



On November 15, 1995, the Board received the City's "Prehearing Responsive Brief" with two attachments. Exhibit A is labeled "Proposed UGA." Exhibit B is two excerpts from the Arlington Municipal Code (the **Code**).

AFT did not file a reply brief.

On November 22, 1995, the Board held the hearing on the merits of the petition at the Board's office. Chris Smith Towne, presiding officer, appeared for the Board. Marilyn Hogarth represented AFT; Steven J. Peiffle appeared for the City. Cynthia J. LaRose, Robert H. Lewis & Associates, recorded the proceedings.

On November 30, 1995, the Board received from the City Ordinance No. 1093, adopting Arlington's Comprehensive Plan, and Title 18 of the Arlington Municipal Code, in response to the Board's request at the hearing on the merits.

## **II. RULING ON MOTION**

The Board, construing AFT's motion to supplement as limited to the written submittal of Chuck Hazelton, **admits** that document for the purpose of challenging the City's compliance with the public participation requirements of the Act.

## **III. FINDINGS OF FACT**

1. On February 4, 1993, Snohomish County (the **County**) adopted its Countywide Planning Policies (**CPPs**) pursuant to the requirements of RCW 36.70A.110. <sup>[1]</sup> The CPPs were amended on February 2, 1994 and February 15, 1995.

2. The CPPs include policies for joint County and City planning within UGAs, using interlocal agreements to establish joint planning teams and growth management coordinating committees. CPPs, at 12.

3. The 1995 amendments to the CPPs provided for a target reconciliation process:

Once the GMA comprehensive plans of jurisdictions in Snohomish county are adopted, the Snohomish County Tomorrow process will be used to review and, if necessary, adjust the population and employment growth targets. CPP, at (unnumbered) 2.

4. On June 5, 1995, the City adopted Ordinance No. 1093, "An Ordinance of the City of Arlington, Washington Adopting the 1995 City of Arlington Comprehensive Plan." The findings specified that the Plan was adopted "for purposes of the state Growth Management Act."

5. On June 28, 1995, Snohomish County adopted Amended Ordinance No. 94-125, adopting the Snohomish County Growth Management Act Comprehensive Plan. [\[2\]](#)

### Development Regulations

6. The City's State Environmental Policy Act (**SEPA**) regulations are a part of Title 18, Environmental Regulations, of the City's Code.

7. Chapter 16.08, Drainage Facilities, provides regulations to control surface water contamination, flooding and erosion through drainage plans and drainage facility maintenance.

8. Chapter 16.24, Flood Hazards, provides for consideration by the building official and planning commission of flood hazards during permit review, and requires actions to minimize flood damage.

9. Chapter 16.28, Floodplain Management, provides building standards, permit review, subdivision requirements and utility standards applicable to all special flood hazard areas.

10. Chapter 19.12.110, Wetlands and Drainage, provides regulations for wetlands and natural drainage courses.

11. Chapter 20.03.010 sets forth the purpose of Chapter 20 as assisting in the implementation of the City's Plan by regulating land uses. City Brief, Ex. B.

12. Chapter 20.21.020(3) and (5) are findings required to be made before zone district boundaries or classifications may be amended. City Brief, Ex. B.

13. The City passed Resolution No. 429, "A Resolution Regarding Critical Areas and Interim Protective Policies," on February 18, 1992. The Resolution stated that the City would rely on use of the City's existing SEPA regulations and zoning and building regulations, the Corps of Engineers' regulatory policies for wetlands, and Shoreline Management Act regulations found at Chapter 90.58 RCW. Ex. B-26.

14. Resolution No. 451, adopted April 19, 1993, provides clarification of the City's policy regarding preservation of greenbelts and buffers along Portage Creek.

15. Resolution No. 476, adopted September 6, 1994, sets forth the city's intent to acquire ownership of land rather than easements along Portage Creek, pursuant to the requirements of Chapter 19.12.110 of the City Code.

16. Resolution No. 487, adopted September 6, 1994, provides an interim policy for use of existing development, subdivision and zoning regulations for review of proposed projects. The Resolution sets forth the GMA's requirement to adopt regulations for implementation of comprehensive plans adopted under the Act, and states that the purpose of the Resolution is to "assist the City in dealing with implementation of the adopted comprehensive plan."

### Planning Area

17. The City prepared its Plan for the lands within the existing municipal boundaries, for the unincorporated portion of the City's UGA, and for areas to the northwest, north, east and southeast of the UGA boundary. The Plan's Executive Summary notes that:

The Plan addresses planning at two levels: 1) The current city limits and the land it will require for growth over the next 20 years; and 2) surrounding urban areas like Smokey Point and Island Crossing that are likely to annex to the City because of the need for urban services. Plan, at PB-1, 2; Figure LU-1, following LU-42.

18. The Smokey Point/Lakewood/South Arlington area was included in a joint UGA by the County, and identified as a Phase II Master Plan area on the City's Land Use Map. The Plan recommends that planning for that area should begin when the County completes its planning process. Plan, at PB-8.

19. The Stillaguamish Valley area was identified in the Plan as a Special Study Area by the County and the City. That designation:

"is intended to provide a forum for an ongoing planning process between the landowners, County, City of Arlington, and other governments with jurisdiction in the area. The Arlington comprehensive Plan does not include the Stillaguamish Valley within its Urban Growth Area (UGA). The Special Study Area process is intended to clarify long-term goals for the area and establish a plan for the Valley's future. Plan, at PB-1.

### Public Participation

20. In 1991, the City formed a Comprehensive Plan Committee composed of citizens from the City and surrounding area, Planning Commission members, and staff, which met regularly for two years. During that period, the City held three open houses and a public meeting. Questionnaires were used to ascertain community interests and opinions on issues. Plan, at PB-5.

21. On June 7, 1993, the Arlington comprehensive Plan Committee received a "Proposal for Arlington Public Involvement Program." Attachment to Ex. D-29.

22. In March, 1994, the City formed the Arlington Area Growth Management Coordinating Committee (GMCC), with authority to “facilitate an interjurisdictional planning process. The GMCC will advise the Planning Commissions of the City of Arlington and Snohomish County.”<sup>[3]</sup> The committee was charged with reviewing draft plans. Ex. G-10.

23. Public participation was solicited through use of newspaper articles, distribution of flyers, questionnaires, and maintenance of a mailing list. Ex. B-1; D-31; D-35; D-39; D-73; E-35.

24. Notices of workshops, open houses, and committee meetings provided general information about the topics to be considered. Ex. C-2; C-17; C-22; D-31; D-35; D-73; E-34.

#### **IV. DISCUSSION AND CONCLUSIONS**

##### **LEGAL ISSUE NO. 1**

*Whether the City fails to comply with the Planning Goals set forth in RCW 36.70A.020 (1), (2) and (8) by including within the urban growth area and adopting the land use designations indicated for the ARL-3/Island Crossing, South Arlington, and East Arlington areas?*<sup>[4]</sup>

##### **legal issue no. 4**

*Whether the Plan makes appropriate designations for agriculture resource lands where it omits lands which are currently and historically devoted to agriculture and or have prime and unique agricultural soils and have long-term significance for the production of food or other agricultural products as required in RCW 36.70A.170 (1) (a), and Planning Goals RCW 36.70A.020 (8) and defined in RCW 36.70A.030 (10) and (17)?*<sup>[5]</sup>

##### **LEGAL ISSUE NO. 7**

*Whether the proposed industrial/commercial and industrial land uses<sup>[6]</sup> for ARL-3/Island Crossing and South Arlington areas<sup>[7]</sup> are inconsistent with the designation and protection of those areas for agricultural uses or as critical areas, and inconsistent with the requirement to protect resource lands under RCW 36.70A.040 and .060 and with the City’s own Natural Features Goals, Policies and Actions as stated in the Arlington Comprehensive Plan policies*

*NFP (1), (5), (7) and (13)?*<sup>[8]</sup>

##### **LEGAL ISSUE NO. 9**

*Whether the proposed urban land use designations in the Island Crossing/ARL-3, South and East Arlington areas, <sup>[9]</sup> which are not already characterized by urban growth, are consistent with RCW 36.70A.110, which provides that territories outside of a city may be so designated only if such territories are already characterized by urban growth?*

The Board has elected to consider Issues No. 1, No. 4, No. 7 and No. 9 together; each concerns the City's actions in the same geographic areas, ARL-3/Island Crossing, Stillaguamish, and South Arlington. **Issue No. 1** alleges that the City failed to comply with the Act's planning goals at RCW 36.70A.020 in including certain lands in its the UGA and designating land uses for those lands; **Issue No. 4** challenges the City's land use designations for agricultural lands as violating the requirements of RCW 36.70A.170(1) and Planning Goal (8); **Issue No. 7** challenges land use designations on lands currently in agricultural use, alleging inconsistency with the Act's requirement for protection of resource lands at RCW 36.70A.060, as well as certain Plan policies. **Issue No. 9** also challenges the land use designations, as violating RCW 36.70A.110.

#### Parties' Positions

##### Petitioner's Position

In Issue No. 1, AFT alleges that the City's urban growth boundary (UGA), which expands its land area from 3,756 to 9,351 acres and encompasses floodplain, floodway, agricultural lands and other rural areas, constitutes sprawl, contrary to Goals 1 and 2. Further, AFT asserts that the land use designations in the Plan, placing commercial and industrial development adjacent to agricultural lands, will have the effect of eliminating natural resource-based industries. In support of its position, AFT points to the effect of the City's action on several specific areas: Island Crossing, the Stillaguamish Valley Special Study Area, and East Arlington.

In Issue No. 4, AFT charges the City with violating the Act's requirement to designate agricultural lands, specifically those lands upland of and to the south of the Stillaguamish River currently in agricultural use.

In Issue No. 7, AFT challenges the City's land use designations on lands presently in agricultural use, arguing that the Act requires a higher level of protection for such lands. AFT argues that the City, pursuant to RCW 36.70A.040 and .060, must adopt development regulations for designated agricultural lands, and has not done so.

AFT argues in Issue No. 9 that because Island Crossing is a small "pocket" of urban development surrounded by agricultural land and floodplains, because ARL/3, abutting the Stillaguamish flood plain, contains large tracts of agricultural and rural density zoning, and because East Arlington is rural in nature, these areas should not be included in a UGA.

##### Respondent's Position

In response to AFT’s position in Issues No. 1 and 7, the City characterizes AFT’s argument as concluding that inclusion of Island Crossing and South Arlington in the UGA is evidence of the City’s failure to consider and preserve agricultural lands, and that inclusion of East Arlington would compromise the integrity of its rural character. The City points to the record of consideration of the productivity of the lands in question and the service of Island Crossing by municipal utilities, notes the need for protecting the approach zones for the airport, comments that the “City has agreed to revise the [City’s] urban growth boundary to conform with Snohomish County’s UGA” (City Brief, at 5) and describes the East Arlington area as “Located in relationship to the rest of urbanized Arlington in such a way that it is appropriate for urban growth.” (City Brief, at 6.)

In Issue No. 4, the City relies on the Act’s definition of “long term commercial significance” to support its decision not to designate the lands at issue for agricultural use, rather than to make that determination based solely on the lands’ past and current use. It points specifically to proximity to population areas, possibility of more intense uses, and land values to support its contention that there were no agricultural lands of long-term commercial significance within its designated urban growth area.

The City responds to AFT’s allegations in Issue No. 9 that “Cities may fairly consider whether land is ‘located in relationship to an area with urban growth on it as to be appropriate for urban growth.’” City Brief, at 13. It asserts that the areas in question are adjacent to urban growth, are near major transportation facilities, and can be served by existing public facilities and services, or such facilities can be provided within twenty years.

## Discussion

### Legal Issue No. 1

In Issue 1, AFT’s challenge regarding the City’s compliance with the planning goals of RCW 36.70A.020 breaks down into two parts: 1) whether the *inclusion* of these specific areas within the UGA violated the statute, and 2) whether the *land use designations* for these areas violated the statute.

As for the first part, the Board concludes in Issue No. 9 below that the City has no authority when it comes to drawing the UGA boundary; the duty and authority to draw the UGA is vested solely with the County. “Each *county* that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area...” RCW 36.70A.110(1). Clearly, where the county has this sole authority, the City cannot be held accountable for how it was accomplished. This portion of Issue No. 1 is appropriate only in an action against the County, not against the City.

The second part of this challenge deals with land use designations. Since the challenges in Issues No. 7 and 9 also deal with land use designations for the same areas, our analysis here will also control the holding under that issue.

Each of the areas specified by AFT in Issue No. 1 as appropriate for designation as agricultural resource lands lies outside the City's boundaries; some of those lands lie outside the UGA boundary. City Brief, Ex. A; Plan, Figure LU-1, following LU-42.

The Board **holds that the City is not authorized by the GMA to designate lands outside its corporate boundaries, whether as agricultural resource lands or for other uses, and it therefore has no duty to do so; any actions it has taken on such lands do not constitute land use designations.** With respect to the unincorporated portions of the City's UGA, the Plan's land use "designations" constitute nothing more than a declaration of future preference or intent. Such declaration has no substantive or legal effect until such time as the land is annexed by the City. The fact that the City has not designated in its Plan certain lands outside its corporate boundaries as agriculture resource lands does not constitute a failure to comply with RCW 36.70A.170(1)(a) or RCW 36.70A.020(8).

#### Legal Issue No. 4

RCW 36.70A.170(1)(a) provides:

"... each county and city shall designate, where appropriate:

(a) 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;"

"Agricultural land" is defined at RCW 36.70A.030(2); "long-term commercial significance" is defined at RCW 36.70A.030(10).

RCW 36.70A.020, Goal 8, directs counties and cities to maintain and enhance natural resource-based industries, encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

Both the County and the City have a duty to designate resource lands pursuant to RCW 36.70A.170(1)(a). However, the County does not have the authority to regulate lands within a city's corporate limits by designating natural resource lands there. Conversely, the City does not have the authority to regulate lands outside its corporate limits by designating natural resource lands in the unincorporated portion of its UGA. Therefore, the directive to "each city and county" to designate (pursuant to RCW 36.70A.170(1)(a)) and conserve (pursuant to RCW 36.70A.060) resource lands refers to the lands within their respective jurisdictional boundaries. AFT's challenge is to the City's failure to designate lands lying outside to its boundaries.

The fact that, in its Plan for the unincorporated UGA, the City designates for non-agricultural uses lands that have historically been, or currently are, in agricultural use, does not constitute a failure to designate resource lands, within the meaning of RCW 36.70A.170. In its Plan, the City is free to declare the future land use categories that it would assign to parcels of land upon their annexation. Much of the argument presented in the City's brief sets forth its rationale for why the land in question is appropriate for inclusion within the Arlington UGA, but no action of the City presently before the Board effectuates that policy preference. Only the County can determine what land will be included within the City's UGA and only the County can designate resource lands in

unincorporated areas.

The Board need not and does not express a conclusion about the propriety of the City Plan's land use designations, or the City's alleged failure to designate resource lands, within the unincorporated portions of its UGAs; those are the County's duties. If the lands in question are appropriate for resource lands designation (and regulation), it is the County's duty to designate them. If the petitioners in this matter believe the County has erred as to that duty, their recourse is to file a petition alleging noncompliance by the County, as to either its Plan or its duty, independent of the Plan, to designate and conserve resource lands.

In the circumstance that the County acts to designate and regulate to conserve resource lands, and the City's Plan for those lands is inconsistent with the County's action, there may be grounds for a petition for review alleging noncompliance of either party with RCW 36.70A.100, at the time that such lands are proposed for annexation. If and when such a petition is filed, the Board would then weigh the facts and the respective duties of the County and the City under the Act. The Board notes that the City and the County have available a process to address and resolve such conflicts apart from adjudication before this Board. *See* Finding of Fact No. 22.

**The Board holds that the City is not authorized to make natural resource land designations outside its municipal boundaries, and it therefore has no duty to do so.**

#### Legal Issue No. 7

Because the Board has held in Issue No. 4 above that cities are not authorized to make natural resource land designations pursuant to RCW 36.70A.170 outside their boundaries, the City cannot be held to have violated RCW 36.70A.060, which requires local governments to adopt development regulations to assure the conservation of agricultural lands designated under RCW 36.70A.170.

Because the Board has held in Issue No. 1 above that cities are not authorized to apply any other land use designations to lands outside their boundaries, the Board **holds that the City cannot be held to have violated the Act when it identified proposed industrial/commercial and industrial land uses for the areas in question.**

#### Legal Issue No. 9

RCW 36.70A.110 provides that:

(1) Each *county* that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature....An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.(Emphasis added.)

It is not necessary for the Board to analyze AFT's argument under this issue because the issue

incorrectly assumes the applicability of the above quoted section of the Act. RCW 36.70A.110 establishes guidelines and duties related to the establishment of UGA boundaries, and as the statute clearly states, it is the County's duty to establish UGA boundaries. The City's role in that process is limited to a consultative one. "The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located." RCW 36.70A.110(2). The Board **holds that RCW 36.70A.110 applies solely to counties**; the City has no authority to establish its UGA, and did not do so. Petitioner's challenge under this issue fails.

### Conclusions No. 1, 4, 7, and 9

#### Legal Issue No. 1

AFT has failed to demonstrate that the City violated RCW 36.70A.020, since the City is not authorized to designate lands outside its corporate boundaries.

#### Legal Issue No. 4

AFT has failed to demonstrate that the City violated RCW 36.70A.040 and 060, since the City is not authorized to designate lands outside its corporate boundaries.

#### Legal Issue No. 7

AFT has failed to demonstrate that the City violated RCW 36.70A.020, since the City is not authorized to designate lands outside its corporate boundaries.

#### Legal Issue No. 9

AFT has failed to demonstrate that the City violated RCW 36.70A.110, since the City is not authorized to designate UGAs.

### LEGAL ISSUE NO. 2

*Whether the City has failed to adopt development regulations for the conservation and protection of resource lands and critical areas as required under RCW 36.70A.040 and .060?*

### LEGAL ISSUE NO. 10

*Whether the Plan is inconsistent with the city's own Resolution 429, as required by RCW 36.70A.060, and its inclusion by reference of the Arlington Municipal Code 20.21.020 (3) and (5); and 20.03.010 (2) and (3)?*

### Parties' Positions

#### Petitioner's Position

First, AFT argues that the City's redesignation or conversion of agricultural lands to other land uses in the Island Crossing and South Arlington areas evidences a failure to protect those lands. Second, AFT asserts that the City's Resolution No. 429 (Exhibit B-26), referencing existing sections of the City's Code, cannot serve as an interim policy to conserve agricultural lands. AFT

asks the Board to find that the City has failed to designate and plan for resource lands and critical areas within the Final Urban Growth Area (UGA), and asks the Plan be remanded until development regulations have been adopted.

As to Legal Issue No. 10, AFT states that the Plan fails to meet the consistency requirement imposed by RCW 36.70A.060 in that aspects of Resolution 429, specifically sections 20.03.010 and 20.21.020 of the Arlington Municipal Code that it incorporates by reference, conflict with the land use designations for ARL-3/Island Crossing, South Arlington, and East Arlington.

### Respondent's Position

Responding to AFT's assertions regarding Legal Issue No. 2, the City argues that, finding no agricultural lands with long-term commercial significance within the FUGA, the City had no duty to adopt protective development regulations for such lands. The City relies on Resolution 429 for wetlands protection, and notes, citing to Exhibit J-41, that "... further regulatory work is anticipated to follow soon in the implementation stage."

Responding to Legal Issue No. 10, the City argues that the Plan does not conflict with the above cited sections of the City's Code. It states that Chapter 20.21.020 deals with findings that are required to be made before a rezone can be approved, and that since the comprehensive plan will drive zoning amendments, the City will eventually make findings consistent with the statute. With regard to Chapter 20.03.010, the City argues that that section merely states the general purposes of establishing zoning districts, and that AFT fails to specify how the Code is inconsistent with it.

### Discussion

#### Legal Issue No 2

RCW 36.70A.040(3)(b) provides that:

... each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060;

RCW 36.70A.060 provides that:

(1) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170 ...

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be

adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(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.

The Board need not discuss the first of AFT's arguments relating to the City's redesignation of lands; such argument is unrelated to the stated legal issue, which is a question of City's failure to adopt the requisite regulations.

As to Petitioner's second argument, regarding the City's adoption of Resolution 429, RCW 36.70A.290(2) provides that:

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city. The date of publication for a city shall be the date *the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations*, or amendment thereto, as is required to be published... (Emphasis added.)

In *Burlington Northern*, this Board held that the above language clearly and unambiguously requires that a GMA comprehensive plan can only be adopted by ordinance. "If the notice that must be published is notice of adoption of an ordinance, then the inescapable legal conclusion is that GMA plans can only be adopted by ordinance." *Burlington Northern Railroad v. City of Auburn*, Case No. 95-3-0050 Order of Dismissal (1995), at 3.

A resolution is a declaration of preference or intent, or an acknowledgment of circumstance or fact. A resolution is not a legally binding enactment and most certainly is not a regulation. AFT has met its burden of proof of the City's failure to adopt implementing development regulations.

Although that holding in the above case was specifically in reference to the Respondent-City's adoption of an entire comprehensive plan, the Board now **holds that the stated rule equally controls the question of a City's adoption of development regulations pursuant to RCW 36.70A.060. Such regulations must be adopted by ordinance, not by resolution.**

Here, the proof of "adoption" offered by the City, Resolution 429, is clearly inadequate under the

rule just stated.

The Board further **holds that the City must adopt the regulations required by RCW 36.70A.060 by means of an ordinance.**

Legal Issue No. 10

Because Petitioner's challenge in Legal Issue No. 10 is based upon Resolution 429, such argument is mooted by the Board's holding in Issue No. 2 above. Because the Board has concluded that the Resolution does not constitute a set of development regulations, any challenge to the consistency between those regulations and the PLAN is moot.

When the City adopts the required regulations by ordinance, it must review those regulations pursuant to RCW 36.70A.060(3), and may make alterations if necessary to insure consistency with its Plan.

Conclusions No. 2 and 10

Petitioner has met its burden of proof of the City's failure to adopt implementing development regulations as required by RCW 36.70A.060. The City is directed to adopt such regulations by ordinance to protect lands designated pursuant to RCW 36.70A.170. When it does so, it must review those regulations pursuant to RCW 36.70A.060(3), and make alterations if necessary to insure consistency with its Plan. The Board need not address Issue No. 10; the ruling in Issue No. 2 has rendered it moot.

LEGAL ISSUE NO. 3

*Where the Plan identifies for industrial use an area designated as an aquifer recharge area, is the Plan inconsistent with the requirements of RCW 36.70A.070(1) which require the protection of the quality and quantity of groundwater used for public water supplies?*

Parties' Positions

Petitioner's Position

AFT asserts that the City's designation of the Arlington Airport and surrounding areas, overlying an aquifer recharge area, fails to protect the aquifer; it asks that the Board remand the Plan and direct the City to assure that industrial development does not threaten that area.

Respondent's Position

The City argues that the Plan includes policies which demonstrate compliance with the requirement to protect aquifer recharge areas, at NFP8, NFP9, NFP10 and NFP13. In addition, the Plan directs the City to replace its interim critical areas ordinance with final regulations, NFA1 and 3, and to undertake planning with the County to meet environmental concerns (NFA4.) The City observes that AFT appears to argue that no development can occur in the location in

question. The City believes that “cities are free to allow development in critical areas so long as the City plans to mitigate adverse impacts from development,” and points to Plan provisions to accomplish this (NFP10 and 13, and NFA1.)

### Discussion

RCW 36.70A.070 directs that:

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(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.

In *Gig Harbor, et al., v. Pierce County*, CPSGMHB Case No. 95-3-0016 (1995), at 27, the Board held that:

... 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.”

In *Aagaard, et al., v. Bothell*, CPSGMHB Case No. 94-3-0011 (1995), at 9, the Board described the GMA’s sequence of planning and regulation:

... critical area and natural resource land designations and development regulation must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan. While those regulations are subsequently to be made consistent with the plan, rather than vice-versa, it must be remembered that they continue in force and effect unless and until modified. For example, simply because the land use element of a comprehensive plan identifies a particular area as appropriate for commercial development does not eliminate whatever procedures or protections the city has previously determined apply to a wetland that may exist in the vicinity.

The Board **holds that its rulings in *Gig Harbor* and *Aagaard* apply to the City’s actions.** AFT has not met its burden to demonstrate that the application of a specific land use designation to an area designated as an aquifer violates the requirements of RCW 36.70A.070(1).

### Conclusion No. 3

AFT has not met its burden to show that the City violated RCW 36.70A.070(1).

### legal issue no. 5

*Whether the Plan violates RCW 36.70A.110 and .160 by failing to identify adequate open space corridors within and between urban growth areas that shall include lands useful for recreation, wildlife habitat, trails and connection of critical areas as defined in RCW 36.70A.030?*

### Parties' Positions

#### Petitioner's Position

AFT states that the Arlington/Smokey Point/Marysville FUGA extends 13 miles north to south, with no significant land for open spaces, contrary to the requirements of the Act. Further, it alleges that the UGA encompasses salmonid habitats where the Plan imposes industrial uses. AFT charges that the Plan provides greenbelts and open spaces primarily where the land is unusable for other reasons. Additionally, AFT asserts that floodplains and agricultural lands in and abutting the UGA "could be better protected..." Finally, AFT believes that certain of the Plan's land use designations would compromise wildlife habitat and other areas that meet the definition of critical areas.

#### Respondent's Position

The City argues that counties alone have the authority to designate UGAs, including greenbelt and open space areas; thus, the City cannot be found to have violated RCW 36.70A.110. It states that the City's sole duty under section .160, which it has met, is to identify open space corridors, directing the Board's attention to exhibits within the Plan.

### Discussion

RCW 36.70A.110 directs counties planning under the Act to designate one or more urban growth areas to accommodate the twenty years' growth expected to occur, and in subsection (2) directs that "[E]ach urban growth area shall permit urban densities and shall include greenbelt and open space areas."

RCW 36.70A.160 provides that:

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. ...

RCW 36.70A.030 defines critical areas at subsection (5), geologically hazardous areas at (9) and

wetlands at (17). The Act does not define “open space,” “recreation,” “trails” or “wildlife habitat.” In *Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010 (1994), the Board examined RCW 36.70A.110(2), specifically the requirement that each county “... include greenbelt and open space areas” when it designates an urban growth area. There, we found the County to be in violation of this provision, in that no documents were found in the record that referred to greenbelts and open space areas. We stated that:

...to not have any evidence in the record whatsoever of an effort to “include greenbelts and open space areas” or even to define the terms cannot be tolerated. For instance, the County could have named or mapped existing or planned parks, trails and critical areas; referenced a development regulation requiring provision of open space in development applications or other similar mechanisms. *Rural Residents*, at 39.

That holding referred to a *county’s* duty under RCW 36.70A.110(2) to “... include greenbelt and open space areas;” the Board now **holds that section .110(2) applies only to counties**; it does not impose that requirement on cities.

As to the requirement to identify open space corridors imposed by RCW 36.70A.160, the Board **holds that it applies to both counties and cities**. In considering whether the City has met the requirement of RCW 36.70A.160, the reasoning used by the Board in *Rural Residents* is applicable here. To meet that duty, it must carry out the identification clearly and conspicuously, instead of relying on areas shown on various maps within the Plan that *could be* considered to be open space corridors.

The City claims that it has complied with RCW 36.70A.160 and references certain Figures within the Plan as proof: inclusion of open space designations on the preferred land use plan (Figure LU-4), designation of future and existing parks and recreation facilities (Figure CF-2), wildlife habitat designations (Figure NF-1), and proposed trails (Figure TR-4). While these designations fit into the definition of what open space corridors shall include under RCW 36.70A.160, nowhere in the Plan does the City ever explicitly state that the above areas *are* the open space corridors that the statute requires to be identified.

Whether or not the areas the City has shown in the Plan maps cited above are appropriate as open space corridors under RCW 36.70A.160 is a separate question. Where the GMA says to “identify” such areas, it means clearly identify them. The Board holds that **the City has not met the requirement to identify open space corridors**. The City is directed to designate open space corridors so that the public will know which lands the City intends to be identified as open space, and has an opportunity to comment.

The Board observes that RCW 36.70A.160 is silent as to how identification is to be accomplished, and where that identification is to be recorded. There is no requirement to adopt an ordinance, to incorporate the identification within a jurisdiction’s comprehensive plan, or to prepare implementing development regulations for identified areas.

As to when and where open space corridors must be identified, since the corridors must be identified within and between UGAs, compliance cannot occur earlier than the County’s action to

designate Interim UGAs. Because the County must adopt final UGAs at the time it adopts its comprehensive plan under the Act, and that action had not been taken at the time that the City adopted its Plan, the City's duty to identify corridors is limited to the areas identified by the County's Interim UGAs.

Because counties can be assumed to have more detailed information about unincorporated lands, whether within or external to UGAs, they can be expected to take the lead in identifying open space corridors on those lands. Similarly, cities will have the necessary information concerning open space corridors within their boundaries, and will undertake the identification there.

In this instance, the City and the County have two mechanisms which could be used to coordinate and assure consistency of their individual identification processes. First, the interjurisdictional Growth Management Coordinating Committee was established to facilitate interjurisdictional planning. Finding of Fact 22. Second, the City has entered into an interlocal agreement with the county which defines open space; sets forth optional elements for an open space system; lists land development techniques to create open space corridors; recognizes the special value of river systems. Ex. F-44.

As to which lands must be identified, in *Aagaard*, the Board found that RCW 36.70A.160 did not require a city to designate a specific parcel as an open space corridor, holding that:

... once the UGAs are established, the Act has left the substantive planning decisions up to the local government about when, where, and how urban growth should be located and configured within a UGA. The same holds true for open spaces. The Board, when asked, will look at whether a jurisdiction has identified open spaces corridors in its planning area. ...

*Aagaard*, at 18-19.

As to the mechanism to be used for identification of corridors, because the Act is silent, the City has discretion in choosing the location. It may include it in its Plan, or use a separate enactment.

#### Conclusion No. 5

The City shall identify open space corridors within its jurisdictional boundaries, and may elect to incorporate such identification within its Plan or in another enactment.

#### LEGAL ISSUE NO. 6

*Whether the City has violated RCW 36.70A.110 by planning for population allocations for the Smokey Point area, which at the time of the adoption of the Arlington Comprehensive Plan and at the time of this appeal was neither a separate incorporated city nor was it annexed to*  
*[10]*  
*either the City of Arlington or the City of Marysville?*

#### Parties' Positions

##### Petitioners' Position

AFT challenges the City's inclusion of the Arlington/Marysville/Smokey Point Final UGA within its Plan, noting that authority and responsibility for that area is the subject of unresolved disputes between Arlington and Marysville. AFT observes that if the area becomes a part of Arlington's UGA, "... less residential designation will be needed in the planning area remaining with Arlington and the remainder of the county." AFT Prehearing Brief, at 13.

### Respondent's Position

The City states that "[b]ecause of the area's urban character, and the fact it is adjacent to the City of Arlington in an unincorporated area, it would be irresponsible, and contrary to GMA, for Arlington not to plan for the area." County Brief, at 12.

### Discussion

AFT alleges that the City has violated RCW 36.70.110. In Issue 9 above, the Board held that the authority and duties under RCW 36.70A.110, are solely the County's. The City's role in that process is limited to a consultative one. The Board reiterates its holding in that issue, and **holds that the City has no authority to establish its UGA.** Petitioner's challenge under this issue fails.

### Conclusion No. 6

Petitioner has failed to carry its burden of showing a violation on the city's part of provisions of RCW 36.70A.110 regarding UGA designation. Cities have no authority to designate UGAs under the statute; only counties have that authority.

### LEGAL ISSUE NO. 8

*Where portions of East Arlington are designated by the City as geologically hazardous areas (as defined by RCW 36.70A.030) is it inconsistent to also designate portions of this area for the residential uses indicated?*

### Parties' Positions

#### Petitioners' Position

AFT argues that the presence of geologically hazardous areas (specifically landslide and seismic) in the East Arlington Area precludes the City's designation of that area for medium density residential use.

#### Respondent's Position

The City points out that: "[t]he East Arlington area is not included within Snohomish county's designation of the Urban Growth Area. Arlington does not intend to challenge that deletion; as a result, East Arlington will be deleted from the Urban Growth Boundary." County Brief, at 12.

## Discussion

Where the County has not included an area in a city's UGA, the Board **holds that a city has no authority under the Act to plan for that area.** Where, as here, a city has planned for an area not included in its UGA, such planning activities, including land use designations, have no effect. In order to avoid confusion, when the City next undertakes amendments to its Plan, it should delete any reference to the East Arlington area in its Plan.

## Conclusion No. 8

Because the City has no authority to plan for areas outside its UGA, and the East Arlington area lies outside the UGA boundary, the issue is moot.

## Discussion

### LEGAL ISSUE NO. 11

*Whether the City may designate the Stillaguamish Valley between Interstate 5 and the present city limits as a "Special Study Area" for planning purposes since the area incorporates both resource lands and critical areas as designated in RCW 36.70A.170 and regulated by RCW 36.70A.050, .060 and .070 and violates the Arlington Comprehensive Plan's own Natural Features Goals, Policies and Actions as stated in policies NFP(1), (2), (5), (7), and (13) ?*

## Parties' Positions

### Petitioners' Position

AFT claims that the City's designation of the Stillaguamish Valley as a special study area is not allowed by the Act, since the area contains natural resource lands and critical areas, and violates the Plan, specifically the policies cited above.

### Respondent's Position

The City first notes that it is Snohomish County "that designated the area in question for special study. Arlington agreed with this designation." City Brief, at 16. Further, it asserts its right to plan for the area in conjunction with the County, while observing that it is the County that has the ultimate planning authority for the area.

## Discussion

The Stillaguamish Valley lies outside the City's UGA. Therefore, the City has no land use regulatory authority in that area, specifically, it does not have a GMA duty to comprehensively plan for the area. However, the Board **holds that nothing in the Act precludes the City from**

**participating in interjurisdictional planning for an area external to its municipal boundaries or its UGA.**

### Conclusion No. 11

AFT has not met its burden to demonstrate that the City has violated the cited provisions of the Act or provisions of its Plan.

### **LEGAL ISSUE NO. 12**

*Whether the City in the adoption of its Plan violated RCW 36.70A.020(11) and RCW 36.70A.140 by failing to establish procedures for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans and whether it failed to ensure the spirit of the procedures of public process was observed?*

### Parties' Positions

#### Petitioners' Position

AFT asserts that the Island Crossing area and surrounding floodplains were placed in the FUGA by the County after the close of the public record, thus foreclosing the Flood Control District's participation. Further, it alleges that the public participation policy had limited distribution; meeting notices failed to inform citizens of the actions under consideration; membership on advisory committees was not representative of the community's interests; and recommendations from advisory groups, as well as citizen comments were ignored.

#### Respondent's Position

The City responds as to the floodplain issues that it is the County, not the City, with authority to adopt UGAs. As to AFT's claims concerning the form and distribution of notices, membership on advisory committees, it cites to the record to refute those claims. As to membership on advisory committees, it asserts that AFT failed to demonstrate that the composition of a committee frustrated the public participation requirement.

### Discussion

RCW 36.70A.020(11), Citizen participation and coordination, provides:

Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70.140, Comprehensive plans-Ensure public participation, provides:

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

To the extent that AFT's argument is directed to actions of the County in placing lands within the UGA, the Board reiterates that its review is limited to the actions of the City, and does not encompass the drawing of UGAs.

As to the City's process for public participation, the record establishes that the City did provide for early and continuous public participation. See Findings of Fact 20 through 24.

As to AFT's assertion that the City did not widely disseminate documentation of its public participation process, the City calls the Board's attention to the fact that such a requirement did not exist until June 23, 1995, when the 1995 amendments to the GMA became effective. See RCW 36.70A.140, as amended, with new language underlined:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans ...

As to AFT's allegation that the City failed to ensure the spirit of the procedures of public process was observed, specifically its complaint that recommendations from citizen groups were ignored, the Board has previously considered that question. In *Twin Falls v. Snohomish County*, CPSGPHB Case No. 93-3-0003, Final Decision and Order (1993), at 77-8, the Board observed that:

... public participation is one of the cornerstones of the GMA and encourages local governments to consider public input ... Public participation is one of the many critical inputs that the Act recognizes as indispensable to comprehensive planning; however, the Act reserves to city and county legislative bodies the authority to "adopt" or "enact" or "designate" plans and regulations ...(citations omitted.)

The record contains evidence of the public's participation in the development of the Plan, through

a variety of processes. AFT has not shown that the City was required to disseminate its participation policies. The Board **holds that AFT has not demonstrated that the City failed to establish the procedures required by RCW 36.70A.140 or failed to be guided by the citizen participation goal at RCW 36.70A.020(11).**

### Conclusion No. 12

AFT has not met its burden to demonstrate that the City violated RCW 36.70A.020(1) and/or RCW 36.70A.140 by failing to provide for public participation.

### LEGAL ISSUE NO. 13

*Whether the Plan is inconsistent [with] the Snohomish County General Policy Plan as required in RCW 36.70A.100?* <sup>[11]</sup>

### Parties' Positions

#### Petitioners' Position

AFT alleges that land use designations in the Snohomish County General Policy Plan differ from those listed in the City's Plan. Substantively, its concerns are focused on the Smokey Point, Island Crossing and Stillaguamish Valley areas.

#### Respondent's Position

The City claims that AFT fails to identify any such inconsistencies save for those between the land use designations in the plans. The City also states that consistency between the County's CCPs and the City's Plan is demonstrated in the Plan, and that the City and County will undertake identification of inconsistencies between the two Plans. Lastly, the City points out that the alleged deficiencies cited by AFT will come into existence only if AFT prevails in another case before the Board, and until a decision is issued in that case the inconsistencies do not exist.

### Discussion

RCW 36.70A.100, Comprehensive plans, provides that:

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

The Plan describes future implementation actions for the Plan, including plan amendments, and

notes that:

The Smokey Point/Lakewood/South Arlington area requires a Phase II analysis based on input from Snohomish County, Marysville, and the City of Arlington. It has been determined that the City of Arlington cannot complete a detailed analysis of this area without input from the other jurisdictions or without Snohomish County's Phase II planning process complete. Therefore, the City of Arlington will participate in a master planning process through an interlocal. Once the joint master plan is complete, an amendment to this Comprehensive Plan will be completed 12 months from the date of its publication. Plan, at PB-1.

LUP30c, guidelines for future annexations, provides:

The City's proposed land use designations and densities for the area are consistent with the City's Comprehensive Plan and adopted plans and policies of Snohomish County. Plan, at LU-36.

LUP42 provides that the City will:

Participate in the master planning of Smokey Point area. During this subarea analysis, Arlington and Snohomish County will work together to develop a detailed plan including land use, capital facilities, and transportation requirements. This process should occur through an interlocal [sic: agreement] with the County once the County finishes its planning process. An amendment to Arlington's Comprehensive Plan in 12 months. Plan, at LU-41.

The Board **holds that the consistency requirement of RCW 36.70A.100 applies exclusively to plans adopted under the Act.** At the time that the City adopted its GMA Plan, June 5, 1995, the County had not yet adopted a plan pursuant to RCW 36.70A.040. Therefore, the requirement of RCW 36.70A.100 was not applicable to the City's Plan.

#### Conclusion No. 13

AFT has not met its burden to demonstrate that the City failed to comply with the consistency requirement of RCW 36.70A.100.

#### LEGAL ISSUE NO. 14

*Whether the Plan is consistent with the stated goals of the Growth Management Act to reduce sprawl [Goal 2], enhance resource based industries (specifically agriculture) [Goal 8], encourage economic development throughout the state [Goal 5], and protect and enhance the environment [Goal 10] as outlined in RCW 36.70A.020?*

[\[12\]](#)

## Parties' Positions

### Petitioners' Position

AFT argues that Goal 2, reduction of sprawl, is violated by a UGA spreading over five miles in either direction, and that agricultural lands and small downtown businesses will suffer from the land use designations in the Plan, contrary to Goal 5, Economic development. It asserts that the Plan is “a blueprint for sprawl,” and asks the Board to remand the Plan with instructions for the City to modify the Plan to “reflect the reduction of sprawl.”

### Respondent's Position

The City states that the Plan furthers the goal of sprawl reduction by the very fact that it calls for infilling within the UGA, which automatically reduces sprawl external to the UGA. It also points out that the mere fact that a UGA is large does not overcome a plan's presumptive validity. Finally, City claims that Petitioner has failed to specifically identify how the Plan has failed to comply with the planning goals in RCW 36.70A.020, relying instead upon unsupported rhetoric. Therefore, City urges that this issue should be deemed abandoned since it was unbriefed.

## Discussion

RCW 36.70A.020, Planning goals, provides:

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:

- ...
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
  - (5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

Because AFT did not brief that portion of Legal Issue No. 14 concerning consistency with Goal 10, it will be deemed to have been abandoned.

In *Aagaard*, in discussing a city's duty arising from RCW 36.70A.020, the Board held:

The preamble to RCW 36.70A.020 provides that the thirteen planning goals of the GMA ‘shall be used exclusively for the purpose of guiding the development of comprehensive plans ... “Actions taken by a local jurisdiction in adopting a comprehensive plan are presumed valid.”RCW 36.70A.320.The burden rests with the petitioner to show by a preponderance of the evidence that a local jurisdiction has failed to comply with the Act.. *Aagaard*, at 10.

Here, the geographic extent of the UGA and its inclusion of lands at present in agricultural use appear to be AFT’s main concern.As noted above, the drawing of the UGA is a County action and is, in fact, before the Board at present in Case No. 95-3-0068.

Petitioner has failed to adequately brief this issue.Therefore, the issue is considered abandoned.In *Alberg v. King County*, CPSGMHB Case No. 95-3-0041, the Board clearly stated its position on unbriefed issues.The burden of proof in this case is on the Petitioner.To carry that burden,

...it must show why the actions of a local government are not in compliance with the GMA. Simply raising an issue is not enough for the Board to resolve it.The Board must review the Petitioner’s rationale for its contention, and weigh that argument against the local government’s response.Without preparing a brief or legal memoranda, a petitioner cannot meet its burden.*Alberg v. King County*, CPSGMHB Case No. 95-3-0041 (1995), at 17.

Here, Petitioner has merely *addressed* this issue, not briefed it adequately.As the Board stated in *Alberg*, simply raising the issue is not sufficient.Petitioner has failed to provide an argument sufficient for the Board to analyze.

The Board **holds that AFT has failed to meet its burden of proof** to show that the City had a duty to consider planning goals (2), (5) and (8) of RCW 36.70A.020 relative to its UGA.Whether the county had such a duty and met it when drawing the UGA is being determined in the *Sky Valley* case.

#### Conclusion No. 14

AFT has not met its burden to demonstrate that the City failed to comply with the requirements of RCW 36.70A.020(2), (5) and (8).

#### LEGAL ISSUE NO. 15

*Whether the Plan land use element adequately reviews drainage, flooding and storm water runoff in the area and nearby jurisdictions and provides guidance for corrective actions to mitigate or cleanse those discharges as required in RCW 36.70A.070, including but not limited to (1), (2)(d), (3), (6), (c), (d)?*

#### Parties’ Positions

## Petitioners' Position

AFT's argument is limited to consideration of RCW 36.70A.070(1). Specifically, it asserts that "no urban development in the floodplain is acceptable." AFT Brief, at 28. It acknowledges that a portion of the City's Code deals with floodplain management, but claims the potential protection offered is not sufficient to deal with urban development in the floodplain.

## Respondent's Position

The City argues that because "there are no major areas of Arlington that drain directly into the Stillaguamish River," AFT has failed to meet its burden of demonstrating noncompliance with RCW 36.70A.070(1).

## Discussion

RCW 36.70A.070 Sets forth the mandatory elements of a comprehensive plan, including:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land ... 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.

AFT's brief on this issue was limited to the City's alleged noncompliance with the requirement found at RCW 36.70A.070(1), and did not address the further requirements of (2)(d), (3), and (6) (c) and (d). Issues, or parts thereof, not briefed are deemed to have been abandoned. *See Alberg v. King County*, Issue 14 above. Therefore, the Board will rule only on that portion of the issue that was adequately briefed.

Figure NF-2 of the Plan, the *100 Year Flood Zone and Aquifer Recharge Area*, clearly show the existence of both floodway and 100-year flood areas within the City's UGA boundary. It is the existence of such areas within the UGA that makes this statutory requirement "applicable" under RCW 36.70A.070(1). The fact that the Plan concludes that there are no major areas of Arlington that drain directly into the Stillaguamish River is immaterial. Where the provision at issue specifically references flooding, and floodway and 100-year flood areas are found within the City's planning area, the requirement is applicable. Therefore, the City must comply with the requirement cited above.

The City fails to point to any part of the record that would demonstrate that it undertook a review of drainage, flooding and storm water run-off in the area and nearby jurisdictions, or that it has provided guidance for corrective actions to mitigate or cleanse polluting discharges to the state's waters. Instead, the City merely points to numerous policies and Actions in the Plan that relate to

drainage issues. City's Brief, at 22. Clearly, these are not enough to satisfy the statutory requirements since they fail to demonstrate the necessary review of drainage, flooding and storm water run-off; neither do they constitute the required provision of guidance for water pollution mitigation. The Board **holds that the City is required to comply with RCW 36.70A.070(1), and has not done so.**

### Conclusion No. 15

Petitioner has met its burden of proof of the City's failure to comply with the requirements of RCW 36.70A.070(1). The City is hereby directed to comply with that provision.

### **V. ORDER**

Having reviewed and considered the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board orders

The City of Arlington's Plan and regulations are in compliance with the requirements of the Growth Management Act, except:

1. The City is directed to adopt by ordinance those regulations required by RCW 36.70A.060. [Issue No. 2]

2. The City is directed to identify open space corridors as required by RCW 36.70A.160, with the method of enactment left to its discretion. [Issue No. 5]

3. The City is directed to undertake a review of drainage, flooding and storm water run-off and provide guidance for corrective actions, as required by RCW 36.70A.070(1), and to incorporate that work in its Plan.

Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order no later than 4:00 p.m. on May 13, 1996.

So ordered this 13th day of February, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

(Mr. Philley did not participate in the case.)

M. Peter Philley

Board Member

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Joseph W. Tovar, AICP

Board Member

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Chris Smith Towne

Board Member

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

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[1] The Board takes official notice of the County's Countywide Planning Policies.

[2] The Board takes official notice the County's comprehensive plan, and of the Board's pending Consolidated Case No. 95-3-0068, *Sky Valley, et. al., v. Snohomish County*. From July 17, 1995 through September 14, 1995, the Board received ten petitions for review challenging the Final Urban Growth Areas, Comprehensive Plan and implementing development regulations adopted by Snohomish County, consolidated as Case No. 95-3-0068. Certain issues in Case No. 95-3-0056 are also being considered by the Board in Case No. 95-3-0068. The latter issues are identified for each such issue in this case.

[3] The Countywide Planning Policies provide that:  
Coordination of joint county and municipal planning within urban growth areas will be facilitated by the interlocal agreements establishing joint planning teams and growth management coordinating committees (GMCC) and other mutually agreed upon methods. CPP, at 12.

[4] The East Arlington area was removed from Arlington's UGA by the County. *See* County Brief, at 12.

[5] In its Brief, AFT amends Issue No. 4 by changing the RCW 36.70A.030(10) and (17) citations to (2) and (11) respectively. In the 1994 amendments to the Act, (11) was renumbered as (10.)

[6] Issue No. 7, as set forth in the Prehearing Order, challenged "the proposed industrial/commercial, industrial and residential land use" for the area. AFT's Brief, at page 14, modified the issue by deleting residential land uses.

[7] AFT and the City use designations found in Ex. A, attached to the City's Responsive Brief (**City's Brief**) as well as designations in the Plan, to describe subareas of the Plan. ARL-3 on Ex. A. is referred to in the Plan as "Island Crossing;" ARL-1 and ARL-2 as "South Arlington;" ARL-4 as "Stillaguamish Valley Special Study Area;" and ARL-8 as "East Arlington."

[8] *See also* Case No. 95-3-0068, Legal Issue No. 17.

[9] The County has removed the East Arlington area from the City's UGA.

[10] *See also* Case No. 95-3-0068, Legal Issue No. 23 and 43 (a).

[11] *See also* Case No. 95-3-0068, Legal Issue No. 42 (b) and (c).

[12] *See also* Case No. 95-3-0068, Legal Issue No. 43 (a).