

The FDO, at pages 134-35, as modified by the Corrected Order, at 14-15, provided:

1. The Plan and the Future Land Use Map are **remanded** with instructions for the County to “show its work” with regard to the amount, locations and rationale for its rural residential designations and to delete those provisions or otherwise amend the Plan to assure that any rural designations of less than 5 acres will not constitute a pattern of urban growth. The County is also instructed to show that, wherever a 5-acre lot pattern is placed next to a UGA, appropriate measures will be taken to assure that flexibility will be retained to permit the potential future expansion of the UGA. The County is further instructed to include in the Plan sufficient policy direction and parameters to assure that any future residential clustered development will constitute compact rural development rather than urban growth. The Plan is **remanded** to the County for it to identify open space corridors within and between UGAs when it amends the Future Land Use Map as required above. The Board **remands** the Utilities Element of the Plan to the County to indicate the general location, proposed location, and capacity of all existing and proposed utilities.
2. The Maltby Employment Area portion of the Plan is **remanded** with instructions for the County to delete it from the rural area, or designate it as a UGA, or otherwise amend the Plan to make it consistent with the goals and requirements of the Act and the portions of the Board’s holdings in the *Gig Harbor* and *Vashon-Maury* decisions referenced in the discussion and conclusions in this Final Decision and Order.
3. The Plan is **remanded** with instructions for the County to identify lands useful for public purposes pursuant to RCW 36.70A.150.
4. The County’s final forest land designations are **remanded** with instructions for the County to make the requisite showing of how the reduction in designated forest lands was consistent with the comprehensive Plan.
5. Plan Policy LU 8.A.4 is **remanded** with instructions for the County to amend it so that landowner intent is not the sole criteria [sic] for removal of designated forest lands.
6. Legal Issues 1 (partially), 2, 8, 9, 13, 14, 18, 19 (partially), 20, 21, 24, the second half of 27 (partially), 32, 33, 35-37, 49-51, 53, 54, 57 and 62-69 are deemed abandoned by parties. The Board will not consider these issues further and they are **dismissed with prejudice**.
7. Legal Issues No. 1 (part), 3, 4, 5, 6, 7 and 47 are moot. The Board will not consider these issues further and they are **dismissed with prejudice**.
8. Pursuant to RCW 36.70A.300(1)(b), the County is given until **5:00 p.m. on Friday, September 6, 1996**, to bring its comprehensive plan into compliance with the Board’s Final Decision and Order and the requirements of the Act.
9. The County shall file by **5:00 p.m. on Tuesday, September 17, 1996**, one original and three copies with the Board and serve a copy on each of the other parties of a statement of actions taken to comply with the Final Decision and Order. The Board will then promptly schedule a compliance hearing to determine whether the County has procedurally complied with this Order. If the Plan is amended, substantive compliance will not be determined until

and unless new petitions for review are filed within 60 days of publication of notice of adoption of a new comprehensive plan.

On August 26, 1996, the Board received “Snohomish County’s Petition for Limited Reconsideration,” in which the County requested additional time to meet the compliance deadline.

On August 30, 1996, the Board received “Response of City of Woodinville to Snohomish County’s Petition for Limited Reconsideration.”

On September 3, 1996, the Board received “Concerned Citizens for Sky Valley’s Response to Snohomish County’s Petition for Limited Reconsideration.”

On September 10, 1996, the Board received “CCSV’s Motion for Compliance Hearing.”

On September 12, 1996, the Board received “AFT’s Response and Opposition to Snohomish County’s Petition for Limited Reconsideration, and Request for a Compliance Hearing.”

On September 17, 1996, the Board received “Snohomish County’s Statement of Actions Taken to Comply and Response to Motions for Compliance Hearing” (the **County’s Statement of Actions Taken to Comply**).

On September 19, 1996, the Board entered an “Order Denying Reconsideration and Notice of Compliance Hearing and Briefing Schedule” (the **Order Denying Reconsideration and First Notice of Compliance Hearing**), which noted that the Board “must issue a finding of compliance or noncompliance within forty-five days of this notice, i.e., by Tuesday, November 5, 1996.”^[1]

On October 15, 1996, the Board received “Snohomish County’s Supplemental Reply Brief in Support of Actions Taken to Comply with Final Decision and Order” (the **County’s Supplemental Reply Brief**).

The Board conducted a Compliance Hearing regarding this matter on October 17, 1996. Present

^[2] for the Board were Joseph W. Tovar and Chris Smith Towne, presiding officer. Present representing the County were Barbara Dykes and Marya Silvernale. Present representing Agriculture for Tomorrow was Annalee Cobbett; for 1000 Friends of Snohomish County was Jane Cooper; for Concerned Citizens for Sky Valley was Steve Erdman; for Pilchuck Audubon Society was Ellen Gray; for Association of Rural Landowners was Thomas J. Ehrlichman; and representing herself was Corinne Hensley.

II.MOTIONS

The Board rules on the following motions made at the compliance hearing or in the briefs submitted.

1.The County’s Motion to Strike Portions of CCSV III’s Response Brief is **granted**.Pages 8 through 11 (Part C. 1) of CCSV III’s Response Brief), inclusive, and Exhibits 3, 4, and 5 of “CCSV III’s Response to Snohomish County’s Statement of Actions Taken to Comply” are stricken from the record.

2.Association of Rural Landowners’ Motion to Strike Portions of CCSV III’s Response Brief is **granted**.Exhibits 1, 2, 6, 7, and 8 of “CCSV III’s Response to Snohomish County’s Statement of Actions Taken to Comply” are stricken from the record.

III. FINDINGS OF FACT

1.The corrected acreage figures for designated forest lands are as follows:

Designated in IFLCP259,612 acres(not 288,797 acres)

Designated in GPP244,192 acres(not 239,800 acres)

Removed from IFLCP to GPP15,420 acres(not48,997 acres)

County’s Statement of Actions to Comply, Attachment 1, Ex. 1 of Declaration of Tom Niemann.

2.The County has prepared a matrix showing the application of its criteria for designation of forest lands to ten “major blocks of land” that were removed from the interim forest lands designation.These major blocks of land account for 11,275 acres of the 15,420 acres removed from forest lands designation.County’s Statement of Actions to Comply, Attachment 3.

3.As to the removal of the 4,145 acres that are not included in the County’s matrix, “the majority were removed due to their parcel size (criterion 1), peninsula width (criterion 2) and/or tax classification (criterion 4).”County’s Statement of Actions to Comply, Attachment 1, Ex. 1 of Declaration of Tom Niemann.

4.On October 15, 1996, the County Council passed Emergency Ordinance No. 96-081, “Adopting Interim Subdivision Controls for Certain Lands Outside Urban Growth Areas on which Residential Uses are Permitted.”Supplemental Reply Brief, Ex. 1.

Ordinance 96-081 provides:

No residential subdivision, binding site plan or short subdivision application . . . will be accepted, processed or approved which proposes to divide any land located outside an urban growth area into lots containing less than 200,000 square feet, unless the land is zoned Rural-5 Acre, Forestry & Recreation, Agriculture-10 Acre, or Forestry.These interim controls do not apply to any subdivision, short subdivision or binding site plan for which a complete application has been filed on or before the effective date of this

ordinance. These interim subdivision controls shall remain in effect for a period of six months from the effective date of this ordinance or until the effective date of Council's action in response to the Board's order on the rural density issue, whichever occurs first. *Id.*

IV. DISCUSSION

The County concedes that:

With the exception of the work done on forestry issues, the County needs additional time to complete its remand work, . . . County's Statement of Actions Taken to Comply, at 14. Therefore, with regard to items 1, 2 and 3 listed in the Order on Motions to Reconsider and Correct, it is undisputed that the County has not complied with the September 6, 1996 deadline. Thus, the County is in **noncompliance** with the FDO and the Act. The Board is cognizant of the enormity of the task, particularly with regard to remand item 1, and notes the County's stated intent to adopt a plan that complies with the FDO and the Act not later than December 2, 1996. County's Statement of Actions Taken to Comply, at 19. The argument presented by the petitioners' briefs regarding ongoing subdivision application activity gave the Board serious pause. Absent the County's adoption of interim controls relative to creation of lots in the rural area, the Board would be inclined to give serious consideration to a recommendation of sanctions and/or limited invalidity. *See* Finding of Fact 4. On balance, the Board is persuaded that the County's action forestalls, at least for the interim, the proliferation of sprawl in the rural area that very well could **substantially interfere** with the goals of the Act.

Notwithstanding the allegations to the contrary by Petitioners, the Board presumes that the County is making a good faith effort to comply with the FDO and the Act. The adoption of interim controls is persuasive evidence to that effect, as is the County's declaration that it intends to act in the next month.

Items 4 and 5 deal with forest issues. However, since item 5 requires a legislative action to comply, and the County concedes it has not taken such action, the Board finds the County is **not in compliance** with the FDO and the Act with regard to item 5.

The Board notes that the specific language of item 4 of the FDO requires the County to making a "showing of how the reduction in designated forest lands was consistent with the comprehensive Plan." Although the County did present evidence, *see* Findings of Fact 2 and 3, (text and table) illustrating how the reduction in designated forest lands was consistent with applying the criteria from the Plan for 11,275 acres, the County did not indicate how the remaining 4,145 acres of the reduction was justified. Additionally, absent a yet-to-be-adopted final comprehensive plan, i.e., one that has been amended to reflect the directions contained in items 1, 2, 3 and 5 of the FDO, the Board cannot evaluate the consistency of the reduction in designated forest lands with the Plan. RCW 36.70A.060(3). For this reason, the Board cannot find compliance with regard to item 4. Such a determination must be made in the context of the entire plan at such time as the County responds to the remands regarding rural lands, Maltby UGA, lands useful for public purposes,

identification of open space, and landowner intent (FDO items 1, 2, 3 and 5). Therefore, the Board finds the County is **not in compliance** with the FDO with regard to item 4.

RCW 36.70A.330 provides, in part:

(1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(1)(b) has expired, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.300, the board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter. A person with standing to challenge the legislation enacted in response to the board's final order may participate in the hearing along with the petitioner and the state agency, city, or county. A hearing under this subsection shall be given the highest priority of business to be conducted by the board, and a finding shall be issued within forty-five days of the filing of the motion under subsection (1) of this section with the board.

(3) If the board finds that the state agency, county, or city is not in compliance, the board shall transmit its finding to the governor. The board may recommend to the governor that the sanctions authorized by this chapter be imposed.

(4) The board shall also reconsider its final order and decide:

(a) If a determination of invalidity has been made, whether such a determination should be rescinded or modified under the standards in RCW 36.70A.300(2); or

(b) If no determination of invalidity has been made, whether one now should be made under the standards in RCW 36.70A.300(2).

The board shall schedule additional hearings as appropriate pursuant to subsections (1) and (2) of this section. (Emphasis added).

The Board holds that the County is in noncompliance with the Act and the FDO. However, at this time, the Board believes that the circumstances in the present case do not justify a determination of invalidity nor a recommendation of sanctions. The Board concludes that it is appropriate to schedule at least one additional hearing in this matter. The Board directs the parties to submit briefs according to the schedule detailed below, and to prepare to submit oral argument at the Second Compliance Hearing on the following matters:

1. Has the County taken action to comply with the GMA and the FDO?

2. Do the County's actions comply with the GMA and the FDO?

3. If the answer to 1 or 2 is no, should the Board recommend sanctions, invalidate all or a portion of the plan and any implementing development regulations, or schedule further compliance hearings?

V. NOTICE OF HEARING

The Board has determined that it is appropriate to schedule an additional hearing to determine the

County's compliance. Accordingly, it has scheduled a second compliance hearing. The second compliance hearing will be held in the Board's Seattle office at **2329 One Union Square, 601 University Street, Seattle, WA** at the following date and time:

Thursday, December 19, 1996

9:30 a.m. to 4:30 p.m.

VI. STATEMENTS OF actions taken to comply

The County shall file by **4:00 p.m. on Monday, November 18, 1996**, one original and three copies with the Board and serve a copy on each of the other parties a **Status Report**, briefly describing the actions taken to comply with the GMA and the Final Decision and Order.

The County shall file by **4:00 p.m. on Tuesday, December 3, 1996**, one original and three copies with the Board and serve a copy on each of the other parties of a **Second Statement of Actions Taken to Comply with the GMA and the Final Decision and Order**.

VII. BRIEFING SCHEDULE

Parties are directed to address the matter of whether or not the County, by December 2, 1996, has complied with the Board's Final Decision and Order and, if the answer is in the negative, whether the Board should recommend to the Governor that sanctions be imposed and/or whether the Board should invalidate all or a portion of the County's comprehensive plan and development regulations.

Petitioners shall file an original and three copies with the Board and serve a copy upon the County and Intervenors any Response to the County's Statement of Compliance by **4:00 p.m. on Thursday, December 12, 1996**. Any exhibits or declarations necessary to support Petitioners' positions shall be attached to Petitioners' Responses.

The County and Intervenors shall file an original and three copies of any Reply to Petitioners' Responses with the Board and serve a copy upon all other parties by **4:00 p.m. on Monday, December 16, 1996**. Any exhibits or declarations necessary to support the County's or Intervenors' positions shall be attached to the Reply.

So ORDERED this 5th day of November, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

[\[1\]](#) The Board misstated its obligation pursuant to RCW 36.70A.330(2). Because there was no finding of invalidity in this case, nor was there a motion filed by a county or a city, there is no duty for the Board to issue a finding of compliance or non-compliance within forty-five days, i.e., by November 5, 1996. See *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008, Finding of Compliance, at 6.

[\[2\]](#) Board member Ed McGuire, although not present at the hearing, has reviewed the record, read the briefs and the transcripts of the hearing and is participating in this Order.