

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

WEST SEATTLE DEFENSE FUND,)
NEIGHBORHOOD RIGHTS CAMPAIGN,))
and CHARLES CHONG,)Case No. 95-3-0040)
)
Petitioners,)FINAL DECISION AND ORDER)
)
v.)
)
CITY OF SEATTLE,))
)
Respondent.))

¶1. PROCEDURAL BACKGROUND

¶2 On March 13, 1995, the West Seattle Defense Fund, Neighborhood Rights Campaign and Charles Chong (hereafter collectively referred to as **WSDF**) filed a Petition for Review with the Central Puget Sound Growth Management Hearings Board (the **Board**). WSDF challenged the City of Seattle’s (**Seattle** or the **City**) adoption of Ordinance Nos. 117430 and 117434, development regulations that implement the City’s Comprehensive Plan (the **Plan**).

¶3 On April 27, 1995, the Board entered a Prehearing Order that established the case’s schedule and set forth a statement of four legal issues to be resolved by the Board.

¶4 On May 10, 1995, the Board received “WSDF’s Revised Statement of Legal Issues” (**WSDF’s Statement**) in response to the Board’s Prehearing Order that ordered WSDF to specify which provisions of Ordinances Nos. 117430 and 117434 did not comply with the Growth Management Act (the **GMA** or the **Act**). The issues set forth in WSDF’s Statement are the ones quoted in Part III below.

¶5 On June 8, 1995, the Board held a hearing on a dispositive motion that had been filed by WSDF.

¶6 On June 16, 1995, the Board entered an Order Denying WSDF’s Dispositive Motion.

Legal Issue No. 1 as set forth in the Prehearing Order was dismissed with prejudice since it was fully resolved by the Order.

¶7 On June 22, 1995, the Board received “WSDF’s Opening Brief in Support of Petition for Review” (**WSDF’s Opening Brief**) with three exhibits attached.

¶8 On July 10, 1995, the City of Seattle’s Brief (**City’s Brief**) was filed with the Board, with one attachment.

¶9 On July 20, 1995, “WSDF’s Reply Brief in Support of Petition for Review” (**WSDF’s Reply**) was filed with the Board. Fifteen exhibits were attached to WSDF’s Reply.

¶10 The Board held a hearing on the merits of WSDF’s Petition for Review on July 24, 1995, at 3400 One Union Square, Seattle. The Board’s three members were present: M. Peter Philley, presiding, Joseph W. Tovar and Chris Smith Towne. Peter J. Eglick and Bob C. Sterbank represented WSDF while Robert D. Tobin represented Seattle. Court reporting services were provided by Duane Lodell of Robert H. Lewis & Associates, Tacoma. No witnesses testified.

¶11 As a preliminary matter, the City orally moved to strike Exhibit 8 attached to WSDF’s Reply, a June 29, 1995, memorandum from Tom Tierney to Jim Street containing the “Mayor’s Report and Recommendations -- Growth Management Hearings Board Response.” After considering argument on the motion, the presiding officer orally granted the City’s motion. The exhibit was prepared well after adoption of the two ordinances in question. In addition, it is merely a recommendation upon which the Seattle City Council has not yet acted. An examination of what efforts the City takes to comply with the Board’s Final Decision in *West Seattle Defense Fund v. Seattle (WSDF I)*, CPSGMHB Case No. 94-3-0016 will be the subject of a future compliance hearing before the Board. See RCW 36.70A.330. Accordingly, Exhibit 8 to WSDF’s Reply is **stricken** and the Board will not consider it or arguments about it in WSDF’s Reply.

¶12 **II. FINDINGS OF FACT**

¶13 No material facts were disputed by the parties. The Board enters the following undisputed facts:

- ¶14
1. Central Puget Sound cities or counties are required to adopt comprehensive plans by July 1, 1994. In addition, unless Central Puget Sound jurisdictions requested an extension in writing, July 1, 1994, was also the deadline for those jurisdictions to adopt development regulations that are consistent with and implement the comprehensive plan. RCW 36.70A.040(3)(d).

- ¶15 2. On July 25, 1994, Seattle Ordinance 117221 was passed by the Seattle City Council adopting the Seattle Comprehensive Plan (the **Plan**) pursuant to the requirements of the GMA.
- ¶16 3. On October 7, 1994, WSDf filed a petition for review with the Board in *WSDf I* challenging the Plan for failing to comply with the requirements of the GMA and the State Environmental Policy Act (**SEPA**).
- ¶17 4. On December 12, 1994, Seattle Ordinance 117430 was passed by the Seattle City Council. The ordinance adopted development regulations to implement the City's Plan. It did not take effect until April 3, 1995. The Board refers to this ordinance as "the **Implementing Development Regulations Ordinance or Ordinance 430.**"
- ¶18 5. Also on December 12, 1994, Seattle Ordinance No. 117434 was passed by the Seattle City Council. The ordinance amended the Official Land Use Map of the City of Seattle and also did not take effect until April 3, 1995. The Board refers to it in this order as "the **Map Ordinance or Ordinance 434.**"
- ¶19 6. January 1, 1995, was the deadline imposed upon Central Puget Sound jurisdictions to adopt development regulations to implement comprehensive plans, if the jurisdiction, like Seattle, had obtained a six month extension from the Washington State Department of Community, Trade and Economic Development (**DCTED**) pursuant to RCW 36.70A.040(3)(d).
- ¶20 7. On April 3, 1995, Sections 1 through 90 and 92 of the Implementing Development Regulations Ordinance (*see* Section 95 of the Implementing Development Regulations Ordinance, at 95) and the Map Ordinance (*see* Section 2 of the Map Ordinance, at 1) became effective.
- ¶21 8. On April 4, 1995, the Board entered its Final Decision and Order in *WSDf I*, remanding the capital facilities plan element and the transportation element of the Seattle Comprehensive Plan as they relate to urban centers and villages for further action to bring these provisions into compliance with the requirements of the GMA. The Board's Final Decision and Order in *WSDf I* was not subsequently appealed to superior court.

- ¶22 9. On May 15, 1995, Governor Lowry approved all but sections 103, 302 and 903 of Engrossed Substitute House Bill (**ESHB**) 1724, “An ACT Relating to implementing the recommendations of the governor’s task force on regulatory reform on integrating growth management planning and environmental review.” ESHB 1724 gives the Board the authority to issue a “determination of invalidity.”
- ¶23 10. On May 16, 1995, Governor Lowry approved Substitute Senate Bill (**SSB**) 5567, entitled “Preservation of Single-Family Residential Neighborhoods.”
- ¶24 11. On July 23, 1995, ESHB 1724^[1] and SSB 5567 took effect.
- ¶25 12. September 1, 1995, was the *WSDFI* deadline for Seattle to bring its Plan into compliance with the Board's Final Decision and Order and the requirements of the Act. September 8, 1995, was the City’s deadline for submitting information to the Board as to what steps it took to comply with the Board’s Final Decision and Order in *WSDFI*. Pursuant to RCW 36.70A.330, a compliance hearing will be scheduled in *WSDFI*, the outcome of which may have a significant impact upon this decision.

¶26 **III. GENERAL DISCUSSION**

¶27 Since this case involves a challenge of the City’s development regulations intended to implement its Plan, an understanding of the Plan^[2] and the Board’s decision in *WSDFI* is essential. In short, Seattle has incorporated an urban villages strategy which:

¶28... combines small changes in the city’s development pattern with a more complete and competitive intermodal public transportation system, the targeted use of housing assistance funds and planning tools to provide desirable and affordable housing, investment in facilities designed to serve higher density neighborhoods and neighborhood-based decisions built upon local citizens’ expressed priorities. Plan, at ix.

¶29 The Plan creates three categories of urban villages: urban center villages within the five urban centers, hub urban villages and residential urban villages. Plan, Land Use Element Policy L11, at 9. However, unlike the Mayor’s proposed version of the Plan, which contained definitive boundaries for all types of urban villages, the City Council elected to establish specific boundaries only for certain urban villages, those within urban centers. The Board concluded that although the City had preliminarily designated all categories of urban villages, the Council had only formally adopted urban center villages. The adoption of hub and residential urban villages is yet to occur, pending conclusion of the City’s neighborhood planning process. *WSDFI*, at 7, 10, 20.

¶30As indicated above, the Board previously entered an order in this case that resulted in a dismissal of Legal Issue No. 1. In that order the Board indicated the parameters of its present review:

¶31The Board concludes that when portions of a comprehensive plan have been remanded with instructions to bring those provisions into compliance with the Act, and when other portions of the plan have been found to comply with the Act, the Board must determine on a case-by-case basis whether the contested portions of implementing development regulations comply with the GMA. In such a circumstance, the Board will not automatically conclude that, simply because portions of a comprehensive plan do not comply with the Act, all implementing development regulations necessarily also do not comply.

¶32Accordingly, the Board holds that development regulations implementing urban villages, as contained in Ordinance Nos. 117430 and 117434, continue to have legal effect prior to the City of Seattle's completion of its transportation and capital facilities elements review, pursuant to the Board-ordered remand in *WSDF I*. However, such regulations must nonetheless be consistent with the adopted comprehensive plan. Determining whether specific provisions of the Implementing Development Regulations Ordinance are consistent with the comprehensive plan will be addressed at the hearing on the merits by examining Legal Issues Nos. 2, 3 and 4. In reaching this determination, the Board will scrutinize whether the regulations in question can stand despite the Board's remand of portions of the comprehensive plan. If they are closely related to provisions of the comprehensive plan that the Board has found do not comply with the Act, the regulations in question may be found not to comply with the Act. Order Denying WSDF's Dispositive Motion, at 6. (Emphasis in original.)

¶33Before turning to the remaining legal issues before the Board, a general observation is necessary. Although WSDF's Statement specified which provisions of the Map and Implementing Development Regulations Ordinances fail to comply with the GMA, and WSDF's Opening Brief and WSDF's Reply refer to these provisions, not once did WSDF quote the language of the cited sections, nor quote the Plan's provisions with which WSDF contends the regulations are inconsistent. This made it difficult for the Board to ascertain precisely what language allegedly fails to comply with the GMA. It is not the Board's task to guess what language a petitioner contends violates the Act. It is extremely difficult for a petitioner to carry its burden of proof when it does not specifically focus the Board's attention on the alleged violating language. See WAC 242-02-634.

¶34 IV. DISCUSSION AND CONCLUSIONS

¶35A. LEGAL ISSUE NO. 2(a)

¶36 *Are the development regulations contained in Ordinances No. 117430 (to be codified at Seattle Municipal Code (SMC) 23.34.007 - .010) internally consistent with other development regulations contained in Ordinance No. 117430 (to be codified at SMC 23.34.011) and consistent with other already-existing development regulations (codified at SMC 23.16.002.A) as required by RCW 36.70A.070 (preamble);*

¶37 In order to resolve this issue, the Board must first determine whether a single development regulation^[3] must be internally consistent, and whether such a regulation must be consistent with other development regulations, in order to comply with the GMA. WSDF urges the Board to hold that development regulations must be both internally consistent and consistent with other development regulations. WSDF's Opening Brief, at 17-18. In response, the City points out that, although it hopes that all its plans, development regulations, administrative rules and other documents are consistent, there is no such explicit requirement in the Act. City's Brief, at 16-17.

¶38 Consistency is one of the most prominent hallmarks of the Growth Management Act. Various provisions require not only that specified GMA enactments^[4] be mutually consistent but even that intangible concepts, such as economic development (*see* RCW 36.70A.020(5)) or public health (*see* RCW 36.70A.030(10)), are consistent. Some of the most important concrete consistency requirements of the Act follow.

¶39 The preamble to RCW 36.70A.070 requires that all elements of a comprehensive plan shall be consistent with the future land use map. Furthermore, it generally requires that a comprehensive plan "... shall be an internally consistent document..." This internally consistent relationship between the various parts of a comprehensive plan is reinforced more specifically elsewhere in the Act. RCW 36.70A.070(3)(e) requires that the land use element, capital facilities plan element and financing plan within the capital facilities plan element be consistent. Likewise, the preamble to RCW 36.70A.070(6) mandates that the transportation element of a comprehensive plan be consistent with the land use element of that plan. In addition, even optional elements of a plan, although not required, must be consistent if adopted. *See* RCW 36.70A.080(2) and *WSDF I*, at 14. Most importantly, all planning activities and capital budget decisions made by governments planning under the GMA must be in conformity with their comprehensive plans. RCW 36.70A.120.

¶40 RCW 36.70A.040(3)(d) and (4)(d) and RCW 36.70A.130(1) require that development regulations adopted to implement a comprehensive plan be consistent with that plan.

¶41 RCW 36.70A.100 requires that comprehensive plans of each county and city be coordinated and consistent with the comprehensive plans of counties and cities with common borders or related regional issues. Moreover, the key reason for the preparation of

county-wide planning policies is to “... ensure that city and county comprehensive plans are consistent...” See RCW 36.70A.210(1).

¶42 In addition, several other GMA provisions implicitly require that a development regulation be internally consistent and externally consistent with other regulations. RCW 36.70A.030(7) provides:

¶43 For purposes of RCW 36.70A.065 and 36.70A.440, “development permit application” means any application for a development proposal for a use that could be permitted under a plan adopted pursuant to this chapter and is consistent with the underlying land use and zoning, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses or other applications pertaining to land uses, but shall not include rezones, proposed amendments to comprehensive plans or the adoption or amendment of development regulations. Emphasis added.

¶44 This provision requires that uses for which development permits are sought must be consistent with “underlying land use and zoning” which, under the GMA, are development regulations that implement comprehensive plans.

¶45 RCW 36.70A.050 requires DCTED to prepare guidelines to classify certain natural resource lands and critical areas. Subsection (4) provides:

¶46 The guidelines established by the department under this section regarding classification of forest lands shall not be inconsistent with guidelines adopted by the department of natural resources. Emphasis added.

¶47 Thus, RCW 36.70A.050 requires that certain state agency guidelines also be externally consistent.

¶48 Finally, the last sentence of RCW 36.70A.070(6)(e) requires that:

¶49 The transportation element described in this subsection, and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, must be consistent.

¶50 Thus, the Act mandates that city and county documents required under non-GMA authority be consistent with the transportation elements of comprehensive plans. In effect, the Act’s consistency requirement thus reaches beyond the confines of Chapter 36.70A RCW.

¶51 Despite these references to the Act’s consistency requirements (not every such

reference was cited), the Act does not contain an explicit requirement that a development regulation be internally consistent, or that any such regulation be consistent with another development regulation. However, the Board cannot read the above-referenced provisions, nor the GMA as a whole, without concluding that the Act necessarily creates such requirements. Accordingly, the Board now holds:

¶⁵²**A development regulation must be internally consistent; and**

¶⁵³**All development regulations must be consistent with each other.**

¶⁵⁴Sound public policy demands such a holding. It makes absolutely no sense to require that comprehensive plans be internally consistent and implementing development regulations be consistent with those comprehensive plans, yet not require that those same development regulations be internally consistent or externally consistent with other development regulations. To hold that development regulations may be internally inconsistent would be an absurd result. Delay and unpredictability in the permit process are chronic problems exacerbated by internally inconsistent development regulations. The Act seeks to eradicate such permit process problems. RCW 36.70A.020(7) provides:

¶⁵⁵Applications for both state and local permits should be processed in a timely and fair manner to ensure predictability. (Emphasis added.)

¶⁵⁶The legislature underscored its desire for greater timeliness and certainty in the permit process by adoption of Section 409 of ESHB 1724, which provides:

¶⁵⁷Development regulations adopted pursuant to RCW 36.70A.040 shall establish time periods consistent with section 413 of this act for local government actions on specific project permit applications and provide timely and predictable procedures to determine whether a completed project permit application meets the requirements of those development regulations.... (Emphasis added.)

¶⁵⁸Having concluded that development regulations must be internally consistent and consistent with other development regulations, the Board would normally turn to the content of Legal Issue No. 2(A): determining whether those portions of Ordinance 430 codified at SMC 23.34.007 through .010 are internally consistent with SMC 23.34.011, and externally consistent with SMC 23.16.002(A). However, because the Board concludes in Legal Issue No. 2(B) below that it is too soon to determine whether Chapter 23.34 SMC complies with the Act because it will not take effect unless and until the Plan is amended sometime in the future, the Board will not address this issue further at this time.

¶⁵⁹**Conclusion No. 2(A)**

¶60 A development regulation adopted pursuant to the GMA must be internally consistent and consistent with other development regulations.

¶61 Because it is premature to determine whether Chapter 23.34 SMC complies with the Act, since these provisions of Ordinance 117430 have not yet taken effect, and may never take effect, the Board will not determine in this decision whether the cited provisions of Ordinance 117430 are internally consistent and consistent with other previously adopted development regulations.

¶62 A. LEGAL ISSUE NO. 2(B)

¶63 *Are the development regulations contained in Ordinance Nos. 117430 and 117434 (to be codified at SMC 23.32, SMC 23.34.007.E, SMC 23.34.008 - 23.34.028, SMC 23.34.077, SMC 23.34.079, SMC 23.43.006 - .012, SMC 23.47.002.C, SMC 23.47.004 (Chart A), SMC 23.47.009.C.1, SMC 23.47.010, and SMC 23.47.023) consistent with pages 8-9 (Land Use Policies L8 - L10), 10 (Land Use Policy L14), 13-14, (Land Use Figure 1), 21 (Land Use Policy L33), 23-24 (Land Use Policy L44 -L48), 26 (Land Use Policy L54), and Appendix A4 - A5 (Land Use Appendix A) of the City of Seattle's Comprehensive Plan, as required by RCW 36.70A.040(2) and (3) and RCW 36.70A.130 (1)?*

¶64 Parties' Positions

¶65 WSDF's Position

¶66 WSDF contends that there are two distinct types of development regulations that are inconsistent with the Plan:

- ¶67 1. currently effective regulations that designate “urban village commercial areas” and permit new commercial and residential development within them (**Urban Village Commercial Area Regulations**); and
- ¶68 2. regulations that have the effective date delayed until adoption of urban village boundaries through neighborhood plans (**Contingent Regulations**). WSDF's Opening Brief, at 5.

¶69 *Urban Village Commercial Areas*

¶70 WSDF contends that Ordinance 434, the Map Ordinance, specifically identifies “urban village commercial areas” in three residential urban villages and one hub urban village proposed for West Seattle, and in other proposed hub and residential urban village areas around the City. Furthermore, although Ordinance 434 does designate urban village

commercial areas in the five “urban center” villages in fact adopted in the Plan, only a small portion of the ordinance involves actually adopted urban villages. WSDF’s Opening Brief, at 5-6.

¶71 The Implementing Development Regulations Ordinance specifies standards for “urban village commercial areas” that WSDF alleges constitute a “radical departure” from regulations that apply outside urban village areas. Specifically, WSDF claims that:

- ¶72 ◆ SMC 23.47.009(C)(1) and SMC 23.47.023 “drastically” raise density limits for single-purpose residential development within the urban village commercial areas, by 30-50% above many of the density limits in the prior development regulations. (*See* Ordinance 430, § 52, at 61; and § 57, at 68-69); WSDF’s Opening Brief, at 6-7.
- ¶73 ◆ SMC 23.47.009(C)(1) and SMC 23.47.023 “substantially” increase density limits for single-purpose residential development outside the urban village commercial areas, except in commercial zones. (*See* Ordinance 430, § 52, at 61; and § 57, at 68-69); WSDF’s Opening Brief, at 7.
- ¶74 ◆ SMC 23.47.009(C)(1)(e) allows newly increased density limits for single-purpose residential development in a C1 or C2 zone inside an urban village to be increased to an even greater density than that in NC zones. (*See* Ordinance 430, § 52, at 61); WSDF’s Opening Brief, at 7.
- ¶75 ◆ SMC 23.47.010(A)(3) exempts office uses in C1 and C2 zones in urban village commercial areas from maximum size limits. (*See* Ordinance 430, § 53, at 62); WSDF’s Opening Brief, at 6.
- ¶76 ◆ SMC 23.34.007(E) indicates that the above-referenced regulations in Chapter 23.47 SMC::

¶77... are in effect now, and development under their auspices may take place in any of the “urban village commercial areas” designated in Ordinance No. 117434 (including West Seattle) at any time. (*See* Ordinance 430, § 5, at 3); WSDF’s Opening Brief, at 7-8.

¶78 WSDF alleges that:

¶79... the specific development regulations contained in Ordinance No. 117434 (SMC 23.32) and Ordinance No. 117430 (SMC 23.34.007(E), 23.47.009(C)(1), 23.47.010(A)(3), and 23.47.023) affirmatively implement urban villages in areas

which the Comprehensive Plan does not formally designate as urban villages, and which the City, the Board and the public cannot know are even capable of being designated as urban villages until the additional transportation, capital facilities, and neighborhood planning is completed. WSDF's Opening Brief, at 9 (emphasis in original, footnote deleted).

¶80...

¶81... This is much more than a matter of development regulations that implement part of the Plan that is subject to change on remand; it involves an attempt by the City to implement urban villages in specified areas where, as determined by *WSDF I*, the City declined to formally adopt them in the Comprehensive Plan. Such an effort must be rebuffed as inconsistent with the Comprehensive Plan and not in compliance with the GMA. WSDF's Opening Brief, at 10 (emphasis in original).

¶82 *Contingent Regulations*

¶83 WSDF contends that the contingent regulations (also referred to as "floating regulations"), which will not take effect until urban village boundaries have been adopted following the neighborhood planning process, are also inconsistent with the Plan for "a more subtle reason." WSDF's Opening Brief, at 11. WSDF maintains that the contingent regulations

¶84... create brand-new types of zoning designations, such as the Residential Small Lot Zone ("RSL") in which cottage housing, townhouses, and single-family houses are permitted on lots as small as 2500 square feet (half of the former 5000 square foot minimum), and the NC/R zones, in which single-purpose residential structures are permitted outright in commercial areas, with no limits upon density. Other development regulations vary the locational standards for previously existing types of zones, such as Lowrise, Midrise, and Highrise, de-emphasizing importance of density and scale compatibility with existing development within urban village areas. WSDF's Opening Brief, at 11 (emphasis in original; footnote omitted).

¶85 Specifically, WSDF cites to SMC 23.34.028, SMC 23.43.006 - .012, SMC 23.34.077 - .079, and SMC 23.47.004, Chart A and SMC 23.34.013 -.028.

¶86 By adopting these regulations, even though they are contingent, WSDF contends that:

¶87... Development regulations which implement focused, urban-village style growth -- even if not technically effective until the neighborhood planning stage -- simply cannot be consistent with the Comprehensive Plan, whose own text, "preliminary" designations, and uncertain status on remand leave the question of the very

existence of urban villages open-ended.

¶188 In effect, allowing such development regulations to stand while the City completes its remand process would predestine a particular result (urban villages) and skew the City away from fair consideration of the remand options described by the Board [in *WSDF I*]. It would further assume the result of the vaunted neighborhood planning ... before urban villages (for example, in West Seattle) were adopted. The Plan would have to meet the already-adopted regulations, rather than define what the regulations would be. *WSDF's* Opening Brief, at 12 (emphasis in original).

¶189 City's Position

¶190 Seattle's arguments are discussed in the text below.

¶191 Discussion

¶192 RCW 36.70A.040^[5] requires that development regulations adopted to implement comprehensive plans be consistent with those plans. RCW 36.70A.040(3) provides in part:

¶193 Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: ... (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994... (emphasis added).

¶194 The question becomes whether Ordinance 434 and the specified provisions of Ordinance 430 are consistent with the Plan.

¶195 Urban Village Commercial Areas

¶196 *Map Ordinance*

¶197 The Map Ordinance, Seattle Ordinance No. 117434, contains one page of narrative as follows:

¶198 AN ORDINANCE relating to land use and zoning, amending multiple plats of the City's Official Land Use Map, identifying those commercial zones which are identified as urban village commercial zones as derived from the Comprehensive Plan's Future Land Use Map; NOW THEREFORE

¶99BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

¶100Section 1. The Official Land Use Map of the City of Seattle, SMC 23.32, is hereby amended as indicated on the attached plats (Attachment A). The amended plats indicate with a “v” those commercially zoned properties which together constitute urban village commercial areas as otherwise regulated by Title 23 and as derived from the City of Seattle Comprehensive Plan Future Land Use Map. (emphasis added).

¶101Section 2. This ordinance shall take effect and be in force on April 3, 1995.

¶102Eighty-two pages of maps then follow the above-quoted narrative. Each map contains a legend box indicating:

¶103“V” indicates the Commercial or Neighborhood Commercial zone is an Urban Village or Urban Center zone. Scale 1 inch = 400 feet

¶104The Plan’s Future Land Use Map, referenced in the preamble and Section 1 above, was described in *WSDF I* as follows:

¶105Pursuant to Land Use Element Policy L62, urban centers and manufacturing/industrial center boundaries, *preliminary* residential and hub urban village designations and *preliminary* neighborhood anchor designations are to be identified on the Future Land Use Map (i.e., Exhibit 1B) attached to the Plan. Exhibit 1, at 31. The Future Land Use Map itself shows urban centers, manufacturing/industrial centers, hub urban villages, residential urban villages and neighborhood anchors, among other designations. Like Land Use Figure 1 in the Plan, the Future Land Use Map shows the boundaries of urban centers and manufacturing/industrial centers with a high level of specificity. However, also like the Plan’s Land Use Figure 1, the Future Land Use Map only shows the general location of hub urban villages, residential urban villages and neighborhood anchors which are depicted by symbols rather than by boundary lines. Exhibit 1B. Accordingly, it is not possible to ascertain the exact boundaries of hub urban villages, residential urban villages and neighborhood anchors on the Future Land Use Map. *WSDF I*, at 10 (footnote omitted; italics in original).

¶106The Future Land Use Map also contains a disclaimer that states:

¶107The future land use map is intended to illustrate the general location and distribution of the various categories of land uses anticipated by the Comprehensive Plan policies over the life of this plan; it is not intended to provide the basis for rezones and other legislative and quasi-judicial decisions, for which the decision

makers must look to the Comprehensive Plan policies and various implementing regulations. (emphasis added).

¶108 Because it was not an issue in *WSDF I*, the Board did not note that Land Use Element Policy L62 of the Plan also required the Future Land Use Map to establish and identify “commercial/mixed use areas.” As a result of that requirement, the Future Land Use Map also shows specific areas of the city as “Commercial/Mixed Use Areas Inside Urban Centers/Villages” denoted in red. A notation on the map indicates:

¶109 Separate colors for commercially zoned land in Urban Village areas generally indicate areas with higher density limits for certain uses than other similarly zoned land not in Urban Village areas. Specific definition of such areas is provided in the land use code. Emphasis added.

¶110 In addition, the Future Land Use Map identifies “Commercial/Mixed Use Areas Outside Urban Centers/Villages” which are denoted in pink. Both designations show precise boundaries of the commercial areas in question, unlike the designations of hub and residential urban villages that are shown by symbols only (in some cases, the symbols are located in what appears to be the center of a commercial area).

¶111 Even though the Future Land Use Map does not use the precise phrase “urban village commercial area” but instead contains the phrase “Commercial/Mixed Use Areas Inside Urban Center/Villages,” the Board began its analysis by assuming that the two phrases are intended to have the same meaning. This was particularly true since the Map Ordinance specifically refers to the Future Land Use Map (Preamble and Section 1, Map Ordinance, at 1).

¶112 The Board’s assumption was confirmed by the Implementing Development Regulations Ordinance. Section 47, codified at SMC 23.47.020(C) provides:

¶113 Areas referred to as urban village commercial areas are those commercially zoned properties designated on the Comprehensive Plan Future Land Use Map as commercial/mixed use areas within urban centers/villages. These commercial areas are indicated by a “V” on the Official Land Use Map.

¶114 Neither party referred to Land Use Element Policy L62 in the Plan or the “Commercial/Mixed Use Areas Inside Urban Centers/Villages” designation on the Future Land Use Map. The Board’s post-hearing discovery of these provisions clears up a great deal of uncertainty. At the hearing on *WSDF*’s dispositive motion, the City was asked whether any specific provision of the Plan created “urban village commercial areas.” The City’s initial oral response was to indicate that no known Plan provision did so, that “... it is an implementing regulation concept and term. It’s not part of the comp plan *per se*.” Exhibit 1

to WSDF's Reply, at 18-19. Subsequently, the City's written response was to cite only to the Plan's Land Use Element at Policies L110 and L136 as designating the boundaries of "urban village commercial areas."⁶ City's Brief, at 5. The City did not refer to Policy L62 or to the Future Land Use Map itself. In its subsequent briefing, the City correctly pointed out that the "urban villages commercial area" regulations are contained in Ordinance 430 and mapped in Ordinance 434 (City's Brief, at 4). The City also presented an alternative theory:

¶115... While WSDF may assume that "urban village boundaries" and "urban village commercial areas" coincide, due to the common use of the term "urban village", they are not the same. The fact that the Council has yet to finalize "urban village boundaries" does not impair the Council's authority to establish a different set of boundaries, for "urban village commercial areas," for purposes of regulating commercial uses... Because application of the commercial area regulations depends upon the commercial area boundaries which have been drawn, and not upon the location of final urban village boundaries which have not, the commercial area regulations are not in conflict with the Plan or with this Board's decision in *WSDF I*. City's Brief, at 7-8 (emphasis in original).

¶116 WSDF points out that the Plan's policies at L110 and L136 do not mention "urban village commercial areas" and apply generally city-wide. It contends that the City did not adopt "urban village commercial areas" as part of its Plan, "let alone adopt boundaries for them." WSDF's Reply, at 6. Instead, WSDF claims that:

¶117... The City has only adopted urban village commercial areas as part of its development regulations, not as part of the Comprehensive Plan, and in doing so, has avoided planning for them. WSDF's Reply, at 6 (emphasis in original).

¶118 The "urban village commercial area" designation creates an internal inconsistency⁷ since the specific boundaries of the hub and residential urban villages have not been adopted, while the Future Land Use Map clearly shows in red the specific boundaries of "Commercial/Mixed Use Areas Inside Urban Centers/Villages." Yet, as the Future Land Use Map itself indicates, some "commercial/mixed use areas" are inside urban villages or centers. Without knowing the precise boundaries of hub and residential urban villages, it is impossible for a "commercial/mixed use area" to be inside such an urban village. Accordingly, the Board rejects both WSDF's claim that the City has not adopted urban village commercial areas in its Plan (it did so through Land Use Element Policy L62 and in the Future Land Use Map although verification of this fact required examination of the Implementing Development Regulations Ordinance) and the City's suggestion that "urban village boundaries" and "urban village commercial areas" are not directly related (they are, since the locations of the latter are by definition "inside" the former).

¶119 The Board holds that those portions of the Map Ordinance that indicate with a “v” commercial areas inside urban villages, the boundaries of which have not yet been formally adopted, are inconsistent with the Plan. As an example, WSDF cites the following pages of the Map Ordinance that indicate with a “v” portions of West Seattle where final boundaries for hub and residential urban villages have not yet been adopted: A-56 - A-57; A-61 - A-63; A-66 - A-67; A-71 - A-72; and A-75 - A-77. WSDF’s Opening Brief, at 6, fn. 2.

¶120 In addition, the Board holds that those portions of the Map Ordinance that indicate with a “v” commercial areas inside urban villages where the precise boundaries of the urban villages have already been adopted (i.e., urban centers and the villages within them), are also inconsistent with the Plan. The City must complete its capital facilities and transportation analysis required by the Act and the Board on remand in *WSDF I* before it attempts to regulate any type of urban center or village. *See* discussion immediately below of Ordinance 430’s treatment of “urban village commercial areas.”

¶121 *Implementing Development Regulations Ordinance*

¶122 WSDF contends that SMC 23.47.002(C) is inconsistent with the Plan. WSDF’s Opening Brief, at 6. SMC 23.47.002 provides:

¶123 **SMC 23.47.002** Scope of provisions. A. This chapter describes the authorized uses and development standards for the five (5) commercial zones: Neighborhood Commercial 1 (NC1), Neighborhood Commercial 2 (NC2), Neighborhood Commercial 3 (NC3), Commercial 1 (C1) and Commercial 2 (C2). B. Commercial zones which have a pedestrian designation (P1 or P2) or a residential designation (R) on the Official Land Use Map shall be subject to the use and development standards of Subchapters I, II and III of this chapter. These subchapters may be modified by applicable overlay provisions. C. Areas referred to as urban village commercial areas are those commercially zoned properties designated on the Comprehensive Plan Future Land Use Map as commercial/mixed use areas within urban centers/villages. These commercial areas are indicated by a “V” on the Official Land Use Map.... Ordinance 117430 § 47, at 47-48 (emphasis added).

¶124 The Board holds that SMC 23.47.002(C) is inconsistent with the Plan for the same reason that the Board held that the Map Ordinance is inconsistent with the Plan: it designates urban village commercial areas based upon the Future Land Use Map’s reference to urban villages when the precise boundaries of hub and residential urban villages have not yet been established.

¶125 More importantly, this provision establishes the “scope” of Chapter 23.47 SMC. Within

formally adopted urban villages where the City has already established precise boundaries, in order for the City to regulate in the manner it has (e.g., new density and dimensional restrictions), the City must first complete the capital facilities and transportation analysis ordered on remand in *WSDF I*. In effect, the Board is belatedly granting WSDF's dispositive motion. However, the Board is not reconsidering or overturning its order on that motion. A case-by-case analysis of development regulations actually adopted must occur, as here, rather than an automatic conclusion that no implementing development regulations can stand when only a portion of a comprehensive plan has been found in non-compliance with the GMA.

¶126 The Board concludes that Chapter 23.47 SMC regulations cannot stand because they are too closely related to the Plan provisions that are not yet in compliance with the Act. The City cannot establish new density and dimensional restrictions in its development regulations based on the Plan's attempt to highly concentrate economic and population growth into urban villages^[8] when the crucial capital facilities and transportation analysis required by the Act and the Board's remand has not yet occurred and subsequently been found in compliance.^[9] Accordingly, those portions of Chapter 23.47 SMC that regulate within urban villages (whether final boundaries have been adopted or not) do not comply with the Act. Specifically, this holding applies to SMC 23.47.002, .009, .010 and .023 (although the contingent provisions of SMC 23.47.009 are discussed further below as is SMC 23.47.004 (Chart A)). To the extent that provisions in Chapter 23.47 SMC regulate outside urban villages, WSDF has not complained nor shown that these regulations do not comply with the Act.

¶127 Contingent Regulations

¶128 Planning jurisdictions may adopt "contingent" implementing development regulations that do not take effect until some future amendment to a comprehensive plan has been formally adopted. However, the GMA requires that plans be comprehensive. RCW 36.70A.030(4). Cities and counties must take great care to adopt comprehensive plans in which all mandatory elements required by RCW 36.70A.070 have been completed. *WSDF I*, at 12-14. By deferring adoption of some features of a comprehensive plan until a future date, a jurisdiction runs the risk of not having fully completed the Act's requirements for a comprehensive plan. Furthermore, delaying implementation until future comprehensive plan amendment action may be a waste of time and effort since there may be no guarantee that the comprehensive plan amendment will actually occur or, if it does, that the policy direction will not change.

¶129 On the other hand, delaying the effective date of implementing regulations has its advantages (assuming the underlying adopted comprehensive plan is actually complete in the first place and that the effectiveness of the regulation is triggered by a comprehensive

plan amendment). It puts everyone on notice as to the content of the adopted but not yet effective regulation, thus announcing in advance a jurisdiction's future intentions. It also alerts one to the potential regulatory consequence of a pending policy decision, such as the inclusion of land within a proposed residential urban village. This gives both the public and the adopting jurisdiction a chance to test the hypothesis of the future plan amendments and implementing regulations, and to take corrective action before subsequent plan amendment take place and before the development regulations take effect.

[\[10\]](#)

¶130 The fact that Seattle's Plan does defer its optional neighborhood planning process until the future is not fatal since the Plan itself contains the mandatory elements required by RCW 36.70A.070, but for those matters remanded in *WSDF I*. The Board now holds that Seattle's Contingent Regulations are consistent with the Plan if they indicate on their face, or refer to another regulation that so indicates, that they will not take effect unless and until some time in the future when the Plan has been amended, presumably as a result of the neighborhood planning process.

¶131 WSDf challenges the following Contingent Regulations for not complying with the Act: SMC 23.34.007 - .028 and SMC 23.34.077 - .079, SMC 23.43.006 - .012, and SMC 23.47.004. WSDf's Opening Brief, at 11. The Board examines them below.

¶132 SMC 23.34.007, entitled, "Rezone evaluation," provides:

¶133 E. Provisions of this chapter that pertain to areas inside of urban centers or villages shall be effective only when a boundary for the subject center or village has been established in the Comprehensive Plan. Provisions of this chapter that pertain to areas outside of urban villages or outside of urban centers shall apply to all areas that are not within an adopted urban village or urban center boundary. This subsection does not apply to the provisions of other chapters including, but not limited to, those which establish regulations, policies, or other requirements for commercial/mixed use areas inside or outside of urban centers/villages as shown on the Future Land Use Map. Ordinance 430 § 5 at 3 (emphasis added).

¶134 The Board holds that the emphasized language from SMC 23.34.007(E) quoted above clearly indicates that all the provisions of Chapter 23.34 SMC will not become effective unless and until actual urban village boundaries have been adopted in the Plan. Accordingly, even though WSDf cited SMC 23.34.008 - .028^[11] as being Contingent Regulations that are inconsistent with the Plan (*see* WSDf's Opening Brief, at 11), the Board holds that it is **premature** to determine whether they are consistent with the Plan since they will not become effective unless and until future Plan amendments, such as the adoption of specific geographic boundaries for hub and residential urban villages, are adopted. The Board will not take the time to now evaluate development regulations that

are dependent upon future Plan amendments that may not take place or on a Plan policy direction that may change in the future. In addition, not all contingent regulations may become effective in all areas of the city.

¶135 Another set of Contingent Regulations WSDF claims are inconsistent is Chapter 23.43 SMC, newly created by the Implementing Development Regulations Ordinance. SMC 23.43.006, .008, .010, and .012 were specifically challenged.^[12]

¶136 Although SMC 23.43.006 does not indicate as clearly as SMC 23.34.007(E) that it will not take effect until in the future, the reference to neighborhood plans adopted after January 1, 1995, in subsections (B) and (C) nonetheless puts citizens on notice that the tandem house or cottage housing developments regulations are contingent upon the neighborhood planning process. Therefore, SMC 23.43.010 and .012 in turn are contingent on future events although they do not indicate so on their face.

¶137 As for the Residential Small Lot (**RSL**) Zone of subsection (A) of SMC 23.43.006, nothing on its face indicates that this regulation is contingent upon future action. Furthermore, SMC 23.43.008(D)(c), which contains specific development standards for one dwelling unit lots, only indicates that setback requirements may change following the adoption of neighborhood planning -- it does not address the RSL Zone itself.

¶138 However, pursuant to SMC 23.34.010, areas zoned single family or RSL are contingent on future neighborhood planning and the establishment of adopted urban village boundaries. Therefore, since SMC 23.43.006(A) is an RSL regulation, it is also contingent on future Plan amendments.

¶139 A third section of the Implementing Development Regulations Ordinance cited by WSDF as being a Contingent Regulation that is inconsistent with the Plan is SMC 23.47.004, Chart A. Entitled, "Commercial Uses," Chart A lists a series of uses in the NC1, NC2, NC3, C1 and C2 zones and generally indicates whether the specific use is permitted or prohibited.^[13] WSDF has not carried its burden of showing how this chart either is inconsistent with the Plan or otherwise violates the GMA.

¶140 As indicated earlier, SMC 23.47.009 must also be examined to determine whether it is a contingent regulation. Because subsection (C) refers to City Council action after January 1, 1995, and because it also refers to urban villages where the boundary has actually been established, it is partially a contingent regulation. Application of the density limits inside urban village commercial areas is contingent in urban villages where precise boundaries are unknown. In those locations it is too early for the Board to determine whether the regulation complies with the Act. For urban villages where precise boundaries have been established, the density regulations cannot take place until the Plan itself is in compliance with the Act (*see* discussion of urban village commercial areas above).

¶141 The Board will also address a legitimate concern raised by WSDP. WSDP fears that if the Board permits the City to proceed with its delayed implementation process as specified in the Contingent Regulations, potential petitioners to the Board will never be able to challenge those regulations once they become effective, since the sixty-day statute of limitations from the date of publication of the notice of adoption of those regulations will long since have passed. The Board assumes that a government adopting a delayed implementation process, like Seattle with its Contingent Regulations, will act in good faith to review its regulations to ensure that they indeed are consistent with any comprehensive plan amendments. If an inconsistency is discovered in the regulations, it will be corrected at the time the comprehensive plan amendment is adopted.

¶142 The Board holds that when a city or county clearly delays the effectiveness of an adopted implementing development regulation until the occurrence of a specified amendment to a comprehensive plan, potential petitioners will have two opportunities to challenge the regulations in question. The first period will be within sixty days of publication of notice of adoption of the development regulation itself. Although the Board likely may elect, as in this case, to defer judgment until the regulation becomes effective, the Board will make such a determination on a case-by-case basis. Accordingly, in instances of clear violations, the Board might conclude that a deferred implementing regulation does not comply with the Act even though it has not yet taken effect.

¶143 The second opportunity for a petitioner to challenge a deferred regulation that, although adopted, does not take effect until sometime later, is sixty days from the date of publication of the notice of adoption of the comprehensive plan amendment. At that point a petitioner can again challenge the now-effective development regulations for failing to be consistent with the comprehensive plan.

¶144 The Board rejects the City's suggestion that if a jurisdiction amends its comprehensive plan and, as a result, the implementing development regulations are inconsistent with it, a party could at any time file a petition for "failure to act" to make the development regulations consistent. If the Board were to adopt this rule as a holding, it would create an indefinite period of uncertainty contrary to the Act's short statute of limitations at RCW 36.70A.290(2) or the planning goal at RCW 36.70A.020(7) to ensure predictability. Presumably, under the City's proposal a potential petitioner could bring such a failure-to-act petition five years after adoption of the comprehensive plan amendment that created the inconsistency. Instead, the Board's holding expects governments to act in good faith to ensure consistency and requires due diligence on the part of potential petitioners to verify, within sixty days of the date of publication of the notice of plan amendment, that the implementing regulations and the comprehensive plan itself are indeed consistent.

¶145 In addition, the Board reiterates (*see WSDF I*, at 50-51, 66, 69, 79-80) the importance for the City to amend its Plan when it adopts precise boundaries of urban villages upon completion of the neighborhood planning process and when it concludes its capital facilities and transportation analysis for urban centers and urban villages required by the Act. Were the City not to amend its Plan, a reader of that document -- the controlling planning document under the GMA (*see RCW 36.70A.120*) -- would never know, for instance, that the preliminary urban village designations had subsequently been amended and precise boundaries actually established.

¶146 **Conclusion No. 2(B)**

¶147 Seattle Ordinance No. 117434, the Land Use Map Ordinance, codified in Chapter 23.32 SMC, does not comply with the Act since portions of it are inconsistent with the City's Comprehensive Plan Future Land Use Map. The Map Ordinance designates "urban village commercial areas" inside urban villages in areas where the City has yet to establish specific urban village boundaries. In addition, because of the Board's holding regarding urban village commercial area regulations within Ordinance 430, the Map Ordinance does not comply with the Act even for those urban villages where precise boundaries are currently known. The City cannot adopt new regulations that attempt to implement the Plan's urban village concept, such as Ordinance 430, by regulating commercial areas inside urban centers and villages (whether adopted or unadopted) until it has completed its capital facilities and transportation analysis for those areas as required by the Board in *WSDF I*.

¶148 Similarly, those portions of Seattle Ordinance No. 117430, the Implementing Development Regulations Ordinance, at SMC 23.47.002, .009 and .010 that regulate urban village commercial areas inside those urban villages that do not have established final boundaries are not consistent with the Plan and therefore do not comply with the Act. Furthermore, to the extent that these provisions currently regulate urban village commercial areas (whether final adoption of precise boundaries has occurred or not), they do not comply with the Act because the capital facilities and transportation element analysis required in *WSDF I* to make the Plan comply with the Act has not yet been found in compliance.

¶149 The "contingent" regulations contained in Ordinance 117430 at Chapter 23.34 SMC will not take effect unless and until the Plan has been amended sometime in the future. Therefore, it is premature to determine whether these provisions comply with the Act. However, if and when the Plan is amended in a manner that makes these "contingent" regulations effective, potential petitioners will have sixty days from the date of publication of the notice of adoption of the Plan amendment to file a petition for review with the Board challenging the now-effective (formerly contingent) regulation as not

complying with the GMA.

¶150 Those portions of Ordinance 117430 codified at SMC 23.43.006, .008, .010 and .012 are also contingent on future Plan amendments. Therefore, appeals of those provisions at this time are also premature and must await such Plan amendment.

¶151 Finally, WSDF has not shown how Chart A to SMC 43.47.004 violates the Act.

¶152 **B. LEGAL ISSUE NO. 3**

¶153 *Are Ordinance No. 117434's adoption of residential small-lot classifications, and adoption of general rezone criteria and criteria allowing rezoning of existing single-family areas (to be codified at SMC 23.34.008 - 23.34.010) in compliance with RCW 36.70A.020(4), and consistent with the Seattle Comprehensive Plan, specifically Land Use Element Goals G1, G2, G40, G42, G46 and Land Use Element Policies L50, L67, L69, L73, and L83, as required by RCW 36.70A.040(2) and (3)?*

¶154 Parties' Positions

¶155 WSDF's Position

¶156 WSDF contends that the Plan appropriately contains goals and policies to protect existing single-family areas of the city. However, WSDF claims that that portion of the Implementing Development Regulations Ordinance codified at SMC 23.34.008 - .010 “undercuts” the Plan’s protection of single-family areas by permitting cottage, tandem, and townhouse development “which is essentially multi-family in nature.” WSDF’s Opening Brief, at 20. In addition, WSDF alleges that SMC 23.34.010(B) allows rezones from single-family zones to multi-family zones. Finally, WSDF maintains that the Implementing Development Regulations Ordinance violates RCW 36.70A.020(4)’s requirement for the “preservation of existing housing stock” since:

¶157... regulations which allow rezones from single-family to various forms of multi-family development do not comply with this goal, since they depend upon demolition of existing (often affordable) single-family houses in favor of new multi-family development. WSDF’s Opening Brief, at 21.

¶158 City's Position

¶159 The City replies that WSDF is simply “repackaging” an argument that the Board previously disposed of in *WSDF I*. Furthermore, the City argues that RCW 36.70A.020(4) is not limited to single-family housing and that if it constitutes a prohibition on the demolition of housing, then it applies to all forms of housing. City’s Brief, at 16. The City

contends that the legislature did not intend to prohibit development that might first involve demolition of existing structures, since such an interpretation of the Act would amount to a development moratorium in a developed urban area like Seattle.

¶160 Discussion

¶161 The Act's fourth planning goal at RCW 36.70A.020(4) provides:

¶162 **Housing.** Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

¶163 First, as previously indicated, Chapter 23.34 SMC contains "contingent" development regulations that will not become effective until specific boundaries for urban villages have been established in the Plan. Therefore, it is premature to challenge these provisions at this time.

¶164 Second, the Board agrees with the City's position. Surely the legislature did not intend to prohibit any redevelopment of existing housing stock that may or may not involve demolition of existing structures. The Board refuses to read the last clause of RCW 36.70A.020(4) in such a manner and notes that the crucial verb is "encourage" rather than "mandate" or "require."¹⁴ Accordingly, the Board holds that WSDf has not met its burden of proof to show that the challenged provisions of the Implementing Development Regulations Ordinance do not comply with the GMA.

¶165 Similarly, the Board rejects WSDf's arguments that the development regulation provisions in question violate the Plan goals and policies quoted below.

¶166 Land Use Element Goal G1 of the Plan provides:

¶167 **G1** Maintain and enhance Seattle's character. Seattle's character includes large single-family areas of detached houses both inside and outside of villages, many thriving multifamily areas, neighborhood commercial areas, industrial areas, major institutions and a densely developed downtown with surrounding high density neighborhoods. Plan, at 5.

¶168 Land Use Element Goal G2 of the Plan provides:

¶169 **G2** Respect the city's human scale, history, aesthetics, natural environment, and sense of community identity. Plan, at 5.

¶170 Land Use Element Goal G40 of the Plan provides:

¶171G40Maintain existing residential neighborhoods and create new residential neighborhoods to accommodate the city's existing and future housing needs.Plan, at 32.

¶172Land Use Element Goal G42 of the Plan provides:

¶173G42Maintain the character of areas that are predominantly developed with single-family structures, including the use, development and density characteristics of existing single-family areas.Plan, at 32.

¶174Land Use Element Goal G46 of the Plan provides:

¶175G46Protect areas which are currently in predominantly single-family residential use in areas of the lowest intensity of development, such as environmentally critical areas.Plan, at 34.

¶176Land Use Element Policy L50 of the Plan provides:

¶177L50Single-family areas shall continue to be protected, both inside and outside of urban villages.However, through neighborhood planning, individual neighborhoods may consider ways of increasing housing opportunities in single-family areas that are brought into an urban village's boundary through the neighborhood planning process and are within easy walking distance (five minutes or five blocks whichever is less) of the designated principal commercial streets of the village, to provide additional alternatives to accommodating residential growth in multifamily and commercial areas.Such consideration shall be subject to further limitations provided in comprehensive plan policies for single-family areas, below, and in the Land Use Code.Plan, at 24.

¶178Land Use Element Policy L67 of the Plan provides:

¶179L67Distinguish between single-family and multifamily areas.Plan, at 32.

¶180Land Use Element Policy L69 of the Plan provides:

¶181L69Establish as single-family areas those areas that are predominantly in single-family residential use, and are large enough to maintain a low-density development pattern, with detached single-family dwellings establishing the predominant development character.Plan, at 32-33.

¶182Land Use Element Policy L73 of the Plan provides:

¶183L73Reflect in development standards the character of existing low-density

development in terms of scale, siting, structure orientation, and setbacks. Plan, at 33.

¶184 Land Use Element Policy L83 of the Plan provides:

¶185 L83 The small lot zone may be applied to single-family zoned property meeting Land Use Code locational criteria for a single family designation only where all of the following conditions are met:

¶186 1) the land is within an urban village boundary provided for in a neighborhood plan adopted by the City Council, and the rezoning is provided for in a neighborhood plan adopted by the City Council;

¶187 2) the area is within easy walking distance (five minutes or five blocks whichever is less) of designated principal commercial streets of an urban village;

¶188 3) the quantity of land of such rezones, on a cumulative basis, does not exceed the quantity of land shown in Land Use Appendix C; and

¶189 4) the change is made through a rezone procedure. Plan, at 33.

¶190 **Conclusion No. 3**

¶191 It is premature to ascertain whether Sections 6, 7 and 8 of City of Seattle Ordinance No. 117434 (codified at SMC 23.34.008 - .010), comply with RCW 36.70A.020(4) and are consistent with the Seattle Comprehensive Plan. Chapter 23.34 SMC contains contingent development regulations that will not become effective unless and until the Plan is amended in the future. It will be the Plan amendment process that triggers both the effectiveness of Chapter 23.34 SMC and the statute of limitations for challenging those regulations once they become effective.

¶192 Regardless of the contingent nature of some of Seattle's development regulations, the Board concludes that RCW 36.70A.020(4) does not prohibit the demolition of existing housing structures. Instead, cities and counties must balance the Act's requirements to "encourage preservation of existing housing stock" with the demand to "encourage the availability of affordable housing..." and the promotion of a "variety of residential densities and housing types..."

¶193 Similarly, the Board concludes that WSDF has not at this time shown how the challenged Implementing Development Regulations Ordinance provisions are inconsistent with the specified goals and policies of the Plan. The Act requires that the City balance the various objectives listed in RCW 36.70A.020(4). It does not mandate that single-family residences be preserved at the expense of every other housing type. Accordingly, the City

has not violated RCW 36.70A.020(4).

¶194 **C. LEGAL ISSUE NO. 4**

¶195 ***Do the development regulations contained in Ordinances Nos. 117430 and 117434 (to be codified at SMC 23.32, SMC 23.34.007.E, SMC 23.34.008 - 23.34.028, SMC 23.34.077, SMC 23.34.079, SMC 23.43.006 - .012, SMC 23.47.002.C, SMC 23.47.004 (Chart A), SMC 23.47.009.C.1, SMC 23.47.010, and SMC 23.47.023) comply with the concurrency requirements and goals in RCW 36.70A.020(12) and RCW 36.70A.070(6) (e)?***

¶196 **Parties' Positions**

¶197 **WSDF's Position**

¶198 WSDF contends that both the “urban village commercial area” and the new “floating” residential zone features of Ordinances 430 and 434 do not comply with the Act because neither meets the concurrency requirements at RCW 36.70A.020(12) and RCW 36.70A.070(6). Specifically, WSDF claims that SMC 23.34.008(E), 23.47.009(C)(1), 23.47.010(A)(3) and 23.47.023 allow “... new, dramatically increased levels of growth to occur...” within designated urban village commercial areas in areas that have only been proposed as urban villages but where final adoption cannot occur until transportation and capital facilities planning as required on remand in *WSDF I* is completed. WSDF's Opening Brief, at 15.

¶199 WSDF argues that the “floating” residential zones at SMC 23.34.007 - .028, .079, and 23.43.006 - .012 cannot meet the Act's concurrency requirements for the same reason that the urban village commercial area regulations cited above cannot. WSDF's Opening Brief, at 16. Therefore, WSDF asks the Board to hold that the new floating residential zoning designations and development regulations are “closely tied” to the Land Use Element of the Plan's fundamental urban village assumptions and that these regulations cannot assure concurrency. WSDF's Opening Brief, at 17.

¶200 Summing up, WSDF states:

¶201... In light of the City's own recognition that concurrency depends on capital facilities planning performed at the local, urban village level, the Board may properly find that the development regulations that allow growth before the City's localized capital facilities and transportation planning has been completed are not in compliance with the GMA, and should invalidate them until such time as the requisite planning has been completed. WSDF's Reply, at 25 (emphasis in original).

¶202 City's Position

¶203 Seattle maintains that WSDF is simply repeating its prior arguments that a jurisdiction cannot adopt implementing development regulations until the underlying comprehensive plan has been finally held to comply with the GMA. The City points out that it is unclear whether WSDF considers final approval from the Board (at the remand hearing in *WSDF I*, for instance) to be the requisite “final say” or whether judicial approval (at the superior, appeals or supreme court) is necessary. City’s Brief, at 18.

¶204 The City points out that WSDF has not shown that the ordinances violate the GMA, but merely claims it is too early to ascertain whether these ordinances comply with the Act until the Board has held a compliance hearing in *WSDF I* to determine whether the comprehensive plan complies.

¶205 Seattle contends that “WSDF is trying to fit a square peg into a round hole” because the adoption of urban village commercial area regulations and floating residential zones “has no application to the enforcement of the City’s transportation LOS ordinance; the ordinances are not projects, and they do not violate LOS standards.” City’s Brief, at 19. Furthermore, those same regulations do not prevent public facilities and services from being available at the time of occupancy. City’s Brief, at 20.

¶206 Discussion

¶207 RCW 36.70A.020(12) states:

¶208 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.

¶209 RCW 36.70A.070(6) provides in part that a comprehensive plan shall include:

¶210 A transportation element that implements, and is consistent with, the land use element. The transportation element shall include the following subelements:

¶211...

¶212(e) Demand-management strategies.

¶213 After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes

the level of service on a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) “concurrent with the development” shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

¶214 The transportation element described in this subsection, and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, must be consistent. (emphasis added).

¶215 Because of the Board’s prior determination above regarding the validity of the Map Ordinance and both the contingent and urban village commercial area regulations in Ordinance 430, the Board will not address this issue.

¶216 **Conclusion No. 4**

¶217 Because the Board has held that the Map Ordinance does not comply with the Act and that the urban village commercial area provisions of the Implementing Development Regulations Ordinance do not comply with the Act, the Board will not address this legal issue.

¶218 **V. ORDER**

¶219 Having reviewed and considered the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board enters the following order:

¶220

1. City of Seattle Ordinance No. 117430, the Implementing Development Regulations Ordinance, is in compliance with the requirements of the Growth Management Act, except for those provisions that regulate “urban village commercial areas” inside urban villages, whether or not the final boundaries of urban villages have been formally established in the Comprehensive Plan. Specifically, SMC 23.47.002(C) .009, .010(A)(3) and .023 are affected by this order.

- ¶221 2. City of Seattle Ordinance No. 117434, the Map Ordinance, is in compliance with the requirements of the Growth Management Act, except for those provisions that map “urban village commercial areas” inside urban villages.
- ¶222 3. Ordinances Nos. 117430 and 117434 are **remanded** to the City with instructions to bring them into compliance with the requirements of the Act and the Board’s Final Decision and Order in this case by making them consistent with the Seattle Comprehensive Plan.
- ¶223 4. Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order no later than **5:00 p.m. on December 1, 1995**. The City shall provide the Board with an original and three copies of a Statement of Compliance indicating what steps it took to comply with this Order, and serve a copy on WSDF, by **5:00 p.m. on December 7, 1995**.
- ¶224 5. Section 110 of ESHB 1724 amended RCW 36.70A.300 to authorize the growth management hearings boards to enter a “determination of invalidity.” WSDF has requested that the Board make such a determination regarding the Map and Implementing Development Regulations Ordinances. In order to do so, the Board must conclude that the continued validity of a regulation would substantially interfere with the fulfillment of the goals of the GMA. The Board **denies** WSDF’s request since it is unable to conclude, from the facts and argument before it, that the requisite substantial interference exists.

¶225 So **ORDERED** this 11th day of September, 1995.

¶226 **CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD**

¶227 M. Peter Philley, Board Member

¶228 Joseph W. Tovar, AICP, Board Member

¶229 Chris Smith Towne, Board Member

¶230 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-

^[1] Sections 801 through 806 of ESHB 1724 took effective on June 1, 1995 pursuant to Section 904.

^[2] Seattle's Comprehensive Plan is not an exhibit in this case. However, it is Exhibit 1 in WSDF I.

^[3] RCW 36.70A.030(8) defines "development regulation" as:

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

^[4] By "enactments" the Board refers to GMA required adopted documents including county-wide planning policies, urban growth areas, comprehensive plans and development regulations.

^[5] In addition, RCW 36.70A.130(1) provides that any amendments to development regulations must be consistent with and implement a comprehensive plan.

^[6] L110 states:

Limit and in some circumstances prohibit housing and/or substantial amounts of office development in general commercial areas because: 1) the auto oriented nature of the area or development renders high commuter trip generating uses less appropriate; 2) these uses potentially conflict with the preferred commercial function of an area or with the activities in adjacent areas; or 3) the available land for certain commercial activities is limited and may be displaced if uses are allowed above certain intensities.

L136 provides:

Generally retain existing density limits for residential and non-residential uses in mixed-use commercial zones in urban villages, and reduce permitted densities of residential and office use outside of urban villages and in urban villages in zones where development standards are conducive to single-occupant-vehicle use.

^[7] The Board notes a second inconsistency, one regarding the "disclaimer" language on the Future Land Use Map. That language states that the map is not intended to provide the basis for legislative decisions and that one must turn to the Plan and various implementing regulations in order to do so. Yet, when one turns to the Plan, no "urban village commercial area" policy exists *per se*; when one turns to the Implementing Development Regulation Ordinance, it refers back to "those commercially zoned properties designated on the Comprehensive Plan Future Land Use Map as commercial/mixed use areas within urban centers/villages." Ordinance 430, § 47, SMC 23.47.002(C), at 47. The preamble to RCW 36.70A.070 states that:

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

The issue of whether the Future Land Use Map complies with the GMA is not before the Board in the present case. However, because the mandatory and optional elements of a comprehensive plan (which must be internally consistent) must be consistent with the future land use map, a disclaimer on the Future Land Use Map that could be interpreted to the contrary can be given little legal effect. A map showing future land uses, although not explicitly required by the Planning Enabling Act, Chapter 36.70 RCW, might have legally contained a disclaimer such as the one on Seattle's Future Land Use Map. However, under the GMA, both a comprehensive plan and its future land use map are mandatory, directive documents that cannot be readily disclaimed away.

[8] In *WSDF I*, the Board noted that, at least in the near term, 75 percent of the City's anticipated population growth will be directed to 6 percent of the total acreage of Seattle. Eventually, this amount of population growth may be dispersed to urban centers and villages that constitute 18 percent of Seattle's land mass. *WSDF I*, at 44.

[9] At the compliance hearing in *WSDF I*, the Board will determine whether the City procedurally complied with the Board's Final Decision and Order. Since compliance requires an amendment to the Plan, the Board will not determine substantive compliance of the amendment unless and until a new petition for review is filed. See *Friends of the Law and Bear Creek Citizens for Growth Management*, CPSGMHB No. 94-3-0009 (Order Granting Dispositive Motions, November 8, 1994).

[10] Another possible approach would be to stop short of actual adoption by ordinance and instead adopt a resolution of intent to adopt the regulations at such time that the neighborhood plan or other policy enactment is adopted. This would more explicitly acknowledge that, pursuant to GMA, policy plans provide the context and direction for implementing regulations and not the reverse.

[11] The Chapter 23.34 SMC provisions in question are quoted in the Appendix to this order.

[12] The relevant provisions from Chapter 23.43 SMC are quoted in the Appendix to this order.

[13] Chart A is not reprinted in order to save space. The Board notes that the only apparent amendment to the chart created by Ordinance 430 was adding references to the NC2/R and NC3/R zones in footnote 11 of the chart.

[14] The Board is aware of 1995 amendments to the housing element requirements for comprehensive plans. Substitute Senate Bill 5567 (Chapter 377 of the 1995 Laws of Washington) became effective on July 23, 1995, almost precisely one year after the Plan was adopted and over seven months after Ordinance Nos. 430 and 434 were adopted. It amended RCW 36.70A.070(2) as follows:

(2) A housing element (~~((recognizing))~~) ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs; (b) includes a statement of goals, policies, (~~((and))~~) objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

These changes do not require the absolute preservation of all existing single-family houses and the prohibition of the demolition of such homes for future redevelopment. Instead, the 1995 amendments to the comprehensive plan requirements specifically mandate both preservation and improvement on one hand, and development on the other. This amendment therefore continues the ongoing need for local jurisdictions to reasonably balance the Act's requirements.