

The Board holds that LU-Ag Policy 20.3 in the agricultural section of the Plan's land use element is not inconsistent with PCCPPs agricultural Policy 10. The two policies both use the directory verb "ensure." The fact that the PCCPPs use the auxiliary verb "shall" and the Plan does not is not material, given the directiveness of the verb "ensure."

<u>LU-Ag Policy 16.2</u>

Finally, Batker argues that LU-Ag Policy 16.2 is not consistent with PCCPP agricultural Policy 10, that it violates RCW 36.70A.020(8) and that it is internally inconsistent with LU-Ag Policy 15.2(h). LU-Ag Policy 16.2 provides:

> Lands within the Agricultural Overlay may be allowed to convert to more intensive land uses, in accordance with the agricultural land conversion policies in Objective 20. Plan, at II-45.

In turn, LU-Ag Objective 20 directs the County to establish a process to "address the conversion of agricultural land." Plan, at II-46. LU-Ag Policy 20.3, quoted above, is one of the policies within LU-Ag Objective 20.

RCW 36.70A.020(8), one of the Act's planning goals, addresses agricultural lands as follows:

> 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.

The PCCPPs, despite repeated directions to preserve agricultural lands, also require the County to "... address the conversion of agricultural land from agriculture to non-agriculture use..." Ex. 18, Policy 7, at 17. The PCCPPs were not appealed. Therefore, they are valid. LU-Ag Objective 20 constitutes the County's effort to comply with PCCPP agricultural Policy 7 to "address the conversion of agricultural land." LU-Ag 16.2 deals with conversion of properties within the Agricultural Overlay by specifically implementing conversion policies in Objective 20. **Therefore, the Board holds that LU-Ag Objective 20 and its underlying policies, and LU-Ag 16.2 are consistent with the PCCPPs.**

The Board also holds that Batker has not met her burden of demonstrating how LU-Ag 15.2 (h), which indicates that one of the purposes of agricultural land conservation is to maintain regional, state and national agricultural reserves, is inconsistent with LU-Ag 16.2. The County's intention to conserve agricultural lands does not prohibit the County from establishing policies for the conversion of some agricultural lands to other uses, when the PCCPPs mandate such conversion policies.

Conclusion No. 6

Batker has failed to meet her burden of showing how LU-Ag Policy 15.4.1, which creates a minimum lot size of one dwelling unit per ten acres for lands designated agriculture violates the Act. Although the Board may in the future establish a "bright line" for residential densities for designated agricultural lands, it declines to do so here.

LU-Ag Policy 20.3 is consistent with PCCPP agricultural Policy 10. Furthermore, LU-Ag Objective 20 and its underlying policies and LU-Ag 16.2 are consistent with the PCCPPs, since PCCPP agricultural Policy 7 requires the County to establish policies for the conversion of agricultural lands to other uses.

Legal Issue No. 7

Are the Plan's environmental and economic elements consistent as required by RCW 36.70A.070, and do they comply with RCW 36.70A.020(5) and (10) and PCCPPs 3.5 and 6.1?

Batker voluntarily elected to withdraw Legal Issue No. 7. Batker's Brief, at 1.

Conclusion No. 7

Because Batker has withdrawn Legal Issue No. 7, it is abandoned and the Board will not review it.

Legal Issue No. 8

Did the County comply with the Act's public participation requirements at RCW 36.70A.020 (11) and RCW 36.70A.140 in adopting the Plan?

Batker voluntarily elected to withdraw Legal Issue No. 8. Batker's Brief, at 1.

Conclusion No. 8

Because Batker has withdrawn Legal Issue No. 8, it is abandoned and the Board will not review it.

Legal Issue No. 9

Is the relief requested by Batker within the Board's jurisdiction to grant?

Legal Issue No. 9 is a County issue and therefore Batker did not brief it other than to argue that the relief she requested was legitimate. The gist of the County's argument is to remind the Board that a petitioner has the burden of proof to show that a comprehensive plan, which is presumed valid, does not comply with the Act. In addition, the County contends that if the Board finds that the County has not complied, it cannot order the specific relief demanded by Batker (e.g., imposing a 20-acre minimum lot size for agricultural lands) because that is a policy choice to be left to the County's discretion. Because the Board already addressed this contention in its discussion of Batker's Legal Issue No. 6, it will not address it further here.

Conclusion No. 9

A petitioner has the burden of proof to establish that a comprehensive plan, which is presumed valid, does not comply with the requirements of the GMA. Although the Board will defer to a local jurisdiction's policy decisions for implementing the Act's requirements, it must find a city or county in non-compliance if that jurisdiction erroneously interpreted or applied the Act. The Board will on occasion also establish "bright line" standards. Such a standard is a general, not an absolute rule. However, if cities and counties depart from the general rule , they must adequately justify their rationale.

B. PENINSULA NEIGHBORHOOD ASSOCIATION CASE

Legal Issue No. 1

Did the County, in its adoption of the Plan, exceed the Office of Financial Management's planning population projections for 20 years, contrary to the requirements of RCW 36.70A.020 (2), RCW 36.70A.110(2) and RCW 36.70A.210(1), and PCCPPs 2.1.1 and 2.1.2?

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....

Whether a county properly used OFM's population projections was most recently addressed in the *Vashon-Maury* decision which stated:

> 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.

In its January 31, 1992, document entitled "County Population Projections 1990-2010, 2012" (**OFM County Population Projections**), OFM projected Pierce County's population as follows:

Year	Projected Population
1995	648,113
2000	696,572
2005	743,579
2010	792,179
2012	812,104

In 1992, Pierce County had a population of 624,000 people. OFM Correction Release, at 5.[17] Therefore, OFM projects that 188,104 additional people will live in Pierce County in the year 2012 than resided in the county in 1992, the year the projection was made. The County must make its plans and define its UGAs with these 188,104 additional people in mind.

The question is, did the County do so? The Plan states the following:

> ... We know that Pierce County population is going to grow. Whether we like it or not, we

> expect almost 200,000 more people in the next 20 years.... Plan, at I-1.
>
> **Why do we need to do a growth management plan?** Although there are almost 200,000 new residents expected in the next two decades, there are over 600,000 of us here today.... Plan, at I-3. (Emphasis in original.)
>
> ... The OFM year 2012 projection for Pierce County is 812,104 persons, reflecting an increase of 188,104 persons from the 1992 population of 624,000. Plan, at II-23. *See also* Table II-4 on that page.
>
> Rapid population growth is expected in Pierce County, with 812,104 people forecast to live here by the year 2012 (Washington Office of Financial Management).... Plan, at V-1.

It is clear that the Plan correctly indicates a 20-year planning period from 1992 to the year 2012, and that the Plan is based upon OFM's population projections. In addition, Finding No. 55 in Exhibit D, Part B of Ordinance 94-82S (which adopted the Plan) provides:

> The November 1994 Comprehensive Plan uses the OFM population projection for 2012 as the basis for the entire Plan. The Plan and the UGA accommodate the growth projected by OFM for Pierce County. Exhibit 23, Exhibit "D", Part B, at 7.

A review of the County's Addendum to Final SEIS (the **Addendum**) verifies this conclusion:

> The 2012 OFM population projection is used throughout this [ultimately adopted] version of the Plan. Earlier Plan versions used an extended 2014 population number. Ex. 16, at 4.
>
> The CUGA is Pierce County's first designation of a 20-year (1992-2012) Urban Growth Boundary, based on OFM population projections. The March Draft UGA was based on a 22-year period (1992-2014), with OFM population projections extended to 2014.... Ex. 16, at 11.
>
> In September-November of 1994, Pierce County entered into a series of negotiations with representatives from the various cities and towns in Pierce County. One of the issues which the negotiations addressed was the allocation of population growth through the year 2012 to different cities and towns and to the County.... Ex. 16, at 13.

Table 2. Pierce County Population Allocation

2012 Office of Financial Management Projection	812,104
1992 Office of Financial Management Estimate	624,000
20-Year Growth/Population to be distributed	188,104

Ex. 16, at 14.

Despite these references, PNA contends that the County "substantially exceeded" OFM's population projection for the year 2012 by planning for 233,603 additional persons rather than 188,104. PNA reached this conclusion by correlating "... the County's population allocation numbers with the County's published capacity numbers..." PNA's Reply, at 8.

The Plan designates a CUGA:[18]

> ... which is intended to set the limits for any further urban sprawl and encourage infilling for the County and the cities and towns within the CUGA. In addition to the CUGA, the County has made certain UGA designations for cities and towns beyond the boundary of the CUGA. These satellite or stand-alone cities or towns are addressed differently than the municipalities within the CUGA.
> ...
> The satellite or stand-alone cities and towns that fall beyond the CUGA boundary include: Bonney Lake, Buckley, Carbonado, DuPont, Eatonville, Gig Harbor, Orting, Roy, South Prairie, and Wilkeson. For the County's 1994 designation of satellite city and town urban growth areas, UGAs are established at the existing jurisdictional boundaries for Bonney Lake, Carbonado, DuPont, Orting, Roy, South Prairie, and Wilkeson.
>
> For the satellite cities and towns of Buckley, Eatonville, and Gig Harbor, the 1994 UGAs are designated to include portions of unincorporated Pierce County beyond their existing city or jurisdictional limits. These designations are based upon the jurisdictions' commitment and apparent ability to provide urban level services and facilities to these areas.... Plan, at II-10.

OFM's population projections for the year 2012 list only the total anticipated population for the entire county; the projections do not indicate whether future residents will reside in rural or urban areas. Unlike OFM's annual population estimates, which do contain a breakdown between unincorporated and incorporated areas, OFM's 20-year projections do not distinguish locations of growth within a county. *Compare* OFM's Population Projections with OFM's Correction Release.[19]

In *Edmonds and Lynnwood v. Snohomish County*, CPSGPHB Case No. 93-3-0005, Final Decision and Order (***Edmonds***), the Board indicated that counties have the authority to take the total OFM population projection and to allocate projected population within the county. *Edmonds*, at 31. This allocation or disaggregation process is a policy decision ultimately to be made by counties. However, an allocation formula or criteria for making allocations, or the

actual allocation itself, can also be addressed by CPPs. Although the PCCPPs do not specify what the rural/urban population growth split will be (i.e., how much population will be directed to rural areas and how much to urban areas), PCCPP 2.1.1 indicates that UGAs must be of sufficient size to accommodate only the urban growth projected to occur over the succeeding 20-year planning period.

The Board has previously indicated what must be done with OFM's population projections:

> In sharp contrast to OFM's twenty-year population projections for an entire county, which are both a minimum and a maximum number, counties are required to allocate OFM's figure within the county. In *Edmonds*, the Board held that a county does have the authority to allocate OFM's population projections to cities within its jurisdiction. *See Edmonds***,** at 31. Precisely how this distributive process, called "disaggregation," is carried out is discretionary — a matter for a county to determine. However, the Board fully expects local considerations to play a role in determining these final allocations. For instance, a county could utilize methods such as the procedures outlined in its CPPs or refer to subarea population projections such as those from the US Census Bureau, a regional agency, or estimates from individual cities, in determining how to allocate OFM's forecast. As long as the sum of the individual population allocations equals the OFM 20-year population projection for the entire county, the county will be in compliance with the GMA.
>
> To recap, the first requirement a county must meet in establishing its UGAs is to ascertain what twenty-year population projection OFM has made for it. A county cannot "base" its UGAs on OFM's projection if it does not know what the OFM projection is. Secondly, a county must apply OFM's countywide projection locally by disaggregating the overall forecast to subparts of the county. In order to comply with the GMA, a county must indicate both what its OFM projection is and precisely how it allocated that forecast throughout the county. *Rural Residents*, 33-35.

Table 2 of the Addendum lists OFM's 1992 population estimate and its 2012 population projections for Pierce County. It also indicates how the County elected to allocate the 188,104 expected additional residents by the year 2012. The information provided in the table is accurate. However, because it is laid out in a somewhat confusing manner, the Board has summarized the crucial information below. This shows where the County intends Pierce County's projected population growth to be directed. The summary shows the results of the population allocation or disaggregation process, which is a based upon a policy decision made by the County in its role as the regional government in the County.[20]

Year 2012	County Population Increase:	Percent:
Projected rural area (i.e., outside UGAs) population	32,000	17

Projected unincorporated area population within *all* UGAs[21]	77,800	41
Projected incorporated area population	78,304	42
TOTAL PIERCE COUNTY POPULATION GROWTH	188,104	100%

Pierce County Resolution No. R94-153 (Ex. 32), passed on November 29, 1994, confirms the County's allocation of OFM's 20-year population growth projections. It contains the same information as found in Table 2 of the Addendum. Section 1 lists the expected year 2012 population within the existing boundaries of today's cities and towns as 331,872 persons:

> This results in a total incorporated population growth of 78,304 based on the 1992 OFM incorporated population estimate of 253,568.
>
> Section 2. The population allocation for growth within designated rural areas of Pierce County for the year 2012 is 32,000.
>
> Section 3. The population growth allocation for satellite city urban growth areas for the year 2012 are as follows:
> ...
> TOTAL 7,993
>
> Section 4. The population growth to be allocated as within the Comprehensive Urban Growth Area outside of existing city limits is 69,807. Ex. 32 (emphasis added).

The information summarized above from Table 2 of the Addendum reveals that 156,104 people (83 percent of the total new anticipated growth) will move into the County's UGAs (i.e., existing incorporated cities, currently unincorporated areas within the CUGA and currently unincorporated areas within the satellite cities' UGAs). The remaining 32,000 people (17 percent of projected growth over the 20-year period) will move to rural areas. The Plan verifies this:

> The population growth projected for the rural areas is approximately 32,000 persons during the twenty-year planning period. Plan, at III-3.

Using OFM's Correction Release for the 1992 Pierce County population estimate, the County's population allocation between unincorporated and incorporated areas is shown below. *See also*, Plan, Table II-4, "Population Disaggregation for Pierce County," at II-23. It is important to note that the 1992 estimate was made before the County had designated Interim UGAs pursuant to the GMA. UGA boundaries have the effect of clearly distinguishing between the rural and urban portions of a county. The year 2012 population projections shown below are formatted like the 1992 population estimates. Therefore, the year 2012 numbers for incorporated areas are the number of persons expected to be living solely within 1992's city limits. The 2012 numbers for

incorporated areas do not include presently unincorporated portions of the county that are within a UGA. By the year 2012, much of the growth that will take place on today's unincorporated lands within UGAs will by then be located in yet-to-be incorporated or annexed lands.[22]

Area	1992[23]	%	2012[24]	%	Increase	%
Incorporated	253,568	41	331,872	41	78,304	42
Unincorporated	370,432	59	480,232	59	109,800	58
TOTAL	624,000	100	812,104	100	188,104	100

As indicated above, 17 percent of the expected 188,104 new residents of Pierce County by the year 2012 will actually reside in the rural area. Determining how much of projected population growth will be planned to go into rural areas remains in the province of the County's discretion. RCW 36.70A.020(2), one of the Act's planning goals, states:

> Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low density development.

PNA has not met its burden of showing how the County's allocation of 17 percent of the projected 20-year population growth to rural areas violates this goal.

Accordingly, the County has properly based its UGAs on OFM's population projections for the year 2012. In addition, the County has precisely disaggregated OFM's projected population growth within subareas of the county. **The Board holds that the County has complied with the requirements of RCW 36.70A.110 and PCCPP 2.1.1.**

The Board also holds that the County has complied with PCCPP 2.1.2, which provides:

> The County, and each municipality in the County, shall develop and propose objective standards and criteria to disaggregate the State Office of Financial Management's County-wide growth forecasts for the allocation of projected population to the County and municipalities, utilizing as the primary criteria the availability and concurrency of public facilities and services with the impact of development. Ex. 18, at 50. (Emphasis added.) **[25]**

Resolution No. R94-153 indicates that:

> ...
> WHEREAS, Pierce County has continued to meet and negotiate with the Cities and Towns

> in Pierce County; and
>
> WHEREAS, a consensus was reached among the Cities and Towns and Pierce County on a population allocation;... Ex. 32, at 2.

By reaching a consensus with the cities and towns on the actual population allocations, the County has more than developed allocation standards and criteria as required by PCCPP 2.1.2.

Finally, the Board rejects PNA's assertion that the County planned for 233,603 persons rather than 188,104. PNA confuses the population disaggregation process (of allocating OFM's projected population growth to subareas of a county) with the land capacity analysis utilized in appropriately sizing UGAs. In effect, PNA added theoretical land capacity figures for all areas outside designated UGAs to theoretical land capacity amounts for unincorporated areas within UGAs to arrive at 233,603 people. Although the population allocation process is related to the land capacity analysis process because both are necessary to designate UGAs, the two processes are distinct. The fact that a UGA can accommodate more residents than OFM projects for the next 20 years does not automatically mean that the UGA is invalid.

Conclusion No. 1

The County did not exceed the Office of Financial Management's planning population projections for the 1992 to 2012 planning period. Instead, the County applied OFM's county-wide projection and precisely disaggregated it into subparts of the County. Therefore, the Plan does not violate RCW 36.70A.020(2), RCW 36.70A.110(2), and PCCPPs 2.1.1 and 2.1.2.2.

Legal Issue No. 2

Do the Plan's population allocations comply with RCW 36.70A.020(2) and RCW 36.70A.110 (2), and PCCPPs 2.1.1 and 2.1.2?

The County pointed out that although PNA framed Legal Issues Nos. 1 and 2 in the way it did, i. e., focusing on the County's allocation of OFM's population projections, PNA actually concentrated on the appropriate size of the UGAs in its briefing and argument. As a result, PNA commingled land capacity arguments with its population allocation arguments throughout its discussion of both legal issues. The Board concurs with the County's assessment. Nonetheless, the Board will examine PNA's arguments because they address whether the County's UGAs comply with the specified provisions of the Act and the PCCPPs.

As indicated in the Board's discussion of PNA Legal Issue No. 1, disaggregating OFM's population projections to subareas of a county falls within the discretion of a county, subject to any relevant provisions of the Act and the CPPs that address the matter.

Distinct from the population allocation exercise is the process of ascertaining theoretical land capacity — an attempt to quantify how many persons are actually capable of living on the land if totally "built-out" during the 20-year GMA planning period. In conducting such analysis, counties must review existing land use patterns, including already developed parcels, vested but not developed parcels, and vacant land, to determine how many people could theoretically reside in a given area. It must be recognized that a county cannot undo past development or future development that has already vested.

Next, counties must make deductions for a variety of factors such as: critical areas (where development may not occur or may occur only on a limited basis); existing roads and rights-of-way; publicly-owned land where development cannot occur; commercial and industrial sites where people will not reside; and market conditions that recognize that not every parcel of property that is physically capable of being developed may be developed within the planning period. *See* WAC 365-195-335(3)(d) and (e)[26] and the State Department of Community Development (**DCD**) [now Community, Trade and Economic Development (**CTED**)] publication, Issues in Designating Urban Growth Areas — Part I: Providing Adequate Urban Area Land Supply (March 1992).

The County conducted such a land capacity analysis pursuant to PCCPP Policy 2.1. It is entitled "Size" and provides:

> 2.1.1 urban growth areas must be of sufficient size to accommodate only the urban growth projected to occur over the succeeding 20-year planning period taking into account the following:
>
> a. land with natural constraints, such as critical areas (environmentally-sensitive land);
> b. agricultural land to be preserved;
> c. greenbelts and open space;
> d. New Fully Contained Communities pursuant to RCW 36.70A.350...;
> e. maintaining a supply of developable land sufficient to allow market forces to operate and precluding the possibility of a land monopoly but no more than is absolutely essential to achieve the above purpose;
> f. existing projects with development potential at various stages of the approval or permitting process (i.e., the "pipeline");
> g. land use patterns created by subdivisions, short plats or large lot divisions;
> h. build-out of existing development and areas which are currently only partially built out. Ex. 18, at 49-50.

A January 28, 1993, document, entitled "Urban Growth Area Background Report" [Draft] outlined the County's process for sizing its UGAs. Ex. 51. This included identifying domestic water and sanitary sewer systems, inventorying existing development to ascertain predominant land use patterns, particularly areas already characterized by urban growth, and conducting analysis of underdeveloped and vacant land. Ex. 51, at 8-9. The County specifically deducted the following percentages from the land potentially available for development:

30 % deduction for roads and critical areas;
35 % deduction for development of non-residential uses;
25 % deduction for existing dwelling units when calculating for underdeveloped lands. Ex. 51, at 9.

At the time this report was prepared in January 1993, the County was relying on OFM's year 2010 population projection and had not yet allocated that population. Nonetheless, this preliminary analysis concluded that the county had capacity for an additional 286,900 persons in its proposed UGA within the next 20 years, even though only 205,976 persons were expected based on OFM's 2010 projections and 1990 population estimates. This constituted 139 percent of OFM's projected population increase. Ex. 51, at 15.

According to information contained in the Addendum, the CUGA had enough capacity for 111,687 people based on an assumption of five dwelling units per acre. Ex. 16, Table 4, at 15. Later, on November 29, 1994, County staff indicated that the population capacity for the CUGA was 91,350 people. This total was based upon a revised density assumption of four dwelling units per acre, caused by a County Council amendment to change the density range in the moderate single family designation. Ex. 14, Table 4. Both tables also assumed 2.5 persons per household as did the County's January 1993 report. While the CUGA's capacity is 91,350 people, the County only allocated 69,807 to it. Ex. 16, Table 2, at 14. **The Board holds that PNA has not met its burden of showing how the fact that theoretical land capacity within the CUGA exceeds the actual population allocation to the CUGA violates the Act.**

PNA, citing to the FSEIS (which was based on a year 2014 population projection), argues that the County had capacity in the rural area for 55,956 people, or an amount "substantially in excess of the 32,000 rural allocation". PNA's Reply Brief, at 8. The **Board also holds that PNA has failed to establish how the fact that the County elected to allocate 32,000 of its total projected population increase to the rural area, even though the rural area had capacity for nearly 56,000 people within the planning period, does violates the Act.**

<u>Market or Safety Factor</u>

PNA contends that the County's "safety factor" is "too little and too late." PNA's Reply Brief, at

10. In *Tacoma*, the Board held that a county may size its UGA with more land than is required to meet the demands of 20 years of projected growth. The Board indicated that this "excess land supply" could be called a "market factor," "safety factor," or "cushion." *Tacoma*, at 10. The concept was derived from the DCD *Issues in Designating Urban Growth Areas* publication cited above. In general, it accounts for the fact that not all vacant land will be built or all redevelopable property redeveloped, because the property owners simply will not take the necessary actions during the planning period.

The 1995 legislature explicitly authorized the concept. Section 2 of EHB 1305 (Chapter 400, Laws of 1995) amended RCW 36.70A.110(2) by adding the following language:

> ... <u>An urban growth area determination may include a reasonable land market supply factor</u> and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.... (Emphasis added.)

The Board has acknowledged this legislation.

> **While it is difficult to draw an absolute limit beyond which a county may not go in using such a factor, the Board holds that a "market factor bright line" will be drawn at the 25 percent threshold....**
> ...

The Board concludes that this is a prudent approach to implement the legislature's direction that a "reasonable" market factor may be included in sizing the UGA. Where counties adopt a land supply market factor between 1 and 1.25 (i.e., 25 percent), the Board will presume that the factor is reasonable. In evaluating allegations that a county has used an unreasonable land supply market factor, the Board will give increased scrutiny to those cases where the factor exceeds the 25 percent bright line. *Bremerton*, at 42-43. (Emphasis in original.).

The PCCPPs also authorize the use of a market factor, as UGA Policy 2.1.1(e) permits a supply of land necessary to allow market forces to operate. Ex. 18, at 50. The PCCPPs do not specify a percentage but instead limit this safety factor to "no more than is absolutely essential."

PNA correctly notes that "... the County had never mentioned the 'safety factor,' much less 'shown its work' with respect to this concept. Nowhere in the Plan, the review documents, or in Ordinance 94-82S and its numerous exhibits has a 'safety factor' been identified or analyzed..." PNA Reply, at 10. Although the County argues that its capacity analysis implicitly shows a 26 percent market factor, it cites no document in the record, including the Plan or SEPA documents, that discuss the specific percentage. County's Reply to PNA, at 17. **The Board holds that**

counties must specify the market factor they utilize either directly in an adopted comprehensive plan or in the supporting documentation incorporated by reference in the plan. Post-adoption rationalization in a response brief to the Board is insufficient, however accurate it may be.

Conclusion No. 2

PNA has not met its burden of showing how the County's population allocations violate the Act or PCCPPs.

Counties electing to apply a reasonable market factor in sizing UGAs must specify that factor as a percentage in their comprehensive plan or in documents incorporated by reference in the plan.

Legal Issue No. 3

Do the Plan's Rural Activity Center provisions comply with RCW 36.70A.020(2), RCW 36.70A.070(5), RCW 36.70A.110(1) and (3)?

PNA alleges that by authorizing the concept of a Rural Activity Center (**RAC**), the County has permitted urban growth in the rural area of Pierce County in violation of RCW 36.70A.020 (2), .070(5) and .110.

RCW 36.70A.070(5), in part, requires that a county comprehensive plan contain a mandatory rural element that includes "lands that are not designated for urban growth, agriculture, forest, or mineral resources." The County appropriately defines "rural lands" as those lands:

> ... located outside of an Urban Growth Area (UGA), but not including designated agricultural, forestry, or mining areas of long-term commercial significance. Plan, at III-1. See also Glossary, at B-21.

The Plan further indicates that:

> The context of rural areas is provided by the adjacent lands, such as designated forest land, and the land uses, such as designated agricultural land, that are interspersed within the "rural areas." Rural acres in Pierce County are generally located between an urban growth boundary and forest lands utilized primarily for commercial timber production.... Except for incorporated cities, all of the southern county, a part of the eastern county, the peninsulas, and most islands are characterized by rural settlement and activities.... There are considerable local differences within the rural areas in terms of physical environment and settlement pattern. For example, a suburban development pattern exists in some limited areas such as the southern part of the Gig Harbor Peninsula. Diversity in the existing rural environment provides a unique local identity for each rural area. Plan, at III-

1.

The Rural Area consists of seven designations: Reserve, Rural Separator, Rural Five, Rural Ten, Rural Activity Centers, Rural Neighborhood Centers, and Rural Gateway Communities. Plan, RUR Policy 2.3, at III-9. The last three designations constitute three categories of "Rural Centers." Plan, RUR Policy 6.4, at III-13. Pursuant to RUR Objective 6, "A higher intensity mix of uses should be directed into Rural Centers." Plan, at III-12. The purposes of Rural Centers are:

> a. To provide centers where rural residents and others can gather, work, shop, entertain and, where appropriate, reside;
> b. To provide a focus for the surrounding rural area that is appropriate in character and scale in rural environment;
> c. To provide an alternative to strip developments along arterials and state routes;
> d To provide services to tourists and other visitors recreating in the major recreation facilities; and/or
> e. To provide an opportunity to develop facilities that can function as a community center in those areas where an incorporated town does not serve that role for the surrounding area. Plan, at III-12-13.

A Rural Activity Center land use designation is defined as a:

> ... location where commercial businesses are concentrated, providing goods and services meeting the needs of a local rural community. Resource based industrial operations can also be found in these centers. Plan's Glossary, at B-20.

The Plan also contains specific policies for RACs as follows:

> 6.5 Locations for Rural Activity Centers should be determined by the following characteristics:
> a. Having immediate access onto state routes or major arterials;
> b. Characterized by established mixed commercial land uses; and
> c. New Rural Activity Centers should be located more than five miles from other Rural Activity Centers or Rural Gateway Communities.
>
> 6.6 Establish standards to guide development of Rural Activity Centers.
>
> 6.6.1 Utilize existing patterns as the foundation for the designation of Rural Activity Centers.
>
> 6.6.2 Mixed-uses, commercial and industrial developments should be allowed in Rural Activity Centers where adequate facilities and improvements exist or can be provided.

> 6.6.3 Expansion of Rural Activity Centers should be compatible with other adjacent uses.
> 6.6.4 Rural Activity Centers should not be expanded into areas of natural hazards.
> 6.6.5 Residential development should be permitted in Rural Activity Centers so long as it is consistent with the residential density permitted in the adjacent rural designations. Plan, at III-13.

The Plan's "Generalized Proposed Land Use" map show two RACs on the Gig Harbor Peninsula. One of the two is immediately adjacent to Gig Harbor's satellite UGA (to the north) and State Route 16 (to the east). It is referred to by the County as the South Gig Harbor RAC (*see* below). PNA claims that it contains approximately 85 acres. PNA's Reply Brief, at 21. The record contains no information to the contrary regarding the size of this RAC. All the record indicates is the total acreage for all RACs designated in the Plan, or 1,476 acres. Ex. 16, Table 5, at 17.

The second RAC, the larger of the two, is just south of the first. The County referred to this as the Tacoma Narrows Airport RAC (*see* below). It is nearly adjacent to the Tacoma Narrows portion of the Puget Sound. PNA contends that this "Narrows" RAC contains approximately 778 acres. The record contains no information to the contrary regarding the size of this RAC.

The County Council prepared the following findings for Ordinance No. 94-82S regarding the RACs:

> 56. During the evolution of the County's plan development, a variety of rural commercial center concepts were proposed. Up until the November 1994 Plan, all indications of Rural Neighborhood Centers (RNCs), Rural Activity Centers (RACs), and Rural Gateway Communities were depicted symbolically as a circle or dot on the Generalized Proposed Land Use Map.
>
> 57. Business interests, neighborhood groups, and property owners have testified that certain intersections be indicated as RACs or be deleted as RACs. Additionally, clarification has been sought to indicate the scope and extent of the proposed RACs.
>
> 58. After extensive consideration of the concerns and questions raised, the Council chose to clearly delineate the properties to be included within these Rural centers. Additionally, the Council reviewed the existing land uses and zoning at all proposed centers and determined whether the intersection or area should be indicated as a RAC or RNC.
>
> 59. In the [draft] November 1994 Plan, the Council designated 6 areas as Rural Activity Centers, 14 areas as Rural Neighborhood Centers, and 3 Gateway Communities. The next

25 Findings of Fact provide the rationale for each designation.

...

69. Tacoma Narrows Airport Rural Activity Center (RAC)

a. Encompasses airport properties and adjacent vacant parcels to the east and west.
b. North of Stone Drive consists of large vacant parcel.
c. Stone & Fosdick has existing commercial with adjacent vacant property.
d. Includes city-owned property north of the runway. Ex. 23, Exhibit D, Part C, at 6-8.

The County Council also adopted the following two conclusions regarding Rural Centers:

> 15. After reviewing the testimony on Rural Centers and reviewing the existing land use and zoning maps, the County has determined that parcel specific classifications provides more certainty to land owners than symbolic representations on a map.
>
> 16. The Council further concludes, after its above-noted review, that certain areas or/ intersections have substantial existing commercial activity or have the potential to expand given the locations; other areas do not have the same existing development or opportunity. Therefore, the Council had chosen to distinguish between Rural Activity Centers, which serve a larger rural area, and Rural Neighborhood Centers, which provide commercial services to a smaller area. Ex. 23, Exhibit D, Part C, at 40-41.

In adopting the Plan, the County Council also adopted amendments to the draft November comprehensive plan. One was Proposed Mapping Amendment M13 which provided:

> Expand Narrows Airport Rural Activity Center by including three parcels adjacent to the RAC. Ex. 12.

A second was Proposed Mapping Amendment M15 which states:

> Amend the Rural Neighborhood Center designation south of Gig Harbor to a Rural Activity Center (RAC) designation. The RAC would consist of the golf course, the athletic club, and the former DNR parcel. Ex. 12, at 2.

Both of these amendments to the draft November comprehensive plan passed. Accordingly, the County Council added additional findings relative to these parcels:

> 28. Although Rural Activity Centers and Rural Neighborhood Centers are designated to be the focal point of commercial activity in the rural areas, some limited single family residential uses may occur within these rural centers. The amendments only allow

residential development in RACs and RNAs that is consistent with adjacent rural densities. The intent is to discourage the RACs and RNCs from becoming "urban in nature." (#28 and #29). Ex. 23, Exhibit D, Part E, at 4.

...
46. The expansion of the Narrows Airport RAC includes contiguous vacant land in common ownership. (M13) (see: Finding No. 69, PART C);
...
48. Gig Harbor South Rural Activity Center
a. Incorporates existing large commercial, recreational and vacant properties along 36th Street NW, west of SR-16. (M15). Ex. 23, Exhibit D, Part E, at 6.

During the period that the County was preparing final development regulations to implement the Plan, "... the RACs are treated the same as Commercial (C-3) zoning...." That treatment was established by Pierce County Ordinance No. 94-167, which was passed on December 20, 1994. County's Reply to PNA, at 8.[27]

When the Board reviewed the County's IUGAs, the County was given the following warning:

> As for the six "rural activity centers" that are excluded [from the IUGA designation], Finding No. 32 (a part of Exhibit E attached to Ordinance 93-84S2) indicates:
>
> > The Council finds that to preserve the County's rural character and guide development towards rural activity centers, areas around certain intersections should be excluded from the General-Rural rezone and remain as they are presently zoned until the Comprehensive Plan and implementing regulations are completed and adopted. Exhibit 159, Ex. E thereof, at 4.
>
> There simply is insufficient evidence in the record before the Board to determine the status of these areas. The Cities have failed to overcome the presumption of validity granted to Ordinance 93-84S2 as incorporated by reference by Ordinance 93-91S. Because the Board is remanding Ordinance 93-91S, it will not require that the record be supplemented to provide the additional information necessary to make an appropriate determination. However, the County is cautioned that its "rural activity centers" will be closely scrutinized by the Board in the event of any future challenge to the County's FUGAs or comprehensive plan. Because these centers are outside the IUGAs boundary line, additional urban growth cannot be permitted there. *Tacoma*, at 21 (footnote omitted).
> ...
> A density of one unit per ten acres is a rural density. The Board has serious concerns that the County excluded "rural activity centers" but will reserve judgment until the County

> complies with this Order. The County is reminded that additional urban growth is not permitted beyond a UGA. *Tacoma*, at 38.

The Board based this last statement on the language of RCW 36.70A.110(1) which provides in part that outside a UGA, "... growth can occur only if it is not urban in nature." More recently, in its *Vashon-Maury* decision reviewing the King County Comprehensive Plan, the Board acknowledged that a literal and solitary application of the definition of "urban growth" as the test of what is not permitted in a rural area would achieve an absurd result because it would exclude certain rural-dependent uses. *Vashon-Maury*, at 66-67. Therefore, the Board established a rule for determining when non-residential uses in the rural area are permitted:

> **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....** *Vashon-Maury*, at 69 (Emphasis in original.)

This holding from *Vashon-Maury* is not a repudiation of prior Board holdings or the language from RCW 36.70A.110(1) that urban growth is prohibited beyond a UGA. Instead, it is simply a recognition that certain rural-dependent uses will intensively use land (thereby meeting the literal definition of "urban growth"). The Board's above-quoted *Vashon-Maury* holding stands for the proposition that as long as such rural-dependent growth is also compatible with the functional and visual character of the immediate vicinity of the rural area, it may be permitted.

Here, the Board holds that the Plan's RAC policies do not limit non-residential uses to only those uses that, by their very nature, are dependent upon being in a rural area and are compatible with the functional and visual character of the immediate vicinity. Instead, RUR Policy 6.5(b) focuses on established mixed commercial land uses. In *Vashon-Maury* the Board rejected the concept that <u>new</u> commercial or industrial uses of any nature can be permitted in the rural area. See Ex. 74, which lists a series of :Permitted Uses" in RACs, the vast majority of which are <u>not</u> dependent on being located in a rural area. The Plan does not adequately restrict such uses in the rural area. Although RUR Policy 6.6.3 states that expansion of RACs should be compatible with adjacent uses, this policy is problematic for two reasons. First, it uses a discretionary auxiliary verb "should" rather than the mandatory "shall." Second, and more important, when a RAC is literally adjacent to a UGA — like the South Gig Harbor RAC — or nearly so — like the Tacoma Narrows Airport RAC — it creates a conflict between the land uses within the RAC and those of the adjacent urban area. The purpose of a rural designation is to distinguish rural land from urban land, not to blend the two together.

The preamble to RCW 36.70A.070 requires that a comprehensive plan be internally consistent.

The Board also holds that the designated Tacoma Narrows Airport and the Gig Harbor South RACs do not comply with the Act because their designation as such is internally inconsistent with the purpose of rural centers. RUR Objective 6(e) indicates that the purpose of a Rural Center, of which a RAC is one category, is to "provide an opportunity to develop facilities that can function as a community center in those areas where an incorporated town does not serve that role for the surrounding area." Plan, at III-12-13. Both RACs lie between the Tacoma Narrows Bridge and the City of Gig Harbor. The South Gig Harbor and Tacoma Narrows Airport RACs are adjacent to and within one mile respectively of the Gig Harbor satellite UGA to the north and slightly over one mile from the Tacoma portion of the CUGA to the south.[28] These RACs cannot usurp the community center functions of incorporated areas located so nearby. In contrast, the designated RACs on the Key Peninsula, far from any city or recognized central place, do constitute such community centers. This part of the Board's decision is limited to just these two Gig Harbor Peninsula RACs.

The Board understands the County's reliance on the fact that both RACs contain existing commercial development. The South Gig Harbor RAC contains a municipal golf course and an athletic club; the Tacoma Narrows Airport RAC's name is self-explanatory as to its predominant use. As the Board has repeatedly indicated, the GMA cannot undo past development decisions.

> This does not mean that the County can or must ignore what has occurred in the past. Reality dictates that its past development patterns will certainly affect its future for many years to come. Those past development patterns cannot be easily undone. The landowners affected by those pre-GMA development activities are protected, for better or worse, by the fact that their uses, although nonconforming with future planning and zoning, are legal. They are also protected by the fact that their fully completed development permit applications are vested. Nonetheless, the County cannot base its *future planning* for *new growth* on its past development practices if those past practices, as here, do not comply with the GMA. What was once permissible is no longer so. The GMA was passed to stop repeating past mistakes in the future. *Bremerton*, at 71.

Conclusion No. 3

The Plan's Rural Center and RAC policies do not limit non-residential uses in the rural area to uses dependent upon being located in a rural area. Nor do these provisions limit the functional and visual character of rural uses in the immediate vicinity. Therefore, the RACs do not comply with RCW 36.70A.110(1) and .070(5). Moreover, the designation of the South Gig Harbor and Tacoma Narrows Airport RACs does not comply with RCW 36.70A.070 since it is internally inconsistent with the purposes of rural centers.

Legal Issue No. 4

Does the Plan's "Rural 5" designation comply with RCW 36.70A.070(5)?

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:

> (5) 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 land uses that are compatible with the rural character of such lands and provide for a variety of rural densities <u>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</u>.

RUR Policy 2.4 of the Plan provides:

> 2.4 Rural densities are as follows:
>
> 2.4.3 <u>The Rural Five designation allows a basic density of one dwelling unit per five acres</u>. However, density incentives should be provided (1) when the development is served by a Group "A" water system, or (2) when 50 percent or more of the property is designated as open space or as set-aside lands. It is the property owner's option to designate as either open space or set-aside lands. Set-aside lands may be able to develop at increased densities if the Comprehensive Plan designation is amended in the future. The maximum density incentive would be double the basic density. Clustering of dwelling units is encouraged to maximize buffer and open space. Plan, at III-9. (Emphasis added.)[29]

Definitions of several of these terms are found in the Plan Glossary.

> "Clustering of dwelling units" is not defined, but the term "Cluster Development" means a development design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, individual or jointly owned open space, and preservation of environmentally sensitive areas. Plan Glossary, at B-4.
>
> "Group A Water System" means, for the purpose of this Plan and implementing regulations, a water system which: (1) is regulated by the State Department of Health and has an approved comprehensive water system plan; (2) is designated as a satellite system management agency; and (3) has one hundred or more hookups. Plan Glossary, at B-11.

> "Set-aside lands" means land that is held for future development. Set-aside lands may be able to develop at increased densities if the Comprehensive Plan designation is amended in the future. Plan Glossary, at B-22.

The amount of Rural 5 land (denoted as "Rural One" in the Addendum) county-wide is 76,074 acres, or about 26 percent of all the non-resource land rural area in the county (derived by adding "Rural Adjacent to Forestry", "Rural One", "Rural Two", Rural Activity Centers" and "Reserve") Ex. 16, Table 5, at 17. The amount of Rural 5 acreage is slightly greater than the combined acreage listed for Ft. Lewis (68,914) and McChord Air Force Base (4,513). The same table shows that Rural 10 (denoted as "Rural Two" in the Addendum) consists of 205,314 acres, or about 70 percent of the non-resource land rural area in the county. Thus, two rural lot sizes (Rural 5 and Rural 10) constitute 96 percent of the non-resource land rural area in the county.

The distribution of the Rural 5 designated land is depicted on the "Generalized Proposed Land Use Map" that follows page II-83 in the Plan. A tan-colored pattern shows Rural 5 for Fox and Anderson Islands, all of the Gig Harbor Peninsula, the northeastern portion of the Key Peninsula, and an arc of land south and east of the CUGA.

PNA's Legal Issue No. 4, as set forth in the Prehearing Order, speaks to the compliance of the County's Rural 5 designation with RCW 36.70A.070(5). The focus of PNA's argument is that the County inappropriately designated as Rural 5 portions of the Gig Harbor Peninsula, specifically, five salmon-spawning streams: Artondale Creek, Wollochet Creek, Mark Dickson Creek, Crescent Valley Creek and McCormick Creek. PNA PHB, at 20.[30] The areas were designated as "Rural-Special" by Ordinance No. 91-163S in 1991. Ex. 35. "Rural-Special" required a minimum of ten-acre lots. PNA argues that use of Rural 5 conflicts with the County's goal of limiting rural growth to 32,000 people over the coming 20 years. PNA also argues that allowing a density of up to two dwelling units per five acres in these Rural 5 lands on the Peninsula provides for continued subdivision in an environmentally sensitive area and perpetuates sprawl.

The County argues that the Rural 5 designation helps it comply with the requirement for a "variety of rural densities" and that the environmentally sensitive qualities of these lands need not be preserved by ten-acre lot sizes because they are protected by the County's critical areas regulations. County Response to PNA, at 32. The County also argues that the density bonus provisions for "set-aside" lands are an "innovative" clustering technique that preserves flexibility for growth beyond the 20-year horizon of GMA. Last, the County argues that the Board should defer to the County's exercise of local discretion in setting densities:

> Under the <u>GMA standard of review</u>, the Comprehensive Plan is "presumed valid upon adoption." RCW 36.70A.320. The Board must find the Plan in compliance with the GMA

> unless it finds "by a preponderance of the evidence that the state agency, county, or city erroneously interpreted or applied" the GMA. RCW 36.70A.320; WAC 242-02-632." County Response to PNA, at 33. (Emphasis added.)

Discussion

The Board has addressed the subject of permitted rural densities in three prior cases. The Board held that ten-acre lots are clearly rural. *See Tacoma*, at 21. The Board held that 1- and 2.5-acre lots are urban, rather than rural, and as a new development pattern are generally prohibited in the rural area. *See Bremerton*, at 51. The Board also held that the "variety of rural densities" required by RCW 36.70A.070(5) would "typically require a range from ten-, to 20-, 40- and 80-acre lot sizes." *Bremerton*, at 51. In *Vashon-Maury*, the Board determined that, while 5-acre lots are more rural than urban in character, it was necessary to evaluate the GMA compliance of residential lots smaller than ten acres:

> ... rather than adopt a minimum rural residential lot size, the Board instead adopts as a general rule a "bright line" at ten acres. The Board holds that any residential pattern of ten-acre lots, or larger, is rural. Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the <u>pattern</u> 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. *Vashon-Maury*, at 79. (Emphasis in original.)

Before applying the test to the present case, the Board pauses to set forth both the policy and statutory rationale for the third prong: "will not thwart the long-term flexibility to expand the UGA."

As to the policy basis, it is important to recall that portions of Washington's Growth Management Act borrow from the experiences in other states, most prominently Florida (as to concurrency) and Oregon (as to urban growth boundaries/areas). Since adoption of its growth management statute in 1974, Oregon has undertaken a number of studies to measure the success of its program. The Board takes official notice of *Planning the Oregon Way: A twenty-year Evaluation*, Carl Abbott, Deborah Howe and Sy Adler, Editors, Oregon State University Press, Corvallis, Oregon, 1994. Case studies of Portland, Medford, Bend and Brookings identified the problems created by a pattern of 1- to 5-acre lot sizes immediately adjacent to and outside the urban growth area boundary:

> UGBs were initially designed to guide urban development to 2000. Implied in the planning

> and acknowledgment process is that UGBs will be expanded to accommodate growth after 2000... The trouble is that residential development in the urban fringe is resulting in a low-density residential ring around most or all of the UGB in each of the study areas. The low-density (1 - to 5-acre) development makes annexations and urban service extensions more difficult. Rural areas that might have been held in reserve for future urbanization have developed in ways that will be extremely difficult to urbanize. *Planning the Oregon Way*, at 35.

The problem with creating such a "ring" around a UGA is that it then prevents the addition of future land supply to the UGA, or, in the alternative, it forces additional urban development to "leapfrog" over the intervening ring, perpetuating many of the inherent service delivery inefficiencies and environmental consequences of sprawl.

As to the statutory basis for the third prong of the test, the Board has previously noted the Act's predilection for compact urban development pursuant to RCW 36.70A.020 (1) and (2) and its desire that urban development be "orderly and contiguous" (*see* RCW 36.70A.210(3)(b). While the GMA's time horizon for the UGA land supply is twenty years (*see* RCW 36.70A.110(2)), the Act recognizes that growth will take place beyond the twenty year horizon and directs counties to be cognizant of that longer-range future.[31] For example, the Act explicitly requires that, at least every ten years, counties are to evaluate their progress and revise their UGAs, as appropriate, to "accommodate the urban growth projected to occur in the county for the succeeding twenty-year period." *See* RCW 36.70A.130(3). Further, the addition of the "land supply market factor" provisions of EHB 1305 (Chapter 400, Laws of 1995) underscores the legislature's intent that counties have the flexibility to increase the UGA land supply by a reasonable amount. In view of these provisions, the **Board holds that Act creates an *ongoing* duty for Washington's communities to plan for future growth, including preservation of the flexibility to increase the UGA land supply at a date beyond the immediate twenty year planning horizon.**

Turning to the present case, the Board concludes that the County's use of the Rural 5 land use designation does clearly constitute a *land use pattern* of lots smaller than 10 acres in size. As noted above, over 76,000 acres carry this designation and are located over widespread areas of the county. These facts do not mean that the County's Plan, on its face, violates the Act - but simply that the *Vashon-Maury* test cited above will be applied. We now apply the four prongs of the test to the present facts.

1. Will Rural 5 result in urban growth in the rural area?

Policy 2.4.3 provides as an incentive a potential doubling of the density on Rural 5 sites. Neither the Plan nor the record shows how this provision precludes the subdivision of a 5 acre parcel into

two 2.5-acre parcels. While "clustering of dwelling units is encouraged" the Board notes that it is not mandatory, and thus it is not a bar to the creation of two freestanding building pads, each centered in the middle of a 2.5-acre lot. The Board has previously held that a 2.5-acre lot is urban rather than rural, and, as a general rule, new 2.5-acre lots will be prohibited in rural areas. *See Bremerton*, at 51.

Further, while the County has argued that the 100-hookup requirement for Group A Water Systems will limit the numbers of parcels able to utilize this density bonus, the Board notes that the bonus is also available, in the alternative, to parcels that simply set aside 50 percent of the property as open space or set-aside, at the owner's option. This by itself is not a sufficient site development constraint. Even in cases where water is provided, via a Group A Water System or by individual wells, it is extremely unlikely that sewers will be provided at a 2.5-acre effective density.

In view of the large portions of the County that carry the Rural 5 designation, and thus a virtually unrestricted opportunity to plat into 2.5-acre lots, the Board concludes that, as drafted, Rural 5 very well could result in urban growth in the rural area.

2. Will Rural 5 present an undue threat to large scale resource lands, such as forestry, or critical areas, such as aquifers?

Much of PNA's argument focuses on the allegedly environmentally sensitive creek valleys on the Gig Harbor Peninsula. Aside from the interim "Rural Special" designation for these valleys made in 1991(Ex. 35), PNA points to no other evidence in the record that these areas are "large scale critical areas, such as aquifers." The only other information before the Board in this case indicates that there are aquifer recharge areas underlying portions of the Rural 5 designations (*compare* the Plan's Generalized Proposed Land Use Map with the Aquifer Recharge Areas Map. Ex. 65). However, the largest parts of these aquifer recharge areas are beneath the CUGA and Ft. Lewis, rather than the rural area. The Board therefore does not conclude that Rural 5 violates this prong of the test.

3. Will Rural 5 thwart the long term flexibility to expand the UGA?

This prong of the Board's analysis is concerned with where, specifically, a five-acre lot pattern is proposed and how that may foreclose future options to accommodate growth beyond the 20 year forecast period.

In the present case, a five acre lot pattern far removed from the County's designated UGAs, such as Anderson or Fox Islands, or even the most westerly portion of the Gig Harbor Peninsula, would not constrain potential future UGA expansion. In contrast, the entire Gig Harbor UGA is surrounded by Rural 5, as is the area immediately south of the metropolitan UGA, east of Ft.

Lewis, and the lands between the Sumner-Puyallup and the Bonney Lake-Orting UGAs.[32] In fact, with very limited exceptions, Rural 5 appears to be the rural designation of choice adjacent to cities within the Metropolitan UGA.

The Board concludes that Rural 5, as it is presently drafted and located adjacent to the Gig Harbor and Metropolitan CUGA, will create a land use pattern that effectively locks in the size of those UGAs.

If the County wishes to continue to have Rural 5, or a variation thereon, adjacent to UGAs and to operate as, in effect, a growth reserve, it needs to revise the provisions of Rural 5 to achieve such an effect. The Board is aware that part of the rationale of the "set-aside" option in Rural 5 appears to have such an objective in mind, but this is only optional, and, even if selected, does not achieve the purpose of an urban reserve. In addition to impermissibly enabling very low density urban use in the rural area in the near term (i.e. 2.5 acre lots), the Rural 5 lacks provisions to make it a viable long-term growth reserve. For example, it lacks any mandatory provisions for clustering, master-planned access, utility and building siting criteria to assure that, at some point in the future, a 5 acre parcel could be included within a UGA and be developed at a truly urban density.

For the reasons cited above, the Board concludes that Rural 5, as it is presently drafted and located, violates the third prong of the test.

4. Will Rural 5 otherwise be inconsistent with the goals and requirements of the Act?

RCW 36.70A.070(5) provides, in pertinent part, that a rural element must include:

> ... lands that are not designated for urban growth, agriculture, forest or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a <u>variety of rural densities</u>. RCW 36.70A.070(5). (Emphasis added.)

The Board has focused on what constitutes a variety of rural densities. In the *Bremerton* case, the Board stated:

> The word "variety" is not defined in the Act. Therefore, the Board resorts to the common meaning found in *Webster's II New Riverside Dictionary*, at 1277. "Variety" means:
>
> 1. the quality or state of being various or varied; diversity.
> 2. a number of varied things, esp. of a particular group: assortment.
> 3. a group set off from other groups by a particular characteristic or set of characteristics.. *Bremerton*, at 72.

The Board went on to hold that the five rural classifications that Kitsap County utilized did not constitute a "variety," because they all functionally equated to 2.5-acre lots. The Board said that it:

> ... expects to see a true variety of rural densities such as, for example, 1 du/10 acres, 1 du/20 acres, 1 du/40 acres and 1 du/80 acres. *Bremerton*, at 72.

In the present case, the Board noted above that the Rural 5 and Rural 10 density categories combined to total 96 percent of all the non-resource land rural areas in the county. Moreover, of the remaining categories, the minimum lot size for the Rural Activity Centers is the same as the surrounding Rural 5 or Rural 10 and, as noted above, the 2.5-acre lot size for the "rural separator" is an urban rather than a rural density. Thus, there are, effectively, only two rural densities in the Plan. The Board holds that this is too small a number to constitute a variety, and this small selection consumes too much of the total rural area.

To recapitulate, the Board holds that Rural 5, as adopted in the Plan and applied in the Generalized Proposed Land Use Map, will result in urban growth in a rural area and would thwart the county's long term flexibility to expand the UGA. Further, the County has failed to meet the requirement of RCW 36.70A.070(5) to provide a "variety" of rural densities.

Turning to the County's argument about the "GMA standard of review", the Board notes that phrase does not appear in the Act. The County correctly states that comprehensive plans are presumed valid upon adoption and that the Board must find compliance unless it finds "by a preponderance of the evidence" that the respondent erroneously interpreted or applied the Act. However, the County appears to suggest that the Board's "standard of review" is the far more deferential "arbitrary and capricious" standard rather than the "preponderance of the evidence" standard.

The Board draws this inference from the County's statement that: "... the GMA standard of review poses a high burden for a petitioner seeking Board review of legislative action" (emphasis added). This statement immediately precedes a quote in the County's Response to PNA (at 34) from dicta in *Twin Falls* wherein the "arbitrary and capricious standard" is mentioned.[33]

The "take home message" from this passage should be that the Board will give deference to local legislative enactments and will not substitute its judgment for that of the legislative body. However, it is incorrect to suggest that the degree of deference approaches the "arbitrary and capricious standard." This becomes apparent when reading the next passage, following the above-cited quote, wherein the Board concludes:

> The deference which the courts have historically given to the legislative enactment of comprehensive plans and development regulations guides the direction if not the degree of deference which the Boards should give when reviewing GMA mandated plans and regulations. With regard to GMA mandated plans and regulations, the great degree of deference that legislative bodies have historically enjoyed is diminished by the explicit direction of RCW 36.70A.320 that the presumption of validity may be overcome by a preponderance of the evidence. *Twin Falls*, at 59. (Emphasis added.)

Conclusion No. 4

While the County correctly observes that PNA does have a burden of proof under the Act, it is not the "high burden" that the County suggests. The standard of review is a "preponderance of the evidence." In this instance, the Board concludes that the weight of the evidence in the record indicates that the Rural 5 designation, as applied county-wide, and with the provision for 2.5-acre platting, does not comply with RCW 36.70A.070(5) because it would constitute urban growth in the rural area and thwart the long term flexibility to expand the UGA.

Further, the Board holds that by adopting only two rural densities, the County has not complied with the requirement of RCW 36.70A.070(5) to "provide for a variety of rural densities."

The Board will therefore remand the County's land use element with direction to provide a "variety of rural densities"; remove the provisions of Rural 5 that would enable urban growth in a rural area, and either delete the use of Rural 5 adjacent to the Gig Harbor UGA and Metropolitan CUGA or adopt an explanation within the Plan of how such 5-acre parcels will function as, in effect, a growth reserve and will not thwart the County's future flexibility to increase the size of its UGAs.

Legal Issue No. 5

Should PNA's SEPA claims be dismissed because the Board lacks jurisdiction since PNA has failed to exhaust its administrative remedies and/or lacks SEPA standing?

On March 24, 1995, PNA filed a "Response to Pierce County's Dispositive Motion" that withdrew PNA's Legal Issues Nos. 5 and 6. Consequently, on April 11, 1995, the Board entered an Order Granting Pierce County's Motion to Dismiss PNA's SEPA Claims.

Conclusion No. 5

The Board will not address PNA Legal Issue No. 5 because it has been dismissed pursuant to a

prior order.

Legal Issue No. 6

Was the County required by WAC 197-11-600(4)(d) to issue a supplemental environmental impact statement when changes occur, for example on the mapping amendments to the Plan M-7, M-8, M-12 through M-15 and M-20, and text amendment 12?

On March 24, 1995, PNA filed a "Response to Pierce County's Dispositive Motion" that withdrew PNA's Legal Issues Nos. 5 and 6. Consequently, on April 11, 1995, the Board entered an Order Granting Pierce County's Motion to Dismiss PNA's SEPA Claims.

Conclusion No. 6

The Board will not address PNA Legal Issue No. 6 because it has been dismissed pursuant to a prior order.

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IV. <u>ORDER</u>

Having reviewed the above-referenced documents and the file in this case, having considered the oral arguments of the parties, and having deliberated on the matter, the Board finds that the Pierce County Comprehensive Plan is **in compliance** with the requirements of the GMA except for those provisions discussed below.

1) The Plan is **remanded** and the County is ordered to adopt a narrative defining its open space corridors and amend its open space/greenbelts map to depict such corridors within and between UGAs, and connecting critical areas.

2) Since Batker has withdrawn Legal Issues Nos. 5, 7 and 8, they are **dismissed with prejudice**.

3) The Plan is **remanded** with instructions for the County to specify (either in the Plan itself or a document incorporated by reference in the Plan) the "land supply market factor" relied upon to size the County's UGAs. This factor must be expressed as a percentage.

4) The Plan's Rural Activity Center provisions are **remanded** with instructions for the County to establish specific criteria that prohibit urban uses in the rural areas unless the uses, by their very nature, are dependent upon being in a rural area and is compatible with the functional and visual character of the immediate rural area. The South Gig Harbor and Tacoma Narrows Airport RACs are remanded to the County with instructions to either entirely remove their RAC designation or otherwise bring that designation into compliance with the Act and this decision.

5) The Plan's Rural 5 designation is **remanded** with instructions for the County to amend its provisions so that Rural 5 would not enable urban growth in a rural area. The County is also directed to amend the Plan so that it provides a variety of rural densities, and to remove the five-acre designations adjacent to the Gig Harbor UGA and the CUGA or adopt an explanation within the Plan of how such five-acre parcels will function, in effect, as a growth reserve and will not thwart the County's future flexibility to increase the size of its UGAs.

6) Pursuant to RCW 36.70A.300(1)(b), the County is given until **5:00 p.m.** on **Wednesday, April 3, 1996** to bring its comprehensive into compliance with the Board's Final Decision and Order and the requirements of the Act.[34]

7) The County shall file by **5:00 p.m.** on **Friday, April 12, 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 procedurally complied with this

Order. If the Plan is amended, substantive compliance will not be determined until and unless new petitions for review are filed within 60 days of publication of notice of adoption of a new comprehensive plan and/or implementing development regulations.

So ORDERED this 31st day of October, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
M. Peter Philley
Board Member

_____
Joseph W. Tovar, AICP
Board Member

_____
Chris Smith Towne
Board Member

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

levels of service (**LOS**)
its Final Environmental Impact Statement (**FEIS**)
37 dwelling units (**du**) per acre.
Geographic Information System (**GIS**)
Citizen Advisory Group (**CAG**).
State Department of Community Development (**DCD**)
[now Community, Trade and Economic Development (**CTED**)]
Rural Activity Center (**RAC**),

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[1] WAC 242-02-660(3) provides that a board can take official notice of:

> Ordinances and resolutions enacted by cities, counties, or other municipal subdivisions of the state of Washington.

[2] Federal and state land is broken down as follows:

Mt. Rainier National Park 196,168 acres
US Forest Service lands 144,750 acres
McChord Air Force Base 4,513 acres
Fort Lewis 68,914 acres
McNeil Island 4,244 acres
TOTAL 418,589 acres Exhibit 16, Table 5, at 17.

[3] Plan, at I-6 for population information and at II-16 for acreage information.

[4] Plan, at II-23. This information covers the County before urban growth areas (**UGAs**) were designated.

[5] The Board takes official notice of a Washington State Office of Financial Management (**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" (the **OFM Correction Release**). According to this document, in 1995 unincorporated Pierce County had a population of 396,357 (60 percent) while the incorporated portions of Pierce County contained 263,843 people (40 percent) for a total population of 660,200 people. Thus, two percent more of the total population lives in unincorporated Pierce County in 1995 than did in 1990.

[6] The Board independently calculated Pierce County's 1990 average population density at 327 people per square mile as follows: 586,203 people ÷ 1,793 square miles = 327 people per square mile (rounded off).

[7] Pursuant to OFM's Correction Report, Pierce County's 1995 population is 660,200. That amount, divided by 1793 square miles, equals an average population density of 368 people per square mile in 1995.

[8] Although Batker did not cite RCW 36.70A.020(12) when framing Legal Issue No. 1, the Board will nonetheless examine it since it is so closely related to planning goals 1 and 9.

[9] Although RCW 36.70A.020(1) focuses on public facilities within urban areas, RCW 36.70A.020(9) applies both inside and outside UGAs, as does RCW 36.70A.020(12).

[10] The Plan defines numerous terms of art. *See* Plan, Appendix B -- the Glossary. However, it does not define either "recreation area" or "parks."

[11] The Plan's Open Space/Greenbelt map was revised on May 11, 1995. Ex. 69, at 2.

[12] The PCCPPs define "open space" as including:

> ... parks, recreation areas, greenbelts/natural buffers, scenic and natural amenities or unique geological features or unique resources. Exhibit 18, Policy 10, at 34.

[13] Batker abandoned a discussion of PCCPPs 5.1, 5.2 and 5.8. Therefore, the Board will not review them.

[14] A response letter to Ms. Batker on her comments on the FEIS indicates that the Chambers/Clover Creek sewerage basis "roughly corresponds" to the recharge area. Ex. 29, at 44.

[15] RCW 36.70A.060(4) provides:

> (4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

[16] Policy 15.2 states:

> The purposes of agricultural land conservation in Pierce County are:
> a. Ensuring that agricultural lands are treated sensitively to their location and the presence of urban growth pressures;
> b Preventing urban sprawl;
> c. Maintaining open space or providing a visual green belt;
> d. Retaining natural systems and natural processes;
> e. Preserving the local economic base;
> f. Preserving a rural lifestyle;
> g. Maintaining specialty crops; and/or
> h. Maintaining regional, state and national agricultural reserves. Plan, at II-44.

[17] The Plan confirms Pierce County's 1992 population of 624,000 persons. Plan, at I-6; II-12; and at IX-51.

[18] The CUGA is defined in the glossary as:

> ... the area designated as the 20-year Urban Growth Area for unincorporated Pierce County and the incorporated cities and towns i.e., Fife, Fircrest, Milton, Puyallup, Ruston, Steilacoom, Sumner and Tacoma. Plan, Appendix B, at B-5.

[19] OFM is required by RCW 43.62.035 to determine the population of each county as of April 1st of each year. The OFM Correction Release reveals the following regarding Pierce County (with the exception of 1980 information which is found in the Plan, at I-6):

Year	Total Population =	Unincorporated &	Incorporated
1980	485,667	272,591	213,076
1990	586,203	339,679	246,524
1991	603,800	354,102	249,698
1992	624,000	370,432	253,568
1993	640,700	383,130	257,570
1994	648,900	388,321	260,579
1995	660,200	396,357	263,843

OFM's 1995 actual population estimate for the year 1995 (660,200 persons) is 12,087 persons greater than its 1995 population projection of 648,113 persons, which was made in January, 1992.

[20] *See also* WAC 365-195-335(3)(h) which recommends that counties allocate population to the rural areas and to UGAs of a county.

[21] The 77,800 people figure for unincorporated areas within all UGAs includes both the CUGA and satellite UGA populations broken down as follows: CUGA (69,807 people) + satellite UGA (7,993 people) = 77,800. Table 2 shows an even more detailed breakdown for each satellite city UGA.

[22] The Board notes that subsequent to the allocation of population, the cities of Edgewood, Lakewood and University Place have incorporated. Thus, the land encompassed by these cities was unincorporated land within a UGA at the time the Plan was passed.

[23] All 1992 information obtained from OFM's Correction Release. Table 2 of the Addendum also uses the 1992 incorporated area total of 253,568.

[24] Only the total amount for year 2012 is based upon OFM's Projections since those forecasts, unlike OFM annual population estimates, do not contain a breakdown between incorporated and unincorporated areas. The amount for the incorporated area in year 2012 was obtained from Table 2 of the Addendum, at 14. The amount for the unincorporated area was derived simply by subtracting the incorporated area amount (331,872) from the total (812,104).

[25] The Board will not consider whether the County violated RCW 36.70A.210 since PNA simply quoted from a portion of it for the proposition that the CPPs must address UGAs. PNA's Reply, at 6. PNA did not explain how the County violated this section of the Act. Therefore, the Board treats it as abandoned.

[26] WAC 365-195-335(3)(d) and (e) provide:

> (d) Determination of the amount of land necessary to accommodate likely growth. This process should involve at least: i) A forecast of the likely future growth of employment and population in the community, utilizing the twenty-year population projection for the county in conjunction with data on current community population, recent trends in population, and employment in and near the community and assumptions about the likelihood of continuation of such trends. Where available, regional population and employment forecasts should be used.(ii) Selection of community growth goals with respect to population, commercial and industrial development and residential development.(iii) Selection of the densities the community seeks to achieve in relation to its growth goals.(iv) Estimation of the amount of land needed to accommodate the likely level of development at the densities selected.(v) Identification of the amount of land needed for the public facilities, public services, and utilities necessary to support the likely level of development.(vi) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern.
> (e) Determination of the geographic area to be encompassed to provide the necessary land. This process should involve at least:(i) An inventory of lands within existing municipal boundaries which is available for development, including vacant land, partially used land, and land where redevelopment is likely.(ii) An estimate of lands within existing municipal boundaries which are potentially available for public capital facilities and utilities necessary to support anticipated growth.(iii) An estimate of lands which should be allocated to greenbelts and open space and lands which should be protected as critical areas.(iv) If the lands within the existing municipal boundaries are not sufficient to provide the land area necessary to accommodate likely growth, similar inventories and estimates should be made of lands in adjacent unincorporated territory already characterized by urban growth, if any such territory exists.(v) The community's proposed urban growth area should encompass a geographic area which matches the amount of land necessary to accommodate likely growth. If there is physically no territory available into which a city might expand, it may need to revise its proposed densities or population levels in order to accommodate growth on its existing land base.

[27] PNA's Petition for Review challenged only the Plan as failing to comply with the GMA or SEPA.

[28] This determination is made based on the scale of miles shown on the Plan's Generalized Proposed Land Use map, following II-83; i.e., one mile equals less than one quarter an inch or six miles equals slightly less than one and one-quarter inches.

[29] RUR 2.4.5 exempts the first 200 feet adjacent to the ordinary high water mark of marine or lake shorelines of Pierce County. This drops the minimum lot size in the Rural 5 designated areas to 2 du/5 acres or 4 du/5 acres along marine and lake shorelines. Plan, at III-10.

[30] PNA in its reply brief lists Rosedale Creek rather than McCormick Creek, which was listed in the prehearing

brief.

[31] The Board has also specifically recognized that it is permissible under GMA for local governments to include in their comprehensive plans longer-range planning:

> It may be wise to look beyond the GMA-mandated twenty year time horizon, in view of the fact that major capital investments, i.e. sewage treatment plants and transportation facilities such as roads, airports and rail lines, have well beyond a twenty year life and the results of certain public policy decisions will likewise endure beyond twenty years. However, the land supply and density decisions that must be made in designating UGAs must accommodate only the demands of twenty years of growth. *Kitsap v. OFM*, CPSGMHB Case No. 94-3-0012 (1995), at 23.

[32]PNA, in arguing Legal Issue No. 2, calls the Board's attention to two large "islands" of rural land surrounded by the CUGA with a "rural separator" designation of 1 dwelling unit per 2.5 acres. While these "islands" were not challenged specifically in any legal issue in the present case, the County should be aware of the Board's prior holdings that 2.5 acre lots are urban, rather than rural (*see Bremerton*, at 50) and that, just as 5 acre lots are poorly suited as growth reserves, 2.5 acre lots are even more so.

[33] The portion of *Twin Falls* quoted by the County provides:

> ...Accordingly, this Board will grant deference to local legislative bodies attempting to comply with the Act. This deference is in recognition of the presumption of validity expressly given local government enactments by the Act and is consistent with the deference courts have historically given legislative actions. As a consequence, it is also consistent with the arbitrary and capricious standard where the reviewing body will not substitute its judgment for that of the original decision-making body. *Twin Falls*, at 58. Quoted in County Response to PNA, at 34.

[34] The Board has not issued a determination of invalidity in this case. Consequently, it has not given the County the full 180 days allowable on remand.