

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

SKY VALLEY, et al.,)	
)	
Petitioners,)	Consolidated
)	Case No. 95-3-0068c
)	
v.)	FINAL DECISION AND ORDER
)	
SNOHOMISH COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
ASSOCIATION OF RURAL)	
LANDOWNERS, SNOHOMISH)	
COUNTY ASSOCIATION OF)	
REALTORS and SNOHOMISH)	
COUNTY FIRE PROTECTION)	
DISTRICT NO. 7,)	
)	
Intervenors.)	

TABLE OF CONTENTS

I. PROCEDURAL HISTORY.....

II. FINDINGS OF FACT....

III. DISCUSSION AND CONCLUSIONS.....

A. JURISDICTIONAL ISSUES....

Growth Management Act (GMA).

Administrative Procedure Act (APA).

Legal Issues Nos. 48, 56, 60 — Standing.....

Unbriefed and Abandoned Legal Issues Nos. 1 (part), 2, 8, 9, 13, 14, 18,
19 (part), 20, 21, 24, 27 (part), 32, 33, 35-37, 49-51, 53, 54, 57 and 61-69.....

B. PUBLIC PARTICIPATION.....

Legal Issue No. 34.....

Legal Issue No. 44.....

Legal Issue No. 55.....

C. URBAN GROWTH AREAS/RURAL AREAS ISSUES..

1. Urban Growth Areas/Rural Areas Findings of Fact

2. The Statute and Board Case Law.....

3. Specific Legal Issues..

Legal Issue No. 42 (CCSV III).....

Legal Issue No. 43 (CCSV III).....

Legal Issue No. 41.....

Legal Issue No. 23 (Pilchuck III).....

Legal Issue No. 45 (CCSV III).....

D. WOODINVILLE/MALTBY ISSUES.....

Woodinville/Maltby Findings of Fact

Legal Issues Nos. 10, 11, and 12.....

E. GOLD BAR ISSUES..

Gold Bar Findings of Fact

Legal Issues 1 (part), 3, 4, 5, 6,7, and 47

F. CAPITAL FACILITIES/OTHER PUBLIC FACILITIES ISSUES.....

Legal Issue No. 46.....

Legal Issue No. 45 (Part).....

G. FOREST LANDS ISSUES..

Forest Lands Findings Of Fact

Legal Issue No. 25.....

Legal Issue No. 26.....

Legal Issue No. 27.....

Legal Issue No. 28.....

Legal Issue No. 29.....

Legal Issue No. 31.....

H. AGRICULTURAL LANDS ISSUES

Findings of Fact.....

Legal Issues 15-17, 19 (part), 22, 23, and 30.....

Legal Issues Nos. 15, 16 and 17.....

I. OTHER CONSISTENCY ISSUES

Legal Issue 22 - Consistency.....

Legal Issue 30 - Consistency.....

J. ALL OTHER ISSUES

Legal Issue No. 40 — Implementation (CCSV III)....

Legal Issue No. 52 — Implementation (Stillaguamish).

Legal Issue No. 15 (Part) (Pilchuck III)....

Legal Issue No. 39 — Transportation Policy (CCSV).....

Legal Issue No. 38 (CCSV III)....

IV. ORDER.....

APPENDIX A: GLOSSARY OF ABBREVIATIONS.....

I. PROCEDURAL HISTORY

On September 18, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued an Order of Consolidation and Amended Notice of Hearing in the above-captioned case, hereafter collectively referred to as **Sky Valley, et al.** The Order enumerated the 10 petitions for review (**PFRs**) received by the Board challenging actions taken by Snohomish County (the **County**), specifically adoption of Final Urban Growth Area (**Final UGAs** or **Final UGAs**) boundaries; designation of natural resource lands; its comprehensive plan (the **Plan**), development regulations implementing the Plan; and set a case schedule including a prehearing conference on October 11, 1995, including:

Old No.	Old Title and Date Filed:	Short Name
95-3-0054	<i>Concerned Citizens for Sky Valley(CCSV) v. Snohomish County, filed 7/17/95</i>	CCSV II or Sky Valley
95-3-0060	<i>Woodinville v. Snohomish County, filed 7/17/95</i>	Woodinville
95-3-0061	<i>Pilchuck Audubon Society (Pilchuck or Audubon), Agriculture for Tomorrow (AFT), Pilchuck Newberg Organization (PNO), Andrea Moore, Isabel Loveluck, Stephan Thomas, and Barbara Miles v. Snohomish County, filed 9/7/95</i>	Pilchuck III
95-3-0062	<i>Concerned Citizens for Sky Valley, Corinne R. Hensley, 1000 Friends of Snohomish County, Pilchuck Audubon Society, Agriculture for Tomorrow, v. Snohomish County, filed 9/7/95</i>	CCSV III
95-3-0063	<i>Stillaguamish Flood Control District (Stillaguamish) v. Snohomish County, filed 9/12/95</i>	Stillaguamish
95-3-0064	<i>Roetcisoender Investments (Roetcisoender) v. Snohomish County, filed 9/14/95, stipulated dismissal</i>	Roetcisoender
95-3-0065	<i>Corinne R. Hensley and 1000 Friends of Snohomish County v. Snohomish County, filed 9/14/95</i>	Hensley III
95-3-0066	<i>Tulalip Tribes of Washington v. Snohomish County; filed 9/14/95; separately dismissed 9/28/95</i>	Tulalip
95-3-0067	<i>Jensen v. Snohomish County; filed 9/14/95; separately dismissed 1/9/96</i>	Jensen
95-3-0068	<i>Gerald K. Zimmerman and Karen J. Zimmerman v. Snohomish County; filed 9/14/94; separately dismissed 1/9/96</i>	Zimmerman

On September 28, 1995, the Board issued an Order Dismissing Petition and Amending Schedule, dismissing the Tulalip Tribes' petition for review in response to the Tribes' Motion for Voluntary Dismissal.

The Board issued a Prehearing Order in the consolidated case on October 31, 1995. The Order granted intervention to Association of Rural Landowners (**Rural Landowners**); Snohomish County Association of Realtors (**Realtors**); the City of Gold Bar (**Gold Bar**); Snohomish County Fire Protection District No. 7 (**Fire District**); and Corinne Hensley (**Hensley**). The Order set forth the legal issues in the matter, directed intervenors to identify the specific issues they would brief and argue, and set the motions, briefing and hearing schedule.

On December 28, 1995, the Board issued its Order on Motions to Supplement the Record and Requests for Official Notice, responding to eleven motions. On December 29, 1995, the Board issued an Order Amending Order on Motions to Supplement the Record.

On January 9, 1996, the Board issued an Order on Dispositive Motions, which: confirmed intervention to those parties listed in the Prehearing Order, granted intervention to Pacific Denkmann Company; denied AFT's Motion to amend its petition for review; granted Snohomish County Realtors' motion to withdraw from the case; granted Roetcisoender's stipulated dismissal; dismissed Jensen's and Zimmerman's petitions for review; and denied the County's motion to dismiss Stillaguamish for lack of standing.

Prior to the hearing on the merits, the Board received the following briefs and documents:

12/1/95 Prehearing Brief (**Brief**) of CCSV II

Prehearing Brief of Concerned CCSV III

City of Woodinville's Prehearing Brief with Exhibits

Prehearing Brief of Corinne Hensley and 1000 Friends of Snohomish

Prehearing Brief of AFT, Pilchuck Newberg Organization and Pilchuck

Audubon Society

12/5/95 Prehearing Brief of Stillaguamish Flood Control District

1/5/96 ARL's Prehearing Brief

Corinne Hensley's Reply to Woodinville's Prehearing Brief and Declaration of Corinne Hensley

Prehearing Brief of Intervenor City of Gold Bar

1/12/96 Official Record and Core Documents of Woodinville's Prehearing Brief

1/15/96 Reply Brief of CCSV II

City of Woodinville's Prehearing Reply Brief

Reply Brief of AFT, Pilchuck Newburg Organization

Reply Brief of Pilchuck Audubon Society on Jurisdictional and Related Issues

Consolidated Reply Brief of CCSV III and Hensley III
 Prehearing Response Brief of Intervenor City of Gold Bar

1/16/96

On January 16 and 17, 1996, the Board held the hearing on the merits of the remaining six petitions for review at the Financial Center, 1215 Fourth Avenue, Seattle. Present were the Board's three members: M. Peter Philley, Joseph W. Tovar and Chris Smith Towne, Presiding Officer. Court reporting services were provided by Cynthia LaRose, Robert H. Lewis & Associates.

The petitioners', intervenors' and respondent's representatives were:

95-3-0054	CCSV II	Steve Erdman
95-3-0060	Woodinville	Wayne Tanaka
95-3-0061	Pilchuck III	Annalee Cobbett (AFT); Laura Hitchcock (PNO)
95-3-0062	CCSV III	Steve Erdman (CCSV); David Bricklin (Pilchuck Audubon)
95-3-0063	Stillaguamish	Chuck Hazleton
95-3-0065	Hensley III	Corinne Hensley
Snohomish County		T.Ryan Durkan, Mark C. McPherson, Gordon Sively
Association of Rural Landowners		Thomas J. Ehrlichman
Realtors		Did not appear [1]
Gold Bar		Phil Olbrechts
Hensley		Corinne Hensley
Fire District		Did not appear

The following exhibits were presented by parties at the Hearing on the Merits on January 16 and 17, 1996:

Exhibit Number	County's Index	Description
No./ Purpose		
<u>Respondent Snohomish County</u>		
R-11 Ordinance	For the Record	Snohomish County Council Amended No. 95-117 - incorporating the common siting process for essential public facilities
R-111	3.2.12799	Marysville-Arlington Upland Agriculture

	(Illustrative)	Boundary Designation
R-112 Conservation	(Illustrative)	Snohomish County Interim Agriculture Plan (map/diagram also labeled Exhibit 5, County Council Motion 93-145)
R-113	(Illustrative)	Snohomish County GMA Comprehensive Plan - Future Land Use - General Policy Plan (GPP , or the Plan) (map/diagram)
R-114	(Illustrative) (map/diagram)	Snohomish County - UGA Boundary Lines
R-115	(Illustrative) (map/diagram)	Alderwood Area Comprehensive Plan Map
R-116	1.1.04089 (Illustrative)	Snohomish County Comprehensive Plan - General Policy Plan, Page E-10
R-117	(Illustrative) (map/diagram)	North Creek Comprehensive Area Plan

Petitioner Stillaguamish

P-S-1	For the Record	Map - Flood Boundary and Floodway
-------	----------------	-----------------------------------

Petitioner Woodinville

- P-W-1	(Illustrative)	Grace Urban Area Map
P-W-2	(Illustrative)	Aerial Photo

Intervenor City of Gold Bar

I-GB-1 Annexation	(Illustrative)	Gold Bar Flood Prone Areas, with Dailey highlighted (map/diagram)
----------------------	----------------	--

II. FINDINGS OF FACT

Specific findings relevant to the issue at hand are listed with the related discussion of legal issues.

III. DISCUSSION AND CONCLUSIONS

A. jurisdictional issues

Growth Management Act (GMA)

The County has challenged the authority of the Board to enter decisions with holdings that it asserts constitute substantive general rules, unless the Board has adopted such “rules” through the procedures outlined in the Administrative Procedure Act (APA), Chapter 34.05 RCW. The County’s complaint raises legitimate concerns that address the fundamental nature of the growth management hearings boards.

RCW 36.70A.280 authorizes the Board to hear petitions for review that have been brought challenging the legislative actions of cities and counties taken pursuant to the requirements of the GMA. Entitled “Matters subject to board review,” it provides in part:

(1) A growth management hearings board shall hear and determine only those petitions alleging either:

(a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

The growth management hearings boards are required to issue a final decision and order within 180 days of receipt of a petition for review. RCW 36.70A.300.

RCW 36.70A.290(4) explains that:

The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

Here, the County challenges the Board’s authority broadly to issue any substantive “general rule;” in particular, the County challenges the “bright line” rule the Board adopted concerning appropriate dwelling unit densities in rural areas. In its Final Decision and Order in *Bremerton, et al., v. Kitsap County [Bremerton]*, CPSGMHB Case No. 95-3-0039, entered on October 9, 1995, [2] the Board held:

... that, as a general rule, new 1- and 2.5-acre lots are prohibited as a residential development pattern in rural areas. *Bremerton*, at 51 (emphasis in original).

The Board further held:

Although the County may be able to have 1 du/ 2.5-acre zoning in limited areas under certain specified circumstances, the Board holds that it cannot zone the entire unincorporated area of the county outside of UGAs at such levels. *Bremerton*, at 70-71 (emphasis in original).

The *Bremerton* decision was the first of three cases involving the comprehensive plans of counties. Subsequently, the Board issued a Final Decision and Order on October 23, 1995, in *Vashon-Maury et al. v. King County [Vashon-Maury]*, CPSGMHB Case No. 95-3-0008, and on October 31, 1995, in *Gig Harbor et al. v. Pierce County [Gig Harbor]*, CPSGMHB Case No. 95-3-0016. Each of these cases also reviewed the question of appropriate rural densities permitted under the Growth Management Act.

In *Vashon-Maury*, the Board stated:

Therefore, rather than adopt a minimum rural residential lot size, the Board instead adopts as a general rule a “bright line” at 10 acres. **The Board holds that any residential pattern of 10 acre lots, or larger, is rural.** Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not present an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. *Vashon-Maury*, at 79 (emphasis in original).

In *Gig Harbor*, the Board held:

... that the County’s use of the Rural 5 land use designation does clearly constitute a *land use pattern* of lots smaller than 10 acres in size. As noted above, over 76,000 acres carry this designation and are located over widespread areas of the county. These facts do not mean that the County’s Plan, on its face, violates the Act - but simply that the *Vashon-Maury* test cited above will be applied.... *Gig Harbor*, at 55-56 (emphasis in original; footnotes omitted).

The GMA requires central Puget Sound region cities and counties to have adopted comprehensive plans on or before July 1, 1994. RCW 36.70A.040(3)(d). King County adopted its comprehensive plan on November 18, 1994 (*Vashon-Maury*, Finding of Fact No. 4, at 9); Pierce County adopted its comprehensive plan on November 29, 1994 (*Gig Harbor*, Finding of Fact No. 31, at 9); Kitsap County adopted its comprehensive plan on December 29, 1994 (*Bremerton*,

Finding of Fact No. 4, at 6). In comparison, Snohomish County did not adopt its Plan until June 28, 1995.

Before the 60-day appeals period for challenging Snohomish County's Plan had even run, the Board had already conducted its three-day hearing on the merits in the *Bremerton* case. The prehearing conference in this case was not held until October 11, 1995. By then, the Board had already issued its October 9, 1995, Final Decision and Order in *Bremerton* involving a review of Kitsap County's comprehensive plan.

One of the County's present complaints is that the Board's rulings in *Bremerton*, *Vashon-Maury* and *Gig Harbor* came out after it had spent years preparing its Plan. The Board has no influence over when jurisdictions adopted their comprehensive plans and if and when appeals of those plans were filed. The Board is required to issue its final decision and order within 180 days of receipt of a petition for review. When a jurisdiction like Snohomish County misses the GMA's mandatory deadline for adopting comprehensive plans by one year, it is bound to be affected by Board rulings entered in other comprehensive plan cases where the plans were more timely adopted.

The Board is a quasi-judicial body, as discussed at length in *Twin Falls*:

The Nature of the Growth Planning Hearings Boards

The Washington State Growth Planning Hearings Boards have determined that each board "is a quasi-judicial body created pursuant to Chapter 36.70A. RCW." WAC 242-04-020 (1). A board's interpretation of its enabling statute is accorded great deference. *See San Juan County, et al. v. Dept. of Natural Resources, et al.*, 28 Wn. App. 796, 626 P.2d 995 (1981); (quoting *Hayes v. Yount*, 87 Wn.2d 280,293, 552 P.2d 1038 (1976); *Dept. of Ecology v. Ballard Elks Lodge 827*, 84 Wn.2d 551, 556, 527 P.2d 1121 (1974)). A quasi-judicial body is one that determines "the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding." RCW 42.36.010.

The quasi-judicial designation is important when considering this Board's role and authority to resolve disputes arising under the GMA. For all intents and purposes, the Board is a specialized body (*see* RCW 36.70A.260(1)) charged with resolving a narrowly defined category of disputes. *See* RCW 36.70A.280(1). As such, the Board carries out its functions utilizing common judicial standards and methods of analyzing the challenges brought before the Board. In addition, the Board's quasi-judicial label also signals to parties that a basic court room format will likely be followed. For example, the rules of professional conduct are applicable (WAC 242-02-120(1)); *ex parte* communications with Board members are prohibited (WAC 242-02-130); all pleadings must be signed (WAC 242-02-

140); intervention and amicus status is possible pursuant to the civil rules of the superior courts and the rules of the appellate courts respectively (WAC 242-02-270 and -280); papers must be served (WAC 242-02-310); a subpoena can be issued (WAC 242-02-430); a motions practice is permitted (WAC 242-02-530); if testimony is permitted, all witnesses must be sworn (WAC 242-02-610(1)); and witnesses, if any, are subject to cross examination. These are some of the "judicial" aspects of the Board's "quasi-judicial" characterization.

However, the Board does not have to strictly adhere to traditional court room rules. For instance, the Board's presiding officer "may refer to, but shall not be bound by, the Washington rules of evidence." WAC 242-02-650(3). As another example, "[d]iscovery shall not be permitted...." WAC 242-02-410(1). For that matter, as opposed to the courts, only one of the three Board members must be an attorney. RCW 36.70A.260(1). These are examples of the "quasi" half of the Board's "quasi-judicial" designation.

Twin Falls Inc., et al., v. Snohomish County [Twin Falls], CPSGMHB Case No. 93-3-0003, Final Decision and Order, p. 49.

Because of the judicial nature of the Board, one of the unwritten purposes of the Board is to issue consistent decisions. This is particularly true given the fact that the Board has jurisdiction over more than one county. RCW 36.70A.250(1)(b) creates:

A Central Puget Sound board with jurisdictional boundaries including King, Pierce, Snohomish, and Kitsap counties;

Accordingly, the Board has jurisdiction over the four counties and all cities within them. A final decision in one case may affect all cities and counties within the central Puget Sound region.

What is commonly referred to as the Growth Management Act, initially enacted in 1990, was a landmark piece of legislation in the land use planning field. Where pre-GMA comprehensive planning had formerly been a discretionary rather than mandatory exercise where comprehensive plans were merely a non-binding "blueprint" — subservient to actual zoning regulations,^[3] — the GMA placed comprehensive planning at the forefront of land use planning by making comprehensive land use plans mandatory and requiring that zoning regulations be consistent with and implement adopted comprehensive plans. RCW 36.70A.040.

Consistency is therefore one of the hallmarks of the GMA. In addition to requiring that comprehensive plans be internally consistent (preamble to RCW 36.70A.070) and that development regulations be consistent with and implement comprehensive plans (RCW 36.70A.040), the Act requires that comprehensive plans be "externally" consistent with the

comprehensive plans of other cities and counties. RCW 36.70A.100, entitled “Comprehensive plans—Must be coordinated,” requires:

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. Emphasis added.

The only way to ensure and enforce consistency is for the Board to take action if an appeal has been filed and the Board in fact concludes that a city or county has failed to comply with the GMA. *See also Snohomish County v. Anderson*, 123 Wn.2d 151, 159, 868 P.2d 116 (1994), where the Supreme Court pointed out that permitting a local referendum to overturn county-wide planning policies (with which comprehensive plans must be consistent) would jeopardize an entire statewide growth management plan — a matter extending beyond local concerns.

As a consequence, what the Board has said in its *Bremerton*, *Vashon-Maury*, and *Gig Harbor* decisions does have precedential importance to what the Board holds in this case. It is crucial to note, however, that the Board’s holdings in these three decisions were clearly articulated as “**general rules**” derived from the GMA by applying the relevant GMA provisions to the facts of a particular case.^[4] The Board characterized the holdings as “bright lines” because they involved easily quantifiable objective standards. The fact that clear numeric standards were utilized is no different than if the Board had imposed a “narrative standard” that was less quantifiable. In either case, the Board is performing its function of determining whether the city or county before it complied with the requirements of the GMA. In order to perform this function, it is absolutely necessary for the Board to interpret the actual language of the GMA. Where the Act is unclear or vague, the necessity for interpretation is greater than where it is clear. In the latter instance, the Board must derive the meaning of the statute from the wording of the statute itself. *Rozner v. Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991).

The Board has consistently narrowly defined the limits of its subject matter jurisdiction citing to the common law rule that administrative agencies are “creatures of the legislature without inherent or common law power” and can only exercise these powers conferred either expressly or by necessary implication. *Human Rights Commission v. Cheney School Dist.* 30, 97 Wn.2d 118, 125, 641 P.2d 163 (1982) quoting *State v. Munson*, 23 Wn. App. 522, 524, 597 P.2d 440 (1970). As a result, the Board has held in *South Bellevue Limited Partnership et al. v. Bellevue and Issaquah School Dist. No. 411 [South Bellevue]*, CPSGMHB Case No. 95-3-0055, Order of Dismissal, at 4-6, that it lacks authority to determine:

- whether the United States and Washington State **Constitutions** have been violated (*Gutschmidt*, Order on Prehearing Motions, at 11-13);

- whether the **common law** has been violated, specifically:

tortious interference with contractual relations — *Twin Falls Inc. et al. v. Snohomish County*, CPSGMHB Case No. 93-3-0003, Order on Dispositive Motions, at 4-12 (June 11, 1993);

spot zoning — *Twin Falls*, Order Granting WRECO's Petition for Reconsideration and Modifying Final Decision and Order..., at 5 (October 6 1993);

indispensable party rule — *Pilchuck Newberg Organization (PNO) v. Snohomish County*, CPSGMHB Case No. 94-3-0018, Order Denying Dispositive Motions, at 16-17 (February 1, 1995); *Alberg v. King County*, CPSGMHB Case No. 95-3-0041, Final Decision and Order, at 32 (September 13, 1995);

- whether **equitable doctrines**, such as the doctrine of equitable estoppel, have been violated *Cities of Tacoma, Milton, Puyallup and Sumner v. Pierce County*, CPSGMHB Case No. 94-3-0001, Order on Dispositive Motions, at 3-4 (March 4, 1994).

- whether **statutes** other than the GMA or the State Environmental Policy Act (**SEPA**) as it relates to the GMA have been violated (*Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order, at 16 (March 1, 1993); *Gutschmidt v. Mercer Island*, CPSGMHB Case No. 92-3-0006, Final Decision and Order, at 8 (March 16, 1993); *Twin Falls*, Order on Dispositive Motions, at 10-12 (June 11, 1993)), specifically:

Chapter 4.96 RCW — *Twin Falls v. Snohomish County*, Order on Dispositive Motions, at 12;

Chapter 64.40 RCW — *Twin Falls v. Snohomish County*, Order on Dispositive Motions, at 12;

42 U.S.C. 1983 — *Twin Falls v. Snohomish County*, Order on Dispositive Motions, at 12;

Chapter 36.93 RCW — boundary review board decisions — *Sumner v. Pierce County Boundary Review Board*, CPSGMHB Case No. 94-3-0013, Order Granting Respondents' Motion to Dismiss, at 4 (December 14, 1994);

Title 56 RCW — sewer district comprehensive plans — *Hensley v Snohomish County, Cross Valley and Alderwood Water Districts*, CPSGMHB Case No. 94-3-0029, Order Granting Snohomish County’s Dispositive Motion, at 3 (February 24, 1995);

Chapter 82.02 RCW — impact fees — *Robison et al. v. City of Bainbridge Island*, CPSGMHB Case No. 94-3-0025, Order Granting BISD’s Dispositive Motion re: Jurisdiction, at 6 (February 24, 1995); and *Slatten v. Steilacoom*, CPSGMHB Case No. 94-3-0028, Order Dismissing Legal Issue No. 10, at 2 (February 24, 1995).

In marked contrast, the Board by necessary implication must interpret the GMA where it is unclear or vague in order to give it meaning and promote consistency within the region. A key example where the Board must “fill in the gap”^[5] because of the GMA’s ambiguity is the statutory scheme in RCW 36.70A.070(5) and .110.

RCW 36.70A.110(1) requires counties to designate an urban growth area or areas:

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....

RCW 36.70A.110(3) provides in part that:

... it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas.

In addition, RCW 36.70A.070 requires counties and cities to adopt comprehensive plans. Subsection (5) mandates that county comprehensive plans contain a rural element that:

... shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities. RCW 36.70A.070(5) (emphasis added).

Several significant terms are contained in the above-quoted statutes including “urban,” “urban growth,” “rural” and “rural densities.” In *Association of Rural Residents v. Kitsap County [Rural Residents]*, CPSGMHB Case No. 93-3-0010 (1994), at 42, the Board noted that although the Act does not define “urban,” its common meaning is helpful:

of, relating to, or constituting a city. *Webster's II New Riverside University Dictionary* 1270 (1988).

The Act does define “urban growth” at RCW 36.70A.030(14) as:

... growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

As noted in *Rural Residents*, the Act does not define “rural”:

Experience has shown that when a portion of the GMA is unclear, it is helpful to begin the analysis with what is more certain. First, it is certain that outside of a UGA, growth can occur only if it is not urban in nature. Thus, only "nonurban" growth can occur outside a UGA. The Act does not define "nonurban" although it does use the word. *See* RCW 36.70A.030(16) and RCW 36.70A.350(1)(g). However, the antonym of urban is "rural."^[6] Although the GMA does not define "rural," it does provide guidance as to its meaning. *Rural Residents*, at 40-41 (emphasis in original).

Specifically, that portion of RCW 36.70A.070(5) not quoted above requires the rural element of a county’s comprehensive plan to include lands:

... that are not designated for urban growth, agriculture, forest, or mineral resources.

RCW 36.70A.170 requires the designation of agriculture, forest or mineral resource lands (also referred to as natural resource lands), and RCW 36.70A.110 requires the designation of urban growth areas that, at a minimum, automatically contain each city within a county. As a result, all other lands must by the process of elimination be designated as rural lands. Because the Act does not specify what constitutes appropriate “rural densities,” the Board adopted its bright line: any density of 1 du/10 or more acres is “rural.”

The Board’s rationale for establishing a ”bright line” for appropriate rural densities is described in the relevant final decision and order with references to the applicable GMA provisions. The Board will not discuss the rationale of those holdings here. Instead, this discussion focuses on whether the Board had the authority to make holdings concerning appropriate rural densities.

It is crucial to note that the Board interpreted the Act as necessary and extracted from its implications “general” rules as opposed to absolute rules. In each case, the Board indicated how, logically, exceptions to a general rule might exist or acknowledged that they can be crafted in the

future. Furthermore, as each succeeding case unfolds, the Board has the opportunity to expand upon the meaning of the general rule and examine possible exceptions; new cases and opinions may make apparent other aspects of and exceptions to general rules the Act contemplates.

This is the nature of judicial interpretation of legislation — it, like the land use planning required by the Act, is an iterative process. The legislature has amended the GMA in all but one year since its initial adoption in 1990; the Board, being bound by the precedent of its prior decisions, is nonetheless required to constantly re-evaluate its past holdings in light of these legislative changes and additional information raised in new cases. The Board has rarely reversed itself. Nonetheless, a reversal or modification of a general rule is always a possibility, as is a new, expanded or otherwise modified exception. One of the central tenets of the adjudicative process is this case-by-case process of applying the general rule to the particular facts— whether the general rule is specified by the GMA or adopted by the Board as necessarily required or implied by the GMA.

Administrative Procedure Act (APA)

RCW 34.05.010 is the definitional section of the APA. Subsection (2) defines “agency” as follows:

"Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW. Emphasis added.

Therefore, the APA applies to the Washington State Growth Management Hearings Boards since each of the three boards is a “state board ... authorized by law to [both] make rules ... [and] to conduct adjudicative proceedings.” The Board’s rule-making function is limited to one instance, found at RCW 36.70A.270(7), which requires the joint boards to adopt rules of practice and procedure (as opposed to substantive rules) in accordance with the APA as follows:

(7) All proceedings before the board, any of its members, or a hearing examiner appointed by the board shall be conducted in accordance with such administrative rules of practice and procedure as the boards jointly prescribe. All three boards shall jointly meet to develop and adopt joint rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals. The boards shall publish such rules and arrange for the reasonable distribution of the rules. The administrative procedure act, chapter 34.05 RCW, shall govern the administrative rules of practice and procedure adopted by the boards. Emphasis added.

The Board complied with this mandate by adopting Chapter 242-02 WAC pursuant to the “rule-

making” requirements of the APA.

The Board’s judicial function in conducting adjudicative proceedings is found repeatedly in the GMA. RCW 36.70A.250(1) names the three boards “hearings” boards, thus necessarily implying their adjudicatory nature. RCW 36.70A.250(2) authorizes the Board to “... hear only matters pertaining to the cities and counties located within its jurisdictional boundaries.” RCW 36.70A.270(1) establishes a procedure for removing a board member for inefficiency, malfeasance and misfeasance in office. RCW 36.70A.270(3) places restrictions on the activities of Board members; those restrictions would be inappropriate were the members not functioning in a judicial capacity. It provides:

(3) Each board member shall not: (a) Be a candidate for or hold any other public office or trust; (b) engage in any occupation or business interfering with or inconsistent with his or her duty as a board member; and (c) for a period of one year after the termination of his or her board membership, act in a representative capacity before the board on any matter.

RCW 36.70A.270(4) provides:

(4) A majority of each board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct of its powers and duties, or transacting other official business, and may act even though one position of the board is vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

RCW 36.70A.270(5) reiterates the significance of the Board’s adjudicatory function:

(5) The board may appoint one or more hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact and, if requested by the board, to make recommendations to the board for decisions in cases before the board. Such hearing examiners must have demonstrated knowledge of land use planning and law. The boards shall specify in their joint rules of practice and procedure, as required by subsection (7) of this section, the procedure and criteria to be employed for designating hearing examiners as a presiding officer. Hearing examiners selected by a board shall meet the requirements of subsection (3) of this section. The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the board. This authorization to use hearing examiners does not waive the requirement of RCW 36.70A.300 that final orders be issued within one hundred eighty days of board receipt of a petition. Emphasis added.

RCW 36.70A.270(6) requires that:

(6) Each board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

RCW 36.70A.270(8) establishes requirements for disqualification of Board members pursuant to the same rules as for judges — a provision unnecessary if the Board served primarily in a non-judicial capacity. That subsection provides:

(8) A board member or hearing examiner is subject to disqualification for bias, prejudice, interest, or any other cause for which a judge is disqualified. The joint rules of practice of the boards shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing. Emphasis added.

The introductory phrase to RCW 36.70A.280(1) provides that a “growth management hearings board shall hear and determine only those petitions ...”

RCW 36.70A.290(1) provides:

(1) All requests for review to a growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. Emphasis added.

RCW 36.70A.290(4) provides:

(4) The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

RCW 36.70A.300^[7] requires the boards to issue final decisions within 180 days of receipt of petitions.

RCW 36.70A.320(1), entitled “Presumption of validity–Burden of proof–Plans and regulations,” provides:

(1) Except as provided in subsection (2) of this section, comprehensive plans and

development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption. In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). The board shall find compliance unless it finds by a preponderance of the evidence that the state agency, county, or city erroneously interpreted or applied this chapter.

It would be unnecessary for the legislature to create a presumption of validity and a standard of proof if the Board functioned in a simply rule-making legislative capacity.

RCW 36.70A.300(5) provides for review of a final decision of the Board by superior court. However, judicial review must be initiated within 30 days of issuance of a final decision. In contrast, a “rule” can be appealed at any time after adoption per RCW 34.05.542

The County points to the APA’s definition of “rule”^[8] to conclude that any Board decision, particularly any “bright line” holding, constitutes such a rule. The County argues that since the Board did not follow the appropriate rule-making procedures specified in the APA, the Board’s holdings are invalid.

The Board rejects the County’s argument. An overly literal interpretation of the term “rule” at RCW 34.05.030(15) might lead one to conclude that a final decision of a growth management hearings board is a rule, since it contains an “order.” However, such an interpretation is inaccurate. The County’s interpretation totally ignores the distinction between rule making (i.e., a quasi-legislative activity open to all interested persons) by an administrative agency (for example, departments of Washington State government) and adjudicative proceeding^[9] of hearings boards such as the shorelines or growth management hearings boards (i.e., quasi-judicial actions limited to the specific parties in a particular case). It is through adjudicative proceedings that the GMA evolves and is explicated through interpretation on a case-by-case basis. *See SEC v. Chenery Corporation*, 332 U.S. 194, 203 (1947).

The introductory sentence to the APA’s definitional section provides:

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise. RCW 34.05.010.

The County’s argument ignores the context of the definition of “rule” — which the Board concludes is limited to and separate from the adjudicatory provisions of the APA. *See also Simpson Tacoma Kraft Co., v. Dept. Of Ecology*, 119 Wn.2d 640, 649, 835 P.2d 1030 (1992)

where the Supreme Court acknowledged the distinction between rule-making procedures and adjudicative proceedings, [\[10\]](#) but refused to answer whether an agency can establish rules of general applicability in an adjudicative process since the Department of Ecology failed to raise the issue before the trial court.

Secondly, a final decision that contains a finding of noncompliance by itself does not contain a sanction or penalty. RCW 36.70A.340 and .345 are GMA's sanction provisions; they can be imposed only by the governor.

Thirdly, the County cites *Barry and Barry, Inc., v. Department of Motor Vehicles (DMV)*, 81 Wn.2d 155, 500 P.2d 540 (1972). The case involved DMV's clear statutory authority to adopt rules and regulations to enforce the Employment Agency Act. Of import was the Washington Supreme Court's holding that the delegation of legislative powers is justified when it can be shown:

- (1) that the legislature has provided standards or guidelines which define in general terms what is to be done and the instrumentality or an administrative body which is to accomplish it; and
- (2) that procedural safeguards exist to control arbitrary administrative action and any administrative abuse of discretionary power.... *Barry*, at 159.

Here the legislature has more than adequately established what is to be accomplished and how it is to be done (*see* the GMA regarding the hearings boards at RCW 36.70A.250-.345.) In addition, a party dissatisfied with a Board decision has the right to appeal to court, thus satisfying the procedural safeguard test of *Barry*. [\[11\]](#)

Another case cited by the County, *Factor's Pharmacy v. DSHS*, 125 Wn.2d. 488, 886 P.2d 147 (1994) involves prescription drug reimbursement schedules; it does not involve quasi-judicial actions of a state agency and therefore is not controlling.

Legal Issues Nos. 48, 56, 60 — Standing

The County has raised the issue of standing with respect to several petitioners.

Case No. 95-30062, CCSV III

- Legal Issue 48; ***Does Hensley have standing?***
- Additionally, the County raised the issue ***“Does CCSV have standing in the CCSV III petition?”*** *See* the County's Prehearing Brief at 52, footnote 3.

Case No. 95-3-00673, *Stillaguamish*

- Legal Issue 56; *Does Stillaguamish have standing to bring this issue?*

Stillaguamish was granted standing in the Order on Dispositive Motions of January 9, 1996.

Case No. 95-3-0065, *Hensley III*

- Legal Issue 60; *Does Hensley III have standing to bring its petition for review?*

Discussion

Among the requirements the Act imposes on parties filing a petition with the Board for review of a matter, is that they must have standing. The requirements to achieve standing are stated in RCW 36.70A.280(2):

A petition may be filed only by the state, a county, or city that plans under this chapter, a person who has either appeared before the county or city regarding the matter on which a review is being requested...

Under the Act, a "person" is "any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character." RCW 36.70A.280(3). Therefore, one method for a person to obtain standing is to appear before the county or city regarding the matter on which a review is being requested. This method is called "appearance standing." *See Friends of the Law v. King County [FOTL I]*, CPSGMHB No. 94-3-0003, Order on Dispositive Motions, at 8. The Board has given guidance in *FOTL I* and other cases as to what actions constitute appearance standing:

Appearance before a local legislative body can be accomplished either [1] by personally appearing at a [public] hearing or meeting at some time during the process, [2] by personally appearing and participating or testifying at a [public] hearing or meeting during the process, or [3] by submitting written comments to the local jurisdiction or its agents... *Twin Falls*, Order Partially Granting Petitioners' Motions to Supplement the Record and Order Granting County's Motion for Limited Discovery, at 6.

For an organization to have "appeared," the Board held in *FOTL I* that testifying members of an organization must identify themselves as representing or appearing on behalf of the organization, and that the organization has an interest in the matter before that organization will have achieved appearance standing. This requirement gives notice to the local government that the people before it represent more than individual interests, that they are part of a larger group.

The Board has held that failure to give such notice is fatal to an organization's standing. In *Association to Protect Anderson Creek v. City of Bremerton [Anderson Creek]*, CPSGMHB Case No. 95-3-0053, individual members of the organization testified orally before the planning commission and the city council and also wrote letters to these local government bodies. However, the individuals failed to identify themselves as acting on behalf of the Association. The Board held that individual petitioners could proceed with their appeals, but their failure to identify themselves as representatives of the Association denied the Association standing to pursue its appeal before the Board. *Anderson Creek Order on Dispositive Motions*, at 12.

The County has raised the issue of several Petitioner's standing during the course of the proceedings. Prior to the prehearing conference, the County identified standing as the first issue of consideration for each petitioner in a Statement of Legal Issues. ^[12] The issue of standing was discussed at the prehearing conference and included as legal issues in the Prehearing Order. *See Prehearing Order*, dated October 31, 1995, Legal Issues 9, 14, 36, 48, 56, 60, 65 and 69.

Following the prehearing conference, the County filed a motion to dismiss four petitions based on a lack of standing. *See Snohomish County's Dispositive Motion to Dismiss Jensen, Zimmerman, Stillaguamish Flood Control District and Roetcisoender Petitions*, filed October 20, 1996. Subsequent to that motion, Roetcisoender entered into an agreement with County to dismiss its petition. *See Stipulated Order of Dismissal of Roetcisoender Investments Petition for Review*, dated December 14, 1995. The Board later dismissed Jensen's and Zimmerman's petitions and ruled that Stillaguamish had standing to continue its petition. *See Order on Dispositive Motions*, January 9, 1996.

The only person whose standing the County addresses in its Prehearing Brief is CCSV, ^[13] and even then, only CCSV's standing with respect to issues beyond those that pertain to Gold Bar, generally any issues other than Legal Issues 1 through 9 (CCSV II's petition). The County acknowledged that CCSV has standing with respect to these "Gold Bar" issues, thus Legal Issue 9 raised by the County will be dismissed. *See County's Prehearing Brief* at 52. However, the County challenges CCSV's claim of standing outside those issues, specifically the legal issues included in the CCSV III petition. *Id* at 53.

In *CCSV III*, CCSV asserts its right to standing by pointing to a "letter dated February 3, 1995." *See CCSV III's Petition for Review*, September 7, 1995 at 4 (also *see* copy provided as Respondent's Exhibit R-37). The County argues that this letter only identifies issues related to the City of Gold Bar and thus "CCSV should not now be able to attack each and every UGA and other aspects of the [Plan] when it did not do so in the proceedings below." *See County's Prehearing Brief*, at 53.

As stated above, the Board has held that an individual may achieve “appearance standing” on behalf of an organization merely by appearing at least once in person at a hearing or by writing a single letter as long as the individual identifies that he or she is acting in a representative capacity during that appearance. *FOTL I*. This requirement describes only the minimum standard required of an organization to petition for review. This standard comports with the goals of the Act which include “encourag[ing] the involvement of citizens in the planning process.” RCW 36.70A.020 (11). In the letter to the Snohomish County Council, Mr. Erdman begins:

I am writing on behalf of Concerned Citizens For Sky Valley, a citizens group based in Gold Bar, WA. We have attempted to participate in GMA Planning at the City, County and State level since the passage of the Act. We urge the [council] to adopt ... the Regional Centers approach for the County General Policy PlanEx. R-37.

The cover page included in the County’s exhibit indicates that the County received the letter on February 3, 1995 while the public record for written material remained open. *See* Respondent’s Exhibit R-37. The opening sentence of the letter clearly identifies the author as acting on behalf of an organization. Any remaining doubt of the author’s representation is removed by Mr. Erdman’s signature as “Communications Coordinator for the Concerned Citizens For Sky Valley.” While it is true that the major part of this letter is devoted to issues summarized in the Prehearing Order Legal Issues 1 through 8, the opening paragraph indicates a concern with the broader issue of Snohomish County’s comprehensive plan and its distribution of growth.

The Board has never held, nor does the Act state, that the triggering event or action that conveys standing to a person must also describe the total scope of issues on which a person may subsequently request review. According to the Board’s holdings and the Act, the scope of the Board’s review is defined by the “detailed statement of issues” that a petitioner is required to include in its request for review. RCW 36.70A.290(1).

If the Board were to accept the County’s position that a person must comment on every issue of a plan in order to have the right to later file a petition for review challenging specific issues relating to the plan, a person would have to do more than attend. A person would have to prepare a briefing of every conceivable issue that may be of concern, before stating to the appropriate legislative body the initial fact of concern. Moreover, it would be virtually impossible to obtain appearance standing on every conceivable issue in those frequent instances when persons are given a limited amount of time to speak. Raising the requirements to achieve standing to this higher standard would create a burden on citizens far beyond what is currently included in the GMA. Such a ruling might well preclude the type of citizen involvement that is one of the cornerstones of the Act. Therefore, the Board rejects it.

Conclusion

The Board holds that the question of standing is to be interpreted liberally, that any party who appears during the GMA planning process should have the ability to request review of the resulting document or any portion of that document. **Therefore, the Board holds that CCSV has standing in the CCSV III Petition for Review based on its letter of February 3, 1995.**

Unbriefed and Abandoned Legal Issues Nos. 1 (part), 2, 8, 9, 13, 14, 18, 19 (part), 20, 21, 24, 27 (part), 32, 33, 35-37, 49-51, 53, 54, 57 and 61-69

Several legal issues have been abandoned by explicit note, both in the Petitioners' and Respondent's Prehearing Briefs. Issues abandoned by explicit note will not be considered further by the Board and will be dismissed with prejudice.

Additionally, several issues are unbriefed either because no Prehearing Brief was filed, or by omission from a filed Prehearing Brief. The Board has previously considered the question of unbriefed issues in *Twin Falls*. There the Board began its analysis by observing that the burden of proof in a case before the Board is on the petitioner. To meet that responsibility a petitioner 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.

...

Finally, the Board notes that it need not determine whether an issue was intentionally abandoned (for instance, a tactical decision or because the issue has subsequently been resolved) or abandoned through neglect. As a general rule, so long as the party was afforded ample opportunity to brief its issues, either by means of dispositive motions or hearing briefs, the Board will treat an unbriefed legal issue as abandoned; it will not be considered, and will be dismissed with prejudice. *Twin Falls, supra*, at 17-18.

Therefore, a petitioners' issues which are unbriefed will also be considered abandoned, and accordingly, will not be considered further and will be dismissed with prejudice.

In addition to the issues that were not briefed, other legal issues have received inadequate briefing. Inadequate briefing presents a challenge to the Board not found in disposing of unbriefed issues. With an unbriefed issue, there is nothing of substance to review in the documents before the Board. However, with an inadequately briefed issue, a petitioner may have

identified an issue in the brief filed, but the Board is left with determining if it has crossed the threshold of providing sufficient material to evaluate the issue. In *Robison*, the Board identified two factors that limit or preclude evaluation of a matter: 1) failure to meet a burden of proof, and 2) insufficient supporting facts and legal arguments. *Robison, et al., v. City of Bainbridge Island [Robison]*, CPSGMHB Case No. 94-03-0025 (1995), at 4-5. If a party is unable to muster a sufficient legal or factual argument to meet the standards required by the Act, or has not been able to assemble all the components necessary to meet a burden of proof, the Board can not decide in its favor. Therefore, inadequately briefed issues must be considered similar to unbriefed issues.

Issues that a respondent is attempting to assert affirmatively, e.g., petitioners' standing, are a different matter. In these matters, the burden is on the respondent to establish the matter asserted through argument to the level required. Failure to meet that burden either by omission or ineffective briefing will result in a conclusion of abandonment. **The Board therefore holds that if a respondent abandons an affirmative defense that was raised as a specific legal issue, this will result in dismissal of the issue with prejudice.**

Discussion

The following issues were abandoned in whole or in part by note in Petitioners' Prehearing Briefs:

- Legal Issue 1, Petitioner deleted references to "natural resources areas and critical areas;" *see* CCSV II's Prehearing Brief, at 1.
- Legal Issue 2, Petitioner abandoned the issue; *see* CCSV II's Prehearing Brief, at 3.
- Legal Issue 8, Petitioner abandoned the issue; *see* CCSV II's Prehearing Brief, at 14.
- Legal Issue 20, Petitioner abandoned the issue, *see* Pilchuck III's Prehearing Brief, at 1.
- Legal Issue 24, Petitioner abandoned the issue, *see* Pilchuck III's Prehearing Brief, at 1.
- Legal Issue 33, Petitioner abandoned the issue, *see* Pilchuck III's Prehearing Brief, at 1.
- Legal Issue 35, Petitioner abandoned the issue, *see* Pilchuck III's Prehearing Brief, at 1.

The following issues were abandoned by note in the Respondent's Brief:

- Legal Issue 9, Respondent abandoned the issue; *see* County's Prehearing Brief, at 52.
- Legal Issue 36, Respondent abandoned the issue; *see* County's Prehearing Brief, at 126, footnote 14.
- Legal Issue 37, Respondent abandoned the issue; *see* County's Prehearing Brief, at 126, footnote 14.

The following issues were not included in Petitioners Prehearing Briefs:

- Legal Issue 19, Pilchuck III did not brief this issue.
- Legal Issue 21, Pilchuck III did not brief this issue.
- Legal Issue 27, Pilchuck III did not brief issues related to “fail[ure] to appropriately regulate uses on properties adjacent to forest lands.”
- Legal Issue 32, Pilchuck III did not brief this issue.

No Prehearing Brief was filed for the following issues:

- Legal Issue 58 (Roetcisoender), case dismissed.
- Legal Issues 62 through 65 (Jensen), case dismissed..
- Legal Issues 66 through 69 (Zimmerman), case dismissed..

The following issues were not briefed by Respondents:

- Legal Issue 13, the County did not brief this issue.
- Legal Issue 14, the County did not brief this issue.
- Legal Issue 57, the County did not brief this issue.

The following issues were inadequately briefed by Respondents:

- Legal Issues Nos. 49, 50, 51, 53, and 54: Stillaguamish stated the applicable statutory provision and offered its conclusion that the provision was violated; it did not present argument to support that conclusion.

Conclusion

Legal Issues 1, 2, 8, 9, 13, 14, 18, 19, 20, 21, 24, the second half of 27, 32, 33, 35-37, 49-51, 53, 54, 57, 58 and 62-69 are deemed abandoned by parties. The Board will not consider these issues further and they will be dismissed with prejudice.

B. PUBLIC PARTICIPATION

Legal Issue No. 34

Did the County fail to be guided by RCW 36.70A.020(11) and violate the public participation requirement of RCW 36.70A.070(Preamble) and RCW 36.70A.140 by:

- a) *Failing to adequately publicize and seek comments on the recommendations of the Forest Advisory Committee to change the forestry classification criteria;*
- b) *Making substantial changes to the draft of Ordinance 94-125, specifically the classification and designation of forest and agricultural lands, after the close of the record;*
- c) *Closing the record approximately five months prior to making a decision;*
- d) *After the record closed, determining the final designations;*
- e) *Determining that those designations would not include certain previous included parcels; and*
- f) *Arbitrarily allowing select documents to be added to the record following the close of the period for submission of information by the general public, thereby depriving the public of reasonable opportunity to comment upon the changes?*

Legal Issue No. 44

Did the County fail to be guided by goal 11 (RCW 36.70A.020(11), and did the adopted Plan violate the public participation requirement of RCW 36.70A.140 by:

- a) *Substantially changing the Plan and Final UGA boundaries after closing public testimony and comment;*
- b) *Closing the record five months prior to making a decision;*
- c) *Releasing technical reports referenced within the Plan after the close of public testimony?*

Legal Issue No. 55

Did the County fail to be guided by the public participation goal of RCW 36.70A.020(11) and violate the public participation requirement of RCW 36.70A.070(Preamble) and RCW 36.70A.140, by closing the record approximately five months prior to making a decision, and during this time, determining that parcels which had previously received classification and designation as forest and agricultural lands would not be so designated?

Petitioners' Positions

In Legal Issues 34, [\[14\]](#), [\[15\]](#), [\[16\]](#) 44, and 55, the Petitioners allege that the County violated the Act's requirements for public participation. A summary of the alleged violations are that the County:

1. Conducted excessively lengthy deliberations after the close of the public record without soliciting additional public comment;
2. Allowed additional entries to the record and additional testimony on the Plan after

the record was closed;

3. Made substantial changes to the comprehensive plan and/or development regulations after the record had closed, without the required public comment; and
4. After the Plan was adopted, developed and released documents which support the conclusions of the Plan without an opportunity for public review and comment.

County's Position

The County responds by saying that the Act requires the County, as a government body engaged in planning, to establish procedures for public participation and that the County did adopt procedures through an ordinance. The County asserts that the appropriate question is "Did the County comply with the ordinance?" The County claims it complied with both the requirements of the Act and the ordinance, and that both the opportunity for public participation and actual public participation were more than sufficient to meet the requirements of the Act.

Discussion

The Act's citizen participation requirements are set forth as a goal at RCW 36.70A.020(11), and substantively at RCW 36.70A.140, [\[17\]](#) which provide, respectively:

Encourage the involvement of citizens in the planning process ..., and

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. (Emphasis added.)

To satisfy the requirements of these sections during the development of an initial comprehensive plan, a government body engaged in planning must establish procedures to ensure both early and continuous public participation. Of equal importance, the government body must then follow those procedures.

On April 6, 1994, the Snohomish County Council (the **Council**) adopted a Growth Management Planning Procedures and Public Participation Ordinance (the **Public Participation Ordinance**) to satisfy the Act's requirement to establish procedures. *See* County's Prehearing Brief, at 166; also *see* Respondent's Ex. R-18 (Ordinance No. 94-036 adopting SCC Chapter 32.0). The Ordinance set forth the requirements the County must meet to ensure public participation. As the County states, Petitioners do not challenge the validity of the Ordinance, and therefore the Ordinance is irrefutably valid. RCW 36.70A.320.

Briefly paraphrased, the Public Participation Ordinance required the Snohomish County Planning Commission (the **Planning Commission**) to first consider any plan or amendment by:

1. Holding at least one public hearing to consider the proposed plan or amendment;
2. Giving public notice of the hearing at least ten days before the hearing; and at the conclusion; and
3. Prepare a written recommendation to the County Council.

After receiving the Commission's recommendation, the Council was required to:

1. Hold at least one public hearing to consider proposed plan or amendment;
2. Giving public notice of the hearing at least ten days before the hearing; and
3. At the conclusion of the hearing, the Council could decide on the plan or amendment by adopting, amending and adopting, declining to adopt or remanding the plan or amendment.

SCC § 32.05.020.

In conjunction with preparation of the Plan, the County conducted a Final Environmental Impact Statement (**Final EIS**). *See* Snohomish County GMA Comprehensive Plan Final Environmental Impact Statement, CD 6. The Final EIS considered four alternatives, two of which directed population growth within the County. Alternative 1, the Regional Centers alternative, emphasized “[p]opulation, housing and employment growth . . . [in] designated centers with the southwest county absorbing a significant share of the growth [and] lower growth rates . . . occur [ing] in rural areas.” *Id.* at *i* (Fact Sheet). Alternative 2, the Diversified Centers alternative, focused “growth . . . in the unincorporated urban areas, resulting in less population growth within the cities. *Id.* These two alternatives were the focus of the Planning Commission's efforts in the development of the Draft Plan. Respondent's Ex. R-10.

The Planning Commission held eight public hearings on the Draft Plan from April, 1994 to June, 1994. *See* County's Prehearing Brief, Statement of Fact II.9, at 10. Numerous citizens, as individuals and/or as members of organizations and groups, including Petitioners, attended these hearings. In addition to attending the hearings, Petitioners also provided oral testimony at many of the hearings. *Id.* Petitioners expressed their views further in letters to the Planning Commission. *See* Respondent's Ex. R-14 C, D, F, H, and K. From the above record, it is apparent that the Commission fulfilled, even exceeded, the procedural requirements for receiving public comment on the Draft Plan as specified in § 020(1)(a) of the Public Participation Ordinance. It is also apparent that Petitioners took good advantage of the procedural opportunities to provide input to the Planning Commission.

After the close of the public hearings, the Planning Commission made its recommendation (the Draft Plan) on June 26, 1994, to the County Executive Robert J. Drewel (the **County Executive**) with instructions to convey it to the County Council. *See* County's Prehearing Brief, Statement of Fact II.13 and Respondent's Ex. R-12.

When the Council undertook consideration of the Draft Plan, it held four public hearings between December, 1994 and January, 1995. *See* County's Prehearing Brief, Statement of Fact II.18. The County Executive submitted the *Executive Recommendation on the General Policy Plan* (Recommendation) to the Council at the third public hearing on January 10, 1995. *See* Respondent's Ex. R-13. With the recommendation, the Executive included three attachments, Attachment 1: Summary of Recommendations including proposed UGA and map changes; Attachment 2: Agriculture Area Re-evaluation Position Paper; and Attachment 3: [UGA] Growth Management Forecast and Land Capacity Position Paper.

Members of both CCSV III and Pilchuck III responded by communicating their views of the Executive's Recommendation and the Draft Plan to the Council, both in oral testimony at a public hearing and in writing. *See* Respondent's Ex. R-14 M and N^[18] and Ex. R-107.^[19] Eight days after the public presentation of the Recommendation, Petitioners were able to provide specific critiques of the Recommendation and offer counterproposals in their written testimony. *Id.* This suggests that Petitioners monitored the process closely and that the County had provided sufficient notice of hearings and disseminated matters broadly. It also demonstrates that Petitioners took an active role in communicating to the Council their views on those subjects that interested them.

The Board holds that the County has complied with the requirements of the Act to establish a process by enacting an ordinance held valid to ensure public participation. The Board also holds that the County did not violate the requirements for public participation by conforming to the requirements of the ordinance with the hearings held up to January 18,

1995, and the acceptance of written testimony until February 3, 1995.

The Petitioners allege that the Council has both acted impermissibly by closing the record while it deliberated on the Plan, and exceeded the scope of legislative discretion when it made changes to the Draft Plan during these deliberations without the opportunity for additional public comment. Petitioners argue that the changes made by the Council to the Plan were substantial and thus, the Council is required to provide for additional public review and solicit additional public comment before it may adopt the Plan. *See* CCSV III Prehearing Brief at 72-3, Pilchuck III Prehearing Brief, at 26-7 and 44-5 (the later citing WAC 365-195-600(2)(a)(v)), and Stillaguamish Prehearing Brief, at 3. The Petitioners generally cite the Board's ruling in *WSDF I*.

In *WSDF I*, the Board held that:

The legislative body's discretion to make changes is contingent on two conditions :

1. That there is sufficient information and/or analysis in the record to support the Council's new choice, and
2. That the public has had a reasonable opportunity to review and comment upon the contemplated change (during the public hearings).

If the first condition does not exist, additional work is first required to support the Council's subsequent exercise of discretion. If the second condition does not exist, effective public notice and reasonable time to review and comment upon the substantial changes must be afforded to the public in order to meet the Act's requirements for "early and continuous" public participation pursuant to RCW 36.70A.140. *WSDF I*, at 76.

Thus, the Board has defined the criteria under which a local government body may exercise legislative discretion in finalizing a GMA Comprehensive Plan. If the amendments to a draft that were included in the final Plan were within the range of options discussed in the EIS, considered by the Planning Commission, and/or raised at the Council's public hearings, and were presented with sufficient detail and analysis at a adequately publicized hearing, then the public has had an opportunity to review and comment. Under these circumstances, the public participation element will be deemed to be satisfied and additional public input is not required before a legislative body may adopt a plan.

The Petitioners allege that after the Council closed the official record, the Council added additional information to the record. Specifically, CCSV III alleges that the Council accepted 256 documents into the record after the close of testimony and quotes County Council Chair Miller:

Council has determined that unless we decide to reopen the record for additional written testimony, we will not enter such additional written testimony in the hearing record. CCSV III Prehearing Brief, at 71-2, citing County Index No. 1.7.00408.

The Board does not find any support in CCSV III's brief for the exact number or subject of the additional documents received by the County after the close of the record. However, in reviewing the above quote, as cited by CCSV III, it appears that the statement is taken out of context. A review of the full text of the statement indicates that the statement was made in the context of determining the disposition of any documents received after the close of the record. *See* Pilchuck III Exhibit as County Index 1.7.00408. Prior to the above statement, Chair Miller specifically stated that any documents received after the close of the hearing record "will not go in the hearing record, and will be so marked." *Id.*

Petitioners also cite a Council General Policy Plan Deliberation agenda, April 12, 1995, as indicating that the Council heard additional testimony from a trade group after the close of the record. *See* Pilchuck III Exhibit as County Index 1.7.00578. A review of the tape transcripts shows that the purpose of this item on the agenda is for the Council to review previous testimony given while the record was open, not to hear new testimony. Respondent's Ex. R-17. From the citations given by the Petitioners, it is clear that the Council took affirmative steps to exclude impermissible additional testimony from the record. Accordingly, no violation of the GMA's public participation requirements has been shown.

Excessive Deliberation

Petitioners assert that the County deliberated excessively before adopting the Plan. *See* CCSV III Prehearing Brief, at 71. CCSV III asserts 18 Council meetings and approximately five months' duration from the close of public testimony to the final decision is excessive.

The County responds that the Council "laboriously deliberated" the Plan and that five months was the time necessary to properly consider the Plan. *See* County's Prehearing Brief, at 169.

The Act specifies the final deadline by which counties must have adopted a comprehensive plan. RCW 36.70A.040. The Act also gives intermediate milestones by which local governments must complete specific tasks, and specifies certain sequential procedural steps. However, the Act does not specify the length of time that a local government either may or must consider a plan before it renders a decision. The Act requires only that all the necessary tasks be complete when the comprehensive plan is adopted, in theory by the specified deadline.

The final consideration of a comprehensive plan by local is a vital task. The County claims to have begun its GMA planning process in 1993. *See* County's Prehearing Brief, at 8. The County includes a list of the substantial steps it took to collect, compile and develop information during

the planning process. *See* County's Prehearing Brief, Statement of Facts. The Planning Commission and Council conducted 12 public hearings over four months, before the close of the record. ^[20] The post-hearing deliberations that petitioners complain of were of approximately the same length and were conducted on an approximately continuous basis. It is, as the County asserts, difficult to imagine how reasonable consideration of an initial comprehensive plan could have been conducted any more quickly. **Therefore, the Board holds that the County did not violate the public participation portions of the Act when it conducted its deliberations between February and June.**

Were Changes Within Legislative Discretion?

Petitioners complain that the Council exceeded its discretion when it made changes to the Draft Plan during deliberations conducted after the record had closed. Petitioners allege that several changes were substantial and thus required additional public participation before they could be implemented.

Pilchuck complains that the Council changed the land designation of agriculture land to urban and rural land designations. They claim that this was a significant change from the Draft Plan and was done after the record closed. *See* Pilchuck III at 26. Pilchuck also claims that the Council changed forest land designations based on a report from the Forestry Advisory Committee submitted 25 days before the record closed. *Id.* at 49. It alleges that this was insufficient time to formulate a response and it was thus a procedural violation. CCSV III largely mirrors these issues.

Stillaguamish complains that when the Council decided to include the Island Crossing area in the final Arlington UGA, this change was substantial.

The County responds that changes in agricultural land designations that petitioners complain of were included in the Executive's Recommendation. *See* County's Prehearing Brief, at 124. The County also responds that the changes in the forest land designations were consistent with the recommendations of the Forest Advisory Council which were submitted to the Council before the close of the public record. *Id.* at 135.

The Board has held that the legislative body must weigh competing considerations and render a decision. If there are changes to a proposed plan, the changes must be within the scope of the alternatives that were available for public comment during the hearings, or new opportunity for public review and comment must be provided. This relationship between the public and elected officials was discussed in *Poulsbo, et al. v. Kitsap County [Poulsbo]*, CPSGMHB Case No. 92-3-0009 (1993), in which the Board held:

... the "public participation" that is one of the hallmarks of the GMA, does not equate to "citizens decide." The Act requires the elected legislative bodies of cities and counties, not individual citizens, to ultimately "decide" on the direction and content of policy documents such as county-wide planning policies and comprehensive plans. The Act assigns this policy making authority to city and county elected officials, who are accountable to their citizens at the ballot box. *Poulsbo*, at 36.

The Board expanded upon this theme in *Twin Falls*, in which the Board held:

The Board further holds that "consider public input" means "to think seriously about" or "to bear in mind" public input. Significantly, the Board holds that "consider public input" does not mean "agree with" or "obey" public input.

...Certainly, many of the choices that the Act places before elected officials are essentially value driven, and hearing the opinions of citizens is an important duty for elected officials. Nevertheless, the Act also obliges local elected officials to be responsive to many other duties and it therefore does not follow that a local legislative enactment will always comport with popular public opinion. *Twin Falls*, at 77-78.

...The Act's purposes are served when public participation is an interactive dialogue between local government and the public. Those purposes are not served by a soliloquy. *Twin Falls*, at 79.

The Board holds that RCW 36.70A.140 requires that local government establish procedures to ensure the public has a reasonable opportunity to comment. The Board has also held that local officials have a duty to hear and consider public opinion. However, these holding do not require elected officials to agree with or follow such public direction. Local government does have a duty to be clear and consistent in informing the public about the authority, scope and purpose of proposed planning enactments. If local government meets these requirements, they have completed the requirements of the Act for public participation. Citizen disappointment in the final choices made by local governments does not mean that the citizens have not had a chance to express their views.

In the case of agriculture land designations, it is clear that the changes were delineated in the Executive's Recommendation which was submitted on January 10, 1995, before the public record closed. Petitioners had an adequate opportunity to comment and did in fact comment, extensively.

On the issue of the forest land designations, it is not clear how the Petitioners can complain of procedural violations in the public process. The Petitioners concede that they were aware of the Forest Advisory Committee (FAC) recommendation and had 25 days to review and comment

before the record closed. This is clearly adequate time to formulate a response to a proposal.

With respect to the inclusion of the Island Crossing area in the Arlington UGA, again, this was a matter that received extensive comment from parties advocating both for its inclusion and its exclusion. The County claims that the Arlington Growth Management Coordinating Committee (GMCC) had recommended inclusion in June, 1994. *See* County's Prehearing Brief, at 119, citing Ex. R-99. It is clear that Petitioners had notice that this was an item of debate within the community and, should petitioners disagree, they should make their views known to the Council. Failure of citizens and citizen groups to take advantage of the public participation opportunity does not invalidate the process.

Additional Entries to the Record

CCSV III complains that the County either developed new documents during deliberation or withheld the release of existing documents until after the close of public testimony. *See* CCSV III Prehearing Brief, at 71. CCSV III asserts that this documentation contained information fundamental to the implementation of the Plan, and should have been available for public review and comment. *Id.* Specifically, CCSV criticizes the County for changes to the Urban Growth Area Residential Land Capacity Analysis (RLCA), and the Employment Land Capacity Analysis in Unincorporated Snohomish County (ELCA), and for adding a document entitled "Major Council GPP Text Changes," all after the close of public testimony. *Id.*

The County responds that the ELCA and RLCA documents contain information that either was available during the public hearings or are merely compilations of previous information. For example, in the ELCA, the County states that the document was first released in April 1994 and that the only change made in the June 1995 revision was the addition of a single page.^[21] *See* County's Prehearing Brief, at 172.

The County states that the RLCA is a reporting document which logs the result of planning decisions at milestones in the process. *Id.*, at 170-1. The County states that the methodology contained in the RLCA is consistent throughout the planning process. *Id.* The document was used to verify that the UGA choices remained consistent with the County's overall goals for land capacity. The County asserts that the final calculation of the land capacity could not be complete until the final UGA boundaries had been established. The calculations in the final document only served to verify assumptions made during the establishment of the UGAs which were not finalized until the Council had completed its deliberations.

CCSV III also cited the "Major Council GPP Text Changes" as a new document which suffered two flaws, the first that it was admitted to the record after closure, and second, that it documented the County's decision to incorporate portions of the Executive's Recommendation into the Final

Plan. *See* CCSV III Prehearing Brief, at 73, and Exhibit as County Index 3.6.00003.

Reports, such as the RLCA which verify the results of previous decisions, are not used in the same fashion as study documents or position papers. Study documents present issues as before the fact. Reports merely reflect the result of previous decisions. Thus, even if the RLCA had been available during the open hearings, no amount of public input would have affected the information included in it. The issue for public discussion with respect to the RLCA is, what are the base criteria and the factors that make up the methodology. Once these are established, subject to public scrutiny, the data collected cannot be challenged unless the proper methodology was not followed.

The change in the ELCA of a single page falls short of the “substantial” threshold necessary for the Board to consider. The Board does not find an issue here.

An examination of the “Major Changes” indicates that it is a “laundry” list of coordination items that Council used to instruct the text editors of the Plan on preparing the final Plan document. The list documents the Council’s decisions on changes made during deliberations. This type of record is functionally equivalent to transcripts of the Council’s oral deliberations. Admission to the record is nothing more than documentation that the Council had a process for executing the decisions made during its deliberations.

Conclusion

The County provided numerous opportunities for its citizens to provide input into the planning process, learn of the Plan’s progress, and comment on the elements of the Plan. These opportunities were provided according to the County’s Public Participation Ordinance. The Petitioners took good advantage of the opportunities by attending meetings, speaking at many of the meetings, writing letters and, in general, making both the Planning Commission and the Council aware of their viewpoints. Petitioners’ participation continued up to the close of public testimony on February 3, 1995. The Board concludes that the County has fulfilled the requirements of the Act for early public participation.

With respect to the Petitioners’ allegations that the County violated the “continuous” element by acting impermissibly after the close of the record, none of the allegations made by the Petitioners convinced the Board that the Council acted outside the permissible range of legislative discretion. As the Board said above, citizen disappointment with a local government’s choices does not equate to a violation of the process by the government if citizens have had a reasonable opportunity to comment. The Board concludes that the County fulfilled the continuous element and thus the Act’s requirement for public participation.

C. URBAN GROWTH AREAS/RURAL AREAS ISSUES

The first issue in this grouping of issues is Legal Issue No. 42, which deals with land use designations and compliance of the Future Land Use Map with the Act, the CPPs and the Plan itself. This is followed by Issue No. 41 dealing with Plan consistency and completeness. Issue No. 23 focuses specifically on certain lands. [\[22\]](#)

1. Urban Growth Areas/Rural Areas Findings of Fact

In the interest of saving space, and as to Legal Issues No. 42, 43, 41, 23 and 45, the Board adopts by reference the following Findings of Fact set forth in the County's Prehearing Brief, pages 6 through 25:

- I. FACTS RELATING TO SNOHOMISH COUNTY INTERJURISDICTIONAL PLANNING PROCESS- 1 through 13.
- II. FACTS RELATING TO PUBLIC PARTICIPATION PROCESS- 1 through 27.
- III. FACTS RELATING TO FUGA CAPACITY ANALYSIS- 1 through 18.
- IV. FACTS RELATED TO DIVERSIFIED CENTERS ALTERNATIVE- 1 through 15.
- V. FACTS RELATING TO VISION 2020 CENTERS CONCEPT- 1 through 11.

2. The Statute and Board Case Law

a. GMA requirements re: UGAs and the Rural Element

The Act's requirements for Urban Growth Areas appear at RCW 36.70A.110, which provides in pertinent part:

(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. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. An urban growth area determination may

include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth...

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

....

The Act's requirements regarding the rural element of county comprehensive plans is set forth at RCW 36.70A.070(5), which provides:

Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses and may also provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth.

b. Prior Board Decisions re: UGAs and the Rural Element

The Board has previously discussed the rank order for inclusion of lands in the UGA. In *Bremerton*, the Board stated that RCW 36.70A.110 does permit counties to include unincorporated lands in the UGA, but that:

... this does not give counties carte blanche permission to designate as UGAs *all* urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both UGAs and CPPs must serve: to achieve the *transformation of local governance* within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve *compact urban development*. See *Tacoma [Tacoma, et al., v. Pierce*

County, CPSGMHB Case No. 94-3-0001 (1994)], at 12. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical to now blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted.

The fourth, fifth and sixth exceptions would permit UGAs to extend not only beyond existing city limits but even beyond urbanized unincorporated areas covered by the third exception. Because including such lands would be more inconsistent with the Act's first two planning goals regarding where to permit urban growth, the Board will apply a much higher level of scrutiny to a county's actions in extending UGAs to such lands. Counties do not have carte blanche permission to include nonurban areas that fall within the fourth, fifth and sixth exceptions within UGAs. In those rare cases when exceptional circumstances so warrant, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled, and demonstrating how such lands serve the fundamental purposes of UGAs and CPPs cited above. *Bremerton*, at 39-40. Footnote omitted

The Board has also previously analyzed the matter of urban growth and concluded that it is generally prohibited in rural areas:

Significantly, the definition of urban growth specifically focuses on the intensity of the use of land, specifically naming such physical improvements as “buildings, structures and impermeable surfaces. Thus, the net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted or if it crosses the threshold into impermissible urban growth. Dimensions of development intensity traditionally include building height, setbacks, parking requirements, impervious surface coverage, the degree of grading and its consequent removal of existing vegetation. *Bremerton*, at 50-51.

3. Specific Legal Issues

Legal Issue No. 42 (CCSV III)

Do the land use designations on the Plan’s Land Use Map and as defined in the Plan, and the designations in Ordinance 95-049:

a) Comply with the goals and requirements of the Act? (RCW 36.70A.010, .020(1), (2), (8) and (10); .030(15); .060(1); .070(1) and (5); .110(1), (2) and (3). Plan at LU-6.A, LU-1.C.)

b) Are they internally consistent with the Plan? (RCW 36.70A.070(5); .100; .110(1), (2) and (3). CPP: at UG-3. MCPP at: RG-1.1 and RC-2.1.)

c) Do they meet the Act's requirements for external consistency? (RCW 36.70A.100; 210 (7). CCPs at: UG-1(a), (f) and (g), -2, -3, -4, -16; OD-2, -3, -11; RU-2; JP-1, -2. MCPP at: RG-1.1, -1.2, -1.5, -1.6, -1.9, -2.1; RR-5, -5.1, -5.6, -5.7; RC-2.2, -2.3, -2.6, -2.7, -2.9, -2.11, -2.12; RO-6.1, -6.3, -6.4, -6.5, -6.7 and -6.8.)

CCSV III's Position

CCSV III argues that:

.. with the exception of resource lands and the very few small, scattered areas designated for 10 and 20 acre densities, the Plan designates virtually all of non-UGA Snohomish County as small parcels of 1/2, 2.3 or 5 acres in size. The predominance and the location of ... [these]... designations in the rural area of the county will create a massive, sprawling land use pattern. CCSV III Brief, at 31.

It argues that the extensive use of such densities in a rural area was rejected by the Board in prior county comprehensive plan cases, citing a recent Board holding:

Therefore, rather than adopt a minimum rural residential lot size, the Board instead adopts as a general rule a “bright line” at 10 acres. **The Board holds that any residential pattern of 10 acre lots, or larger, is rural.** Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not present an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. *Vashon-Maury*, at 79 (emphasis in original).

Petitioner further argues that the rural area will have a tremendous overcapacity. Whereas the composite UGA will have an excess capacity of 14.5 percent (i.e., capacity for 214,905 residents where the plan allocates 187,629) the rural areas will have an excess capacity of almost 300 percent (capacity for 126,779 additional people where the Plan allocates 32,315). Plan, at A-25. CCSV III argues that this nearly 300 percent overcapacity is the result of the County simply mirroring the land use designations contained in the County's sub-area plans adopted prior to the GMA. It cites to the Draft EIS, which in turn discusses the future land use map as follows:

The proposed future land use General Policy Plan map reflects the land use designations of the county's existing 13 subarea comprehensive plans (Figure 4), along with interim resource lands designations. Exhibit CD 3(a) at II-63. (Emphasis by CCSV III).

CCSV III also cites to the Final EIS as follows:

Rural land capacity remains unchanged since the original rural capacity analysis generally was based on existing subarea comprehensive plan designations. Exhibit CD 6, at 60-61. (Emphasis by CCSV III).

CCSV III argues that small-parcel designations “ring” virtually all of the UGAs with the exception of resource lands adjacent to the UGA boundaries. It provides a detailed narrative of the Plan’s pattern of 1/2-, 2.3- and 5-acre lots immediately adjacent to the UGAs of the Southwest Cities, Marysville/Arlington, Stanwood, Darrington, Lake Stevens, Snohomish, Monroe, Sultan and Gold Bar. CCSV III Brief, at 32, fn. 9. It also contends that the resulting small-lot pattern in rural areas would present an undue threat to large scale natural resource lands, including fishery habitat and rural aquifers. CCSV III Brief, at 33. Further, petitioner cites to the Final EIS as evidence that the Plan’s rural densities are inconsistent with Plan policies, including Objective LU 1.C and Goal LU 6; with County-wide Planning Policies UG-3, OD-11 and RU-2; and with MCPPs ^[23] RG-1.1 and RC 2.1 ^[24] It cites the Final EIS:

The amended GPP proposed by the County Council would additionally designate several rural areas as areas of High Density Rural Residential, allowing densities of 1 to 2 dwelling units an acre. However, creating a rural residential designation that allows densities of up to 2 dwelling units per acre could potentially create conflicts with the county-wide planning policies which call for rural densities that do not preclude future urban densities. Such a designation would encourage suburban land use patterns in rural areas, would result in the loss of rural character in these areas over time, and would result in lost capacity for future urban expansion... Increased densities in rural areas could result in lower density development in the unincorporated urban areas and reinforcement of suburban land use patterns. Over time, distinctions between urban and rural lands would become less apparent. Overall, these changes could have a significant adverse impact on the county-wide land use pattern. Exhibit CD 6, at 58.

CCSV III adopts the Pilchuck argument that the Board does have the authority to adopt a “bright line” general rule regarding permissible rural densities. It argues that the County never argues how its rural land use designations comply with RCW 36.70A.110(1), which provides in part:

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 only occur if it is not urban in nature.

Petitioner argues that the Board has the authority to determine County compliance with the above cited requirement of the Act, and that the GMA has explicitly defined “urban growth” as:

... growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services.... RCW 36.70A.030(14).

CCSV III then asserts that the question is simply one of whether the County’s definition of “rural” in fact falls within with the GMA’s definition of urban growth. CCSV III Reply, at 18. The Plan defines “rural” as:

All land located outside of UGAs not designated as agricultural or forest lands of long-term commercial significance with existing or planned rural service and facilities such as domestic water systems (generally systems without fire flow), rural fire and police protection services and transit services along major arterial routes. New Rural residential developments have a maximum net density of 1 dwelling unit per 2.3 acres. Maximum densities are lower in specific plan designations. Plan, Appendix E, at E-11.

CCSV III argues that these rural densities are incompatible with “the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources” and are thus urban in nature. CCSV III Reply, at 18.

Petitioner also argues that the Plan and Land Use Map are *internally* inconsistent, citing specifically CPP UG-3 and MCPP RG-1.1 and RC-2.1. Further, it argues that the Plan and Land Use Map are *externally* inconsistent with the plans of adjacent counties, citing other CPPs and MCPPs. CCSV III argues:

By creating a total capacity far in excess of the OFM figure the County is required to set densities for, the County’s designations will draw population away from counties which have adopted lower densities in unincorporated UGAs and rural areas. While the County has widespread areas at 1-2 DU/Acre, King and Pierce Counties have designated much lower rural densities. CCSV II Brief, at 37.

County’s Position

The County states that the Rural Element of the Plan and the Future Land Use Map plan for a variety of rural densities including: High Density Rural Residential (1 to 2 du/acre), Medium Density Rural Residential-2.3 (1 du/2.3 acre), and Medium Density Rural Residential-5 (1 du/5 acre), as well as a Medium Density Rural-10 (1 du/10 acre) and a Low Density Rural Residential

(1 du/20 acre).

The County argues that the use of clustering in the rural area will be an effective technique to preserve rural character. Ordinance 94-125, adopting the General Policy Plan, discusses the County's intentions regarding clustering and rural densities. Section 1(C)(2)(d) provides:

Rural lands. The rural policies, revised densities, and designations in the General Policy Plan constitute the rural element required by the GMA (Subsection 36.70A.070(5)). Rural residential densities range from 1 to 2 dwelling units per acre, to 1 dwelling unit per 20 acres on non-resource lands. The higher residential densities of 1 to 2 dwelling units per acre apply to lands which have been historically designated or zoned for this density. This designation will be evaluated further in the rural/resource plan. No additional rural areas have been designated for this density. CD 2(a), at 7.

The County observes that these densities were adopted prior to the Board's general rule in *Bremerton* that prohibited 1- and 2.5-acre lot sizes as a new development pattern in rural areas and asserts that, in any case, the Board lacks the authority to constrain the County Council's authority to legislate what lot sizes and densities are appropriate for Snohomish County's rural area. The County cites to surveys that indicated that most people in Snohomish County consider lot sizes within the range of 2.5 to 5 acres in rural areas to be rural. Exhibit R-7. County Brief, at 141.

Intervenor ARL Position

The Association of Rural Landowners (**ARL**) adopts the County's position that the Board lacks jurisdiction to determine whether the lot sizes set forth in the County's rural element meet the goals and requirements of the Act. Assuming, arguendo, that the Board has this jurisdiction, and that the Board's holdings in the *Bremerton*, *Vashon-Maury* and *Gig Harbor* cases apply to Snohomish County's Plan, ARL attempts to distinguish the facts in this case and argues that the County's action comports with the Board's prior holdings.

ARL states that the County's rural designations will not decrease the flexibility to expand the UGA in the future. It argues that, unlike prior cases in which the Board remanded five-acre rural zoning, the County has not designated a large portion of land adjacent to, or forming a "ring" around, an urban growth area, nor did it apply a uniform designation in a manner creating an opportunity for further subdivision. ARL Brief, at 39. It argues that, in the very few locations where the five-acre designation was placed adjacent to the UGAs, it is separated by a river or other geographic boundary serving as a natural impediment to sprawl or future extension of the UGA.

ARL also argues that the County's rural designations do not create an undue threat to natural

resource lands or large scale critical areas because existing regulations, such as the Forest Transition Area, adequately protect the few areas identified by CCSV III. It argues that, because the Board has previously held that the presence of critical areas does not dictate whether land is designated urban or rural, the presence of such areas does not itself require a particular level of rural density. ARL Brief, at 41.

ARL argues that the Rural 2.3 designation, in conjunction with the mandatory use of clustering for any new rural subdivisions, is an appropriate exception to the Board's general rule in *Bremerton*. It argues that clustering provides an economically viable option that may prevent urban sprawl, leave significant amounts of open space, allow efficient use of services, and provide a low-density mix of residential development compatible with rural character. Further, it argues that clustering ceases to be economically viable below density yields of 1 dwelling unit/ 10 acres. ARL Brief, at 42.

Discussion

The Board's discussion is grouped under the three prongs of Legal Issue No. 42.

1. Do the land use designations on the Land Use Map and as defined in the Plan and the designations in Ordinance 95-049 comply with the goals and requirements of the Act? ^[25]

While the GMA provides discretion for local legislative bodies to make many choices, the Board rejects the County's theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas ^[26] and the Act's explicit prohibition of urban growth (a defined term) outside of UGAs. *See* RCW 36.70A.110(1); *see also Rural Residents*, at 20. The Board concurs with CCSV III's analysis that, because urban growth in the rural area is prohibited by the Act, the GMA inevitably *must* constrain the County's "bottom-up" attempt to permit patterns of new residential development that constitute urban growth. This conclusion is buttressed by RCW 36.70A.070(5), which directs that a county plan's rural element is to permit "appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses."

As noted above, the Board has previously analyzed the question of what residential densities the Act permits in rural areas and the circumstances under which various lot sizes may be permitted in a Plan's rural element. While the specific facts in this case are different than in the previous county cases, the question of the Act's requirements and the range of local discretion to designate residential densities is a matter of law rather than fact. The Board adopts its prior analyses of the requirements of RCW 36.70A.110 and RCW 36.70A.070(5) as set forth in the *Bremerton*,

Vashon-Maury and *Gig Harbor* cases. Specifically, the Board earlier concluded that a pattern of lots as small as 1 or 2 1/2 du/acre meet the definition of urban growth.

A pattern of 1- and 2.5-acre lots meets the Act's definition of urban growth, which is to say that it precludes "the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources." RCW 36.70A.030(14). To argue that the ability to grow berries on a 1- and 2.5-acre lots renders them "rural," within the meaning and objectives of the GMA, is preposterous... A pattern of such lot sizes is an extremely land-consumptive way to accommodate growth and is the antithesis of compact urban development. *Bremerton*, at 49, footnote omitted.

In the present case, the County has permitted precisely such rural residential land use patterns, calling half acre and one acre lots "High Density Rural" and 2.3-acre lots "Medium Density Rural". In colloquial terms, "High Density Rural" is as oxymoronic as "jumbo shrimp." High density, as a GMA land use concept, appropriately describes what should be happening inside UGAs, not in the rural area. Even if one were to consider "high density" a relative term (e.g., parcels much more dense than 20- or 40-acre lots), it strains credulity to suggest that a pattern of lots as small as a half acre in size are rural, as opposed to urban, in nature.

The Board affirms a prior holding that a pattern ^[27] of 10-acre lots is clearly rural and now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. The Board further holds that, as a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule.

There is little question that the Plan includes a "variety" of residential densities in the rural area — ranging from half acre lots up to twenty acre lots. However, the record provides no quantification of the absolute or relative number of acres or lots in each category. There are no tables or charts in the Plan, the EIS or the County's brief to summarize how much of the rural area is designated for lots of various sizes. ^[28] Indeed, the characterization in the County's brief regarding just how much land is designated for these small parcel sizes is as sparse as the rationale provided. ^[29]

As to the clustering concept for residential development in the rural area, the Act explicitly discusses the use of such “innovative techniques.” RCW 36.70A.090 provides:

A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights.

The Board has previously reviewed the clustering concept listed among the “innovative techniques” cited above. In *Kitsap Citizens for Rural Preservation v. Kitsap County [KCRP I]*, CPSGMHB Case No. 94-3-0005 (1994) , the Board reviewed a conservation easement ordinance (CEO) that was intended to provide an option for clustered development in the rural area. While Kitsap County’s CEO was found not to comply with the Act, the Board observed that:

The Board can conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such a rural development proposal could constitute “compact rural development” rather than “urban growth.” However, the CEO does not have parameters to prevent development projects that constitute urban growth from occurring in rural areas.

For example, there is no upper limit on the acreage or unit count that the CEO would permit to occur in rural areas, nor are there any parameters regarding the configuration, servicing or location of such development. The CEO could potentially result in thousands of dwelling units being aggregated in a single development in the rural area. It is difficult to conceive of a project of such magnitude, no matter how compact and how well designed, that would not meet the Act's definition of urban growth. As the size of a rural development project increases, the demand for urban governmental services inevitably increases, as do the offsite impacts on both natural systems and abutting properties. Likewise, as the size of a project site increases, the more likely it is that it will exhibit the characteristics of urban growth (i.e., "the intensive use of land for the location of buildings, structures and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources....") RCW 36.70A.030(15). While no clear breakpoint is evident from information presently before the Board, it is only logical that, at some point along the continuum of potential project size and intensity, the *quantitative* dimension of clustered development in a rural area must have *qualitative* urban growth consequences. *KCRP I*, at 15-16.

The value of clustering as a development concept was not the issue in *KCRP I*, but rather its application and its lack of parameters to preclude urban development in the rural area. [\[30\]](#) Here,

the problem is even more fundamental. The Board held above that high density rural residential and medium density rural residential — 1 du/2.3 acre — land use pattern which the County uses extensively in the rural area constitute, on their face, impermissible urban growth. How could clustering of a residential pattern that is too dense in a non-clustered form (i.e., urban growth) result in something less dense in a clustered form? Notwithstanding the value of open space preservation, as the Board concluded in *KCRP I*, the consequence of rural clustering cannot be to create urban growth in the rural area.

Consequently, the Board will remand the Future Land Use Map and the rural element of the Plan with direction that the County “show its work” to clarify how much, where and why residential lot patterns of various densities are designated. A rural residential land use pattern of lots smaller than 5 acres must be eliminated or, alternatively, provisions of the Plan modified so that the number, configuration, and location of such lots do not constitute urban growth. With regard to clustering, the County is encouraged to retain this concept and is directed to provide sufficient policy direction and parameters to assure that future residential clustered development in the rural area constitutes compact rural development rather than urban growth.

2. Are the land use designations on the Land Use Map and as defined in the Plan and the designations in Ordinance 95-049 internally consistent and consistent with county-wide and multicounty planning policies?

In addition to constituting a *prima facie* violation of the Act’s requirements, the Plan’s rural element residential densities are inconsistent with provisions of the CPPs and the Plan itself. From a perusal of the Future Land Use Map, it is possible to get a general sense of where high and medium density rural residential and medium and low density rural residential lands are designated. The petitioners correctly characterize the location of the .5-acre, 1-acre and 2.3-acre lot pattern as “ringing” the UGAs of virtually every city. *See CCSV III Brief*, at 32, fn. 9. For example, the land between the Lake Stevens UGA and the Snohomish UGA shows a designation of “High Density Rural Residential (1 to 2 dwelling units/acre).” It is hard to imagine a more tangible impediment to the long-term flexibility to expand those two UGAs, or a clearer example of the rural land use pattern that CPP OD-11 seeks to prevent:

Establish low intensities of development and uses in areas outside of urban growth areas to preserve resource lands and protect rural areas from sprawling development. (Emphasis added).

If a widespread pattern of half acre, one acre and two acre lots do not constitute sprawling development, it is difficult to fathom what else the drafters of CPP OD-11 could have had in mind. Likewise, a pattern of “high density residential in the “rural” areas, such as in the Lakewood area or between the Lake Stevens and Snohomish UGAs, blurs the distinction between

urban and rural, contrary to Plan Objective LU 1.C which states:

Establish and maintain a UGA boundary that provides a distinct edge between urban and rural land uses. (Emphasis added).

The Board holds that the widespread pattern of 1/2-acre, 1-acre and 2-acre lots in the Plan and Future Land Use Map are inconsistent with CPP OD-11 and Plan Objective LU 1.C.

3. Do the land use designations on the Land Use Map and as defined in the Plan, and the designations in Ordinance 95-049, meet the Act's requirements for external consistency?

Petitioners have not carried their burden of proof to persuade the Board that the Plan and Future Land Use Map fail to meet the Act's requirements for external consistency with adjacent counties. The cited provisions of the MCPPs either simply restate the requirement of the Act (e.g., RG-1.1 paraphrases RCW 36.70A.040 and .210) or lack specific directive verbs (e.g., RG-1.5 says "promote", RG-1.9 and RG-2.1 say "encourage"). The County did not dispute CCSV III's assertion that the rural densities set by the County are greater than in King or Pierce Counties; however, the Petitioners have not shown how this rises to the status of a noncompliance with RCW 36.70A.100. **The Board holds that CCSV III has not met its burden of proof that the County did not comply with the Act's requirements for external consistency with adjacent counties.**

Conclusion No. 42

The Board concludes that the Plan's extensive use of the High Density Rural Residential (1 dwelling unit per acre to 1 du/half acre) and Medium Density Rural Residential (1 dwelling unit per 2.3 acre) patterns are inconsistent with CPP OD-11 and the placement of these densities is inconsistent with Plan Objective LU 1.C. Such a widespread land use pattern at these densities also constitutes urban growth in the rural area that has not been justified. Therefore, the Plan fails to comply with the goals and requirements of the Act, including RCW 36.70A.020(1), (2) and (8), RCW 36.70A.110 and RCW 36.70A.070(5). Furthermore, the placement of a pattern of 5-acre lots immediately adjacent to UGAs impermissibly precludes the future expansion of the UGAs.

The Plan and the Future Land Use Map will be remanded to the County with direction 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 will also be directed 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 will be directed to include in the Plan sufficient policy direction and parameters to assure that future residential clustered development will constitute compact rural

development rather than urban growth.

Legal Issue No. 43 (CCSV III)

Did the County:

- a) Fail to designate and size the adopted Final UGAs consistent with the requirements of the Act, thus creating unreasonable oversized Final UGAs? (RCW 36.70A.020(1), (2), (3), (12); .040(3)(c); .070(1), (2), (3), and (6); .080(2); .100; .110(1), (2) and (3); .120; .140; .210 (7). CPP at: UG-1(c), (d), (f), (j), -2, -3, -4, -5, -6, -7, -8, -13; OD-1, -2, -3, -6, -7, -10, -11; RU-2. MCPP at: RG-1, -1.1, -1.2, -1.3, -1.5, -1.6, -1.7, -1.9, -1.12, -2.9; RR-5; OD-1 and -2.)*
- b) Fail to coordinate adoption of the Final UGAs with the cities, consistent with the requirements of the Act? (RCW 36.70A.020(1), (2) and (12); .070(1), (3) and (6); .100; .110(1), (2) and (3); .140; 210(3)(f). CPP at: UG-1(c), (d), (e), (g), (i) and (j), -2, -4, -6, -7, -8, 13; OD-1, -2, -3, -6, -9; JP-1, -2, -3, -4; HO-3. MCCPs at: RG-1, -1.2, -1.5, -1.6, -1.9, -1.10; RC-2, -2.1, -2.2, -2.4, -2.9, -2.10, -2.11, -2.12; RF-3. Plan at: IC-1.B4, -1.D., and -1.D.1.)*

CCSV III's Position

There are essentially two components of CCSV III's allegation under Legal Issue No. 43. First, it argues that the process the County used to size the Final UGA was improper, resulting in an "oversized" UGA. Second, it argues that the flawed process was the result not only of faulty methodology and assumptions, but did not provide for coordination of the adoption of the Final UGAs with the cities, as required by the Act.

CCSV III alleges that the County used excessive "safety factors" in calculating the amount of land necessary to accommodate the projected growth in the UGA ^[31] and that it did not base the amount of unincorporated UGA on a detailed and realistic assessment of the ability of the cities to accommodate the projected urban growth. CCSV III Brief, at 47. It further argues that many of the cities performed their capacity analyses on pre-GMA land use designations using flawed and inconsistent methodologies. CCSV III Brief, at 58. It also argues that the County improperly based its own land capacity analysis on pre-GMA subarea plans. CCSV III Brief, at 51.

Petitioner argues that the pre-GMA plans of the County functioned as, in effect, templates for the residential densities contained in the Plan. It cites as evidence of this intent and outcome, the executive summary of the County Executive's January 10, 1995 position paper on the UGA:

The plan generally does not replace the currently adopted plans, existing development regulations, or zoning maps. Ex. 1.100388 at 8, cited in CCSV III Brief, at 54.

CCSV III argues that, because the County has also elected to continuously monitor land supply, it

is not appropriate that it also use a market supply factor. CCSV III Brief, at 57.

County's Position

The County disputes the allegation that it has not “shown its work.” It cites to the Residential Land Capacity Analysis (**RLCA**) as documentation of its coordination with the cities and its methodology and assumptions for sizing the UGA. CD 21. It disputes CCSV III’s claim that the cities have additional capacity to accommodate growth, citing CD 21, App. D. County Brief, at 54. It argues that its 14.5 percent UGA land supply safety factor falls well within the 25 percent “bright line” established by the Board as reasonable in the *Bremerton* decision, and argues that the Petitioner has erroneously equated the County’s “safety factor” with the “market feasibility reduction factor” as that concept was used by Snohomish County Tomorrow.

With respect to the assumptions and methodology used for capacity calculations, the County asserts that the 4 to 6 du/acre density was the lowest density used by the County in its analysis, and it did not, as CCSV III claimed, use the densities employed in prior analyses. County Brief, at 57. Further, it cites to a table on page 34 of the Hensley brief to show that 97 percent of the Final UGAs are designated for between 4 du and 24 du/acre. The County argues that its approach to Final UGA densities is consistent with the 4 du/acre “bright line” which the Board announced in the *Bremerton* case is clearly urban. It also argues that it was not required to take into account the densities of future urban centers yet to be designated, citing the Board’s holding in *WSDF I* for the proposition that optional elements are not required to be completed at the time of Plan adoption. County Brief, at 62.

The County also argues that there is no provision in the Act or past Board case law that would require a safety factor to be applied uniformly to all cities’ UGAs, nor require a uniform average household size. It also argues that its decision to continuously monitor land supply does not preclude it from using a safety factor.

With respect to the CCSV III allegation that the Final UGAs would not serve the transformation of local governance directed by the Act, the County states:

... the Board noted with approval that King County was planning for annexation of the UGA areas. Snohomish County is similarly planning for the annexation of its UGA areas and has supported specific annexation policies adopted by Snohomish County Tomorrow. County Brief, at 77.

Discussion

The UGAs adopted by the County are in compliance with the goals and requirements of the Act. Contrary to the allegations by Petitioners, the record indicates that the County and its cities did a

thorough, consistent and credible job of sub-allocating the county-wide 20-year population projection. The inter-jurisdictional coordination between the County and its cities, from the work of Snohomish County Tomorrow to the population target reconciliation process, was a coordinated effort and the outcome of that process reflected in the Urban Growth Area Residential Land Capacity Analysis (Exhibit CD 21) is a solid foundation for the UGA decisions reflected in the Plan.

The Board rejects the Petitioners' argument that the County has failed to "show its work." If the Petitioner disagreed with the land use capacity assumptions that underlay the various cities' comprehensive plans, its recourse was to appeal those plans. Absent such an appeal, and a concurring Board holding, the Board must consider the assumptions in those city plans to be irrefutably valid.

The Board further finds that the geographic extent of the UGAs as depicted on the future land use map is, almost without exception, located "in relationship to" the County's existing cities. *See* RCW 36.70A.110(3) and RCW 36.70A.030(14). These UGAs generally are focused on cities, and the Board agrees that the County's UGAs help to achieve two of the fundamental purposes of UGAs: the transformation of local governance and the achievement of compact urban development *See Bremerton*, at 40. Thus, the UGAs fall within the range of discretion that the Act reserves to the County.

The County's use of a 14.5 percent UGA land supply market factor falls well below the 25 percent "bright line" set forth in *Bremerton*, at 42. The Board concludes that it is not unreasonable, particularly in view of the County's decision to also undertake a five-year land supply monitoring cycle. The Board sees no legal prohibition against a county using both techniques. The Petitioners have not convinced the Board that a localized land supply in excess of 15 percent, or even 25 percent, is *prima facie*, a violation of the Act. The Board agrees with the County that many circumstances could justify a smaller, or larger, supply of land in different cities or different unincorporated sub-areas of the County, just as logic would suggest that different localized population per household factors may be appropriate.

Conclusion No. 43

The Board concludes that CCSV III has failed to carry its burden of proof to persuade the Board that the County failed to designate and size the adopted Final UGAs consistent with the requirements of the Act. Likewise, CCSV III has failed to carry its burden to persuade the Board that the County failed to coordinate adoption of the Final UGAs with the cities.

Legal Issue No. 41

Is the Plan internally consistent and complete and consistent with documents incorporated by

reference, and were those incorporated documents guided by the goals of the Act? (RCW 36.70A.020; 040; .070; 080; .100; and .12?)

a) Is the Plan internally consistent as follows:

i) Are the pre-GMA subarea plans referenced within the Plan consistent with the Plan and the adopted Future Land Use Map? (RCW 36.70A.020(1), (2), (3), (4) and (12); .070(1), (2), (3), and (6); .080(2); .110(2); .120. Plan at: LU- 1, and -1.C, -2, -2.A, -2.A.1 through 9; -4, -6, -6.A, -6.A.1, -6.E, -7, -7.A, -7.B, and -7.C.)

ii) Are the Land Use Map and Final UGA maps consistent with the Plan as required by the Act? (RCW 36.70A.070)

b) Is the Plan complete as follows:

i) Does the phasing of Final UGA and Rural/Resource plans allow a complete and internally consistent plan to be adopted, and if not, is this plan consistent with the Act? (RCW 36.70A.040(3))

ii) If the Plan is not yet complete, how can consistent implementing development regulations be adopted? (RCW 36.70A.040(3))

iii) Does the Plan comply with the requirements of the Act if the Natural Environment element is missing section NE-2, “Environmentally Sensitive Areas”?

c) Were the referenced pre-GMA subarea plans guided by the goals of the Act, and if not, does this comply with the Act? (RCW 36.70A.020(1), (2), (3), (4), (8), (9), (10) and (12))

CCSV III’s Position

The issue addresses both Plan inconsistency and incompleteness. First, CCSV III argues that the Plan is internally inconsistent, citing the requirements of RCW 36.70A.020(1), (2), (3), (4) and (12), .070(1), (2), (3) and (6), .080(2), .110(2) and .120. Specifically, CCSV III alleges that subarea plans referenced in the Plan are not consistent with the Plan, and should not have been relied upon as a foundation for the Plan; that the County must, in order to comply with the GMA, resolve any inconsistencies between the subarea plans and the comprehensive plan; that the Final UGA boundaries shown on the Land Use Map differ from the Interim UGA boundaries shown in the Park Plan; and that eleven listed Land Use goals, Objectives and Policies ^[32] are inconsistent with the Land Use Map. CCSV III argues that:

By allowing such high densities in rural areas and creating a residential capacity far in excess of the unincorporated rural sub-allocation, and by simply readopting previous subarea plan designations, the County has perpetuated, rather than reduced, the rate of urban residential growth in rural areas. CCSV III Brief, at 42.

Second, CCSV III argues that the Plan is not complete, citing to RCW 36.70A.040(3), since

further work is called for in the Plan to complete the final UGAs boundaries and Rural/Resource plans, and its Natural Environment element is missing a section on Environmentally Sensitive Areas. Finally, it asserts that the subarea plans were not guided by RCW 36.70A.020(12), (2), (3), (4), (8), (9), (10) and (12) and therefore cannot serve as the basis for policy decisions made in the Plan.

County's Position

The County briefs Legal Issues Nos. 41 and 42 together. As to the consistency portions of Issue No. 41, the County's argument is focused on CCSV III's objection to references in the Plan to pre-GMA sub-area plans. It notes that petitioners concede that the sub-area plans are not adopted as part of the Plan; that the Board has recognized the value of sub-area planning; that the plans contain valuable information; and that where inconsistencies are found, the comprehensive plan will control.

The County states that the alleged inconsistencies with LU 1, 1.C, 2, 2.A and 4 are a simply a restatement of CCSV III's allegation that the Final UGAs are oversized, and the County argues that, since the UGAs are not oversized, no inconsistencies exist. With regard to the alleged inconsistencies with LU 6 and 6.A, the County says that this is simply a re-argument of the rural density issue, and argues that the population allocation of the County to the rural area is consistent with the goal to reduce the rate of growth in rural and resource areas. The allegations of inconsistencies with LU 7, 7.A, 7.B and 7.C, the County states, are simply rearguments that the County refutes under the Agricultural and Forestry issues. County Brief, at 155.

Discussion

With respect to the allegations of inconsistency, the Board held under Legal Issue No. 43 that the UGAs are not "oversized". Therefore, the Board here concludes that the Petitioners have failed to carry their burden of proof that the UGAs are inconsistent with LU 1, 1.C, 2, 2. and 4. The Board has resolved the question of agricultural and forestry issues elsewhere in this decision and need not address the allegations of inconsistency with the above cited goals and objectives. With regard to the allegations of inconsistency of the Plan's rural densities with LU 6 and LU 6.A, the Board held above that the Plan's rural element is not in compliance with the goals and requirements of the Act. *See* the holdings above regarding Legal Issue No. 42.

The Board finds no fault with the County's allocation of 32,000 people to the rural area, representing as it does just 15 percent of the county-wide growth projection. However, the Board notes that the County did not refute CCSV's allegation that the rural densities in the Plan are largely a reflection of the land use designations in the subarea plans that preceded the GMA. It should therefore not be a surprise that the resulting pattern of urban density lots in the rural area (e.g., 1 and 2 du/acre and 1 du/2.3 acres) causes almost a 300 percent excess capacity in the rural

area. It is difficult to fathom how such an excess in the rural area is consistent with the policy directive of LU 6.A to “reduce the rate of growth in the rural and resource areas.” Fundamental laws of supply and demand would suggest that the rate of growth is more likely to be higher in an area with a 300 percent excess capacity (the rural area) than in an area with only a 14.5 percent excess capacity (the UGA). While the rate of growth is dependent on a host of other factors, the Board looks forward to a County explication of how the excess rural capacity meets the mandate of LU 6.A to reduce the rate of rural growth.

With respect to the allegations that the Plan is incomplete, the Board agrees with the County that optional elements of comprehensive plans do not need to be complete upon initial adoption and that, with respect to the mandatory land use element, it need not include subarea plans in order to be complete. At such time as the County elects to incorporate sub-area plans, by whatever name, it will be obliged to comply with the requirements of the Act. The Board notes that the County did not adopt the pre-GMA sub-area plans as GMA enactments. **The Board holds that pre-GMA sub-area plans need not be adopted as GMA enactments in order to continue to have useful application in local land use decision-making. However, such pre-GMA sub-area plans may not be used to satisfy a GMA requirement unless they are specifically incorporated by reference and adopted for that purpose pursuant to the requirements of the Act; nor may they supersede any specific policy or regulatory directive contained in a GMA enactment.** The County understood this nuance, as explicitly acknowledged in the Plan’s adopting ordinance No. 94-125. [\[33\]](#)

Subsequent phasing of various Plan elements, mandatory or optional, and even subsequent revisions to the UGA, are permitted by the Act as amendments to the Plan pursuant to RCW 36.70A.130. **With respect to the Future Land Use Map and the Land Use Element of the Plan, the Board holds that the County’s Plan is complete.** The completeness of the Capital Facilities element and Resource Lands designations are addressed elsewhere in this decision.

Conclusion No. 41

Excepting conclusions to the contrary listed in other portions of this decision, the Board holds that the Plan is internally consistent and complete with respect to the Final UGAs, the Future Land Use Map and the County’s proposed use of pre-GMA sub-area plans. The Plan does not incorporate or impermissibly utilize pre-GMA sub-area plans and it is therefore immaterial whether the latter were guided by the goals of the Act.

Legal Issue No. 23 (Pilchuck III)

Did the County fail to comply with RCW 36.70A.020(1), (2) and (8), .110(1) and (3), and .170 by locating lands previously designated as interim agricultural lands inside UGAs when it

adopted Ordinances 94-125, 94-117, 94-120, 94-121, 94-122 and 94-123?

Pilchuck III's Position

With regard to Legal Issue No. 23, Petitioner Pilchuck III argues that the County included 2,650 acres of agricultural lands in the UGA contrary to the GMA and prior Board rulings. It cites examples of lands that were designated by the County in 1993 in the Interim Agricultural Lands Conservation Plan (**IACP**), but were then inappropriately earmarked for urban growth^[34] in the Plan. Pilchuck III Brief, at 4.

Pilchuck argues that the County ignored the recommendations of its own Agricultural Advisory Board and Planning Commission and included within the UGA lands with virtually no urban growth upon them, such as Smith Island, or relatively small amounts of urban growth, such as Island Crossing. Pilchuck III Brief, at 18, 20. Further, it argues that 2,700 acres of prime agricultural upland would be lost in the Lakewood Agricultural Area, west of the Marysville/Arlington UGA, because that land was designated for “High Density Rural Residential (1 to 2 du/acre)”. Pilchuck III Brief, at 21. It cites to the Board’s *Bremerton* decision, at 51, for the proposition that a new development pattern of 1-2.5 acre lots or less is presumed to be sprawl and prohibited in the absence of a persuasive explanation from the city or county.

County's Position

The County argues that it was not required by the Act to re-adopt in the Plan the agricultural lands designations as they were in the IACP. It cites to evidence in the record supporting the County’s exercise of discretion to de-designate Smith Island and Island Crossing and to not designate the Lakewood Area as agricultural land. It argues that the evidence shows that the County met its duty under RCW 36.70.060(3) to “review” its prior designations, and then exercised its discretion to determine what, if any, alteration was necessary. It further cites to a County Executive report (CD 18) recommending alteration of mostly upland agricultural land based upon the testimony of farmers who wished to have their lands removed from resource lands designations, and from new data and factors not considered in the development of the IACP. County Brief, at 122.

With regard to Smith Island, the County cites to correspondence from the City of Everett setting forth the rationale for inclusion of the parcel in Everett’s UGA.^[35] With regard to Island Crossing, the County cites to testimony from property owners and the City of Arlington requesting deletion from agricultural status and inclusion in the UGA^[36] as well as the recommendation of the Arlington GMCC, Exhibit R-99. With regard to Lakewood, the County points out that this area was not designated agricultural in the IACP and that the Plan simply follows the Executive’s Recommendation and the record support set forth in the IACP for not

designating Lakewood as agricultural land. County Brief, at 120.

Discussion

Pilchuck III's argument on Legal Issue No. 23 is directed both at the question of the County's authority to de-designate land from agricultural use and the question of inclusion of said lands in the UGA. These are related, but separable arguments. As set forth in the prehearing order, Legal Issue No. 23 is narrowly focused on the question of whether or not the County had the authority to de-designate the lands in question. This narrow question was answered in the affirmative in the portion of this decision addressed to agricultural resource lands, and need not be further addressed here.

The arguments that were raised by Pilchuck III as to the compliance of including these lands in the UGA are answered in Legal Issue No. 42. The County, in fact, grouped its response to Legal Issue No. 23 with its response to Legal Issue 42. Because this portion of Legal Issue No. 23 was effectively answered by the Board in Legal Issue No. 42, it need not be further addressed here.

Conclusion No. 23

This Legal Issue is composed of two segments which may be stated as: first, was the County in compliance with RCW 36.70A.020(1)(2) and (8), .110(1) and (3), and .170 when it de-designated previously designated interim agricultural lands; and second, if the answer is yes, was the County in compliance with the cited sections of the Act when it included portions of said lands in the UGA? The answer to the both questions is yes.

Legal Issue No. 45 (CCSV III) [\[37\]](#)

The portions of this issue that address capital facilities are discussed in section F below. The other portions of this issue have been addressed by legal issues above.

D. WOODINVILLE/MALTBY ISSUES

The focus of Legal Issues 10, 11 and 12 is the area identified in the Plan as the Maltby Employment Area, a portion of which is known as the "Grace Area."

Woodinville/Maltby Findings of Fact

1) The Snohomish County Plan includes an area identified as "Urban Reserve" in the area that is also known as the "Maltby Industrial Area" (MIA) and "Maltby Employment Area." All of the MIA is outside the Final UGAs. Exhibit CD 2(a), Map 4 Future Land Use - General Policy Plan.

2) The MIA includes a portion that is known as the “Grace Urban Area.” This consists of 490 acres immediately north of the City of Woodinville. Exhibit 1.2.6 2.57, Memorandum and Exhibits from Mayor L. DeYoung to Karen Miller, Chair of the Snohomish County Council, dated 2/3/95, Attachment 1 at 1.2.02263-67.

3) The Board takes official notice that the City of Woodinville is located in King County. The northern boundary of the City abuts the Snohomish County line in the vicinity of the Grace Urban Area.

Legal Issues Nos. 10, 11, and 12

Is the Plan internally inconsistent under RCW 36.70A.070 because it results in multiple designations of the Maltby area as a) industrial; b) rural outside the UGA boundaries; c) Urban Reserve, which allows for “future expansion of employment and mixed land uses,” and d) Grace-Maltby Employment Area?

Does the presence of existing urban or industrial uses, surrounding uses, and potential future uses in the Maltby area require the County to put that area in Woodinville’s Final UGA under RCW 36.70A.070, .070(5), .110(1), .110(3), .020(2) and .020(6)?

Was the County required to coordinate with Woodinville under RCW 36.70A.100, and if so, did the county so coordinate?

Position of Woodinville

The City of Woodinville argues that the Plan violates RCW 36.70A.070(5) and .110 because it impermissibly allows new industrial growth in rural areas. It argues that the County must put the Grace Urban Area in a Final Urban Growth Area or else alter the plan so that only natural resource based industry is allowed. The City argues that the Plan should be remanded with the requirement that the County “show its work” in making the decision to include lands less industrialized than the Grace Urban Area in the FUGA, while excluding the Grace Urban Area from the FUGA. Woodinville Brief, at 54-55.

Position of the County

The County acknowledges that the Maltby Employment Area, as drafted, does not comport with the Board’s general rule as set forth in the *Gig Harbor* decision, at 51, and that it would like the opportunity to reconsider the Maltby designation in light of the Board’s recent decisions. It does not concede, however, that the County is required to put Maltby in a Woodinville UGA. County Brief, at 153.

Position of Intervenor Hensley

Hensley argues that the County did not violate the GMA or provisions of the Plan by including the Maltby Industrial Area (MIA) in an Urban Reserve area. She disputes the City's allegation that the Plan would impermissibly allow new industrial growth in rural areas, and asks that, if the MIA must be designated as an FUGA, that it be designated as an island UGA. Hensley Reply to Woodinville, at 21.

Discussion

The County has agreed that the Maltby Employment Area portion of the Plan should be remanded. The Board does so, with direction that the County comply with the requirements of the Act, including the Board's prior holdings regarding non-residential uses in the rural area as set forth in *Gig Harbor*, at 51 and *Vashon-Maury*, at 65-71. Further, the County is directed to include in the Plan an explanation of how the final configuration of any UGA and Plan land use designations for the Maltby/Grace areas will serve to achieve compact urban development and the transformation of local governance.

Conclusion No. 10, 11 and 12

The Maltby portion of the Plan does not comply with RCW 36.70A.020 and .110. The County is directed to delete the Maltby Employment Area 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 Board's prior holdings in the *Gig Harbor* and *Vashon-Maury* decisions.

E. GOLD BAR ISSUES

Gold Bar Findings of Fact

- 1) On June 28, 1995, the Snohomish County Council passed Ordinance No. 94-114, "Establishing an Urban Growth Area for the City of Gold Bar." The final UGA boundaries were set at the existing city limits, with the exception of the Dailey property which was also included in the FUGA. CD 17, Ord. 94-114.
- 2) On October 3, 1995, the City of Gold Bar passed an ordinance annexing the Dailey property. The ordinance became effective on October 8, 1995. Exhibit R-62, Ord. 402.

Legal Issues 1 (part), 3, 4, 5, 6,7, and 47

The focus of Legal Issues 1, 3, 4, 5, 6, 7 and 47 is County Ordinance 94-114 "Establishing an Urban Growth Area for the City of Gold Bar." This Ordinance added seven acres of

unincorporated land, known as the Dailey property, to the Gold Bar UGA. Petitioner CCSV II makes a number of arguments alleging noncompliance of Ordinance 94-114 with the goals and requirements of the Act.

Among its responses to these many issues and arguments, the County argues that all these issues are moot because the Board cannot grant effective relief. The seven acres in question are now incorporated into the City of Gold Bar and the Act mandates that all incorporated areas be included with the UGA. RCW 36.70A.110(1). Consequently, **the Board holds that, regardless of the merits of CCSV II's substantive arguments, the Board is without authority to grant the relief requested, namely, to remove the Dailey property from Gold Bar's UGA.** See *Tacoma v. Pierce County*, CPSGMHB Case No. 94-3-001 (1993), Order on Dispositive Motions, at 15.

Conclusion No. 1 (part), 3, 4, 5, 6, 7 and 47

Because the Dailey property is now incorporated in the City of Gold Bar, and the Act requires all lands within incorporated cities to be included with UGAs, the Board is without authority to grant the relief requested by CCSV II. Consequently, these issues are moot and the Board will **dismiss them with prejudice.**

F. CAPITAL FACILITIES/OTHER PUBLIC FACILITIES ISSUES

Legal Issue No. 46

Does the Plan fail to include a process for identifying areas of shared need for public facilities, and lands useful for public purposes within the County, including a prioritized list of lands necessary for public purposes and acquisition dates; and siting of essential public facilities, including those regional facilities requiring multi-jurisdictional coordination and consistency as required by the Act and the CPPs? (RCW 36.70A.070(1); .150; .200; CPPs at: UG-12; OD-1, -6, -8; CF-1 through -4; and ED-4.)

CCSV III alleges that the Plan fails to identify lands useful for public purposes and fails to provide a prioritized list of lands necessary for the identified uses as required by RCW 36.70A.150. CCSV III also alleges the plan fails to provide a process for siting essential public facilities as required by section RCW 36.70A.200(1).

The County concedes that the Plan, as originally enacted did not include a process for siting essential public facilities ordinance as required by section .200(1). The County now responds that it has since adopted an appropriate ordinance. [\[38\]](#)

The County states that the Petitioner's phrasing of Legal Issue 46 and the requirements of the Act for identification of land useful for a public purpose are limited to the development of a "process to accomplish the Act's goal" and does not require a map. *See* County's Prehearing Brief, at 106. Alternatively, the County argues that some of the required maps have been prepared and that "[a]dditional mapping will take place as part of the UGA and rural/resource maps." *See* County's Prehearing Brief at 107. Lastly, the County also argues that "RCW 36.70A.150 does not expressly provide where or when identification occurs" and that "the language of the Act implies an on-going process." *Id.*

Discussion

As stated above, the County has adopted, on January 11, 1996, an ordinance that provides a process for siting essential public facilities. Therefore, the Board holds that the Plan now complies with the requirements of RCW 36.70A.200(1).

To address the County's last argument with respect to the requirements of RCW 36.70A.150 first, the language of the section states "[e]ach County or City that is required to or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify lands useful for public purposes" The County is correct that this language does not identify a date or give an exact number of days by which the useful lands must be identified relative to the occurrence of some certain event. The County is also correct that the language of this section identifies some procedural steps and the role of the participants to that process. But as to the requirement to for when the first step must be complete, the answer is strongly implied; that the "identification" should be coincident with the adoption of the plan. The language of section .150 is more directive than that found in section .200(1) in that it requires a result, "identification," not development of a process for identification. RCW 36.70A.150 also specifies who is to identify the lands useful, the county or city engaged in planning. Without the assignment of the duty to complete the process of identification by a certain date, it would be possible for the identification to remain an indefinite process perpetually on-going, An interpretation of RCW 36.70A.150 that leaves the identification process "open-ended" leads to an absurd result: a meaningless mandatory requirement. Instead, the Board holds that counties and cities must complete the identification process specified in RCW 36.70A.150 by the time of adoption of the comprehensive plans.

Having determined when the identification of lands useful for public purposes must occur, the Board next examines what the process entails.

The County asserts, and petitioners do not argue to the contrary, that identification does not necessarily require a map. The Board agrees. The Act requires that those lands that are useful for public purposes be identified, but does not specify the means of identification. The Board can conceive of several means of identification such as mapping or a narrative describing identified

lands. With the former, the County is not required to show site-specific locations of lands as “useful for public purposes” with precision. It can do so generally, on a broad level. Furthermore, a specific “identification” need not occur in open public hearings. *See* RCW 42.30.110.

CCSV III argues that the third sentence requires the County to “prioritiz[e] needs for public facilities.” *See* CCSV III Prehearing Brief at 16. Petitioners misinterpret the remaining requirements of this section. This section does not require the County to prioritize “needs.” Rather, it requires the County to prioritize “lands;” lands which are necessary for the identified public uses. Thus, after a county has identified lands that may be useful for public purposes and after it has worked with the state and cities to identify those areas of shared need, a county must prioritize the lands necessary to accommodate those public uses it will provide. The county, as the regional planner, may assume the initiating role in contacting the state, and act as a coordinator between the statewide needs, its needs and the needs of individual cities within its borders. However, the County’s prioritization of necessary lands occurs only after the county and the cities have completed lists, assembled and discussed the allocation of responsibilities.

The Board holds that the County has not fully completed the required identification of lands useful for public purposes as required by RCW 36.70A.150. Therefore, the matter is remanded to the County for compliance.

Conclusion No. 46

The County did not comply with RCW 36.70A.200(6) since its Plan does not contain a process for identifying and siting essential public facilities.

The County did not comply with RCW 36.70A.150 since it has yet to complete the identification of lands useful for public purposes. That identification process must be complete by the time of comprehensive plan adoption.

Legal Issue No. 45 (Part)

Does the Plan procedurally and substantively comply with the requirements of RCW 36.70A.070 and was it guided by the goals of the Act, and if not, are the Plan and adopted Final UGAs in violation of the Act? (RCW 36.70A.020(1) through (13); .050; .060; .070(1), (2), (3), (4) and (6); .080; .100; .110(2); .150; .160; .170; .200; .210; CPP at: UG-1(c), (d), (h), -5, -6, -7, -8, -9, -11, -12, -16; OD-1 through -8, -10; HO-1 through -8, -10 through -13; CF-1; JP-1, -2; RU-1, -3; CF-1 through -5; and TR-1 through -12)

CCSV III raises several issues related to the County’s compliance with RCW 36.70A.070. This portion focuses on the issues raised with respect to the capital facilities plan element required by

RCW 36.70A.070(3). The Board has addressed the other issues elsewhere in the order.

CCSV III contends that “the County failed to comply with most of the requirements [of RCW 36.70A.070]” and therefore, the County’s Comprehensive Plan is invalid because the County could not properly allocate the Final UGAs without proper mandatory plan elements. *See* CCSV III’s Prehearing Brief, at 4.

In particular, CCSV III alleges that the County failed to include an adequate capital facilities plan element in the Plan. The shortcomings of the capital facilities plan element that CCSV III complains of include:

- A lack of an inventory of capital facilities;
- A lack of reference to other documents;
- Insufficient discussion of public waste facilities, sewage treatment facilities, wastewater collection facilities and fire and police protection;
- Insufficient forecast of future needs;
 - No implementation measures; and
 - The County improperly moved the public water supply and waste treatment portions to the Utilities Element.

The County responds by saying that the Plan has an adequate capital facilities plan element. This element contains, by reference, the required inventory of existing capital facilities and forecasts of future needs. The County provides, in a separate document, information on proposed locations and capacities of the new and expanded capital facilities for the services the County provides and the required six-year financing plan for those facilities. The County argues that it is not required to provide capital planning for public facilities that it does not own or operate such as wastewater and water supply. The County argues that because these services are provided by individual municipalities, special purpose districts and individuals, it does not have an obligation to include these utilities in its capital facilities plan.

Discussion

Every comprehensive plan of a county or a city required to plan under RCW 36.70A.040 must contain the six “mandatory” elements listed in RCW 36.70A.070. The capital facilities plan element at RCW 36.70A.070(3) requires:

- (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities;
- (b) a forecast of the future needs for such capital facilities;
- (c) the proposed locations and capacities of expanded or new capital facilities;

(d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
(e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities element, and financing plan within the capital facilities plan element are coordinated and consistent.

To determine if the County has fulfilled the requirements of RCW 36.70A.070(3), the Board must first determine which documents constitute the County's capital facilities plan element.

Snohomish County Amended Ordinance No. 94-125 that adopts the County's GMA Comprehensive Plan also adopts several components as part of the Plan. Among the adopted components are the GPP and the Capital Facilities Element. *See* Amended Ordinance No. 94-125 § 4 (1995). This section of the ordinance also adopts the *1995-2000 Capital Plan of Snohomish County (Capital Plan)* as a specific attachment. *Id.* The substance of the Capital Facilities Element is described in the ordinance at section 1C.5. "Contents of the General Policy Plan." The description states that this element is "built on an inventory of existing facilities" which is embodied in a report entitled *Capital Facilities Requirements 1994-1999 (and to 2013) for Snohomish County (Capital Facilities Requirements)*. *Id.* Additionally, the GPP states that the "GMA comprehensive plan was prepared using several plans and technical reports as reference" and includes in its list the Countywide Utility Inventory Report for Snohomish County - Public Water Supply and Wastewater Collection and Treatment Systems (**Inventory**). *See* General Policy Plan, at IN-14-15.

In the Capital Plan, the County states that this portion of the element covers the "[p]roposed strategies for dealing with the siting of new facilities, along with the six-year financing plan" while the "[i]nventory summary data and forecasts of future needs for county provided facilities are contained in the [Capital Facilities Requirements]. *See* Capital Plan, at 6. In the introduction of the Capital Facilities Requirements, it states that "[t]his study is the foundation of the County's Facilities Plan." *See* Capital Facilities Requirements, at 1.

When viewed in total, these documents encompass the County's intention to specifically adopt the GPP and the Capital Plan for the capital facilities plan element. Further, the County has incorporated the Capital Facilities Requirements and the Inventory by reference by virtue of the statements contained in the GPP and the Capital Plan. The Board previously held that incorporation by reference is an appropriate technique. *WSDF I*, at 49-50. **Therefore, the Board holds that the County's capital facility plan element, as stated in the enabling ordinance, is comprised of the relevant portions of the GPP and the Capital Plan, including the Capital Facilities Requirements and the Inventory.**

CCSV III alleges that the Plan does not contain an inventory of capital facilities as required by section .030(3)(a), and thus, the discussion of the forecast of future needs required by .030(3)(b) is inadequate because it is not based on an inventory. The specific short-comings identified are a lack of discussion on facilities for public water, sewage treatment, wastewater collection and fire or police protection. The Board has previously held that “for the purposes of conducting the inventory required by RCW 36.70A.070(3)(a), ‘public facilities as defined by at RCW 36.70A.030

(12) are synonymous with ‘capital facilities owned by public entities.’” ^[39] *WSDFI*, at 45.

“Public facilities” include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities and schools. RCW 36.70A.030(13).

As stated above, the County relies on the Capital Facilities Requirements as the inventory of many existing capital facilities. The specific components studied in that report are airport, corrections, county government offices, juvenile justice facilities, human services, judicial system, law enforcement, park land, recreational facilities, transportation, solid waste and surface water management. The Inventory completes the County’s inventory of existing capital facilities with the discussions on the public water supply and wastewater collection contained therein. From the holding in *WSDFI* above, the County was not required to provide an inventory of either the fire or police protection. The subjects that the County was required to inventory are identified in the Table of Contents of the Capital Facilities Requirements and the title of the Inventory.

A review of the Capital Facilities Requirements shows that for each of the listed components, the report includes an table showing the actual level of service for 1992 and a forecast analysis for capital facilities through 1999 and 2013. The Inventory provides two main sections of information (“Existing Systems” and “Existing Deficiencies and Improvement Plans”) for individual areas within the county in text. In both cases, the information in the reports state what the existing capital facilities are and what the forecasted needs are. **Therefore, the Board holds that these documents satisfy the requirements of RCW 36.70A.070(3)(a) and (b).**

Next, CCSV III alleges that the capital facilities plan element does not identify locations of expanded or new capital facilities, particularly water and sewage facilities, as required by section .030(3)(c). While CCSV III agrees that the County has incorporated a six-year capital financing plan into the Plan, it asserts the capital plan is deficient because it fails to include information on water and sewage facilities. *See* CCSV III Prehearing Brief, at 11. CCSV III notes that the County discusses these facilities in the utility element, but argues that this is improper because shortfalls in “funding [of these] facilities will [no longer] trigger [a] reassessment of the land use element.” *Id.*, at 13.

The County responds that it intends the Capital Plan to fulfill the requirements of RCW 36.70A.070(3)(c) and (d). *See* Capital Plan at 6. The County refers to the information

provided at Section VII as the description of capital projects required by section .030(3)(c). *See* Capital Plan, Chart at 56. An examination of this chart shows that it provides an overall list of the County's projected capital projects, the intended capacity and, at a minimum, cursory information on locations for the projects. Additional capital project detail is provided in supporting documentation immediately behind this chart.

The County states it is not required to include location and funding plans for expansions of capital facilities that it does not own and that it is permitted to include the water and sewage facilities in the utility element. *See* County's Brief, at 98-100.

The question of what facilities must a county or city account for in the proposals and funding requirements of its capital facilities plan element is not specifically addressed in the Act. ^[40] The County proposes that the determinative factor revolves around ownership of the facility. If the county or city does not own (or operate) a facility, it should not be required to provide capital planning for that facility. The Board agrees with the result. Accordingly, the Board confirms its *WSDFI* holding regarding RCW 36.70A.070(3)(a) and (b). Counties and cities must conduct an inventory of existing publicly-owned capital facilities regardless of ownership.

However, the Board interprets RCW 36.70A.070(3c) as if the phrase "owned or operated by the city or county" existed at the end. This interpretation is required by necessary implication. To hold otherwise would require a county government, as the regional planning entity within a county, to conduct capital planning for all public facilities regardless of ownership. Thus, all capital facilities within a county's boundaries would be integrated into a single capital facility plan. Unlike a major city which is likely the sole provider of public services within its boundaries, counties often do not own or operate all the facilities which provide the public services within its boundaries. To require a county to assume this capital facilities planning is impractical. The county may be unable to incur the expense of additional administration, it may lack expertise to conduct effective administration, special districts may either not cooperate, or they may not share the necessary relevant information because they deem it to be proprietary.

A more appropriate reading of the current requirements of section .070(3) is that after the initial inventory and forecast requirements of section .070(3)(a) and (b) are completed, the Act permits a county to choose to shift some of the facility components that it has inventoried to other categories within the overall mandatory elements of section .070 if there is adequate supporting rationale. Clear identification of components within another section, as in the case of the transportation elements, is adequate rationale. *Compare* "streets" and "roads" in .030(12) with the transportation element .070(6). And, under the current version of the Act, lack of ownership is also adequate rationale.

Conclusion

The County has provided an adequate capital facilities plan element as required by RCW 36.70A.070.(3). Further, the County did not act improperly when it did not provide proposed locations of expanded and new facilities nor a financing plan for the Public Water Supply and Wastewater components because the County included these facilities in the utilities element.

G. FOREST LANDS ISSUES ^[41]

This is the third time the Board has reviewed the County's forest land designations. The first case, *Twin Falls*, CPSGMHB Case No. 93-3-0003, was entered on September 7, 1993. The Board found that the County had complied with the Act's requirement at RCW 36.70A.170(1)(b) to designate forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber. In addition, the County was found to have complied with RCW 36.70A.060 and the requirement to adopt interim development regulations that assure the conservation of designated forest lands.

The second case was *Pilchuck-Newberg Organization et al. v. Snohomish County [PNO]*, CPSGMHB Case No. 94-3-0018, decided on April 28, 1995. There, the Board remanded amendments to the enactments previously found in compliance in *Twin Falls*.

Forest Lands Findings Of Fact

The following Findings of Fact include several relevant ones from the *Twin Falls* and *PNO* final decisions and orders involving Snohomish County forest land designations, in addition to new ones for subsequent events:

- 1) On May 15, 1991, the Snohomish County Planning Department (**Planning Department**) advertised and held a public informational meeting to inform the public of the County's intention to plan for commercial forest lands. The meeting was attended by about 60 and was reported by articles in *The Seattle Times* and *The Herald*. *Twin Falls*, Finding of Fact No. 1.
- 2) In June, 1991, the Planning Department held three public interest group workshops, attended by about 90 citizens. Issues identified included protection of commercial forest lands from adjacent residential development and conversion to other uses, a wide range of property rights issues (the ability to convert forest lands, the ability to conduct forest practices, protection from chemical spray drift on adjacent commercial forest properties), and environmental concerns. Participants at all three workshops agreed that forest lands should be classified and designated into two or three different classes based on scale of operation: Commercial Forests, Rural Forests, and perhaps Urban Forests. *Twin Falls*, Finding of Fact No. 2.

3) On July 18, 1991, the Planning Department established a Forestry Advisory Committee (the **FAC**) of 12 citizens and representatives of special interest groups to advise and assist the Department in developing the forest land conservation program, including an interim plan and the forestry element of the county-wide comprehensive plan. *Twin Falls*, Finding of Fact No. 4; *see also* ARL Exhibit 1.

4) Utilizing the Washington State Department of Community Development's (**DCD**)^[42] Minimum Guidelines, the Planning Department developed five criteria to identify productive commercial forest lands eligible for interim designation:

Forty acre parcel size: The County relied on studies showing 20 acres as the minimum size allowing a positive return on investments, and that economies of scale level off at about 80 acres, and its observation that large contiguous areas of 40 acre or larger parcels remain in the County.

Forest land cover: The County examined aerial photographs, noting that "large commercial forest areas, densely built areas and agricultural areas were easily identified on the aerial photographs, unlike areas of mixed forest, agriculture and residential development." In the former areas, "forested areas of at least 40 acres without a building were identified as productive forest land...."

Forest land grades: The County determined that grades one through three of the State Department of Revenue forest land grades were the most productive forest lands for timber production in Snohomish County, and utilized the Department's [of Revenue's] Land Grade maps to identify "a large contiguous area of productive commercial forest land in eastern Snohomish County, and islands and peninsulas of productive commercial forest lands westward."

Parcel pattern adjacent to islands and peninsulas: The County used the size of adjacent parcels, as determined from Assessor's maps, as an indicator of existing land use conflicts.

Five-acre subdivisions and 20-acre segregation: To determine recent development history, the County used Planning Division maps to locate proposed large lot subdivisions and land segregations filed between 1988 and 1991. *Twin Falls*, Finding of Fact Nos. 6 and 26.

5) Using the five criteria, a county-wide inventory of forest lands identified a large contiguous block of such lands in the eastern portion of the county, and smaller, more isolated lands to the west, referred to as "islands and peninsulas." Only those islands and peninsulas having at least 640 acres and minimum potential for land use conflicts with adjacent

landowners, measured by parcel size and density around the forested perimeter, were considered productive forest land. *Twin Falls*, Finding of Fact No. 7.

6) Between August and November of 1991, the FAC met five times to consider forest land designations and formulate its recommendation. While the FAC reached consensus on support of proposed Alternative 3 ICF designations, and the conservation and planning policies in the interim plan, they did not reach consensus on the IFR designation. The minority could not support the IFR designation because it included some areas that had been segmented into 20 acre parcels and removed from forest tax classification. *Twin Falls*, Finding of Fact No. 4.

7) The Planning Department developed three designation and regulation alternatives:

Alternative 1: (Maximum Commercial Forest Lands Designation Proposal) would designate as Interim Commercial Forest (**ICF**) all productive forest lands identified in the interim plan, providing maximum protection to the largest amount of productive forest land. The forest land identified in Alternative 1 is the result of applying the five criteria described in the plan uniformly county-wide. These lands are generally 40-acre parcels or larger, have commercial forest cover, are in areas of high forest land grades, and have minimal adjacent land use conflicts. Furthermore, no lands with approved 5-acre subdivisions have been proposed for designated forest. These criteria were developed in consultation with the FAC as a means to identify forest lands in Snohomish County that have potential long-term commercial significance consistent with the state's minimum guidelines. Alternative 1 designates all these lands as ICF lands, thus protecting all potential forest lands of long-term commercial significance equally during the interim planning period.

Alternative 2, developed by the Washington Forest Protection Association (**WFPA**), would designate only these lands identified as suitable for long-term commercial timber production by Association members and the Washington State Department of Natural Resources (**DNR**). WFPA members and the DNR Northwest region each evaluated their land for its ability to remain in forest management over the long-term. Although the landowners were able to consider proprietary economic data in the evaluations, the use of these data varies among landowners. This proposal only evaluated and considered the lands of eight large industrial landowners and the DNR, thus limiting the study area and the lands proposed for designation.

-
Alternative 3 was not one of the Planning Department's original alternatives, but was developed through the FAC process. Prior to development of Alternative 3, half the committee strongly favored Alternative 1 and half strongly favored Alternative 2. Alternative 3 was developed as a means of resolving the issues that polarized the committee

on this decision. Technically, Alternative 3 was developed from Alternative 1 by differentiating between large scale forestry operations, which generally occupy the large contiguous block of forest land in the eastern portion of the county, and smaller scale forestry operations which generally occupy the islands and peninsulas lying westward. Large scale forestry operations are classified as ICF land and smaller scale operations as Interim Forest Reserve (**IFR**) lands. The less restrictive development regulations applied to the Forest Reserve lands were intended to reduce the potential economic impact of designation on smaller Forest land owners during the interim planning period. *Twin Falls*, Finding of Fact Nos. 8 and 27.

8) Alternative 1 encompassed a total land area of 288,797 acres, all designated ICF; Alternative 2 covered only 242,992 acres, all designated ICF; Alternative 3 designated 257,080 acres as ICF, and 31,717 acres as IFR (the same total number of acres as Alternative 1). *Twin Falls*, Finding of Fact No. 8.

9) On November 4, 1991, the Planning Department held a follow-up public workshop to its June 1991 workshops, attended by about 25 to 30 citizens, to provide citizens an opportunity to learn about the interim forest lands plan, evaluate the alternatives and the policies, and choose a preferred alternative. *Twin Falls*, Finding of Fact No. 3.

10) The Planning Department recommended Alternative 3, because unlike Alternative 1, Alternative 3 differentiates between small and large scale forestry operations with two classifications of commercial forest land. Furthermore, the Planning Department felt Alternative 3 was responsive to public concerns and issues identified by the FAC and citizens participating in public workshops. *Twin Falls*, Finding of Fact No. 9.

11) On November 6, 1991, the County issued a Determination of Non-Significance (**DNS**) and Environmental Checklist were issued pursuant to the State Environmental Policy Act (**SEPA**). The proposed action was described as: "...an ordinance to adopt and implement the County's Interim Forest Land Conservation Plan [the **IFLCP** or **Interim Forest Plan**], which is intended to meet the Growth Management Act (SHB 2929) interim requirements for conservation of commercial forest lands. The ordinance would designate mapped areas of the county as commercial forest and forest reserve lands and conserve designated lands for commercial timber production with interim policies and regulations." *Twin Falls*, Finding of Fact No. 5.

12) On November 14, 1991, the Planning Department transmitted a Draft Interim Forest Plan to the Planning Commission. *Twin Falls*, Finding of Fact No. 15.

13) On January 13, 1992, the Planning Department sent 5,200 public hearing notices to all

owners of property proposed for designation as interim forest land or within 300 feet of lands proposed for such designation. *Twin Falls*, Finding of Fact No. 16.

14) A January 17, 1992, a Planning Department memorandum to the Planning Commission, drafted in response to statements that an IFR designation went beyond the County's GMA authority, noted that:

The Forest Reserve lands and Commercial forest lands identified in Alternative 3 are both considered potential forest lands of long-term commercial significance based on the established criteria and county-wide inventory. Forest Reserve lands were not "added" to the plan, but differentiated from the Commercial Forest lands shown in Alternative 1. Adoption of Alternative 1 or Alternative 3 would not go beyond the State's GMA minimum requirements. Adoption of Alternative 2 may not meet the State's GMA minimum requirements since it did not result from a complete county-wide inventory of commercial forest lands. Furthermore, Alternative 2 designates substantially less land than the existing areas plans, which did utilize designation criteria and land use inventories on a planning subarea basis.

Designation of Forest Reserve Lands: Forest Reserve lands do not go beyond the Commercial Forest designation required by the GMA. Forest Reserve lands meet all the criteria for classification as Commercial Forest lands. Under Alternative 3, Forest Reserve lands were differentiated from Commercial Forest lands because they were composed of smaller parcels and located closer to developed areas. This differentiation prompted a relaxing of the more restrictive measures associated with the Commercial Forest designation and therefore, creation of the Forest Reserve (and Alternative 3). In fact, most of the Forest Reserve lands produce more valuable trees at a faster rate than do the Commercial Forest lands because of lower elevation, smoother terrain and excellent soil conditions. *Twin Falls*, Finding of Fact No. 10.

15) The January 17, 1992, Planning Department memorandum also discussed whether a forest land designation would affect permitted uses on designated properties:

The interim plan is an overlay to existing area plans and zoning. Except for subdivision restrictions, setbacks, and fire protection assurances imposed on designated and adjacent lands, landowners are not restricted in use of their property beyond its current zoning. The policies would not prevent landowners from building a house or other structures, harvesting timber, clearing trees for a pasture, mining or any other land uses permitted under their current zoning. The purpose of limiting subdivision on designated lands is to maintain those properties in a condition in which they could be managed for timber production now, and in the future if they are designated permanently in the county-wide comprehensive

plan. This interim plan does not require all designated lands (Commercial Forest and Forest Reserve) to remain in forestry uses. While forestry is encouraged, all existing and allowed uses under the zoning code will still be allowed, but new dwelling units will be subject to the 200' or maximum possible setback, whichever is less, and to the fire protection measures. *Twin Falls*, Finding of Fact No. 11 (emphasis added in original finding).

16) The Planning Commission held public hearings on the proposed Interim Forest Plan and implementing ordinance on November 26 and December 11, 1991, and January 28, and February 24, 1992. It discussed and considered the Interim Forest Plan on December 19, 1991, and February 24, 1992. *Twin Falls*, Finding of Fact No. 18.

17) A February 13, 1992, Planning Department memorandum to the Planning Commission responded to public comments on some of the lands which would be subject to designation under Alternative 3, that had been recently segregated or otherwise planned for development. To address such objections, under Alternative 3B:

Forest lands recently segregated into parcels smaller than 40 acres would be removed from the Forest Reserve. Pending and future development projects on these lands would be required to meet the interim plan requirements applying to lands adjacent to designated forest lands to maintain the productivity of remaining Forest reserve lands.

[Although recently segregated forest lands (1990 and 1991)] no longer meet the 40-acre size criteria, they were designated Forest Reserve because the parcels are still within the 20 acre minimum lot size and have potential for producing some timber, and a substantial number of the parcels created have not changed ownership.) This alternative would essentially remove 5,270 acres of forest lands from the Forest Reserve, including segregated lands and additional parcels that would otherwise remain isolated and therefore warrant removal as well. These changes would completely remove the Bosworth Block, Menzell Lake Road, and Little Pilchuck Creek areas referred to in the interim plan document. (Figure 3)

[Alternative 3C would have excluded parcels with pending large-lot subdivision applications as of 1/1/92 from the Forest Reserve. Alternative 3D would identify and designate Commercial Forest and Forest Reserve; however, subdivision of FR would not be restricted; all incentives and disincentives would apply to FR.] *Twin Falls*, Finding of Fact No. 12.

18) On February 24, 1992, the Planning Commission voted to recommend approval of an amended version of Alternative 3 of the Draft Interim Forest Plan to the County Council. Recommended amendments to the Interim Forest Plan and implementing ordinance addressed

the following topics:

Addition of Resource Protection Area of at least 50-foot width along boundaries of Interim Forest Lands.

Increase of minimum subdivision parcel size from 20 to 80 acres in Interim Forest Reserve areas.

Reduction of setback, requirement for pre-application survey, fire protection for dwellings.

Establishment of a 200 foot resource protection area when subdividing parcels adjacent to forest land.

Clustering Ordinance to be developed by July 1, 1992; if no adoption by January 1, 1993, Regulation 2 of the Forest Lands Ordinance shall be repealed.

Within six months of adoption of the Plan, landowners may request exclusion from or addition to Interim Forest Land designation. Staff will evaluate properties for consistency with the criteria in Section III of the Plan, and conduct a site visit. Recommended changes "...shall be processed as a comprehensive plan amendment. This policy shall be repealed when permanent forest lands are designated as part of the county-wide comprehensive plan." *Twin Falls*, Finding of Fact No. 19.

19) The Planning Commission recommendation included the following findings:

The subdivision restriction on Interim Forest Reserve lands should be increased from 20 to 80 acres because the minimum amount of forest land required for efficient timber production is uncertain and the forest lands remaining in the county should be held in place while the Planning Department staff conduct further research on the economics of timber production and prepare the comprehensive plan.

Commercial forest practices may cause a hazardous situation to dwellings located within 200 feet of commercial forest properties and both the adjacent residential landowner and the forest landowner should share the responsibility of reducing the potential hazard. Under the State Forest Practices Act, however, the County cannot regulate forest practices, although forest managers are currently required to abate logging slash adjacent to residences, thus reducing the potential fire hazard caused by logging debris. Therefore, the requirement for a 200-foot setback should be reduced to 50 feet for new dwelling or existing legal lots, strong fire prevention measures should be required in new dwellings, and developing landowners adjacent to designated forest lands should be encouraged to establish a 200-foot

setback between their dwelling and adjacent interim forest land boundaries.

New subdivisions of parcels adjacent to interim forest lands have a better ability than existing legal lots to minimize hazards and conflicts associated with forest practices near residential development by establishing a 200-foot wide resource protection area during the platting process or clustering homes away from interim forest land boundaries. *Twin Falls*, Finding of Fact No. 20.

20) On March 31, 1992, the County Council received the proposed Interim Forest Plan, implementing ordinance and SEPA ordinance amendment. It held public hearings on September 30 and November 4, 1992; the latter hearing was continued to and concluded on December 14, 1992. *Twin Falls*, Finding of Fact No. 21.

21) At a September 30, 1992, hearing before the County Council, a staff member commented on the use of two classes within Alternative 3:

Alternative 3 recognized all forest land identified by county-wide inventory as productive forest lands.... [H]owever, it also recognized that some of these areas lie farther west in the county and are surrounded by mixed rural uses. Therefore it designated these areas as forest reserve. The forest reserves are considered productive forest lands, because of the development pressure they face, being farther west and surrounded by rural land uses, and they would be allowed some residential development, as long as that development conserves some forest land and doesn't convert all of it, and is compatible with forest land uses on adjacent properties.

The Planning Commission found that these lands, [proposed for designation as Forest Reserve] under the development pressure they are, would not be likely for permanent designation if they were not designated in the interim plan, and therefore should be included in the interim plan so they could at least undergo further study. *Twin Falls*, Finding of Fact No. 27.

22) On December 14, 1992, the County Council considered, modified and enacted Motion No. 92-283 (the **Motion**), "Adopting The Interim Forest Land Conservation Plan and Designating Interim Forest Lands." The Motion was passed in response to the GMA requirement to classify, designate and adopt interim development regulations to conserve productive forest lands until the county-wide comprehensive plan is adopted. *Twin Falls*, Finding of Fact No. 23. The designations were based on the five criteria developed by the Planning Department. *Twin Falls*, Finding of Fact No. 26.

23) The Interim Forest Plan indicated that:

Approximately 43 percent of the county's land area is devoted to commercial forestry; of that 579,636 acres, about 62 percent is privately owned. The Snohomish County timber industry is productive and contributes significantly to the economic vitality of several communities in the county.... Historically, forest products mills in the county have depended primarily on timber supplied from the Mount Baker-Snoqualmie National forest, which is expected to decline by more than 83 percent over the next ten years. Due to large cutbacks in federal timber supply to local mills, the future health of the timber industry and dependent communities in the county rely on the availability of timber from state and private commercial forest lands. *Twin Falls*, Finding of Fact No. 24.

24) The Interim Forest Plan noted that:

The timber industry in Snohomish County is productive and should be maintained and enhanced.... Combined third quarter 1990 wages for manufacturers of lumber and wood products, and paper and other allied products totaled \$35,911,818, ranking third highest among manufacturing industries.... In the communities of Darrington, Gold Bar, Granite Falls and Arlington, between 10 and 52 percent of the population was employed by 47 wood products employers in 1990.... The economic vitality and perhaps the existence of some of these communities depend on the health of the timber industry in Snohomish County. *Twin Falls*, Finding of Fact No. 24.

25) The Interim Forest Plan further indicated that:

When residential development is located adjacent to commercial forest land, the costs of forest management increase.... These costs reduce the productivity of forest lands and leave some lands inoperable for timber production. *Twin Falls*, Finding of Fact No. 24.

26) The County Council determined that "[I]t is probable that some commercial forest land will be converted to residential use while the comprehensive plan is being prepared, thereby increasing the potential for conflict with surrounding commercial forest lands, eroding the integrity of the existing commercial forest land base that supports the timber industry in the county, and subverting the comprehensive planning process." The Interim Plan is intended to meet the GMA requirement to "...adopt interim regulations to conserve all resource lands, including commercial forest lands" during the period when the Comprehensive Plan is being prepared, as well as to identify data needs and issues the county should consider in preparing the Comprehensive Plan. *Twin Falls*, Finding of Fact No. 29.

27) Also on December 14, 1992, the County Council adopted Amended Ordinance No. 92-101, "Adopting Interim Regulations to Conserve Forest Lands Amending Snohomish County

Codes Titles 17, 18, 19, 20 and 32" (**Interim Forest Regulations**), pursuant to the GMA requirement to adopt interim development regulations to conserve productive forest lands during the interim planning period prior to adoption and implementation of the county-wide comprehensive plan. *Twin Falls*, Finding of Fact No. 30.

28) Ordinance No. 92-101 set forth twelve planning policies, intended to "...guide staff preparation of the forestry element of the county-wide comprehensive plan required by the GMA" including:

...

(2) Within six months of the date this ordinance is adopted, the county shall adopt a "Right to Practice Forestry" ordinance that discourages adjacent landowners from filing a nuisance suit against an interim forest land owner who is operating under best management practices as defined by current Washington Forest Practice Rules and Regulations.

...

(9) When the county adopts an ordinance that allows clustering of homes in rural area subdivisions, subdivision and short subdivision of parcels adjacent to interim forest lands shall be required to cluster home sites away from interim forest lands.

(10) The county shall review landowners' requests to have their land excluded from an interim forest land designation. Requests for exclusion shall be accepted by the county for six months following the adoption of the Interim Forest Land Conservation Plan. The properties to be reviewed under this policy shall be evaluated for their consistency with the five criteria described in Section III of the Interim Forest Land Conservation Plan and for the presence of other interim resource land designations; and a site visit from Planning department staff shall be conducted as part of the review.... Recommended changes in the interim forest land boundary resulting from review of individual properties shall be processed as a comprehensive plan amendment. This policy shall be repealed when permanent forest lands are designated as part of the county-wide comprehensive plan. *Twin Falls*, Finding of Fact No. 32.

29) Ordinance No. 92-101 bars subdivision of land designated ICF "...until the final commercial forest designation is established and the comprehensive plan and implementing development regulations are adopted pursuant to the GMA. SCC 32.13.020(1). "Land designated Interim Forest Reserve shall not be divided into parcels of less than 80 acres in size. SCC 32.13.020(2). *Twin Falls*, Finding of Fact No. 34.

30) On March 9, 1993, the Board received a Petition for Review from Weyerhaeuser Real Estate Company (**WRECO**) challenging Motion 92-283, Amended Ordinance 92-101 and Ordinance 92-102 regarding the County's forest land designation of WRECO's property. The matter was consolidated with Case No. 93-3-0003, *Twin Falls v. Snohomish County*. PNO,

Finding of Fact No. 9.

31) On May 3, 1993, the Snohomish County Council passed Ordinance No. 93-021, the Rural Cluster Subdivision Ordinance. *PNO*, Finding of Fact No. 10.

32) Requests for exclusion were accepted by the County until June 15, 1993, six months after the Interim Forest Plan was adopted. *PNO*, Finding of Fact No. 11.

33) On September 7, 1993, the Board issued a Final Decision and Order in *Twin Falls, et al., v. Snohomish County* that found Snohomish County Motion 92-283 and Ordinances 92-101 and 92-102 in compliance with the GMA and SEPA. Subsequently, on October 6, 1993, the Board entered an "Order Granting WRECO's Petition for Reconsideration and Modifying Final Decision and Order; and Order Denying SNOCO PRA's Petition for Reconsideration." However, this order did not change the Board's ultimate conclusion that the challenged actions complied with the Act. *PNO*, Finding of Fact No. 12.

34) On October 11, 1993, the Snohomish County Council adopted a Right to Practice Forestry Ordinance, Snohomish County Amended Ordinance No. 93-083. *PNO*, Finding of Fact No. 13.

35) In November 1993, staff from the Planning Department conducted a field visits to 21 sites owned by six landowners, including WRECO, for removal from, or change in, interim forest designation pursuant to Planning Policy 10 of Ordinance 92-101. *PNO*, Finding of Fact No. 15.

36) On January 5, 1994, the Planning Department issued a "Staff Evaluation and Recommendation of Properties Evaluated Pursuant to Planning Policy 10 in Ordinance 92-101" (the **Staff Evaluation**). *PNO*, Finding of Fact No. 17.

37) On January 25, February 22 and March 22, 1994, the Planning Commission studied the Planning Department's Staff Evaluation and held public hearings on the staff's findings and conclusions. *PNO*, Finding of Fact No. 27.

38) On February 22 and March 22, 1994, the Planning Commission submitted its recommendations regarding the requests for redesignation. *PNO*, Finding of Fact No. 28.

39) In March, 1994, the Planning Commission distributed a Draft Snohomish County Comprehensive Plan General Policy Plan (the **Draft GPP** or **Draft Plan**) to the general public. County Exhibit 10.

40) On March 8, 1994, the FAC sent a memorandum to Ray Gould, the Chairman of the

Planning Commission, and to Steve Holt, Director of the Planning Department, announcing that on March 7, 1994, the committee, by a six to two vote, ^[43] recommended that two criteria for designating forest lands be amended: existing subdivision applications and existing legal tracts less than 40 acres. ARL Exhibit 5.

41) On March 25, 1994, Planning Department Director Steve Holt sent a memorandum to all the chairs of the various advisory committees asking them to have their committees review and comment by May 2, 1994, upon the Draft *Plan* that was distributed by the Planning Commission. ARL Exhibit 9.

42) On April 2, 1994, Governor Lowry signed ESSB 6228 (Laws of 1994, Chapter 307) which amended the GMA's definition of "forest lands" at RCW 36.70A.030(8).

43) On April 6, 1994, the FAC met and member Jim Beaster distributed a set of draft criteria for buffer lands adjacent to commercial forest lands that contained a 200 foot setback. No action on the proposal was taken at the meeting. ARL Exhibit 10, at 3-4.

44) On April 13, 1994, the FAC met and by an eight to one vote, passed a motion endorsing the Beaster/Weston proposal in general regarding commercial forest buffers and reaffirming the committee's strong opposition to residential uses in the commercial forestry zone. ARL Exhibit 11.

45) On April 25, 1994, the FAC met and passed a motion to send a letter to the Planning Commission containing the FAC's comments on the Draft Plan. The comment letter was modified because of the 1994 amendments to the Act. ARL Exhibit 12.

46) On May 24, 1994, the Planning Commission held a public hearing. Duane Weston, the FAC's representative, presented the FAC's recommendations. [need an exhibit; see ARL's brief, at 15]

47) On June 9, 1994, ESSB 6228 became effective.

48) On June 21, 1994, Karen Miller, the Chair of the County Council, sent a memorandum to Steve Holt, Director of the Planning Department, and Joni Earl, Deputy County Executive. Ms. Miller requested that Planning Department staff and the FAC conduct analysis and make a recommendation to the County Council on how the 1994 amendment to the definition of "forest lands" might alter the amount of land designated as forest lands. ARL Exhibit 13, at 2.

49) On July 14, 1994, the FAC met because of the County Council's request to determine whether proposed forest land actions complied with the 1994 amendments to the GMA

definition of forest lands. ARL Exhibit 14.

50) On July 25, August 3, and August 31, 1994, the County Council held public hearings to consider the petitions for inclusion in and exclusion from ICF and IFR designations, and to consider the Planning Commission recommendations, and to take public testimony. *PNO*, Finding of Fact No. 31.

51) On July 26, 1994, the Planning Commission released its “Recommendation” version of the Plan, a version that contained underlining and a strike-out format. Exhibit 1.1.0002.

52) On August 13, 1994, Bonnie Phillips-Howard sent a letter to Steve Holt, Planning Department Director, indicating that the Pilchuck Audubon Society was resigning from the FAC. Exhibit 3.2.09928.

53) On August 16, 1994, the County issued a "Determination of Non-significance" regarding the proposed redesignation of 2,497 acres of forest lands from ICF to IFR in the Interim Forest Plan. *PNO*, Finding of Fact No. 32.

54) On August 21, 1994, Bob Weirman sent a letter to Steve Holt, Planning Department Director, indicating that the Snohomish County Sportsmen’s Association was “terminating” its seat on the FAC. Exhibit 3.2.09929.

55) On August 31, 1994, the Snohomish County Council passed Amended Motion 94-210, amending Motion 92-283, relating to interim forest land designations. *PNO*, Finding of Fact No. 33.

56) The FAC met on several occasions between August and November, 1994. *See* ARL Exhibits 16, 17 and 18.

57) On December 15, 1994, the FAC submitted a letter of final recommendation (**FAC cover letter**) to the County Council with an attachment, its “Findings and Conclusions on the Designation of Commercial Forest Lands” (**FAC Report**), dated January 5, 1995^[44]. The FAC recommended eliminating the “forest reserve” category and recommended the establishment of a “forest transition area” (**FTA**) within lands designated as “commercial forest.” The FAC recommended that approximately 239,800 acres of state and private timber land within Snohomish County be designated as “commercial forest”. CD 22.

58) On April 28, 1995, the Board issued its Final Decision and Order in *PNO*.

59) On March 1, 1995, the County Council deliberated on forest land issues and approved

amendments to the Draft Plan recommended by the FAC. ARL Exhibit 21, at 16-17.

60) On June 21, 1995, the County issued its Final Environmental Impact Statement (**Final EIS**), in two volumes, for its GMA Comprehensive Plan. CD 6.

61) On June 28, 1995, the County Council passed Snohomish County Amended Ordinance No. 94-125 which adopted the attached Snohomish County GMA Comprehensive Plan, entitled “General Policy Plan.” Section 5 of the Plan repealed the Interim Forest Land Designations and the Interim Forest Land Conservation Plan adopted and amended by County Council Motions Nos. 92-283 and 94-210. CD 2A, at 18.

62) The forest land designations contained in the Plan were based on the Interim Forest Plan and the FAC’s Report which was incorporated by reference into the Plan. The Plan contains two designations: commercial forest (referred to as “F-C”) and local forest (“F-L”). CD 2A, at LU-45. The Plan does not indicate the number of acres designated as forest lands. However, the FAC cover letter indicates that a total of 239,800 acres^[45] of land were designated “commercial forest lands.” CD 22, at 1. This designated commercial forest acreage contains “state and private timber land.” CD 22, at 2.

63) The Plan also includes a “forest transition area” (**FTA**) designation recommended by the FAC. The FTA is an overlay to the F-C designation, consisting of the first one-quarter mile of designated commercial forest. CD 2A, at LU-45; CD 22, FAC cover letter, at 2. The FTA is not the equivalent of the interim forest reserve designation in the IFLCP (CD 22, FAC Report, at 6) nor the same as the “rural resource transition area” described in the Plan, which is part of the rural area. CD 22, FAC Report, at 8. The FTA is approximately 300 miles in length (CD 22, FAC Report, at Figure 1 between 8 and 9), which equals somewhat less than 75 square miles. CD 6, at 26. If the FTA were fully developed, it would contain less than 2,400 dwelling units on less than 48,000 acres of forest land, i.e., an overall average density of 1du/20 acres. Residential development could occur at 1du/10 acres if rural cluster subdivision procedures are used. Development on the non-FTA portion of designated commercial forests would be limited to 1du/80 acres. CD 6, at 26.

64) On July 10, 1995, the County Council passed Snohomish County Amended Emergency Ordinances Nos. 95-048 (Regulations to Conserve Forest Lands) and 95-052 (Right to Practice Forestry Ordinance) which constitute forest land development regulations that implement the Plan. CD 12 and 16 respectively. Section 1 of Ordinance 95-052 defines “Designated Forest Land” as “... any land designated as commercial forest or local forest...” by the Plan. CD 16, at 2.

Did the County fail to be guided by RCW 36.70A.020(2), (8), (9) and (13) when it made forestry designations when it adopted Amended Ordinance 94-125?

The preamble to RCW 36.70A.020 states:

RCW 36.70A.020 Planning goals. 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:

Pilchuck contends that the County violated four of the Act's planning goals.

RCW 36.70A.020(2)

Planning Goal 2 of the Act states:

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

Pilchuck III cites to the Final EIS which indicates that 15,735 acres of land designated as commercial forest land in the Draft Plan was removed from forest land designation in the adopted Plan. *See* CD 6, at 59. In particular, Pilchuck III points to the Final EIS' Table 4, which indicates that 1,512 acres of formerly designated forest land was re-designated in the adopted Plan as "Rural 2.3." Pilchuck III Brief, at 37-38, citing CD 6, at 28. Pilchuck III contends that a 1du/2.3 acre housing density constitutes sprawl, citing the Board's *Bremerton* decision.

The Board agrees that 1du/2.3 acre rural densities generally constitute rural sprawl and should not be permitted. That, however, is not the issue before the Board here and is addressed elsewhere in this decision. Instead, the issue here is whether the County's removing 1,512 acres from forest land designation violates RCW 36.70A.020(2) as it relates to forest lands. The Board assumes that the 1,512 acres that were removed did not meet the Act's definition of forest lands. [\[46\]](#)

Pilchuck III has not shown otherwise. **Therefore, the Board holds that Pilchuck III has not met its burden of proof for showing how the Plan's de-designation of forest lands fails to comply with RCW 36.70A.020(2).**

RCW 36.70A.020(8)

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the

conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

Pilchuck III claims that the County was not guided by Planning Goal 8 because it “continuously decreased” the acreage of designated forest lands over the course of its GMA planning process. Pilchuck III Brief, at 34. The Board has reviewed the record of this and prior decisions and prepared the following summary chart to illustrate the County’s history of forest land planning under the Act.

Designated Forest Land Acreage

1,342,720 acres	=	total acreage of Snohomish County	[47]
579,636 acres	=	total commercial forest land acreage based on 1990 and 1991 data, before adoption of Interim Forest Plan	[48]
288,797 acres	=	total acreage designated as “forest land” in the Interim Forest Plan (257,080 acres as ICF and 31,717 as IFR)	[49]
255,000 acres	=	total acreage designated as forest lands in the Amended Interim Forest Plan	[50]
239,800 acres	=	total acreage recommended by the FAC for designation as forest lands; total acreage designated as forest land in the Plan (approx. 48,000 acres of this amount constitutes the Forest Transition Area)	[51] [52]

Pilchuck III contends that:

Between enactment of its Interim Forest Land Conservation Plan ... and the final Plan, the County effectively removed approximately 64,000 acres from commercial forestry use.... Pilchuck III Brief, at 34.

Although the Board agrees that the amount of acreage designated by the County as forest lands decreased between adoption of the Interim Forest Plan and the Plan, the Board calculates the change as a reduction in 48,997 acres [53] rather than 64,000 acres. [54] **The Board holds that Pilchuck III has failed to meet its burden of showing how this reduction in designated acres of forest lands does not comply with RCW 36.70A.020(8).** The first sentence in Planning Goal 8 refers to productive timber industries. Pilchuck III has made no showing how the designation

of 239,800 acres of land as “commercial forest lands” pursuant to RCW 36.70A.170 (of the 579,636 acres of land generally recognized by the County, before adoption of the Interim Forest Plan, as being devoted to commercial forestry) will not achieve this goal. The fact that land is generally used by the timber industry does not necessarily mean that it meets the Act’s definition of “forest land” that must be designated. Accordingly, Pilchuck III has not shown how the County is not maintaining and enhancing productive timber industries.

The second sentence of Planning Goal 8 does specifically address productive “forest lands,” a phrase which is defined by the Act at RCW 36.70A.030(9). Nonetheless, Pilchuck III has not met its burden of showing how, by simply reducing the amount of designated acres of forest lands, the County has violated this planning goal. In order to do so, Pilchuck III would first have to show that previously designated lands that were removed met the definition of “forest lands.”

RCW 36.70A.020(9)

RCW 36.70A.020(9) provides:

(9) Open space and recreation. Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.

Pilchuck III contends that by removing more than 15,000 acres from forest land designations and having an approximately 48,000-acre forest transition area overlaying designated forest lands, the Plan does not comply with Planning Goal 9 and the requirement to encourage the retention of open space and increase access to natural resource lands. Pilchuck III Brief, at 39. **The Board holds that Pilchuck III has not met its burden of showing how the County violated RCW 36.70A.020(9).** Although the County reduced the number of acres designated as forest land, that does not necessarily mean that it failed to encourage the retention of open space. Table 4 to the Final EIS indicates that of the 15,735 acres removed from forest land designation, 3,520 acres (22 percent of the total acres removed) were re-designated as Rural 20 and 7,175 acres (46 percent of the total acres removed) were re-designated to Rural 5. CD 6, at 28. In addition, the 3,048 acres listed for the City of Everett constitutes its water supply lands. *See* CD 6, at 59.

Pilchuck III also argues that because development is allowed within the FTA, that the County has violated Planning Goal 9. The Board discusses the FTA in more detail below. **However, for purposes of this legal issue, the Board holds that Pilchuck III has not met its burden of showing how designating a 48,000-acre FTA fails to comply with RCW 36.70A.020(9) and the language to encourage the retention of open space.** LU Policy 8.E.3 allows development at a density of 1du/20 acres through a standard plat or 1du/10 acres using a cluster subdivision process in the portion of the FTA eligible for development. CD 2A, at LU-31. According to the Final EIS, the maximum number of homes that could be built is 2,400. CD 6, at 26 and 60. Even so, LU Policies 8.E.4 and 8.E.6 require a permanent 500-foot buffer between any development in the FTA and the non-FTA commercial forest lands. Within this 500-foot buffer, the land must be

managed and maintained as commercial forest, thus ensuring open space. If these policies do not encourage the retention of open space, Pilchuck III has not made its case of persuading the Board why.

Pilchuck III next alleges that LU Policy 8.A.5 fails to comply with the open space provisions. LU Policy 8.A.5 provides:

Up to one year after adoption of the Plan, Commercial Forest land shall be reviewed for its consistency with the adopted criteria described in Plan policy 8.A.2 at a landowner's written request. Those properties that do not meet the criteria shall be removed from Commercial Forest land designations. CD 2A, at LU-28.

The Board holds that Pilchuck III has not shown how LU Policy 8.A.5 does not comply with RCW 36.70A.020(9). Even assuming that the County reviewed a landowner's written request and concluded that the property did not meet the criteria for being designated as forest land, that does not mean that the County would not encourage the retention of open space on the property.

Finally, Pilchuck III alleges that the Plan fails to provide increased access to forest lands. The Act does not define the phrase "natural resource lands" used in RCW 36.70A.020(9). However, the captions to RCW 36.70A.060 and .170 refer to such lands. As a result, the Board has always referred to "natural resource lands" as those lands that counties and cities are required to designate as "agricultural lands," "forest lands," or "mineral resource lands" pursuant to RCW 36.70A.170. The fact that the County reduced the number of acres of designated forest lands is irrelevant to whether the Plan increases access to designated natural resource lands such as forest lands. The Plan's "Open Space, Shoreline and Scenic Resources" provisions specifically address this goal and contain policies for trail corridors (Policy 10.A.1(h)) and accessible trails (Policy 10.

B.4). [CD 2A, at LU-37 and -38.]^[55] Accordingly, Pilchuck III has not met its burden of showing how the Plan fails to increase access to designated natural resource lands.

RCW 36.70A.020(13)

Pilchuck III did not brief the portion of Legal Issue No. 25 dealing with historic preservation at RCW 36.70A.020(13). Therefore, the Board deems it **abandoned** and will not discuss it further.

Conclusion No. 25

Pilchuck III has not met its burden of showing how the County failed to comply with RCW 36.70A.020(2), (8), (9) or (13) when it made final forest land designations in the Plan.

Legal Issue No. 26

Did the County fail to comply with RCW 36.70A.040(3)(b), .060(1) and .170 when it determined that certain areas designated as interim commercial forest and interim forest reserve would not receive forest lands designations in the Plan?

RCW 36.70A.040(3) provides that:

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: (b) the county and 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 ;

In turn, RCW 36.70A.170, as it relates to the *designation* of forest lands, provides:

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate: ... (b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;

RCW 36.70A.060, as it relates to the *adoption* of development regulations for designated forest lands, provides:

(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 . Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.120. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within three hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

...

(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. Emphasis added.

The County's Interim Forest Plan constituted its process for designating forest lands and the Interim Forest Regulations its development regulations to implement the Interim Forest Plan until the County's GMA Comprehensive Plan was adopted. As previously indicated, 48,997 acres of designated forest land in the Interim Forest Plan were removed or de-designated in the Plan. Of these lands, the Final EIS only partially explains what happened to 15,735 acres. Neither the Plan itself, nor the FAC cover letter or FAC Report, nor the Final EIS explains what happened to the other 33,262 acres. None of these documents explains why these lands were de-designated or where they are located. What happened to the 48,997 acres is the key question. The County points to the 1994 amendment to the definition of "forest lands" as its justification.

In *PNO*, the Board evaluated the 1994 amendment to the GMA's definition of forest lands.

(9) "Forest land" means land primarily ~~useful for~~ devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, ~~for commercial purposes~~, and that has long-term commercial significance ~~for growing trees commercially~~. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses. (underlined language added, strikethrough language deleted by ESSB 6228, Laws of 1994, Chapter 307, §2).

The Board also examined the 1994 legislature's uncodified statement of intent, Section 1 of Laws of 1994, Chapter 307 (ESSB 6228), which provides:

The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques

that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36.70A.030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forest lands and is not intended to require every county that has already complied with the interim forest land designation requirement of RCW 36.70A.170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36.70A.060(3). Emphasis added.

The Board concluded that:

Snohomish County Amended Motion 94-210 does not comply with the requirements of the GMA because it does not apply the 1994 definition of "forest land" at RCW 36.70A.030 (9). The Board holds that the event that invokes usage of the 1994 definition for counties that have already complied with RCW 36.70A.170 is an amendment to any forest land designation prior to adoption of a comprehensive plan. *PNO*, at 15 (emphasis added).

The change to the definition of forest lands (signed by the Governor on April 2, 1994; effective June 9, 1994) was made well after central Puget Sound counties and cities were required to have made "interim" designations and adopt "interim" development regulations (i.e., by September 1, 1991) but before comprehensive plans were to have been adopted on July 1, 1994 (*see* RCW 36.70A.040(3)(d)). **The Board holds that, as a matter of law pursuant to Section 1 of ESSB 6228 and RCW 36.70A.060(3), all cities and counties that had not adopted comprehensive plans by the effective date of ESSB 6228 were required to re-evaluate whether their prior (interim) forest land designations and development regulations complied with the 1994 definition of the phrase "forest lands" and remained consistent with their newly adopted comprehensive plans.**

Pilchuck III contends that the County violated the Act because, when it conducted the additional review discussed above and then adopted its comprehensive plan, the County reduced the acreage of designated forest lands. **The Board holds that a county or city does not *per se* violate the Act simply because its *final* forest land designations approved at the time of comprehensive plan adoption include lesser acreage than the preliminary, interim forest land designations.** In its *Bremerton* decision, the Board noted:

... It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." Only after a county's agricultural, forestry and mineral resource lands have been identified and actions taken to conserve them, and its critical areas, including aquifers, are identified and protected, is it then possible and appropriate to determine where, on the

remaining land, urban growth should be directed pursuant to RCW 36.70A.110....
Bremerton, at 31.

The fact that “the land speaks first” does not necessarily mean that it also “speaks last.” Instead, internally the GMA is an iterative process as described as follows:

The interactive and iterative sequence under GMA is: (1) Designate and adopt interim critical areas and resource land regulations (RCW 36.70A.170, .060); (2) Adopt CPPs with at least **procedural** fiscal analysis (per *Snoqualmie*); (3) Adopt *Interim* Urban Growth Areas (RCW 36.70A.110(4)); (4) Adopt final phases of CPPs and/or **substantive** fiscal analysis as needed (per *Snoqualmie*); (5) Adopt comprehensive plans, including Final Urban Growth Areas (RCW 36.70A.110(4)); (6) Perform activities and make capital budget decisions in conformity with the adopted comprehensive plan (RCW 36.70A.120). *Bremerton*, at 31, footnote 18, quoting *Edmonds*, at page 26, fn. 10 (emphasis in original).

RCW 36.70A.060(3) adds a review step to this equation at the time of comprehensive plan adoption — the goal of which is to ensure that the designations are consistent with the Plan.

Additionally, the GMA itself is not a static document. Instead, since passage in 1990, it has been amended every year but 1992. Thus, the external factors affecting the Act plus its own unique iterative process, force all jurisdictions planning under the GMA to constantly re-assess their work. Here, the County re-evaluated its Interim Forest Land Plan and Interim Development Regulations based on several reasons: the documents themselves called for such a review prior to adoption of the comprehensive plan; ^[56] RCW 36.70A.060(3) requires such analysis, and the Board’s *PNO* decision and remand order confirmed the requirement.

The Board holds that a city or county cannot automatically as a matter of law be found in noncompliance when, as a result of conducting the necessary review prior to adopting its comprehensive plan, it reduced the acreage of designated forest lands. It may not be that unusual for a city or county to decrease the amount of designated natural resource lands. As indicated above, the first action required to be taken by central Puget Sound cities and counties under the Act was to designate critical areas and natural resource lands by September 1, 1991. Since the GMA did not take effect until July 1, 1990, these jurisdictions, especially counties, were given little time to complete a monumental task. The Board has suggested in the past that under such circumstances, it is best to err on the conservative side. Thus, when designating interim urban growth areas (**IUGAs**), the Board suggested a “minimum sprawl hypothesis”^[57] — where, to be cautious, IUGAs should be drawn as small as possible. Similarly, to be “prudent” in assuring the conservation of all designated natural resource lands (RCW 36.70A.060(1), a maximum conservation hypothesis), cities and counties should designate more, rather than fewer of these lands. However, subsequently, by the time comprehensive plans were to be adopted on

July 1, 1994, cities and counties had nearly three years to gather additional information that would result in the more accurate designation of natural resource lands and critical areas.

In contrast to the above holding that as a matter of law a reduction in designated natural resource lands does not constitute noncompliance with the Act, the County can be found in noncompliance, based on a factual examination of the record below, if it failed to designate all lands that meet the definition of forest lands unless these lands are located within a UGA. See RCW 36.70A.060(4) discussed below. The Board has previously held that RCW 36.70A.170(1)(d) requires counties and cities to designate all critical areas. See *Pilchuck, et al., v. Snohomish County [Pilchuck]*, CPSGMHB Case No. 95-3-0047 (1995), at 18. **The Board now similarly holds that RCW 36.70A.170(1)(b) requires counties and cities to designate all lands that meet the definition of forest lands and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all these designated forest lands unless the forest lands would fall within a UGA.** Unlike critical areas, which have no statutory exception for the designation of all such lands, forest (and agricultural) lands do.

RCW 36.70A.060(4) provides:

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.

Subsection (4) constitutes a statutory exception to the requirement that all forest lands must be designated. It grants discretion to cities and counties to either not designate what would be “forest lands” if these lands are located within a UGA; or to designate them as forest lands but only if the city or county has enacted a purchase or transfer of development rights (TDR) program. RCW 36.70A.060(1) requires counties and cities to adopt development regulations that assure the conservation of all designated forest lands.

Although *Pilchuck III* has not shown how the County violated RCW 36.70A.020(8), the record reveals that the County did violate RCW 36.70A.060(3). Between adoption of the Interim Forest Plan and the Plan, the County Council removed 48,997 acres of designated forest lands. Pursuant to RCW 36.70A.060(3), any reduction or addition in amount of designated forest lands between the interim and final designations must have been done to ensure consistency between the designations and the comprehensive plan. The County has not indicated why the reduction in 48,997 acres of forest land was necessary to ensure consistency. Its only explanation is that the change in definition of forest lands caused the reduction.

Pilchuck III argues that the 1994 amendment to the definition of forest land did not require a

substantive change to the County’s criteria for designating forest lands since the 1994 amendment basically incorporated language from the Minimum Guidelines on which the Interim Forest Plan was already based.

The Plan’s final designations of forest lands were based on eight criteria:

1. Parcel Size
2. Peninsula Width
3. Island Size
4. Tax Classification
5. Primary Use
6. History of Development Permits
7. Forest Land Cover
8. Forest Land Grades CD 2A, at LU-27.

Only two of these, numbers 7 and 8, were the identical criteria used for making designations in the Interim Forest Plan. The other six criteria were versions of prior criteria “more stringently defined” by the FAC as a result of the 1994 amendment to the definition of “forest lands.” CD 22, FAC Report, at 4-5. Consider the seven comparisons below. Quotations from the four factors listed in RCW 36.70A.030(9) are compared with quotations from the seven Minimum Guideline provisions from WAC 365-190-030, and with quoted criteria in the Plan:

1. Compare RCW 36.70A.030(9)(a)

The proximity of the land to urban, suburban, and rural settlements;

with WAC 365-190-060(2)

The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements.

Plan Result:

Criterion 7 — Forest Land Cover (interim criterion 2): The land should consist of large forested areas and may not contain densely built residential or agricultural areas. [\[58\]](#)

2. Compare RCW 36.70A.030(9)(b):

surrounding parcel size and the compatibility and intensity of adjacent and nearby land

uses; [emphasis added]

with WAC 365-190-060(3):

The size of the parcels: Forest lands consist of predominantly large parcels

and WAC 365-190-060(4):

The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance.

Plan Results:

Criterion 1 — Parcel Size: A minimum of 40 acres or 1/16th of a section; or (b) parcels less than 40 acres which are zoned Forestry when at least 40 acres are contiguously owned and the land is in a deferred forest or exempt tax status. [\[59\]](#)

Criterion 2 — Peninsula Width: Peninsulas shall be more than one quarter mile wide.

Criterion 3 — Island Size: Islands shall be a minimum of 2,000 acres.

3. Compare RCW 36.70A.030(9)(c):

long-term local economic conditions that affect the ability to manage for timber production;

with WAC 365-190-060(6):

Local economic conditions which affect the ability to manage timberlands for long-term commercial production.

Plan Result:

No specific criterion corresponds to this RCW or WAC.

4. Compare RCW 36.70A.030(9)(d):

the availability of public facilities and services conducive to conversion of forest land to other uses.

with WAC 365-190-060(1):

The availability of public services and facilities conducive to the conversion of forest land.

Plan Result:

No specific criterion corresponds to this RCW or WAC.

5. WAC 365-190-060(7) (no specific RCW factor corresponds):

History of land development permits issued nearby.

Plan Result:

Criterion 6 — History of Development Permits: The land shall not be subject to any vested development applications containing residential lots or densities higher than one unit per 40 acres. [\[60\]](#)

6. WAC 365-190-060(5) (no specific RCW factor corresponds):

Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW.

Plan Result:

Criterion 4 — Tax Classification: Parcels shall currently be in a deferred forest tax status pursuant to RCW 84.33 or RCW 84.34.

7. WAC 365-190-060 (first sentence) (no specific RCW factor corresponds):

In classifying forest land, counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530).

Plan Result:

Criterion 8 — Forest Land Grades (interim criterion 3): The land should consist primarily of Forest Land Grades one through three as mapped by the Department of Natural Resources. [\[61\]](#)

The Board's above analysis of the definition of forest lands and the criteria the County used to designate those lands indicates that the change in the definition of forest lands should not have had a significant impact on the County's criteria. Nonetheless, even if the definition modification had forced the County to adopt entirely different designation criteria, the legal justification for making a change in designations must be consistency with the comprehensive plan, of which applying the appropriate definition of "forest lands" is a component. Although the definitional change can certainly constitute a major part of the justification for a change, when, as here, the County basically was already employing the four factors added by the 1994 definition, the definitional change alone cannot constitute the appropriate justification. Alternatively, even if the definitional change entirely caused the de-designation, a county would still have to identify which lands were de-designated

Therefore, the Board holds that the Plan as adopted does not comply with RCW 36.70A.060 (3) and will be remanded with instructions to the County to make the requisite showing of how the reduction in designated forest lands was consistent with the comprehensive plan.

The Board wants to be clear on this point: the Act does not prohibit a reduction or increase in the amount of finally designated forest lands. It simply requires that any change be made in order to ensure consistency with the adopted comprehensive plan. Accordingly, the Board is not holding that the County cannot reduce designated forest lands by 48,997 acres or any other amount it deems appropriate. **Instead, the Board holds that any change in the amount of designated forest lands must have been made to ensure consistency with the comprehensive plan.** On remand, the County must specify the amount of acreage, indicate why the reduction in acreage was necessary to ensure consistency with the Plan, and specify where the de-designated lands are located.

The County contends and the Board agrees that Pilchuck III did not brief the second question asked in Legal Issue No. 27. Therefore, the Board treats it as **abandoned** and will dismiss it with prejudice.

Finally, Pilchuck III also argues in this issue that the County violated RCW 36.70A.160 because it failed to list forest lands in its identification of open space corridors. *See* Pilchuck III Brief, at 64-65. Since RCW 36.70A.160 was not listed in the statement of Legal Issue No. 26, the Board will not address it here.

Conclusion No. 26

RCW 36.70A.170(1)(b) requires counties and cities to designate all lands that meet the definition of forest lands unless such lands are located within a UGA. In that case, these lands must be designated only if the city or county has enacted a purchase or transfer of development rights program. RCW 36.70A.060(1) in turn requires that counties and cities adopt development regulations that assure the conservation of all designated forest lands. The fact that the County's

final forest land designations contained in its comprehensive plan include fewer acres than those designated on an interim basis until the adoption of the comprehensive plan is not an automatic violation of the Act at RCW 36.70A.040(3)(b), .060(1) and .170. However, if a city or county changes the number of acres designated as forest lands between the interim and final designations, the change must be based on the 1994 definition of forest land (if the factors contained in that definition had not previously been examined) and must be consistent with the comprehensive plan. Here, the County violated RCW 36.70A.060 because it did not explain its rationale for de-designating forest lands, as correlated to comprehensive plan consistency.

Legal Issue No. 27

Did the County fail to comply with RCW 36.70A.060(1) and .170 relating to forest land designations when it adopted Amended Ordinance 94-125 and Emergency Ordinances 95-048 and 95-052 as those enactments affected approximately 48,000 acres of forest land; and did it fail to appropriately regulate uses on properties adjacent to forest lands?

The basic question for the Board to determine in this legal issue is whether the County designated all forest lands as required by RCW 36.70A.170. Pilchuck III contends that the County relied upon land-owner intent in further reducing the number of acres designated as forest land in the Plan. Pilchuck III Brief, at 57.

The Board has previously examined the subject of land-owner intent and its effect on the designation of forest lands in both *Twin Falls* and *PNO*. In *Twin Falls*, the Board rejected arguments that designations should be based only upon the land-owner's intent:

The Board rejects the contention by Twin Falls and WRECO that because a parcel of land is not being managed for commercial forestry purposes, it cannot be designated forest lands. Neither the GMA's definition of forest lands, nor its requirements that counties and cities designate forest lands and adopt interim development regulations that assure the conservation of those lands, bolster such a contention. Simply put, if the intent of the landowner were the crucial determining factor for designating forest lands, there might be far fewer forest lands designated, since high density residential or commercial use would be more lucrative. This would defeat the purpose of interim forest land development regulations — to conserve these lands until GMA required comprehensive plans and implementing development regulations are adopted. *Twin Falls*, at 28.

The Board noted the difference between the Act's definition of "agricultural lands" and "forest lands" and concluded that with the former, land-owner intent did play a more important role as evidenced through the land-owner's actions: was the land primarily devoted to agricultural use? The Board stated:

While RCW 36.70A.030(8) defines forest land as "land **primarily useful** for growing trees," RCW 36.70A.030(2) defines agricultural land as "land **primarily devoted** to the commercial production of horticultural... products." (Emphasis added). The latter terminology includes the landowner's intent: if the land is not currently being utilized for the commercial production of agricultural products, it cannot be designated agricultural land.

In sharp contrast, "primarily useful" is not limited to the land owner's intent to currently manage property for commercial timber production. Instead, it addresses the possibility of using the property for forestry purposes. The legislature was obviously aware of the distinction between the terms "primarily useful" and "primarily devoted." The Board concludes that "useful" is a much broader term. Accordingly, the Board holds that the land owner's intent relative to management of the property for commercial timber production is not controlling in determining whether the land should be designated as forest land. *Twin Falls*, at 28-29 (emphasis in original).

In *PNO*, the Board was given the opportunity to review the 1994 amendment to the definition of "forest lands." The Board concluded:

... when the County does adopt its comprehensive plan and implementing development regulations, it will have to use the new definition of "forest land." In essence, by amending the definition, the Legislature deleted the phrase "primarily useful for" and replaced it with "primarily devoted to." The legislature did not amend the definition of "agricultural lands" which the Board reviewed in its *Twin Falls* decision. Interestingly, although the Legislature amended the definition of "forest lands" to mirror that of "agricultural lands" by including the "primarily devoted to" language, the legislature also added a set of four factors to examine in determining whether the land was indeed "primarily devoted to" growing trees commercially. None of these four factors expressly involves the landowner's intent.

Ironically, when the Board in *Twin Falls* examined the "primarily devoted to" language in the definition of "agricultural lands," it concluded that the use to which land is primarily devoted can be determined by looking at what is actually occurring on-site: "if the land is not currently being utilized for the commercial production of agricultural products, it cannot be designated agricultural land." *Twin Falls*, at 29. Thus, as the Board indicated, landowner intent is part of the formula, at least by implication. With the 1994 amendment of the definition of "forest land," the Board's test, that "primarily devoted to" is determined by ascertaining actual use of the property including an examination of landowner intent, has been replaced with a review of the four factors listed in RCW 36.70A.030(9) — none of which involves a landowner's intent. Accordingly, the Board rejects WRECO's argument that the current definition of "forest lands" (created in 1994) is merely an inquiry into the

landowner's intent. Had the legislature amended the original definition to include just the first sentence of RCW 36.70A.030(9) as now written, the Board might agree with WRECO. However, the legislature added the second sentence, which contains the four factors unrelated to landowner intent. *PNO*, at 13-14.

Pilchuck III points out that the County adopted by reference the FAC's December 15, 1994 cover letter and January 1995 Report. *See* Plan, CD 2A, at LU-26 and 45. Pilchuck III alleges that the FAC's Report is based on land-owner intent. The FAC recommends that designated lands within one-half mile of an UGA should be removed at the landowner's request. CD 22, FAC Report, at 10. Consequently, LU Policy 8.A.4 provides:

Commercial Forest Lands within one half mile of an urban growth boundary shall be removed from Commercial Forest land designation at the landowner's request. CD 2A, at LU-28.

The Board understands the County's dilemma and need for adopting this policy. Because the Act requires that all cities be included within UGAs regardless of size (*see* RCW 36.70A.110), several small cities in Snohomish County (Darrington, Sultan, Gold Bar and Index) are automatically within a UGA even though designated forest lands are literally adjacent to the UGAs. This fact results in a potential tension between lands inside UGAs, where urban growth is expected, and designated forest lands, where long-term commercial forestry is expected. In an effort to reconcile this conflict, the County adopted LU Policy 8.A.4. **The Board holds that LU Policy 8.A.4 does not comply with the Act since it permits landowner intent alone to control.** Instead, the County must adopt a policy to reconcile the inherent conflict described above that is based on actual use conflicts, if and when they occur. ^[62] This is not to say that a landowner cannot petition the County for re-designation. Instead, the County must ascertain if a use conflict (rather than an adjacent designation conflict) actually exists before it de-designates forest land — it cannot be an automatic process triggered merely by a landowner's request

Conclusion No. 27

LU Policy 8.A.4 of the Plan does not comply with the Act because it relies solely on landowner intent for implementation.

Legal Issue No. 28

Does RCW 36.70A.060(1) and .170 prohibit the Forest Transition Area designation by the County?

The Plan describes the FTA generally as follows:

This designation is an overlay to the Commercial Forest (F-C) designation. The FTA consists of a one quarter mile wide band of Commercial Forest land on the edge of the Commercial Forest Land designation bordering non-resource lands. The use of FTA lands is the same as Commercial Forest lands unless adjacent land uses prevent normal forest practices, in which case limited low density development options may apply. CD 2A, at LU-45.

In its cover letter, the FAC explained the rationale for the creation of the FTA:

Our committee recommends that approximately 239,800 acres of state and private timber land within Snohomish County be designated as commercial forest. This forest land will border lands that could be used for other purposes for approximately 300 miles. The presence of houses, barns, orchards, wells, roads, and other similar uses all cause potential conflicts for the forest landowner, and in many cases the forest landowner is restricted from harvesting timber, spraying brush, and carrying out normal forest practices on the entire property due to these potential conflicts. Our committee feels it would be unfair and inequitable to designate lands as commercial forest if commercial forestry activities cannot be undertaken on these lands due to conflicts with the neighbors. Therefore, we strongly recommend that a “forest transition area” be set up within the first one-quarter mile of the commercial forest. Within this “forest transition area,” the forest landowner would have the option of creating a sufficient buffer for the commercial forest land provided a conflict exists with an adjacent landowner. The newly-created buffer would be no less than 500 feet wide, would be permanent, and would serve to eliminate all future forestry conflicts with neighbors. (You should know that 500 feet is not an arbitrary distance, but is a distance which may be imposed by the Department of Natural Resources for slash abatement provisions when residential activity exists nearby.)

We also feel that the forest landowner’s options within the “forest transition area” will greatly reduce nuisance complaints by neighbors when the neighbor realizes that his/her actions could influence the forest landowner’s decision to utilize a portion of the land for low density rural development. Further, we realize that some people will misinterpret the proposed “forest transition area” as an opportunity to remove additional lands from forest production. Our committee, on the other hand, sees this as an opportunity to add several thousand acres to the program while not penalizing the forest landowner for his/her neighbor’s actions.

It is critical to the understanding of this approach to recognize that some of the forest lands we proposed for designation are already compromised. Only the implementation of the “forest transition area” makes these lands acceptable as commercial forest land. The

proposed boundary and the transition area concept cannot be separated. If the Council chooses not to adopt the transition concept, then our committee feels the entire commercial forest land boundary must be shifted away from existing development. CD 22, FAC cover letter, at 2. [\[63\]](#)

The FAC Report indicated:

The basic concept behind the Forest Transition Area is that when an adjacent land use conflicts with forestry operations, the forest land owner should be allowed to transition that portion of the property which is impacted to a partial rural residential use. As a condition of such conversion, the owner would be required to adequately buffer any created residential uses, provide covenants to assure future compatibility and require that purchasers sign a “Right to Practice Forestry” agreement.

This method would ensure that when land is designated for commercial forestry purposes and it is influenced by incompatible uses, the forest land owner will have an option available which will allow some economic compensation for the reduced viability of the forestry operation.

The “Forest Transition Area” (FTA) is inside the resource line extending a one quarter mile width along all commercial forest edges that border non-resource lands (Figure 1). The FTA would consist of designated resource land and is not the same as the “Rural Resource Transition Area” described in the GPP, which is part of the rural area. Portion of the FTA that are partially developed for a rural residential use are still considered designated commercial forest lands within the FTA. The FTA is shown on the FAC’s proposed map as an overlay of designated commercial forest lands. CD 22, FAC Report, at 7-8.

The Plan more specifically provides a list of uses or activities on properties adjacent to the FTA that constitute conflicts. The Plan also contains specific buffer widths. [\[64\]](#) The Board notes that the Plan does not define the word “structures” or “improvements.”

LU Policy 8.E.4 requires a 500-foot buffer between all proposed and future development within the FTA and the adjacent non-FTA Commercial Forest lands. The FTA is one quarter of a mile wide, or 1,320 feet in width. [\[65\]](#) According to the Final EIS, the FTA includes approximately 300 linear miles or about 48,000 acres. CD 6, at 26. Because the mandatory buffer between development in the FTA and non-FTA Commercial Forest lands is 500 feet, or approximately 38 percent of the width of the entire FTA, only approximately 62 percent of the FTA will actually be able to be developed, or 29,760 acres. [\[66\]](#)

The Board holds that RCW 36.70A.060(1) and .170 do not prohibit the Forest Transition Area designation by the County. As previously indicated, RCW 36.70A.170 requires that cities and counties designate all lands that fall within the definition of forest lands unless potentially-designated forest lands are located within a UGA. *See* RCW 36.70A.060(4) discussed above. Here, those lands within the FTA are also designated commercial forest lands. In *Pilchuck*, the Board similarly held that RCW 36.70A.170 required cities and counties to designate all critical areas. In addition:

The Board holds that *all* lands that are designated critical areas pursuant to RCW 36.70A.170 must be protected by critical area development regulations adopted pursuant to RCW 36.70A.060, and such lands may not be exempted or excluded from protection. However, not all critical areas must be protected in the same manner or to the same degree. *Pilchuck*, at 19 (emphasis added).

RCW 36.70A.060(2) requires cities and counties to adopt development regulations that “protect” designated critical areas. In contrast, RCW 36.70A.060(1) requires cities and counties to adopt development regulations that “assure the conservation” of forest lands. Just as the Board in *Pilchuck* determined that designated critical areas could be protected differently, **the Board now holds that cities and counties can adopt development regulations for designated forest lands that regulate these lands differently (in manner or degree) as long as adopted development regulations assure the conservation of forest lands.**

Here, *Pilchuck III* has not shown how the creation of the FTA violates RCW 36.70A.060. Although the County Council might have agreed with *Pilchuck III* that the forest buffer zone should have been created on lands adjacent to designated forest lands (rather than within designated forest lands), ^[67] the County Council made a different policy choice that was within its discretion. The test is not whether the County Council made the most appropriate policy decision but rather whether the decision the County Council did make violates the goals or requirements of the Act. *Pilchuck III* has not shown how allowing up to 2,400 units on 48,000 acres of land maximum (*see* CD 6, Final EIS, at 26 and 60) fails to assure the conservation of designated forest lands, especially given the constraints placed on development within the FTA by the Plan. ^[68]

Conclusion No. 28

The creation of a Forest Transition Area within designated forest lands does not violate RCW 36.70A.060 or .170. Although the Act requires that all lands that meet the definition of forest lands be designated, unless they are located within a UGA, cities and counties retain discretion as

to the degree and manner of conservation afforded designated forest lands by adopted development regulations. As long as the adopted development regulations assure the conservation of designated forest lands, these regulations may control designated forest lands in a different manner or degree.

Legal Issue No. 29

Did the County fail to comply with RCW 36.70A.050 to apply the minimum guidelines (Chapter 365-190 WAC) established by DCTED in designating forest lands, when it adopted Amended Ordinance 94-125?

RCW 36.70A.050(3) provides:

The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions, but also shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170 .

Furthermore, RCW 36.70A.170(2) mandates that cities and counties consider the Minimum Guidelines in designating forest lands.

In *Twin Falls*, the Board rejected WRECO's contention that the County had failed to consider the Minimum Guidelines in adopting the Interim Forest Plan:

Therefore, it is only the GMA's requirement that guidelines be adopted, and that these guidelines must be considered by cities and counties in classifying and designating natural resource lands and critical areas pursuant to RCW 36.70A.170, that are mandatory. *Twin Falls*, Order on Dispositive Motions, at 7.

The Board has already discussed the nature of the Minimum Guidelines generally and specifically, the above-quoted portion of WAC 365-190-040(2)(b), in its Order on Dispositive Motions entered in this case on June 11, 1993. The Board concluded that the Minimum Guidelines are advisory only, to be considered by counties when classifying and designating natural resource lands. *Twin Falls*, Final Decision and Order, at 20-21.

As the discussion in Legal Issue No. 27 above indicates, the County partially based its new criteria for designating forest lands on the Minimum Guidelines. **Therefore, the Board holds that the County adequately considered these advisory guidelines.**

Conclusion No. 29

The County complied with RCW 36.70A.050 in adopting Amended Ordinance 94-125.

Legal Issue No. 31

Did the County fail to comply with RCW 36.70A.045, .070(1) and .170 when its adopted Plan failed to designate certain private, State, Federal and Tribal forest lands?

Pilchuck III's brief on this issue did not address how the County violated RCW 36.70A.045^[69] or .170. Therefore, the Board treats those portions of this legal issue as **abandoned** and will not address them further here.

RCW 36.70A.070, entitled "Comprehensive plans—Mandatory elements," provides in part:

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

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. Emphasis added.

The Board notes that RCW 36.70A.070(1) uses the phrase "timber production," which is not defined in the Act. In contrast, the Act use the phrase "forest lands" in numerous sections and, as previously indicated, the phrase is defined at RCW 36.70A.030(9). **The Board holds that the reference in RCW 36.70A.070(1) to "timber production" is not synonymous with "forest lands."** The latter is a term of art unique to the GMA, for which specific requirements have been adopted, particularly RCW 36.70A.060 and .170. In contrast, the former, "timber production," is used within the definition of the phrase "forest lands." **Therefore, the Board holds "forest lands" are a subset of broader category of lands, those devoted to timber production.**^[70]

Importantly, just because land is available for timber production does not mean that it constitutes “forest lands” as defined by the Act for which the designations specified at RCW 36.70A.170 and development regulations specified at RCW 36.70A.060 must be adopted.

The question remaining before the Board then is, does the land use element of the County’s Plan designate the proposed general distribution and location and extent of uses of land appropriate for timber production as required by RCW 36.70A.070(1)? **The Board holds that the land use element of the Plan does comply with this requirement of the Act.** The Board has previously held that all the mandatory elements of a comprehensive plan must be fully completed at the time of initial plan adoption. *WSDF I*, at 12. Pilchuck III contends that because the County’s forest subelement of the land use element of the Plan is phased, with only the first phase completed, the County has not complied with the requirement at RCW 36.70A.070(1) to designate all lands appropriate for timber production. Pilchuck III Brief, at 42. Pilchuck III’s argument is based on the following language from the narrative to Goal LU 8:

The Forest land subelement of the county’s GMA comprehensive plan is prepared in two phases. In the first phase, the criteria used in the Interim Forest Land Conservation plan are refined consistent with the Growth Management Act definition of forest lands (RCW 36.70A.030(8)). Commercial Forest lands that meet the refined criteria are designated and general policies to conserve Commercial Forest lands are adopted in the County’s GMA comprehensive plan. In the second phase, selected forest lands, including state and privately owned Commercial Forest lands within the Mount Baker-Snoqualmie National Forest and forest lands on the Tulalip Indian Reservation, will be reviewed. The general policies in the GPP will be supplemented with more detailed policies in the detailed Rural/Resource plan and the County’s GMA Comprehensive Plan Future Land Use map will be amended. CD 2A, at LU-26.

The Board notes that the Plan’s Future Land Use Map (Map 4) shows the following:

- National Forest (Includes some private and non-federal public lands)
- Local Forest (Tulalip only)
- Commercial Forest
- Commercial Forest—Forest Transition Area

As discussed above, the commercial forest, local forest, and forest transition area designations are the County’s designations of “forest lands” pursuant to the GMA. The national forest designations on the Future Land Use Map, which include some private and non-federal public lands, constitute the County’s additional designations of “lands devoted to timber production.” **Therefore, the Board holds that the County has complied with RCW 36.70A.070(1) as it relates to timber production lands.**

The Board acknowledges that the narrative portion of the Plan quoted above could have been more clearly drafted. The Board interprets this language as simply announcing that further detailed “sub-area” planning of listed forest lands will occur in phase two of the County’s process. Subarea planning is not mandatory but rather optional and can be conducted after the comprehensive plan is adopted. The major requirement for optional elements to a comprehensive plan is that they are consistent with the comprehensive plan itself. *See* RCW 36.70A.080.

Finally, to the extent that Pilchuck III argued that the County violated RCW 36.70A.380, [\[71\]](#) the Board points out that Pilchuck III did not specify this provision of the Act in the statement of Legal Issue No. 31. Therefore, the Board need not address it. To the extent that Pilchuck III argued the substance of RCW 36.70A.380 (Pilchuck III Brief, at 42-43), the Board points out that the section deals with receiving an extension of the September 1, 1991, deadline to designate natural resource lands and critical areas; it does not apply to an extension for adopting comprehensive plans.

Conclusion No. 31

The Plan’s Future Land Use Map complies with the requirement at RCW 36.70A.070(1) to designated lands used for timber production. The map clearly indicates the locations of commercial, local (tribal), and national forest lands.

H. AGRICULTURAL LANDS ISSUES

Findings of Fact

Minimum Guidelines

1) On March 15, 1991, the State Department of Community Development issued Chapter 365-190 WAC, “Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas (the **Guidelines**).” The definition of “agricultural land” (WAC 365-190-030(1)) is the same as the definition found at RCW 36.70A.030(2), except for the omission of “finfish in upland hatcheries.” The definition of “long-term commercial significance” (WAC 365-190-030(11)) mirrors that found at RCW 36.70A.030(10). In WAC 365-190-040, Process, the Guidelines set forth the steps to be taken in designating resource lands, including use of definitions in the Act, other definitions used by state and federal agencies, the local government performing the designations, and other local governments. The Guidelines note that:

Although there is no specific requirement for inventorying or mapping either natural

resource lands or critical areas, chapter 36.70A RCW requires that counties ... adopt development regulations for uses adjacent to natural resource lands. Logically, the only way to regulate adjacent lands is to know where the protected lands are. Therefore, mapping natural resource lands is a practical way to make regulation effective. WAC 365-190-040(2)(d).

2) The Guidelines provide for evaluation of interim designations at the time of comprehensive plan adoption, to assure their consistency with and implementation of the comprehensive plan. “When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and public participation. WAC 365-190-040(2)(f).

3) At WAC 365-190-040(2)(g), Designation amendment process, the Guidelines note that “[I] and use planning is a dynamic process. Procedures for designation should provide a rational and predictable basis for accommodating change.” The Guidelines advise basing designation changes on consistency with one or more of the following criteria:

- (i) Change in circumstances pertaining to the comprehensive plan or public policy.
- (ii) A change in circumstances beyond the control of the landowner pertaining to the subject property.
- (iii) An error in designation.
- (iv) New information on natural resource land or critical area status.

4) At WAC 365-190-050, Agricultural lands, local governments are directed to use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service. The system includes eight categories, incorporating consideration of growing capacity, productivity and soil composition of the land. In defining categories of agricultural lands, counties and cities are advised to use the Soil Conservation Service’s classification of farmland soils.

Interim Plan

5) On August 4, 1993, the County adopted the 1993 Interim Agricultural Conservation Plan (the **Interim Agricultural Plan** or **Interim Plan**) building on work begun in 1982 with passage of the Agricultural Preservation Plan (the **1982 Agricultural Plan** or **1982 Plan**). The Interim Plan shows that, at the time of its adoption, 66,802 acres, were designated as primary agricultural land, about 5 percent of the total acreage of the County, or 9.7 percent of the non-federal area. 5,214 acres were designated as secondary agricultural land, about 0.3 percent of the total and .8 percent of the non-federal area. Ex. R-31, at 8.

6) The Interim Plan used three classes of agricultural lands: riverway commercial farmland;

upland commercial farmland; and local commercial farmland. The designations were shown on Plan Exhibit 2. Ex. R -31, at 5.

7) At the time that the Interim Plan was adopted, the County had not acted on an Agricultural Advisory Board recommendation to establish a program for the purchase of development rights on agricultural lands. Ex. R-31, at 4.

8) The Interim Plan "...meets the classification, designation and conservation requirements of the Growth Management Act and its guidelines. It specifically includes actions to meet the agricultural industry enhancement goal of the Growth Management Act." Ex. R-31, at 6. The Interim Plan is based on the Planning Commission's Option C "... essentially retains the designation of those farmlands covered by the existing 1982 Agricultural Plan" The Motion makes a finding that:

Agricultural Lands of Primary Importance identified in the 1982 agricultural Preservation Plan and other upland farmland areas meet the minimum criteria of the Growth Management Act for designation of Agricultural Land of Long-Term commercial Significance. Ex. R-31, at 2.

Regulations

9) On August 4, 1993, the County adopted Amended Ordinance 93-038, "Adopting Interim Agricultural Land Regulations" and No. 93-145, "Adopting Interim Agricultural Conservation Plan, including designation of Interim Agricultural Lands."

10) On August 11, 1993, the County Council adopted Motion 93-263, "Making Clarifying Amendments to Motion 93-145, Approving the Interim Agricultural Conservation Plan." The amended Interim Plan is Ex. R-31.

11) On July 10, 1995, the County Council adopted Amended Emergency Ordinance 95-051, Right to Farm. The Ordinance amended Ordinance 93-040 to maintain the notification requirements on agricultural lands designated in the comprehensive plan. CD 15,

12) Also on July 10, 1995, the County Council adopted Amended Emergency Ordinance No. 95-049, Regulations to Conserve Agricultural Lands, amending Ordinance 93-038, to make revisions necessary to conserve resource lands designated in the Plan and to repeal sections that were no longer applicable. One such section, at 32.14.060, provided a procedure to delete or add farmland designations. CD 13.

Comprehensive Plan

13) On June 28, 1995, the County Council adopted Amended Ordinance No. 94-125, thereby adopting its GMA Comprehensive Plan consisting of the General Policy Plan and Future Land Use Map, the Transportation Element, and the Capital Facilities Element. Exhibit A is the General Policy Plan. (the **Plan** or **GPP**). CD 2(a), at 17.

14) In the Draft Plan, approximately 69,000 acres were designated as farmland, “equal to the amount in the 1993 Interim Agricultural Conservation Plan.” The adopted Plan redesignates approximately 3,039 acres of Upland Agriculture lands near Arlington, and approximately 823 acres are removed from an interim agricultural designations throughout the county and added to the UGA at the request of private property owners. Together with lands removed from agricultural designations and placed within UGAs, “approximately 6,000 acres currently designated for agricultural uses would be redesignated for other urban and rural uses. Lands remaining in agricultural land designations total almost 62,500 acres. CD 6, at 25-6.

15) The Final EIS describes the modifications made by the County Council in the Amended Diversified Centers Proposed Plan (**Amended Plan**), which place previously designated agricultural lands within a UGA.

In the Southwest County area, the Misich Property (92 acres) within the Snohomish River floodplain and Smith Island (1,116 acres) at the mouth of the Snohomish River, both designated Riverway Agriculture, are included in the Southwest UGA.

In the Arlington/Smokey Point/Marysville area, the Graafstra Farm (150 acres) north of Arlington and the Robb Annexation Area (18 acres) west of Arlington, both designated Interim Riverway Agriculture, would be included in the UGA. The Island Crossing area (246 acres) ^[72] east of Highway I-5, most of which is designated Interim Riverway Agriculture, would be included in the UGA. The Crescent area (364 acres) ^[73] west of Arlington, half of which is designated Interim Riverway Agriculture, would be included in the UGA. The Smokey Point/Penney/Steiner area (544 acres) south of the Arlington Airport and the Marysville Upland Agriculture Addition area (43 acres), designated Interim Upland Agriculture, are included in the UGA.

In the Snohomish UGA, the Stocker Field (20 acres) and the Harvey/Waltz/Stocker (171 acres) properties are included in the UGA.

In the Stanwood area, the Northwest Area property (173 acres) designated Interim Local Agriculture, is included in the UGA. CD 6, at 19-22.

16) In the interest of saving space the Board also adopts by reference Findings of Fact Nos. 1

through 28 set forth in the County's Brief, pages 25-32.

Legal Issues 15-17, 19 (part), 22, 23, and 30

These issues are briefed by the County together with issues found elsewhere in the Order. *See* Issues No. 22 and 23, Urban Growth Areas, Part III. C.; Issue 34, Public Participation, Part III. B.

Legal Issues Nos. 15, 16 and 17

Did the County fail to be guided by RCW 36.70A.020(5), (8), (9), (10) and (13) when it adopted Amended Ordinance 94-125, with regard to agricultural lands designations?

Did the County fail to comply with RCW 36.70A.040(3)(b), .060(1) and (4) and .170 requiring designation of agricultural lands and adoption of regulation that conserve those agricultural lands when it adopted Amended Ordinance 94-125 and Emergency Ordinances 95-049 and 95-091, as they relate to conserving agricultural lands and the right to farm?

Did the county violate RCW 36.70A.040(3)(b), .060(1), (2) and (3) and .170(1)(a) by failing to designate certain agricultural lands and to adopt regulations adequate to conserve and protect agricultural lands, designated and undesignated?

Pilchuck III's Position

These issues address the County's alleged violations of the Act in its adoption of the Plan, specifically the designation of agricultural lands, and implementing development regulations to conserve designated agricultural lands. In Issue 15, Pilchuck III charges that the County failed to be guided by goals ^[74] 5, 8, 9, and 10 ^[75] in adopting the Plan.. In Issue 16, it alleges noncompliance with RCW 36.70A.040(3)(b), .060(1) and (4), and .170 in adopting the Plan and in enacting Ordinance 95-049, the Right-to-Farm Ordinance, and 95-091, Regulations to Conserve Agricultural Lands. Issue No. 17 asserts that the County violated RCW 36.70A.040(3) (b), .060(1), (2) and (3), and .170(1)(a) by failing to designate certain agricultural lands and to adopt adequate regulations to conserve and protect agricultural lands, whether or not designated.

Pilchuck III's argument rests on the County's rescinding certain of the designations for agricultural use made in a 1982 Agricultural Preservation Plan and in its 1993 Interim Agricultural Conservation Plan, and allowing non-agricultural uses on those withdrawn areas.

^[76] It uses a Board holding in *Bremerton, et al., v., Kitsap County*, CPSGMHB Case No. 95-3-0039, Final Decision and Order (1995), to argue that once resource land designations have been made, urban growth should be directed to lands not designated. Specific areas of concern are 6000 acres near Smokey Point (Island Crossing), upland properties in the Marysville/Arlington

area, Smith Island and Lakewood. Pilchuck III Brief, at 15-17.

Pilchuck III also discusses the above concerns in its briefing on Issue 22, specifically the alleged violation of RCW 36.70A.070 and .040(3) in the Marysville/Arlington corridor, alleging that Rural land uses applied to the area are inconsistent with the area's earlier designation as agricultural lands. *See* Pilchuck III Prehearing Brief, Issue No. 22, at 27-29.

County's Position

The County responds that it undertook an intensive public process to review its previously made designations, and based on comments received and reexamination of the impacts on urban encroachments on agricultural lands, modified those designations. The modifications included actions taken in response to 84 individual requests and one governmental request for exclusion from designation. The County characterizes Pilchuck III's concerns as being focused not on the process used in modifying the designations, but rather on the results of the process. It directs the Board's attention to the full definition of agricultural land in the Act. Finally, noting that Pilchuck III did not challenge the County's affirmative response to the requests for withdrawal from designation by landowners, it limits its specific comments only to the four areas addressed in Pilchuck III's Brief.

The County argues that de-designating agricultural land is not *per se* a violation, and asks the Board to review the Act's definition of agricultural land in the Act; the requests from land owners; the Executive's Recommendation on Upland Agricultural Land; the City of Arlington's request to include certain agricultural lands within the City's UGA; the Arlington Growth Management Coordinating Committee's request for inclusion of agricultural lands in the Island Crossing area in the UGA; the fact that the challenged area in Lakewood was not included in the Interim agricultural land designations; and justification in the record for de-designation of Smith Island.

Finally, the County points to the record of extensive public participation, its review of the interim designations; the recommendation of the County Executive; and testimony considered by the County Council to support the challenged actions.

Discussion

Legal Issue No. 15

The goals of Act, adopted to guide the development and adoption of comprehensive plans and development regulations, at set forth at RCW 36.70A.020. Goal 8 provides:

- (8) Natural resource industries. Maintain and enhance natural resource-based industries,

including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

Pilchuck III's argument is that de-designation of approximately 6,000 acres, thus taking resource lands out of agricultural use and allowing urban growth to occur on them, is a violation of goal 8, because "'maintain' means to preserve from failure or decline, to sustain." Pilchuck III Brief, at 16.

Pilchuck III protests that such de-designations of upland agricultural areas near Marysville and Arlington were undertaken in the face of objections from the Agricultural Advisory Board, which expressed concerns about water table, drainage and flooding problems in that area.

Although the Board concurs that the amount of acreage designated by the County as agricultural lands decreased between adoption of the 1993 Interim Agricultural Conservation Plan and the comprehensive plan, that fact alone is not sufficient to support a finding that goal 8 has been violated. The Board **holds that Pilchuck III has failed to meet its burden of showing how this reduction in designated acres of agricultural lands does not comply with RCW 36.70A.020 (8)**. Pilchuck has not shown that the total land area which received final agricultural designation cannot serve to meet the requirement of goal 8. Pilchuck has not described, quantified, or otherwise characterized the agricultural industry in Snohomish County; accordingly, it has not shown how the County is not maintaining and enhancing a productive agricultural industry.

Goal 10

Goal 10, Environment, directs the County to "Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water."

As to Pilchuck III's argument that the challenged action was taken in spite of the Agricultural Advisory Board's protests concerning water table, drainage and flooding problems, while such problems, whose nature and extent is not set forth in Pilchuck's brief, could be exacerbated by removal of agricultural designation from the lands in question, conceivably any use of land could have those negative effects. It was Pilchuck III's duty to show how such a result would ensue, and it has failed to do so. The Board **holds that Pilchuck III has not met its burden to show that the challenged de-designations are a violation of goal 10**.

Legal Issue No. 16

RCW 36.70A.040(3)(b) requires that the county designate agricultural lands and adopt development regulations conserving these designated lands, under sections .170 and .060. As this legal issue is framed, the portion of RCW 36.70A.040(3)(b) at issue is a restatement of duties imposed by RCW 36.70A.170 and .060; therefore it will not be discussed further.

RCW 36.70A.170, Natural resource lands and critical areas - Designations, required the County to designate resource lands, including agricultural lands, by September 1, 1991. Subsection (a) describes which lands were to be designated:

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;

The term “agricultural land” is also defined at RCW 36.70A.030(2):

“Agricultural land” means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

“Long-term commercial significance” is defined at RCW 36.70A.030(10):

“Long-term commercial significance” includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land’s proximity to population areas, and the possibility of more intense uses of the land.

RCW 36.70A.060 directed the county to adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural lands designated under RCW 36.70A.170. Subsection (1) of section .060 required the County to adopt development regulations by September 1, 1991 to conserve designated agricultural lands. Subsection (4) provides that agricultural land located within urban growth areas shall not be designated as agricultural land of long-term significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

As the Board stated in its discussion of Legal Issue No. 26, Part III. G. of this Order, prudence dictated that counties and cities designate more, rather than fewer, resource lands, where that designation occurred early in the GMA-mandated planning process. It was to be expected that after additional information was derived from the process of designating UGAs and preparing a comprehensive plan, adjustments would be necessary to reconcile the resource lands designations, critical areas designations, the final UGAs, and the comprehensive plan itself.

However, the County can be found in noncompliance with the Act if it fails to designate all lands that meet the definition of agricultural lands, unless these lands are located within a UGA where there is no program in place for the purchase or transfer of development rights. *See* Forest Lands, Legal Issues, Part III. G. Above. As the Board held in *Pilchuck* as to critical areas, and as it holds in this Order as to forest lands, the Board now similarly **holds that RCW 36.70A.170(1)(a)**

requires counties and cities to designate all lands that meet the definition of agricultural lands, unless the lands fall within a UGA lacking a program for purchase or transfer of development rights, and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all designated agricultural lands.

De-designation of Agricultural Lands

The County describes the process leading to de-designation of lands in the Arlington, Lakewood and Marysville areas. It cites to the definition of “long-term commercial significance,” which comprises a part of the definition of agricultural lands, in particular the need to consider “the land’s proximity to population areas, and the possibility of more intense uses of the land.” Clearly, where the comprehensive planning process results in changes in future land use in areas in proximity to previously designated agricultural lands, a re-evaluation is required. In the case of upland agricultural areas, the factors evaluated were: availability of public facilities; availability of public services; relationship or proximity to urban growth areas; land use settlement patterns and tier compatibility with agricultural practices; intensity of nearby uses; and history of land development permits issued nearby. That re-evaluation led to the Executive’s Recommendation to remove the agricultural designation from 3,000 acres of upland agricultural lands. CD 18, at 2-5. The Island Crossing area was County Brief, at 117. The Board is persuaded that the County correctly applied the factors listed above, and **holds that Pilchuck III has not met its burden of proof that the County’s actions violated the cited provision of the Act.**

Failure to Designate Lands as Agricultural

Pilchuck III argues that the Lakewood area should be designated Agricultural. The Board observes that Pilchuck III cannot “have it both ways” -- it cannot claim that land designated Agricultural cannot be taken out of designation, and that land which was not given interim designation, after review, must now be given that designation. However, just as the Board has held that lands may be de-designated, it now **holds that lands not receiving interim designation as agricultural lands may receive such a designation during the review required by RCW 36.70A.060(3).** However, such a designation is predicated on the parcels in question meeting the definition of “agricultural lands.”

The Board **holds that Pilchuck III has not met its burden of proof that the County was required to designate the lands in question for agricultural use.**

Legal Issue No. 17

Pilchuck III did not separately brief Issue No. 17. To the extent that the issue is discussed and holdings are made in Legal Issues No. 15 and 16 above, the Board will not consider it further.

A portion of Legal Issue 17 asks whether the County violated RCW 36.70A.060(2) and (3) when

it failed to designate certain lands, and when it adopted regulations to conserve and protect agricultural lands, designated and undesignated.

RCW 36.70A.060(2) requires the County to adopt development regulations to protect critical areas required to be designated under RCW 36.70A.170. Legal Issue No. 17 deals exclusively with agricultural lands designations and regulations; therefore, the Board will not further consider this sub-issue.

That portion of Legal Issue 17 asking whether the County violated RCW 36.70A.170(1)(a) in designating agricultural lands and adopting regulations for those lands has been discussed in Legal Issue 16 above, and will not be considered further.

RCW 36.70A.060(3) directs the County to review its (agricultural) designations when it adopts its comprehensive plan and implementing development regulations, and permits alteration of designations and development regulations to insure consistency. The County complied with that requirement to undertake a review; the question of whether it acted in compliance with the Act in making alterations is answered above.

The Board observes that, in its briefing of the three issues above, Pilchuck's interpretation of the Act's requirements would appear to be that once designated, agricultural lands cannot be de-designated. The Board **holds that a county or city does not *per se* violate the Act simply because its *final* agricultural land designations approved at the time of comprehensive plan adoption include lesser acreage than the preliminary, interim agricultural land designation.** A contrary holding would ignore the fact that the Act clearly contemplates the possibility of changed designations. RCW 36.70A.060(3)'s direction to reexamine designations at the time of comprehensive plan adoption would be an idle exercise if no alteration of designations were allowed. RCW 36.70A.060(4)'s provision for inclusion of agricultural lands within a UGA, and the implication that, lacking a program for transfer or purchase of development rights, such designated lands would have to be de-designated, is a clear indication that such alterations were contemplated. The Board **holds that interim designations and implementing regulations may be altered at the time of comprehensive plan adoption if and to the extent that such alteration is necessary to insure consistency with the comprehensive plan and its implementing development regulations.**

Legal Issues No. 15, 16 and 17 Conclusions

Pilchuck has not met its burden of showing how, by de-designating the lands in question, the County failed to comply with RCW 36.70A.020(8) or (10). The Board concludes that a county has the discretion to alter interim agricultural lands designations and implementing regulations at the time of plan adoption if necessary to ensure consistency with the plan and its implementing regulations. The County acted within its discretion to do so in this case.

I. OTHER CONSISTENCY ISSUES

Legal Issue 22 - Consistency

Pilchuck III's Position

While Legal Issue 22 cites a lengthy list of alleged inconsistencies, the Brief discusses only one. Pilchuck III argues that an inconsistency occurs within the Plan's LU 4.F.: the County will be unable to accomplish the directives of Objective LU 4.F. and Policy LU 4.F.1 because they inherently conflict. "The above provisions allow inconsistent growth to occur on the same land area." It claims that the Plan fails to delineate where the "concentric growth of Smokey Point will stop and a rural residential pattern will begin. These Policies do not work together in a coordinated fashion to achieve consistent development in the Marysville/Arlington/Smokey Point UGA. This type of uncoordinated growth fails to achieve compact urban development and is a recipe for sprawl." Pilchuck Prehearing Brief, at 27-28.

County's Position

The County combined its argument on Legal Issue No. 22 with a broader discussion of agricultural designations (Legal Issues 15-17, 22, 23, 30 and 49-51.) It asserts that it properly altered certain interim agricultural designations, citing to extensive property owner testimony and the Executive's Recommendation.

Discussion

See Legal Issues 15, 16 and 17 for a discussion and the Board's conclusions on the question of designation of agricultural lands, and Legal Issues 23, 41, 42, 43 and 45 for a discussion and the Board's conclusions on the question of UGA designation.

Plan Objective LU 4.F. states:

Plan for the expansion of mixed urban land uses to support the Activity Center designation at Smokey Point and for the conservation of specialty agricultural uses in the Medium Density Rural Residential-10 area between Marysville and Arlington. CD-2(a), at LU-13-14.

Plan Policy LU 4.F.2. provides:

The county shall plan with citizens in coordination with the Cities of Arlington and Marysville to establish a pattern of supportive mixed use and industrial land uses in a

concentric manner from the designated activity center, east and south into the Urban Reserve area and west and southwest into the Lakewood area. CD-2(a), at LU-14.

The Board notes that Policy 4.F.2 is prospective; it directs the county to undertake a planning activity to achieve the result desired, and avoid the result feared, by Pilchuck III. It is premature to make a determination that the task the County imposes upon itself cannot be accomplished. The board **holds that Pilchuck III has not shown that Objective LU 4.F. and Policy 4.F.2 create an inconsistency that violates RCW 36.70A.070 and .120.**

Legal Issue No. 22 Conclusion

Plan Objective LU 4.F. and Policy 4.F.2 have not been shown to be inconsistent.

Legal Issue 30 - Consistency

Did the County fail to comply with RCW 36.70A.070 and .120 requiring all elements to be consistent with the future land use map, when the following goals, objectives and policies are inconsistent with the Map: Policies LU-1.A.6, -A.7 -1.A.11, -1.B.3, -1.C.1, -1.C.3, -1.C.4, -2C.2, -3.A.4, -4.F.3, -4.F.4, -4.F.6; Objectives LU-6.B, -6.D; Goal LU-7; Objectives LU-7.C, -7.B; Policy LU-7.A.1; Goal LU-10; Policy LU-10.A.2; Objective ED-2.B; Goal NE-1; Objectives NE-1.A, 1.C, -1.D; Goal NE-3; Objectives NE-3.C, -3.D, -3E; Goal NE-4; Objectives NE-4.A, -4.D, -4.E, -4F, -4G; Goal NE-5; Objectives NE-5.A, and -5.B?

Discussion

A portion of the argument presented by Pilchuck III in its briefing of Legal Issue No. 30 speaks to the allegation that the County did not have a transfer of development rights program. That argument was more properly made in Legal Issue No. 19, which was abandoned. The Board will not permit Pilchuck to attempt to resuscitate and argue an abandoned issue.

Pilchuck III's remaining inconsistency argument, that the Plan and the Future Land Use Map are inconsistent, focuses on the premise that lands designated agricultural resource are impermissibly included within the UGA. There is, in fact, no inconsistency, because the County has either de-designated those lands to non-resource lands or must utilize a transfer of development rights program for lands that it does not de-designate.

Conclusion No. 30

The County did not fail to comply with RCW 36.70A.070 and .120 as alleged by Pilchuck III in Legal Issue No. 30.

J. ALL OTHER ISSUES

Legal Issue No. 40 — Implementation (CCSV III)

Does the Act require the County to fully implement the Plan with consistent development regulations at the time the County did adopt the Plan, and if so, has the County procedurally and substantively complied with that requirement and would completion of the Plan's Appendix H Implementation Measures constitute procedural and substantive compliance? (RCW 36.70A.020(1), (2), (8), (9) and (10); .030 (2), (5), (8), (9), (10), (11), (15) and (18); .040 (3); .050; .060(3); .070(1), (2), (5); .080(2), .110(1) and (2); .120; .210 (3)(a). Plan, at Appendix H LU-1, -2, -3, -4, -6, --7 and 1-0; HO-1, -2 and -4; CF-1, -2, -9, -10 and -11; UT-1 and -2; and NE-1, -3, -4 and -5.)

CCSV III's Position

CCSV III asks whether RCW 36.70A.040(3)(d) requires that the County adopt a zoning ordinance and map, or a functional equivalent, to implement its comprehensive plan, whether its failure to do so violates the Act, and whether completion of implementation measures in Appendix H of the Plan would constitute substantive compliance. CCSV III points to the Board's ruling in *Hensley, et al., v Snohomish County*, CPSGMHB Case No. 95-3-0043 (1995), Finding of Noncompliance, which requires the County to adopt a zoning ordinance and map, or its equivalent, and the County's current noncompliance with that Order. It argues that at a minimum, the County is required by its own Plan to take 28 actions identified in Appendix H in order to achieve full regulatory implementation of the Plan. Further, it must adopt UGA and Rural/Resource Plans as required by the Plan, or update existing subarea plans, and adopt a zoning ordinance and map. CCSV III also asks the Board to find that the County has failed to comply procedurally and substantively with the Act's requirements as to implementing development regulations.

Finally, CCSV III argues that the designation of centers is required as a part of implementation, in order to fully carry out PSRC and Snohomish County Tomorrow (SCT) policies.

County's Position

The County calls the Board's attention to Procedural Criteria for Adopting Comprehensive Plans and Development Regulations, prepared by the State Department of Commerce, Trade and Economic Development, specifically WAC 365-195-805, which recommends the preparation of a strategy for implementation of a comprehensive plan. Next, it points to the introductory text to Appendix H as demonstrating that the list of implementation measures includes both short- and long-term strategies; not all of them will be carried out; some relate to optional elements of the Plan; some will be a part of the zoning code update which responds to the Board's Order in CPSGMHB Consolidated Case No. 95-3-0043c, *Hensley, et al., v. Snohomish County* [*Hensley*

III], and some have been completed. The County asserts that it has completed all mandatory implementation measures with the exception of the zoning code.

Discussion

Appendix H of the Plan, entitled Implementation Measures, contains lists of measures to implement the Land Use, Housing, Capital Facilities, Economic Development and Natural Environment sections of the Plan. The introduction to Appendix H characterizes the proposed actions:

The implementation measures listed below describe short and long-term strategies which the county and other agencies may use to implement the goals, objectives and policies of the county's GMA Comprehensive Plan over the twenty-year plan period. These measures do not have the status of goals, objectives and policies, and, therefore, will not be used by the county in the review of individual development applications. Development applications submitted by individual applicants are not considered to be implementation measures of the county's GMA Comprehensive Plan.

The implementation measures will be subject to further county review and future decisions regarding timing. Decisions will be made whether and when to proceed with specific implementation measures on the basis of available resources and subject to future refinements to the GMA comprehensive plan. CD 2(a), at H-1.

RCW 36.70A.040(3)(d) directs the adoption of a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan, on or before July 1, 1994. The section provides for an extension of six months for adoption of development regulations, by means of notification of CTED.

WAC 365-195-805 recommends preparation of a detailed strategy for implementing a comprehensive plan, describing "the regulatory and non-regulatory measures (including actions for acquiring and spending money) to be used in order to apply the plan in full." It suggests that the strategy should be written, and available to the public. Subsection (3) contains a reminder that "... all of the regulations identified should be adopted by the applicable final deadline for adoption of development regulations." Subsection (4) concludes: "Completion of adoption of all regulations identified in the strategy will be construed by the department as completion of the task of adopting development regulations for the purposes of deadlines under the statute."

In *West Seattle Defense Fund v. City of Seattle [WSDF I]*, CPSGMHB Case No. 94-3-0016 (1995), the Board held that jurisdictions planning under the Act must have fully completed all the mandatory requirements of RCW 36.70A.070, noting that cities and counties in the Central Puget Sound region had four years to do so. As to optional elements, as provided for in RCW

36.70A.080, the Board held that:

... such optional features of a comprehensive plan do not have to be complete at the time of plan adoption, provided that the adopted portions otherwise comply with the Act's requirements. A jurisdiction will not be penalized for electing to expand the scope of its plan simply because it has not fully completed work on its optional components. *WSDF*, at 12.

In the conclusion of law on the issue giving rise to that holding, the Board stated that “all provisions of a comprehensive plan, whether mandatory or optional elements, or innovative techniques, must be internally consistent. *WSDF I*, at 14.

On other legal issues dealing with urban centers within Seattle, the Board concluded that “because innovative land use techniques are not required by the Act, such techniques do not have to be fully complete at the time of initial adoption of a comprehensive plan.” In addition:

[t]he fact that an optional feature of a comprehensive plan, such as an optional element or innovative land use technique, is incomplete is not a violation of the Act unless that lack of completeness creates an internal inconsistency in the comprehensive plan or otherwise results in a failure to comply with the requirements of the Act. An internal inconsistency in a comprehensive plan has a detrimental effect on that plan and would not be in compliance with the Act. *WSDF I*, at 21-22.

The Board's holding in *WSDF I* is applicable to this issue; so long as the failure to complete an optional element or innovative land use technique does not create an internal inconsistency in the Plan, or constitute a failure to comply with the mandatory requirements of the Act, such failure is not a violation of the Act.

In *Hensley II*, the Board found that the County was required to, and had not, adopted development regulations to implement its comprehensive plan, as required by the Act. The Order established a deadline of September 6, 1995 for adoption. After a compliance hearing, the Board determined that, while the County had adopted twelve land use regulatory ordinances, it had not adopted a zoning code, or functional equivalent, consistent with and implementing its comprehensive plan and issued a Finding of Noncompliance.

That determination was made after considering the definition of “development regulations” at RCW 36.70A.030(7), the definition of “consistency” in CTED's Procedural Criteria at WAC 365-195-210 and its description of implementing development regulations WAC 365-195-800(1). The Board explained that “the question is whether the development regulations adopted by the County ‘work together in a coordinated fashion to achieve a common goal,’ which in this case in nothing less than the full implementation of the County's comprehensive plan.” The Board then stated:

While it is not the Board’s responsibility to identify each and every development regulation which would be necessary to achieve full implementation of the Plan, the Board can and will conclude that, lacking a comprehensive zoning code or its functional equivalent the County has not adopted development regulations that ‘work together’ in a coordinated fashion to achieve a common goal, and has not complied with the Board’s Order. While each of the twelve cited ordinances, on its face, addresses a section of the Act (e.g. regulation of critical areas,) or meets one of the suggested regulations in WAC 365-195-805 (1), none of the twelve constitutes a zoning code that applies throughout the County’s jurisdiction. *Hensley, et al.*, at 6-7.

It concluded that the County must adopt a zoning ordinance and map, or a functional equivalent, in order to comply with the requirements of the Act. *Hensley, et al.*, at 8.

The Board, applying that decision to this issue, reiterates that prior ruling, and **holds that the County is required to adopt a zoning code, or functional equivalent, to implement its Plan.**

As to the other implementation steps cited by CCSV II, the County points out that three steps “will be reviewed as part of the zoning code implementation;” eleven “are optional elements, regulations for optional elements need not be completed;” nine have been completed; four are completed in part, with the remaining part optional; and one “will be part of the future, detailed planning of the optional UGA and rural/resource plans.” County Brief, at 158-9.

In response, CCSV III asserts that the County misreads and misapplies the Board’s holding in *West Seattle I* that optional features [of a comprehensive plan] need not be completed at the time of initial adoption of the plan, to justify its failure to fully implement the Plan. Hensley Reply Brief, at 16.

Just as a failure to complete an optional element of a comprehensive plan does not constitute a violation of the Act, the Board **holds that failure to adopt implementing development regulations for such an optional element is not a violation. However, at such time as the Plan is amended to incorporate such an optional element, the requirement to adopt implementing development regulations must be met.**

Similarly, a proposed implementing regulation which is not required in order to implement the comprehensive plan is analogous to an optional plan element. The Board finds those proposed actions cited by CCSV III and identified by the County as optional implementation actions (eleven optional actions, four actions which have been completed except for optional portions, and one future optional action) need not be adopted at a time certain. The Board **holds that the timing of adoption is at the discretion of the local government. However, if such optional regulations are adopted, they must be consistent with the Plan.**

As to those implementing measures specified by CCSV III which the County has stated will be adopted as a part of adoption of a general zoning code, LU 2 a.(1) and (2) and LU 6 g., to the extent that they are necessary to achieve compliance with the Act's requirements, the County's failure to adopt those measures, as well as the continuing failure to adopt a zoning code, are a violation of RCW 36.70A.040(3)(d). The Board **holds that the County must promptly adopt those proposed regulations.**

Conclusion No. 40

Failure to complete an optional element or innovative land use technique that does not create an internal inconsistency in the Plan, or constitute a failure to comply with the mandatory requirements of the Act, is not a violation of the Act. The timing of adoption of an optional regulation, like an optional element or innovative land use technique, is at the discretion of the local government. However, if such optional regulations are adopted, they must be consistent with the Plan. Failure to adopt implementing development regulations for an optional Plan element that has not been completed is not a violation. However, at such time as the Plan is amended to incorporate such an optional element, the requirement to adopt consistent implementing development regulations must be met. The County must promptly adopt a zoning code, including those implementation steps identified by the County as necessary to achieve compliance with the requirements of RCW 36.70A.040(3)(d).

Legal Issue No. 52 — Implementation (Stillaguamish)

Did the County violate RCW 36.70A.020(8), .040(3)(b), .060(1) and (4), and .170 by adopting a policy that calls for a joint study to be conducted of certain agricultural lands in the Stillaguamish River Valley?

Stillaguamish's Position

Implementation measure LU 7 e., set forth in Appendix H of the Plan, directs the County to undertake a study of lands lying south of the Stillaguamish River. Stillaguamish argues that the underlying purpose of the study is to "keep open the possibility of future development," and that conducting the study would violate RCW 36.70A.020(8), .040(3)(b), .060(1) and (4), and .170. It cites to its arguments in Issue 51 that development in that area will result in loss of agricultural lands, and exacerbate flooding. Stillaguamish Brief, at 2.

County's Position

The County notes that the study, planned at the request of the City of Arlington, "reflects the iterative nature of GMA, and the ongoing role of public participation and interjurisdictional coordination. It asserts that Stillaguamish has failed to carry its burden of proof, citing the

Board's ruling in *Robison*. County Brief, at 160.

Discussion

LU 7 e., a land use implementation measure, provides:

Jointly study, with the City of Arlington and citizens, future land use, resource lands, and critical area choices for the Stillaguamish River valley within an area generally bounded on the north and south by the boundaries of the county's A-10 zone, on the west by the I-5 right-of-way, and on the east by SR 9 and the Arlington city limits, excluding any urban growth area. CD 2(a), Appendix H, at H-5.

Stillaguamish's issue statement alleges violation of three sections of the Act, RCW 36.70A.020 (8), .040(3)(b), .060(1) and (4) and .170. However, its briefing on the issue fails to present any argument to support its claim that those provisions were violated.

In *Robison*, in deciding an issue where the petitioner had cited to portions of the Act and the Plan without offering any analysis of his position, the Board held that:

[b]are citation to the provisions of the Act and the Plan without legal argument does not suffice to overcome the presumption of validity enjoyed by the City under RCW 36.70A.320. *Robison*, at 10.

The Board applies the above-cited ruling and **holds that Stillaguamish has not met its burden of proof that the County violated the Act.**

Conclusion No. 52

The County has not been shown to violate the Act in undertaking a joint study of a portion of the Stillaguamish River valley.

Legal Issue No. 15 (Part) (Pilchuck III)

Did the County fail to be guided by RCW 36.70A.020(5), (8), (9), (10) and (13) when it adopted Amended Ordinance 94-125, with regard to agricultural lands designations?

The issue addresses the County's duty to be guided by RCW 36.70A.020(5), (8), (9), (10), and (13) when it made agricultural lands designations. Goals 5, 8, 9 and 10 are discussed in Issues 15, 16 and 17, above. Only Goal 13 will be discussed below. RCW 36.70A.020(13), Historic preservation, provides:

Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.

Pilchuck III's Position

Pilchuck III asserts that the County has not complied with Goal 13's directive to identify and encourage preservation of sites of historical and archaeological significance. It points to the Plan itself to buttress the argument, citing to Objective LU 11.A, LU Policy 11.A.1 and LU 11 Implementation strategy as evidence that the County has not yet met the goal. It also cites the finding in the Final Environmental Impact Statement that any of the land use alternatives considered by the County could impact those sites. Pilchuck III Brief, at 30.

County's Position

The County reiterates its argument, set forth in the Rural Lands section of its brief, that the Board lacks jurisdiction to determine whether the County was guided by a goal in preparing its Plan. Substantively, it points to a listing of the Act's thirteen goals in the Plan as evidence of its consideration of Goal 13, and to the Cultural Resources section of the Land Use chapter as further evidence of its compliance. County Brief, at 161-2.

Discussion

The thirteen goals set forth in RCW 36.70A.020 "are adopted to guide the development and adoption of comprehensive plans and development regulations..."

In *Gutschmidt*, the Board examined the effect of the term "guide." After examining an opinion of the Attorney General (AGO 1992 No. 23), which concluded that local government must consider the goals, the Board held that local governments must consider the goals before adopting comprehensive plans and development regulations. It then examined the term "consider," and accepted the *Black's Law Dictionary* definition: "To fix the mind on, with a view to careful examination; to examine; to inspect. To deliberate about and ponder over. To entertain or give heed to. *Black's Law Dictionary* 277 (5th ed. 1979.)

Next, the Board noted that:

To give serious thought to something, to ponder it or carefully examine it does not mean that written proof of that subjective process must exist. Whether the document in question is an interim critical areas development regulation, a comprehensive plan or an implementing development regulation, it need not have an explicit discussion of the planning goals. ...*Gutschmidt*, at 10 - 15.

In *Rural Residents*, the Board held that RCW 36.70A.020 has both a procedural and a substantive

element. It characterized the procedural element as the mental process of considering the planning goals.

Because it involves thinking about how to achieve the Act's goals, it cannot be quantified, nor need the record document such consideration. The substantive portion of RCW 36.70A.020 requires a determination whether an enactment actually complies with the planning goals. *Rural Residents*, at 24.

The Board rejected a request to overturn its holding in *Gutschmidt*, and held that no tangible procedural demonstration will be required.

Instead, the ultimate test of consideration of the goals remains to determine whether the County's actions were substantively guided by those goals — whether the actions comply with the planning goals. *Rural Residents*, at 25.

The Board concluded that:

... the substantive element of RCW 36.70A.020 is the heart of the GMA. All development regulations and comprehensive plans must comply with the Act's planning goals. Nonetheless, local jurisdictions have a broad array of mechanisms for achieving this result. In addition, the level of compliance with the planning goals will vary depending on the document being enacted. Comprehensive plans and implementing development regulations will be held to the highest standard of compliance ...*Rural Residents*, at 29.

As to the County's assertion that the Board lacks jurisdiction to determine the County's compliance with RCW 36.70A.020, the matters to be determined by the Board are set forth at RCW 36.70A.280. The relevant portion, at subsection (1)(a), provides that the Board shall hear and determine only those petitions alleging “[t]hat a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter ...”

RCW 36.70A.300, Final orders, at subsection (1), provides that a Board's final orders “... shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter...” RCW 36.70A.320, Presumption of validity - Burden of proof - Plans and regulations, directs that a board, “... after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter.

The Board has concluded that counties are required to be guided by the goals set forth at RCW 36.70A.020, and that the requirement has both a procedural and a substantive component. RCW 36.70A.280 gives the Board jurisdiction over that requirement; RCW 36.70A.300 directs the Board to determine whether compliance with that requirement has occurred. The Board **holds**

that it has jurisdiction over this issue.

The Cultural Resources section of the Plan’s Land Use chapter sets forth Goal LU 11, to “Identify and encourage the preservation and enhancement of cultural resources in Snohomish County.” To achieve that goal, it establishes four objectives: Objective LU 11.A. “Identify and document archaeological, historic, and cultural resources throughout Snohomish County; Objective LU 11. B, “Preserve and enhance archaeological, historic, and cultural resources;” Objective LU 11.C, “Recognize the value of promoting cultural tourism as an economic development tool and as a stimulus to cultural resource preservation and enhancement;” and Objective LU 11.D, “Ensure that Snohomish County’s land use policies encourage the social, economic and quality of life benefits of the arts.” Sixteen detailed policies are provided to implement those objectives.

The Plan is a set of goals, objectives, policies and implementation strategies. The above-cited goals, objectives and policies evidence the County’s compliance with the requirement to consider goal 13 in developing that plan. Where, as here, there are no specific actions relating to historic and archaeological preservation mandated by the Act, at RCW 36.70A.070 or elsewhere, the Board cannot, and will not, hold the County responsible for specific performance at the time of Plan adoption. The Board **holds that Pilchuck III has not met its burden to demonstrate that the County was not guided by Goal 13.**

Conclusion No. 15

Pilchuck III has not shown that the County failed to be guided by Goal 13.

Legal Issue No. 39 — Transportation Policy (CCSV)

Does Transportation Policy TR 5.A.1 violate the Act by excluding from LOS standards and concurrency requirements transportation services and facilities which are at their ultimate capacity? (RCW 36.70A.020(1), (3) and (13) corrected, .070(6)(b)(iii), and .070(6)(e))

CCSV III’s Position

CCSV III argues that Plan Policy TR 5.A.1 is inconsistent with Policy TR 1.B.3, because it allows the County to declare a transportation service or facility to be at capacity, and thus not subject to concurrency determinations. It asserts that this violates RCW 36.70A.020(1), (3) and (12), .070(6)(b)(iii), and .070(6)(e), and perpetuates current problems with transportation facilities and services.

County's Position

The County cites to County-wide Planning Policy TR-8(d) as directing the County “to recognize the issue of facilities at their ultimate capacity.” CD 1, at 26. Further, it argues that RCW

36.70A.070(6)(e) requires public improvements or strategies, and asserts that Policy TR 5.A.1 is such a strategy. The County cites to the Transportation Element's section on concurrency management that balances land development, transportation level of service, and capital financing, as complying with the Act's requirements.

The County points to Title 26B of the County Code as addressing the impact of land development on the County's transportation facilities, and argues that it is the sort of strategy contained in the definition of "concurrency."

The County points out that where facilities are at capacity, it elected to "use strategies to reduce vehicular travel demand rather than prohibit development."

Finally, the County argues that the Puget Sound Regional Council (**PSRC**) has certified the County's Transportation Element as conforming with the GMA, and that the PSRC has exclusive jurisdiction to certify conformity of the Transportation element with the GMA.

Discussion

RCW 36.70A.020(1), (3) and (12)

See Legal Issue No. 38 Discussion, above, for a general discussion of RCW 36.70A.020, Planning goals. In this issue, CCSV III alleges that the County acted contrary to Goals 1, 2, and 13 in adopting Policy TR 5.A.1. The goals in question provide:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

....

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

....

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.070(6)(b)(iii) and .070(6)(e)

RCW 36.70A.070(6) sets forth the required subelements for the transportation element of a comprehensive plan, including:

(b)Facilities and services needs, including:

i) An inventory of air, water, and land transportation facilities and services,

including transit alignments, to define existing capital facilities and travel levels as a basis for future planning;

(ii) Level of service standards for all arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) Specific actions and requirements for bringing into compliance any facilities or services that are below an established level of service standard;

....

(e) Demand-management strategies.

After adoption of the comprehensive plan ... 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 improvement 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.

Plan Goals and Policies

Transportation Goal TR 5 requires the County to “[d]esign transportation systems that are efficient in providing adopted levels of service.” Transportation Policy 5.A.1 states that:

Transportation services and facilities that are at their ultimate capacity, as determined by the county, shall not be a consideration in land use concurrency determinations. Plan, at TR-8. Emphasis added.

Transportation Goal TR 1 directs the County to “[d]evelop transportation systems that complement the land use element of the county comprehensive plan.” Objective TR 1.B, a subheading under Goal TR 1, provides:

Prepare long-range plans for future highway and arterial roadways providing direct connections and adequate rights-of-way in consideration of existing and future development. Plan, at TR-2.

Transportation Policy 1.B.3, a subheading of Objective TR 1.B, states that:

Land use designations shall be reviewed where roadway construction or upgrading to serve designated land use intensities is not feasible or where concurrency cannot be achieved.

Plan, at TR-3.

The Concurrency Management section of the Phase II Document directs the County to:

Institute a concurrency management system through the county's Title 26B traffic mitigation ordinance using the integrated highway and transit levels of service standards as adopted within the transportation element of the comprehensive plan. CD 2(b), at 31.

As a part of implementation measures, the section describes levels of service as providing "... the basic measures by which to make judgments on transportation improvement programming and concurrency." CD 2(b), at 33.

The County cites to an implementing ordinance "Amending Title 26B of the Snohomish County Code Relating to Provision of Transportation Demand Management Measures by Development" as a strategy intended to achieve concurrence. Notice of a public hearing on the proposed ordinance was published on October 16, 1993. There is no record of adoption of the ordinance. Ex. R-103. However, CD 7, Ordinance No. 95-039, "Amending Snohomish County Code Titles 13 and 26B, Developer Contributions for Road Purposes as a Condition of Land Use Approvals," was adopted on June 28, 1995. A finding in the Ordinance states that: "It is further found that this title is consistent with and implements the comprehensive plan adopted pursuant to RCW 36.70A." CD 7, Section 4, at 3.

In Section 32 of Ordinance 95-039, amending Section 26B.52-060, Level of Service requirements, transportation system capacity improvements to maintain adopted level-of-service standards are required by subsection (1). Subsection (2) bars new development causing a decline in level of service on an arterial unless improvements are programmed and funding identified which would remedy the deficiency within six years. CD 7, at 11.

Subsection 3 of Section 32, Ordinance 95-039, provides that:

When the county council determines that excessive expenditure of public funds is not warranted for the purpose of maintaining adopted level-of-service standards on an arterial unit, the county council may designate, by motion, such arterial unit as being at ultimate capacity. Improvements needed to address operational and safety issues may be identified in conjunction with such ultimate capacity designation. CD 7, at 11.

Subsection 4 of Section 32, Ordinance 95-039, provides that:

Level-of-service standards for arterial units which have been designated by the county council as ultimate capacity arterial units, and that directly connect state routes with a city, may be determined jointly by the county and the city through an interlocal agreement. CD 7, at 11.

On July 24, 1995, the County Council adopted Emergency Ordinance No. 95-065 amending Title 26B of the County Code, in response to two referenda challenging its adoption of the comprehensive plan; the purpose was to assure the independent operation of Title 26B. The Emergency Ordinance added level-of-service standards, and deleted certain references to the GMA comprehensive plan. CD 8.

The Board **holds that RCW 36.70A.070(6) does not bar the County's determination that a service or facility is at capacity, nor does it preclude mitigation through strategies other than facility improvements.** However, the "missing link" in the process set forth above is a provision in the Plan and/or Title 26B which would explicitly provide for the use of "strategies" for purposes of mitigation, when a service or facility has been found to be at capacity. Policy TR 5.A.1 can be read to exclude a development from application of concurrency requirements where the affected facility or service is at its ultimate capacity. Such an interpretation would not be in compliance with the requirements of RCW 36.70A.070(6). In order to bring Transportation Policy TR 5.A.1 into compliance, the County must clarify that the phrase "shall not be a consideration in land use concurrency determinations" is limited in its effect to determining how, not whether, concurrency requirements are applied. The Board **holds that Policy TR 5.A.1. must be amended to make clear that a development is subject to concurrency requirements even in the case where the service or facility affected by the development has been found to be at its ultimate capacity.** New development must provide mitigation for the impacts of further development, regardless of the status of the affected service or facility; expansion or other improvements to roads is but one of many means to deal with impacts.

As to the County's argument that PSRC has exclusive jurisdiction under Chapter 47.80 RCW to certify of the County's Transportation Element, RCW 47.80.026 directs regional transportation planning organizations (**RTPO's**), including PSRC, to "establish guidelines and principles by July 1, 1995, that provide specific direction for the development and evaluation of the transportation elements of comprehensive plans ... and to assure that state, regional, and local goals for the development of transportation systems are met." RCW 47.80.023(3) directs that certification to be completed by December 31, 1996. The County's Plan was adopted on June 28, 1995; all of the petitions for review before the Board in this matter were received on or before September 14, 1995; and PSRC's Certification and Consistency Report was issued on October 4, 1995. CD 2(a); Ex. R-5.

The certification process of Chapter 47.80 RCW is completely separate from the GMA. If the Legislature had intended RTPO's to have exclusive jurisdiction to review the transportation elements of comprehensive plans, it could have amended the jurisdictional provisions of the GMA (RCW 36.70A.280) to so provide; it did not do so. The Board **holds that it has jurisdiction under the GMA to determine compliance of a comprehensive plan's transportation element with the requirements of the Act.**

Conclusion No. 39

Transportation Plan Policy TR 5.A.1 does not comply with RCW 36.70A.070(6) and must be amended to make it clear that a development is subject to concurrency requirements even where an affected service or facility has been found to be at its ultimate capacity. Because the Board has concluded that the policy does not comply with the Act, it will not answer the questions concerning compliance with RCW 36.70A.020(1), (3) and (13).

Legal Issue No. 38 (CCSV III)

Did the County adequately define, designate and identify “open space” within the Plan, Final UGAs and land use maps., and if so, do the Plan designations and associated goals, objectives, and policies comply with the goals and requirements of the Act? (RCW 36.70A.020, .070 (1), .110(2), and .160)

CCSV III’s Position

CCSV III asserts that the County has failed to adequately define, designate and identify open space within its Plan, Final UGAs and land use maps, pursuant to the requirements of RCW 36.70A.020, .070(1), .110(2), and .160. It directs the Board’s attention to provisions of the Plan indicating that open space designation will occur at a later stage. In its Reply Brief, CCSV III asks the Board to find the Final UGAs to be invalid because the County has failed to designate open spaces between and within the UGAs.

County's Position

The County points to maps in its Parks and Recreation Plan and other provisions for open space in the Plan, the Parks Plan and other GMA enactments, as evidence of compliance with the cited requirements. It notes that it is currently developing an open space map for inclusion in the Land Use Element of the Plan as a part of its Phase II planning actions, and argues that the Act and the Board’s previous rulings allow for adoption of a process for mapping open space areas as they become identified.

Discussion

RCW 36.70A.020(9)

RCW 36.70A.020, Planning goals, “are adopted to guide the development and adoption of comprehensive plans ...” Goal (9) directs the County to “[e]ncourage the retention of open space ...” In its brief, CCSV III concedes that the Plan’s Land Use Element “ ... does have policies which encourage the retention of open spaces ... ,” but argues that the County’s failure to include

open spaces on the Future Land Use Map is evidence of its failure to be guided by Goal 9.

In *City of Gig Harbor, et al., v. Pierce County*, CPSGMHB Case No. 95-3-0016 (1995), a case challenging another county's comprehensive plan and implementing regulations, the Board considered Goal 9 specifically, and noted that "...use of the verb 'encourage' [in Goal 9] is quite permissive ... the legislature sought retention of existing open space. If it wanted cities and counties to increase the amount of open space, it would have so specified in this policy." *Gig Harbor*, at 16-17.

Applying the above cited holdings to this issue, in light of the record before the Board, the Board **holds that CCSV III has failed to demonstrate that the County was not guided by Goal 9.**

RCW 36.70A.070(1) and .160

RCW 36.70A.070(1) sets forth the required contents of a comprehensive plan's land use element, including designation of the "proposed general distribution and general location and extent of the uses of land, where appropriate, for ... open spaces ..."

RCW 36.70A.160 directs cities and counties to:

... 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.

Goal LU 10 of the Plan directs the identification and protection of open space, natural and scenic resources, and shoreline areas; Objective LU 10.A requires identification and preservation of an integrated open space network. Features to be considered for inclusion in an open space system include: natural or scenic resource areas; public watersheds and natural drainage easements; landscaped areas such as golf courses, school yards, cemeteries, parks and arboretums; low intensity park and recreation sites; open spaces or buffers in developments; river corridors; utility and trail corridors; critical areas; areas designated on subarea plan maps as sensitive; and lands designated as open space for tax assessment purposes. Plan, LU 10.A.1, at LU-37.

Objective LU 10.B directs the development of plans and techniques to preserve open space, scenic resources, and shorelines, and sets forth eight policies to be used in complying with Objective LU 10.B. Plan, LU 10.B.1 through 8, at LU-38.

Section 4 of Amended Ordinance No. 94-125 incorporates the County's County-wide Comprehensive Park and Recreation Plan (**Park Plan**). CD 2(c).. The Park Plan, at Regional Park Elements describes open space preservation elements, including critical areas and farmland preservation, noting that the lands will remain in private ownership. In addition, interim forest land designations are shown graphically, but not discussed. CD 2(c), at 129-132. The

Development Plan section identifies and graphically displays resource lands in public ownership and to be acquired to provide public access to regionally significant environmental features, and describes the intent to create greenway corridors and open space networks. CD 2(c), at 132-155. The section also contains a regional trails element, with a maps of existing and proposed trails. CD 2(c), at 156 - 203.

The Plan's Future Land Use Map does not include open space and/or greenbelts among the land uses graphically represented. Plan, Map 4.

However, in text describing the Future Land Use Map, the Plan states that:

It is anticipated that the generalized future land use map will be modified in the future once UGA plans are adopted with more detailed land use designations and refined UGA boundaries. For example, an adequate amount of open space and greenbelts will be designated within each UGA. Existing open spaces and greenbelts will be designated on the modified future land use map as part of this process. However, the land capacity analysis used to determine the twenty year land requirements for each UGA reflected on the generalized future land use map already has incorporated a 15% set aside factor for public uses which is intended to include adequate open space and greenbelts to accommodate this future growth. Plan, at LU-41.

The Land Use Element of the Plan, in the section on Open Space, Shoreline and Scenic Resources, describes a memorandum of understanding (**MOU**) between the County and the cities within it, which calls for:

- identification of open space corridors within and between urban growth areas;
- the use of a variety of land development techniques to achieve open space;
- management of river systems on a watershed basis to protect the resources; and
- development of cooperative management plans and implementation strategies for open space areas of interjurisdictional significance. Plan, at LU-36.

The Board held in *Gig Harbor* that since the challenged comprehensive plan did not have a map showing greenbelts, open space, or urban growth areas, and it was therefore impossible to "... identify open space corridors within and between urban growth areas" (including "the connection of critical areas") as required by RCW 36.70A.160, the County had not complied with that provision's mandate to identify open space corridors within and between UGAs. *Gig Harbor*, at 18-19.

By its own admission, Snohomish County has yet to map open space areas. RCW 36.70A.070(1)

and .160, the Board's holding in *Gig Harbor*, the Policies of the Plan, and the above-referenced the MOU, direct the County to do so. Therefore, the Board **holds that Snohomish County has not identified open space corridors within and between UGAs, as required by the Act.** As to CCSV III's assertion that failure to designate open spaces pursuant to RCW 36.70A.160 necessitates invalidation of the UGAs, it has not met its burden of showing how such non-compliance substantially interferes with the Act's goals, as is required by RCW 36.70A.300(2).

RCW 36.70A.110(2)

RCW 36.70A.110(2) requires that “[e]ach urban growth area shall permit urban densities and shall include greenbelt and open space areas.”

In *Gig Harbor*, the Board stated that:

RCW 36.70A.110(2) requires cities and counties to “include greenbelt and open space areas” within urban growth areas (**UGAs**). In order to do so, counties and cities must first define what these terms mean since the Act does not define them. *Gig Harbor*, at 28.

In the introductory text preceding Goal LU 10, the Plan defines open space as:

Any parcel or area of land essentially unimproved and permanently set aside, dedicated, designated or reserved for public or private use or enjoyment, or the protection of environmentally sensitive areas. Open space includes a wide variety of lands such as publicly owned lands and parks useful for either active or passive recreation, waterways, access to water, trails, critical areas, resource lands, and scenic or open space easements on private land. Plan, at LU-36.

The Plan Glossary does not define “open space” or “open space areas;” however, “greenbelt” is defined as:

A predominantly open area that may be cultivated or maintained in a natural state surrounding development or used to separate land uses. Plan, at E-6.

“Open space corridor” is defined in the Glossary as:

A linear land use plan overlay or designation that may contain various types of uses that are characterized in the aggregate by the pre-eminence of natural or man-altered landscape features and a minimal amount of man-made buildings and other above-grade structures. Open space corridors may contain any of the land use categories enumerated in Policy LU 10.A.1. Refinement of this definition will be considered in the next phase of the county's GMA planning process. Plan, at E-9.

Here the County has defined “greenbelt,” “open space,” and “open space corridor” in its Plan; and its Park Plan, which is included in the comprehensive plan, contains maps showing components of greenbelt and open space areas as those terms are defined or listed in the Plan. RCW 36.70A.110(2) does not use the verb “identify” but rather “include.” Therefore, the County has complied with the minimum requirement to “include greenbelt and open space areas” in its UGAs. The Board **holds that CCSV III has not met its burden of proof to show that the County did not comply with the requirement of RCW 36.70A.110(2).**

Conclusion No. 38

CCSV III has not shown that the Plan’s open space provisions did not substantively comply with RCW 36.70A.020(9), nor has it shown that the County failed to include greenbelt and open space areas within each UGA, as required by RCW 36.70A.110(2). However, because the Plan does not specifically discuss open space corridors or include a map depicting them, it violates RCW 36.70A.070(1) and .160.

IV. ORDER

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

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.
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 include a process for identifying and siting essential public facilities pursuant to RCW 36.70A.200(6) and 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 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.

So ordered this 12th day of March, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

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

APPENDIX A: glossary of abbreviations

<i>Aagaard</i>	<i>Aagaard, et al., v. Bothell</i> , CPSGMHB Case No. 94-3-0011 (1995)
Zoning Ordinance	
Capital Facilities Requirements	a report entitled “Capital Facilities Requirements 1994-1999 (and to 2013) for Snohomish County”
AFT	Agriculture for Tomorrow, one of petitioners in CPSGMHB Case No. 95-3-0061, <i>CCSV II</i> , now consolidated herein
GMCC	Arlington Growth Management Coordinating Committee’s
ARL	Association of Rural Landowners, intervenor in this case
<i>Rural Residents</i>	<i>Association of Rural Residents v. Kitsap County</i> , CPSGMHB Case No. 93-3-0010 (1994)
<i>Anderson Creek</i>	<i>Association to Protect Anderson Creek v. City of Bremerton</i> , CPSGMHB Case No. 95-3-0053
<i>Bremerton</i>	<i>Bremerton, et al., v. Kitsap County</i> , CPSGMHB Consolidated Case No. 95-3-0039
Board	Central Puget Sound Growth Management Hearings Board
Central Board (CPSGMHB)	Central Puget Sound Growth Management Hearings Board
Guidelines	Chapter 365-190 WAC, “Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas”
<i>Children’s Alliance</i>	<i>Children’s Alliance and Low Income Housing Institute v. City of Bellevue</i> , CPSGMHB Case No. 95-3-0011 (1995)
<i>Snoqualmie</i>	<i>City of Snoqualmie v. King County</i> , CPSGMHB Case No. 92-3-0004 (1993)
CCSV	Concerned Citizens for Sky Valley, one of the petitioners in <i>CCSV II</i> and <i>CCSV II</i> , both consolidated herein
CEO	conservation easement ordinance
CD	Core Document
CPPs	County-wide Planning Policies
Inventory	Countywide Utility Inventory Report for Snohomish County - Public Water Supply and Wastewater Collection and Treatment Systems

<i>Roetcisoender</i>	CPSGMHB Case No. 95-3-0064, <i>Roetcisoender Investments v. Snohomish County</i> , consolidated into this case then separately dismissed
DNS	Determination of Non-Significance
Draft Plan	Draft Snohomish County Comprehensive Plan General Policy Plan (1994). County Exhibit 10.
du	dwelling unit
<i>Edmonds</i>	<i>Edmonds and Lynnwood v. Snohomish County</i> , CPSGMHB Case No. 93-3-0005 (1993)
EIS	Environmental Impact Statement
FEIS	Final Environmental Impact Statement
Final UGA	Final Urban Growth Area
FTA	forest transition area
FAC	Forestry Advisory Committee
<i>Gig Harbor</i>	<i>Gig Harbor et al. v. Pierce County</i> , CPSGMHB Case No. 95-3-0016
<i>Gutschmidt</i>	<i>Gutschmidt, et al., v. City of Mercer Island</i> , CPSGMHB Case No. 92-3-0006 (1993)
<i>Hensley II</i>	<i>Hensley, et al., v Snohomish County</i> , CPSGMHB Case No. 95-3-0043 (1995)
IACP	Interim Agricultural Lands Conservation Plan
ICF	Interim Commercial Forest
IFR	Interim Forest Reserve
IUGA	Interim Urban Growth Area
<i>KCRP I</i>	<i>Kitsap Citizens for Rural Preservation v. Kitsap County</i> , CPSGMHB Case No. 94-3-0005 (1994)
<i>Kitsap v. OFM</i>	<i>Kitsap County v. Office of Financial Management</i> , CPSGMHB Case No. 94-3-0014 (1995)
MOU	memorandum of understanding
MCPP	Multicounty Planning Policies
Woodinville	petitioner City of Woodinville in CPSGMHB Case No. 95-3-0060, <i>Woodinville</i> , now consolidated herein
Stillaguamish	petitioner in CPSGMHB Case No. 95-3-0063, <i>Stillaguamish Flood Control District v. Snohomish County</i> , now consolidated herein
Hensley III	petitioner of CPSGMHB Case No. 9-3-0065, <i>Corinne R. Hensley and 1000 Friends of Snohomish County, v. Snohomish County</i> , now consolidated herein
CCSV II	petitioner of CPSGMHB Case No. 95-3-0054, <i>Concerned Citizens for Sky Valley v. Snohomish County</i> , now consolidated herein

Pilchuck III	petitioner of CPSGMHB Case No. 95-3-0061, <i>Pilchuck Audubon Society, Agriculture for Tomorrow, Pilchuck Newberg Organization, Andrea Moore, Isabel Loveluck, Stephan Thomas, and Barbara Miles v. Snohomish County</i> , now consolidated herein
CCSV III	petitioner of CPSGMHB Case No. 95-3-0062, <i>Pilchuck Audubon Society, Agriculture for Tomorrow, Pilchuck Newberg Organization, Andrea Moore, Isabel Loveluck, Stephan Thomas, and Barbara Miles v. Snohomish County</i> now consolidated herein
Jensen	petitioner of CPSGMHB Case No. 95-3-0067, <i>Jensen v. Snohomish County</i> , first consolidated herein then separately dismissed
Zimmerman	petitioner of CPSGMHB Case No. 95-6-0068, <i>Zimmerman</i> , first consolidated herein, then separately dismissed
Pilchuck	Pilchuck Audubon Society, petitioner in CPSGMHB Case No. 95-3-0061, <i>Pilchuck III</i> , and in CPSGMHB Case No. 95-3-0062, <i>CCSV III</i> , both now consolidated herein
PNO	Pilchuck Newberg Organization, petitioner in CPSGMHB Case No. 95-3-0062, <i>CCSV III</i> , and Case No. 95-3-0061, <i>Pilchuck III</i> , both now consolidated herein
PNO	<i>Pilchuck-Newberg Organization et al. v. Snohomish County</i> , CPSGMHB Case No. 94-3-0018 (1995)
Poulsbo	<i>Poulsbo v. Kitsap County</i> , CPSGMHB Case No. 92-3-0009 (1993)
PSRC	Puget Sound Regional Council
RTPOs	regional transportation planning organizations
s.f.	single family
County	Snohomish County
Public Participation Ordinance	Snohomish County's Growth Management Planning Procedures and Public Participation Ordinance
Realtors	Snohomish County Association of Realtors, intervenor in this case who withdrew
Interim Forest Regulations	Snohomish County Council Amended Ordinance No. 92-101, "Adopting Interim Regulations to Conserve Forest Lands Amending Snohomish County Codes Titles 17, 18, 19, 20 and 32"
Motion	Snohomish County Council Motion No. 92-283 "Adopting The Interim Forest Land Conservation Plan and Designating Interim Forest Lands."
Fire District	Snohomish County Fire Protection District No. 7, one of the respondents in the present case
Snohomish County Final EIS	Snohomish County GMA Comprehensive Plan Final Environmental Impact Statement
Staff Evaluation	Snohomish County Planning Department's "Staff Evaluation and Recommendation of Properties Evaluated Pursuant to Planning Policy 10 in Ordinance 92-101"

Plan	Snohomish County Snohomish County GMA Comprehensive), entitled “General Policy Plan” (GPP) adopted on June 28, 1995, in Amended Ordinance No. 94-125
SCT	Snohomish County Tomorrow
Interim Forest Plan	Snohomish County's Interim Forest Land Conservation Plan [IFLCP]
IFLCP	Snohomish County's Interim Forest Land Conservation Plan [Interim Forest Plan]
<i>South Bellevue</i>	<i>South Bellevue Limited Partnership et al. v. Bellevue and Issaquah School Dist. No. 411</i> , CPSGMHB Case No. 95-3-0055
GMA	State of Washington’s Growth Management Act [or the Act]
Act	State of Washington’s Growth Management Act, RCW 36.70A [or GMA]
SHB	Substitute House Bill
<i>Tacoma</i>	<i>Tacoma, et al., v. Pierce County</i> , CPSGMHB Case No. 94-3-0001 (1994)
Capital Plan	the “1995-2000 Capital Plan of Snohomish County”
Gold Bar	the City of Gold Bar, intervenor in this case
Interim Agricultural Plan	the County’s 1993 Interim Agricultural Conservation
1982 Agricultural Plan	the County’s Agricultural Preservation Plan
Park Plan	the County’s County-wide Comprehensive Park and Recreation Plan
ELCA	the Employment Land Capacity Analysis in Unincorporated Snohomish County
GPP	the Plan , or Snohomish County Snohomish County GMA Comprehensive Plan, entitled “General Policy Plan”
<i>Sky Valley, et al.</i>	The present case, CPSGMHB Consolidated Case No. 95-3-0068c, <i>Sky Valley, et al., v. Snohomish County</i> , which contains earlier petitions 95-3-054 and 95-3-0060 through -68. Petitioner Sky Valley (or CCSV I) entered the first of the consolidated petitions, No. 95-3-0054.
Council	the Snohomish County Council
Planning Commission	the Snohomish County Planning Commission
Planning Department	the Snohomish County Planning Department
<i>Twin Falls</i>	<i>Twin Falls, et al., v. Snohomish County</i> , CPSGMHB Case No. 93-3-0003 (1993)
UGA	Urban Growth Area
RLCA	Urban Growth Area Residential Land Capacity Analysis
<i>Vashon-Maury</i>	<i>Vashon-Maury, et al., v. King County</i> CPSGMHB Consolidated Case No. 95-3-0008 (1995)
WFPA	Washington Forest Protection Association
DNR	Washington State Department of Natural Resources
DCTED	Washington State Dept. Of Community, Trade and Economic Development

Western Board (WWGMHB)	Western Washington Growth Management Hearings Board
WRECO	Weyerhaeuser Real Estate Company
WSDF I	<i>WSDF I v. City of Seattle</i> , CPSGMHB Case No. 94-3-0025 (1995)
WSDF II	<i>WSDF II v. Seattle</i> , CPSGMHB Case No. 95-3-0040 (1995)

[1] Snohomish County Association of Realtors' Notice of Withdrawal, December 19, 1995.

[2] The decision was subsequently appealed to Kitsap County Superior Court. That appeal is still pending.

[3] See for instance: *Buell v. Bremerton*, 80 Wn.2d 518, 526, 495 P.2d 1358 (1972); *Barrie v. Kitsap County*, 93 Wn. 2d 843, 849, 613 P.2d 1148 (1980); *West Hill Citizens v. King County Council*, 29 Wn. App. 168, 172, 627 P. 2d 1002 (1981); *Toandos Peninsula Association v. Jefferson County*, 32 Wn. App. 473, 480-81, 648 P. 2d 448 (1982); *Pease Hill v. Spokane County*, 62 Wn. App. 800, 808, 816 P.2d 37 (1991).

[4] The Board will discuss below whether its holdings constitute APA rules that must be established through rule-making procedures or are adjudicatory determinations, not subject to rule-making procedures.

[5] See *Hama Hama Co. v. Shorelines Hearings Board*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975).

[6] The common meaning of "rural" is:

1. of or relating to the country: rustic. 2. Of or relating to people who live in the country. 3. Of or relating to farming: agricultural. *Webster's II New Riverside University Dictionary* 1027 (1988).

[7] RCW 36.70A.300(1) provides:

The board shall issue a final order within one hundred eighty days of receipt of the petition for review, or, when multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated. Such a final order shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to plans, development regulations, and amendments thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW. In the final order, the board shall either: (a) Find that the state agency, county, or city is in compliance with the requirements of this chapter or chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs; or (b) find that the state agency, county, or city is not in compliance with the requirements of this chapter or chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, in which case the board shall remand the matter to the affected state agency, county, or city and specify a reasonable time not in excess of one hundred eighty days within which the state agency, county, or city shall comply with the requirements of this chapter.

[8] RCW 34.05.010(15) defines the word "rule" as follows:

(15) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or

revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes. Emphasis added.

[9] This definition must be compared with the APA's definition of "adjudicative proceeding" at RCW 34.05.010(1):

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law. Emphasis added.

[10] Procedures for such adjudicative proceedings are set forth in RCW 34.05.410 through .494.

[11] In 1995, the legislature amended RCW 36.70A.300(5) to allow parties to appeal to several superior courts rather than just Thurston County Superior Court as was previously the case with the 1991 legislation first creating the boards. See Chapter 347, Laws of 1995, Section 113; and Chapter 382, Laws of 1995, Section 5. The legislature also amended RCW 34.05.518 in 1995 by authorizing direct review of the final decision of an "environmental" board (including the growth management hearings boards) by the appellate courts.

In addition, every party always has the ability to lobby the legislature to amend the GMA, whether in response to a Board decision or not.

[12] Dated October 10, 1995, copy provided to the Board at the Prehearing Conference.

[13] In its Prehearing Brief at footnote 3, page 52, the County correctly notes that standing is a jurisdictional issue and may be raised at any time. However, the County did not identify in its Prehearing Brief any other remaining parties whose standing it wished to challenge. Absent additional motions to the contrary, the Board assumes that there are no further challenges to the standing of the other parties to this petition.

[14] In briefing Legal Issue 34, Pilchuck III (through AFT) alleges that the County deleted land from the agriculture designation. Petitioner also alleges (through PNO) that the County made other significant revisions to the Draft Comprehensive Plan without providing adequate notice of the council meetings on those matters or sufficient opportunity for public comment. Specific revisions that petitioner complains of are:

- removal of 15,735 acres from Interim Forest Reserve,
- removal of 1,045 acres from the forest land designations, and
- alterations to Objective LU 8.E and the accompanying polices Policies 8.E.1 through .6.

[15] In briefing Legal Issue 44, CCSV III alleges that the County violated the public participation requirements of RCW 36.70A.020(11) and .140 when it made modifications to the Comprehensive Plan without either sufficiently notifying the public or conducting public hearings. Generally, the modifications complained of include revisions to the land use designations such as:

- an increase in the size of UGAs (by 8,060 acres);
- removal of 6,000 acres from the agriculture lands designation (placed into urban and rural residential categories);
- removal of 15,735 acres from the forest protection designation (placed into residential development); and
- removal of 48,000 acres of forest land (placed into Forest Transition Land which allows some residential development).

[16] In briefing Legal Issue 55, Stillaguamish alleges that the County added the Island Crossing floodplain area to the Arlington UGA contrary to the recommendations in the Draft Plan submitted by the Planning Commission. Stillaguamish alleges that this is a significant change to the Plan, and the County is therefore required to allow the public an opportunity to comment on this revision prior to adoption.

[17] It is noted that at the time Snohomish County established procedures for public participation, the 1990 version of RCW 36.70A.140 was the effective statute and, thus is the section cited.

[18] Letters from Pilchuck Audubon Society dated January 18, 1995.

[19] Transcripts of Hearing, January 18, 1995, including statements by Ellen Gray representing Pilchuck Audubon Society, speaking against the additional safety factor for residential land supply; Marilyn Hoggarth representing AFT, speaking about agriculture land designations near Arlington, and Corinne Hensley speaking about population forecasts and UGA boundaries.

[20] The Commission conducted eight public hearings over a three-month period and the Council heard public input at four meetings over approximately one month.

[21] The added page was Table 11, Revised June 1995. This table updates the April analysis from 2,088 acres to 2,118 acres of employment capacity.

[22] Legal Issues 49, 50 and 51, raised by Petitioner Stillaguamish, are dismissed elsewhere in this Order. Because the Board answers Legal Issues Nos. 42 and 41 in the negative, it need not and will not answer Legal Issue No. 45.

[23] MCPP is the acronym for the Multicounty Planning Policies authorized by RCW 36.70A.210(7). The MCPP document for the Central Puget Sound Region is Vision 2020, first adopted by the Puget Sound Council of Governments in October 1990 and subsequently adopted by its successor agency, the Puget Sound Regional Council, on May 25, 1995.

[24] Plan Objective LU 1.C provides:

Establish and maintain a UGA boundary that provides a distinct edge between urban and rural land uses.

Plan Goal LU 6 provides:

Protect and enhance the character, quality, and identity of rural areas.

Plan Objective LU 6.A provides:

Reduce the rate of growth in rural and resource areas.

CPP UG-3 provides:

Ensure the final population allocation for UGAs reverses the current trend of an increasing share of the county's population locating in rural areas.

CPP OD-2(b) provides:

The county will regulate development within the unincorporated portions of urban growth areas in a manner that does not preclude urban densities, based on strategies which will be developed as part of the joint comprehensive planning process for each urban growth area. These strategies will consider the unique development opportunities and constraints in each urban growth area and could range from development limitations in one area to the authorization of development at planned urban densities in those areas that have urban governmental services and capital facilities available.

CPP OD-11 provides:

Establish low intensities of development and uses in areas outside of urban growth areas to preserve resource lands and protect rural areas from sprawling development.

CPP RU-2 provides:

Rural density and development standards will be based upon accommodating the portion of the 20 year growth not accommodated within the urban growth areas. The county will prohibit subdivision densities and patterns which preclude resubdivision to urban densities.

MCPD RG-1.1 provides:

Identify urban growth areas sufficient in size and densities to accommodate the urban growth projected to occur, according to requirements of state law, for the succeeding 20-year period.

MCPD RC-2.1 provides:

Encourage the location and phasing of growth within urban growth areas in a manner that supports development of urban centers and manufacturing/industrial centers, makes use of existing public facility and service capacity, and is consistent with capital facility planning, while reinforcing cities as primary locations for growth. Emphasis added.

[25] Ordinance 95-049 is the County's "Regulations to Conserve Agricultural Lands."

[26] The Board has previously concluded that UGAs and rural areas are mutually exclusive:

The GMA universe consists of three major land use types: (1) *resource lands* (designated forest, agricultural and mineral resource lands); (2) *urban lands*, which are within UGAs; and (3) *rural lands* which are entirely outside UGAs and exclude resource lands. *Bremerton*, at 47.

[27] "Land use pattern" means the number, location and configuration of parcels of a given size. *See Bremerton*, at 50; *see also, Vashon-Maury*, at 79.

[28] Table A-11 on page A-23 of the Plan is entitled "Rural Unincorporated Area Land Use Summary - Snohomish County", however the categories used are generic, e.g., single-family residential, commercial, etc., and do not provide an acreage breakdown of residential densities.

[29] As to *how much* rural land is committed to various lot size patterns, the County's brief simply states:

... the Council exercised its discretion to allow a variety of .5- to 10-acre lot sizes in the rural element, with the majority being in the 2.5 to 5 acres range. *County Brief*, at 141.

As to *why* it designated these small rural lot patterns, the County states:

Some of the areas represent pre-existing platting and development patterns. Other areas reflect the bottom-up choice of the County's citizens and elected county officials to define "rural" to include this range of rural

densities. County Brief, at 138.

[30] While there are differences between the *KCRP I* case and the present case, the Board's fundamental conclusion about the applicability and limitations of clustering in the rural area is the same. For example, *KCRP I* dealt with an optional rural development regulation, while this one deals with a comprehensive plan requirement in the rural area. However, regardless of the different facts in the two cases, the statutory language, and the Board's reading of it, is the same. As a matter of law, the Act permits clustering as an innovative plan technique, while also it also prohibits urban growth in the rural area.

[31] CCSV III argues that the County's total market factor for unincorporated land in the Final UGA is 35.8 percent. CCSV III Brief, at 48.

[32] For example, CCSV III argues that the Plan's rural residential densities are inconsistent with Goal LU 6 and Objective LU 6.A. The former provides: Protect and enhance the character, quality and identity of rural areas. The latter provides: Reduce the rate of growth in rural and resource areas.

[33] Section 8 of Snohomish County Amended Ordinance No. 94-125 provides:

Although the existing subarea comprehensive plans are not part of the county's GMA Comprehensive Plan, they represent a long history of plan development and together provide the foundation for the county's GMA Comprehensive Plan. They provide the necessary refinement and detail in those areas where they are consistent with the county's GMA Comprehensive Plan. Inconsistencies will be resolved as described in the General Policy Plan text ... The GMA Comprehensive Plan will control over any conflict between the subarea plan and GMA Comprehensive Plan, even where an existing subarea plan is referenced in the zoning code or other development regulation...

[34] Pilchuck III cites specifically 246 acres of Interim Riverway Agriculture at Island Crossing, 544 acres of Interim Upland Agriculture at Smokey Point, and 1,116 acres of Riverway Agriculture at Smith Island. Pilchuck III Brief, at 17.

[35] The County cites to Exhibit R-82, which includes correspondence from the Everett Mayor and Planning Director. The County summarizes the rationale for inclusion of Smith Island in Everett's UGA as: (1) it conforms to the boundary of the Snohomish River rather than the freeway; (2) the existence of the City's wastewater treatment facilities in the Smith Island Area, with necessary room to expand; (3) the expansion areas for utilities; and (4) the recreation value, specifically open space, wetland enhancement and mitigation banking. County Brief, at 121.

[36] The County cites to hearing testimony from property owners and the City of Arlington, Exhibit R-73 and correspondence from the City of Arlington, Exhibit R-24. The County summarizes the rationale for the inclusion of Island Crossing in the UGA as: (1) the area is characterized by urban development; (2) the area is served by water and sewer; (3) the area is the major entryway to the city; (4) the vacant land south of the developed area will be converted to auto dealerships; (5) the City is motivated because of the potential revenues necessary to provide further development; and (6) the area is a recognized part of the island community and inclusion in the UGA brings this area forever into the city. County Brief, at 119.

[37] ***Does the Plan procedurally and substantively comply with the requirements of RCW 36.70A.070 and was it guided by the goals of the Act, and if not, are the Plan and adopted Final UGAs in violation of the Act? (RCW 36.70A.020(1) through (13); .050; .060; .070(1), (2), (3), (4) and (6); .080; .100; .110 (2); .150; .160; .170; .200; .210; CPP at: UG-1(c), (d), (h), -5, -6, -7, -8, -9, -11, -12, -16; OD-1 through -8, -10;***

HO-1 through -8, -10 through -13; CF-1; JP-1, -2; RU-1, -3; CF-1 through -5; and TR-1 through -12)?

[38] The County provided the Board the ordinance as an exhibit at the Hearing on the Merits, January 16 and 17, 1996. *See* Respondent's Ex. R-11.

[39] At the time of the original Final Order in *WSDFI*, the 1994 version of the Act was cited and at the time the relevant subsection was number 12. Subsequently, the language contained in this definition has become subsection 13.

[40] The legislature attempted to provide guidance by including a requirement that all special districts provide a capital facilities plan that was consistent with the comprehensive plan of the local government within whose boundaries the facility was located. *See* Substitute House Bill (**SHB**) No. 2929, Section 18 (1990). Thus, all capital facilities, except for the smallest facilities, would have been required to provide a capital plan that was coordinated with a comprehensive plan. However, this section was vetoed by Governor Booth Gardner. In his veto message, Governor Gardner indicated his agreement with the portions of proposed section 18 regarding special districts. *See* Veto Message of Governor Booth Gardner § 18 (April 24, 1990). Governor Gardner stated the section was vetoed because he was limited in the scope of his veto to only entire sections and could not line item veto the portion he disagreed with; the exemption to port districts or municipal airports included in the last phrase of the section. *Id.* Unfortunately, the legislature has not provided the Act with a similar section absent the objectionable phrase.

[41] This portion of the decision addresses Legal Issues Nos. 25 through 31.

[42] DCD has subsequently been renamed the Department of Community, Trade and Economic Development (**DCTED**).

[43] One of the six affirmative votes, cast by Jim Beaster of the Washington Department of Natural Resources, was conditional.

[44] The footer to the FAC's Findings and Conclusions is dated January 9, 1995.

[45] According to the FINAL EIS, a total of 241,265 acres would remain in commercial forest land designations. CD 6, at 60. The Board assumes this total includes 1,076 acres which, according to the FINAL EIS, were designated Local Forest, all of which are located within the Tulalip Tribes' reservation. By subtracting the Local Forest lands (1,076 acres from 241,265 total acres, the result is 240,189 acres of commercial forest lands — nearly identical to the 239,800 acres the FAC cover letter indicates is designated commercial forest lands.

[46] The FINAL EIS indicates that 15,735 acres were removed based on minimum size, proximity to existing development, and other related criteria. Specifically, 5,820 acres of ICF; 5,462 acres of IFR; 1,500 acres on the Tulalip Reservation; and 3,048 acres of City of Everett water supply lands, were removed. CD 6, at 26, 28 and 59.

[47] CD 2A, at A-22. Pilchuck mistakenly refers to this amount as the "Total Commercial Forest Land" in Snohomish County. Pilchuck Brief, at 8.

[48] Finding of Fact No. 23 above, taken from Interim Forest Plan, Table 1, at 2 (Exhibit 7.4.00208).

[49] Finding of Fact No. 8 above, taken from Interim Forest Plan, Table 3, at 10 (Exhibit 7.4.00208).

[50] CD 22, FAC cover letter, at 1.

[51] CD 22, FAC cover letter at 1.

[52] CD 6, at 26.

[53] 288,797 minus 239,800 = 48,997 acres.

[54] The Board does agree with Pilchuck that the County reduced the amount of designated acres of forest land by 15,735 acres between the Draft Plan and the adopted Plan. *See* Pilchuck Brief, at 34. The FINAL EIS indicates that approximately 15,735 acres would be removed. The Board notes that by adding 15,735 acres to the amount of forest lands finally designated (239,800 acres), one obtains 255,535 acres. This amount is virtually identical to the amount of acreage (255,000 acres) the FAC cover letter indicates was designated in the Amended Interim Forest Plan. The Board therefore deduces that the amount of designated acreage in the Draft Plan was the same acreage as the Amended Interim Forest Plan.

The Board distinguishes between the 48,000-acre forest transition area (discussed in Legal Issue No. 28 below) and the 48,997-acre difference between the Interim Forest Plan and final designations in the Plan. Petitioners derived their 64,000-acre amount by adding the FTA's 48,000 acres to the 15,735 acres described in the FINAL EIS.

[55] The ordinance adopting the Plan incorporates by reference the Snohomish County Comprehensive Park and Recreation Plan (i.e., CD 2C). The Park and Recreation Plan does address accessibility to resource lands.

[56] Section 2(3) of the Motion called for immediate conservation of forest lands through the Interim Forest Plan "... until the countywide comprehensive plan is adopted."

[57] *Rural Residents*, at 14.

[58] Plan Criterion 7 replaced Criterion 2 in the Interim Forest Plan. The latter designated large commercial forest areas, but removed densely built areas and agricultural areas that were easily identified from aerial photographs. In areas of mixed forest, agricultural and residential development, forested areas of at least 40 acres without a building were identified. Interim Forest Plan, at 6.

[59] Criterion 1 replaced Criterion 1 in the Interim Forest Plan, which designated all parcels of 40 acres or greater. Interim Forest Plan, at 5. Criterion 1 in the Plan also replaced Criterion 4 in the Interim Forest Plan, which evaluated the parcel size pattern of lands adjacent to islands or peninsulas of productive commercial forest lands to assess existing land use conflicts. Interim Forest Plan, at 6. Islands and peninsulas with the majority of its perimeter abutting lots five acres or less were removed. CD 22, FAC Report, at 3.

[60] Plan Criterion 6 replaces Criterion 5 in the Interim Forest Plan, which mapped locations of proposed large lot subdivisions and land segregations filed between 1988 and August 1991 to indicate recent development history.

[61] Plan Criterion 8 replaces Criterion 3 in the Interim Forest Plan, which utilized Washington State Department of Revenue Forest Land Grade maps. Forest land grades one through three only (of seven possible grades, with one being most productive) were used since they were considered the most productive forest lands for timber production in Snohomish County. Interim Forest Plan, at 6.

[62] *See* CD 22. The FAC cover letter and the FAC Report each describes the existence of actual use conflicts.

[63] The FINAL EIS also indicated that:

... Lands within the FTA could be developed with residential uses of 1 unit per 20 acres or 1 unit per 10 acres if developed under the provisions of rural cluster subdivision. In all cases, residential development would have to provide permanent buffers from adjacent commercial forest lands (500 foot rear buffer and 200 foot side buffers). Within the commercial forest designation (exclusive of the Forest Transition Area), residential development would remain limited to 1 unit per 80 acres. CD 6, at 59.

[64] The text of LU 8.E reads:

Objective LU-8.E Establish a Forest Transition Area (FTA) That creates a protected long-term Commercial Forest land boundary that will not be impacted by adjacent land use conflicts.

LU Policies 8.E.1 An FTA one quarter mile in width shall be designated on Commercial Forest lands adjacent to non-resource lands. The FTA consists of Commercial Forest lands and is shown as an overlay to Commercial Forest lands on the County's GMA Comprehensive Plan Future Land Use map.

8.E.2 The FTA may be partially developed if adjacent land use conflicts restrict normal forest practices as indicated by at least one of the following:

a) If any of the following uses are located within 500 feet of the commercial forest land boundary:

i) Residences, campgrounds or other structures valued at more than \$1000;

ii) other areas or activities with frequent public use; or

a) conflicting uses or improvements which are either susceptible to damage from or are incompatible with forest practices typical of the area (including, but not limited to, ornamental or fruit trees, berry bushes, beehives, livestock or poultry enclosures, etc.).

b) If legal action or action by a public agency or court restricts normal forest practices due to potential conflicts along the boundary.

c) Proof of existence of an active surface water intake which is currently used as source for potable water within one quarter mile downstream.

8.E.3 If adjacent land use conflicts restrict normal forest practices, as defined in the GPP, the Commercial Forest landowner shall have the option of developing one sixteenth section of the FTA or a one quarter mile wide segment of the FTA or a one quarter mile wide segment of the FTA that borders the adjacent land use conflict, whichever is greater. That portion of the FTA eligible for development may be developed at a density of one dwelling per 20 acres through a standard plat or 1 dwelling per 10 acres using a cluster subdivision process.

8.E.4 When FTA lands are platted, a deed restriction shall be required that prevents all proposed and future development and other conflicting non-forestry uses in the FTA from being located closer than 500 feet to adjacent non-transition Commercial Forest lands and 200 feet from adjacent undeveloped FTA lands. This 500-foot or 200-foot restricted zone shall be managed and maintained as Commercial Forest Land. The deed restriction shall apply only as long as the FTA borders other Commercial Forest lands.

8.E.5 The Right to Practice Forestry notice shall apply to properties within the FTA.

8.E.6 When FTA lands are divided using a cluster subdivision

process, the lands not proposed for use as residential lots, roads, utilities, open space or other uses associated with the residential development, and not within the 500-foot or 200-foot restricted zone, which must be managed as Commercial Forest land as defined by Policy 8.E.4 above, shall be identified as a Resource Management Area which may be managed for timber production in accordance with the Washington Forest Practices Rules and Regulations

[65] One mile equals $5,280 \text{ feet} \div 4 = 1,320\text{-foot}$ buffer.

[66] $48,000 \text{ acres} \times 62\% = 29,760 \text{ acres}$.

[67] See ARL Exhibit 26, at 7, an excerpt from a January 18, 1995 letter from the Pilchuck Audubon Society to the County Council in which Pilchuck supported the size of the FAC's 500-foot buffer recommendation but objected to the location of the buffer "within" designated forest lands, as opposed to within adjacent rural lands.

[68] The Final EIS states:

... Since such development [i.e., 2,400 dwelling units on 48,000 acres if the FTA were "fully developed"] must establish a permanent buffer between the residential and forest land uses, the remaining Commercial Forest lands would be minimally impacted by residential development. CD 6, at 60.

[69] RCW 36.70A.045, entitled "Phasing of comprehensive plan submittal," provides:

The department may adopt a schedule to permit phasing of comprehensive plan submittal for counties and cities planning under RCW 36.70A.040. This schedule shall not permit a comprehensive plan to be submitted greater than one hundred eighty days past the date that the plan was required to be submitted and shall be used to facilitate expeditious review and interjurisdictional coordination of comprehensive plans and development regulations.

[70] An even broader category than "lands devoted to timber production" would be "lands with forest cover" which would include all forested lands regardless of commercial viability. Not all lands that are forested would be either in "timber production" or "forest lands" (e.g., forested national park lands).

[71] RCW 36.70A.380, Extension of designation date, provides:

The department may extend the date by which a county or city is required to designate agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170, or the date by which a county or city is required to protect such lands and critical areas under RCW 36.70A.060, if the county or city demonstrates that it is proceeding in an orderly fashion, and is making a good faith effort, to meet these requirements. An extension may be for up to an additional one hundred eighty days. The length of an extension shall be based on the difficulty of the effort to conform with these requirements.

[72] In the Final EIS text, most of the 246-acre property is described as having an agricultural designation; in the summary table, 216 acres are shown as receiving an urban designation.

[73] The Final EIS text, at 22, states that the Crescent area parcel is 364 acres; Table 2, at 22, gives the acreage as 437. CD 6.

[74] Pilchuck III has limited its briefing to Goals 8 and 10; therefore, those portions of the issue concerning goals 5 and 9 will be deemed to have been abandoned, and will not be dealt with further.

[75] That portion of Issue 15 dealing with Goal 13 is answered separately in Part III of the Order.

[76] See Legal Issue No. 42, Part III. C. of this Order.