



## Notice of Compliance Hearing and Briefing Schedule.

On October 17, 1996, the Board conducted a compliance hearing. On November 5, 1996, holding that the County had not complied with the Act and the Board's Order, the Board entered a Finding of Noncompliance, Order on Motions, Notice of Second Compliance Hearing, and Briefing Schedule.

On November 19, 1996, the Board received a Compliance Status Report from the County.

On December 9, 1996, the Board received Snohomish County's Second Statement of Actions Taken to Comply with the GMA and the Final Decision and Order.

On December 19, 1996, the Board held the Second Compliance Hearing, addressing only procedural compliance with the GMA as set forth in the FDO. On January 31, 1997, the Board issued a Notice of Third Compliance Hearing, which announced that the Board would consider and determine substantive as well as procedural compliance with the GMA and the Board's FDO.

From February 3, 1997, through February 11, 1997, the Board received four petitions for review (**PFRs**) challenging the County's adoption of four ordinances amending its Plan and implementing development regulations. The PFRs were consolidated as Case No. 97-3-0012, *Kelly v. Snohomish County [Kelly]*; one PFR was dismissed.

On February 21, 1997, the Board received "Notice of Participation by Snohomish County-Camano Association of Realtors."

On March 7, 1997, the Board received "Snohomish County's Objection to Participation of John Postema in Third Compliance Hearing." Also on this date, the Board received from Postema a letter entitled "Request for Clarification of Status of Participation."

On March 10, 1997, the Board received from Postema a "Notice of Participation."

On March 13, 1997, the Board received from Postema a "Response to Snohomish County's Objection to Participation of John Postema in Third Compliance Hearing."

On March 26, 1997, the Board issued a Pre-Compliance Hearing Order.

On May 8, 1997, the Board received "Prehearing Brief of 1000 Friends of Snohomish County for Third Compliance Hearing," "Prehearing Brief of AFT (Agriculture for Tomorrow): Request for Non-Compliance and Invalidity," and "Pilchuck Audubon Society and Concerned Citizens for Sky Valley's Third Compliance Hearing Brief" (**CCSV PHB**).

Also on May, 8, 1997, the Board received "John Postema Motion to Support the Statement of

Issues.”

On May 9, 1997, the Board issued an Order on Dispositive Motions and Motions to Supplement.

On May 29, 1997, the Board received “Snohomish County-Camano Association of Realtors’ Response to Petitioners’ Prehearing Briefs Regarding Third Compliance Hearing” and “ARL’s Response to Petitioners’ Prehearing Briefs Regarding Third Compliance Hearing.”

On May 30, 1997, the Board received “Snohomish County’s Pre-compliance Hearing Brief” (**County Response**), “Snohomish County’s Second Motion to Amend the Index of the Record and Second Motion to Supplement the Record,” and “Snohomish County’s Request for Board to Take Official Notice of 1997 Growth Management Legislation and Motion to Defer Final Decision Until Effective Date of Legislation (July 27, 1997).”

On June 9, 1997, the Board received “Petitioner AFT Response to County Motion for Retroactive Statutory Application and Delay of Final Decision on Third Compliance Hearing,” “AFT Response to County Pre-Hearing Brief on Third Compliance Hearing,” “Pilchuck Audubon Society and CCSV’s Third Pre-Compliance Hearing Reply Brief” (**CCSV Reply**), “1000 Friends of Snohomish County’s Response to Pre-Hearing Briefs of Snohomish County and Snohomish County-Camano Association of Realtors Regarding Third Compliance Hearing,” and “1000 Friends’ Objection to Snohomish County’s Request for Official Notice and Motion to Defer Final Decisions, and Request to Deny.”

Also on June 9, 1997, the Board received “John Postema’s Response to Snohomish County Pre-Compliance Hearing Brief” and “John Postema’s Motion to Deny Snohomish County’s Request to Take Official Notice of 1997 Growth Management Legislation and Deny the County’s Motion to Defer Final Decision Until Effective Date of Legislation.”

On June 17, 1997, the Board received “Snohomish County’s Reply In Support of Request for Board to Take Official Notice of 1997 Growth Management Legislation and Motion to Defer Final Decision Until Effective Date of Legislation (July 27, 1997).”

On June 18, 1997, the Board held the Third Compliance Hearing at the City Council Chambers in Everett, Washington. Present were Board members Edward G. McGuire, Joseph W. Tovar, and Chris Smith Towne, presiding officer. Court reporting services were provided by Cynthia LaRose, Robert H. Lewis & Associates. CCSV and Pilchuck Audubon Society were represented by Steve Erdman; 1000 Friends was represented by Jane Cooper; AFT was represented by Annalee Cobbett; John Postema appeared *pro se*; Snohomish County-Camano Association of Realtors and Association of Rural Landowners were represented by Thomas J. Ehrlichman; the County was represented by Barbara Dykes.

On July 2, 1997, the Board received “Snohomish County’s Motion to Take Official Notice of and

Supplement the Record With Snohomish County Ordinance 97-056, Relating to Commercial Forest Land Designations Under the GMA Comprehensive Plan.”

On July 8, 1997, the Board received “Snohomish County’s Motion to Strike Portions of Reply Brief Filed by John Postema Dated June 9, 1997.”

On July 11, 1997, the Board received “John Postema’s Reply to Snohomish County to Strike [Brief] Submitted July 7, 1997.”

On July 30, 1997, the Board issued a Final Decision and Order in *Kelly*, finding the challenged actions in compliance with the Act, except for a portion of Ordinance 96-074, which was remanded to the County for compliance with the Act’s public participation requirements.

## **II. FINDINGS OF FACT**

1. On June 28, 1995, the County adopted its GMA Comprehensive Plan. CD-29.
2. On November 27, 1996, the County enacted Amended Ordinance No. 96-073, “Establishing an Urban Growth Area for the Unincorporated Maltby Industrial Area.” The Ordinance responded to the Board’s remand order in *Sky Valley*, which instructed the County to delete the Maltby Employment Area or designate it as a UGA. CD-24.
3. On November 27, 1996, the County enacted Amended Ordinance No. 96-074, “Adopting Map and Text Amendments to the Growth Management Act Comprehensive Plan.” CD-25.
4. On November 27, 1996, the County enacted Amended Ordinance No. 96-075, “Adopting a County-Initiated Areawide Rezone Within Rural Residential Areas.” CD-26.
5. On November 27, 1996, the County enacted Amended Ordinance No. 96-076, “Amending Snohomish County Code Titles 18, 19, 20, and 32, Relating to the Requirements of the County’s Comprehensive Plan and Implementation of Development Regulations Under RCW 36.70A.” CD-27.
6. On November 27, 1996, the County enacted Emergency Ordinance No. 96-096, “Repealing Snohomish County Code Chapter 32.30.090.” CD-28.
7. The amendments made to the County’s Plan through Ordinance No. 96-074 include revised rural residential designations. The Future Land Use Map (**FLUM**) (Exhibit B to CD-25) illustrates the location of these rural residential designations. The residential densities and acreage are shown in the following table:

<b>Rural Residential Designations</b>	<b>Density</b>	<b>Acres</b>
		<b>(236,156 total rural acres)</b>
Low Density Rural Residential (RR-L)	1 du/20 acres	22,568
Rural Residential-10 (Resource Transition, RR-10-RT)	1 du/10 acres	5,974
Rural Residential-10 (RR-10)	1 du/10 acres	2,920
Rural Residential-5 (RR-5)	1 du/5 acres	80,204
Rural Residential (RR)	1 du/5 acres base density	116,668
Rural Residential RD (RR-RD)	1 du/2.3 acres	7,822

See Exhibit A to CD-25, at 12-14; County Response, at 25-26; CCSV PHB, at 27.

8. Ordinance No. 96-074 also amended Plan policy LU 6.B.1 to provide more specific policy direction to the application of the County's rural cluster subdivision regulations. LU 6.B.1 requires that the rural cluster subdivision (**RCS**) regulations ensure that the use of clustering results in compact rural development rather than urban growth, that an RCS development does not unduly threaten large-scale natural resource lands, that an RCS development does not thwart the long-term flexibility to expand the UGA, and that an RCS development is not inconsistent with the goals and requirements of the GMA and the Plan. <sup>[2]</sup> Exhibit A to CD-25, at 5-7.

9. Ordinance No. 96-074 amended the FLUM to show a Rural/Urban Transition Area (**RUTA**). Exhibit B to CD-25.

10. Ordinance No. 96-074 added new Policy LU 6.B.8 to the Plan. LU 6.B.8 provides:

Monitor the rate and pattern of development created by rural cluster subdivisions and report to the County Council annually to ensure that a pattern of urban development is not established in rural areas.

Exhibit A to CD-25, at 7.

11. Ordinance No. 96-074 added new Policy LU 6.B.9 to the Plan. LU 6.B.9 provides:

Within the Rural Residential designation, subdivisions may exceed the basic density of 1

lot per 5 acres if the rural cluster subdivision technique is used, all of its criteria and requirements for the maintenance and enhancement of the rural character are met, and the maximum lot yield does not exceed 1 lot per 2.3 acres.

Exhibit A to CD-25, at 7.

12. Ordinance No. 96-074 added new Policy LU 6.C.6, which provides:

Designate as Rural Residential-10 (Resource Transition) those areas which are included in Forestry designations on existing subarea plans but not zoned Forestry or included in the Forestry designations of the General Policy Plan. Areas shall not be subdivided into lots less than 10 acres except through the use of cluster subdivision or housing demonstration program using PRD provisions at a maximum density of 1 dwelling unit per 5 acres.

Exhibit A to CD-25, at 8.

13. Ordinance No. 96-074 amended Policy LU 8.D.1 to prohibit the use of rural cluster subdivisions on lands designated RR-RD. Exhibit A to CD-25, at 9.

14. Ordinance No. 96-074 also amended several forest land policies. LU 8.A.4 provides:

Designations of Commercial Forest Lands within one half mile of an urban growth boundary shall be removed from Commercial Forest land designation reviewed for consistency with the criteria contained in GPP policy 8A.2 at the landowner's written request. Those properties that do not meet the criteria shall be removed from Commercial Forest land designation.

Exhibit A to CD-25, at 9 (deleted language with strikethroughs; new language underlined).

15. In Addendum No. 6 to the FEIS for the County's Plan, the County assumed a 50 percent utilization rate of clustering within R-5 zones. Attachment D to CD-37.

### **Iii. Rulings on motions**

1. Snohomish County's Second Motion to Amend the Index of the Record and Second Motion to Supplement the Record (filed May 30, 1997):

The County's motion is **granted**.

2. Snohomish County's Request for Board to Take Official Notice of 1997 Growth Management Legislation and Motion to Defer Final Decision Until Effective Date of Legislation (July 27, 1997) (filed May 30, 1997):

The Board **takes official notice** of ESB 6094. The County's motion to defer the Board's decision is **moot**, as the Board's decision is being issued after the effective date of ESB

6094.

3.Snohomish County's Motion to Take Official Notice of and Supplement the Record With Snohomish County Ordinance 97-056, Relating to Commercial Forest Land Designations Under the GMA Comprehensive Plan (filed July 2, 1997):

The County's motion is **granted**.

4.Snohomish County's Motion to Strike Portions of Reply Brief Filed by John Postema Dated June 9, 1997 (filed July 8, 1997):

The County's motion is **granted**.Postema's June 9, 1997 reply brief raised arguments that were not raised in his May 7, 1997 prehearing brief.

#### **iv. summary**

The Board's analysis and conclusions in this Order focus exclusively on the facts and arguments regarding the compliance of the County's Plan with the FDO and the GMA.Arguments that were presented regarding the County's development regulations generally and the Rural Cluster Subdivision Ordinance (**RCS**) specifically are outside the scope of the present inquiry. [\[3\]](#)

As discussed below, the Board concludes that the amended Plan's use of the clustering technique and the "rural by design" [\[4\]](#) criteria responds creatively and effectively to the challenge of planning for compact rural development.Even the petitioners admitted, at the hearing on the merits, that they were not challenging the policies regarding clustering.Excerpt of Hearing, Preliminary Discussion and Argument of Steve Erdman (June 18, 1997), at 27.The County's policies appear well crafted to address the "rural character" issues at a project or site design scale. At the same time, the Board affirms its earlier caution that, while a clustering/open space program can work well at the project scale in a localized setting, care must be given to avert the potentially serious cumulative effects of widespread use of such techniques, specifically the density bonus provisions of such techniques.*See Kitsap Citizens for Rural Preservation v. Kitsap County*, CPSGMHB Case No. 94-3-0005, Final Decision and Order (1994), at 15.

In the present case, the Board is similarly concerned about the potential cumulative effect of widespread use of the County's clustering option. [\[5\]](#) There is no evidence in the record that limits the geographic extent, nor the total amount, of the use of the clustering technique and its attendant density bonus provisions.In the FEIS, the County estimated that, if the historic RCS utilization rate of 50 percent holds, then up to half of the rural area "could" be developed at an effective density of 2.3-acre lots.*See* Finding of Fact 15.This gives the Board pause because the rural area must not simply *look* rural (i.e., be visually compatible with rural character), it must

also be protected from “low density sprawl.” While design is an important component of both rural and urban development, the Board cannot conclude that sprawl is simply a matter of aesthetics.

The Board has recently noted that, in ESB 6094,<sup>[6]</sup> the legislature not only directed that new rural growth is to be compatible with “rural character” but also reiterated its intent “to protect rural areas from *low-density sprawl*.” See *Bremerton v. Kitsap County [Bremerton]*, CPSGMHB Case No. 95-3-0039c, Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble* (September 8, 1997), at 24. The performance standards established in the County’s policies address development at a *localized* or project level (e.g., policies that address building placement or retention of natural features; policies limiting the size of an individual clustered project). However, the adopted policies do not explicitly assess or address the cumulative effect of clustered projects and attendant density bonuses on a *county-wide* level. It is at this county-wide level that measures must be taken to protect the rural area

against the inadvertent creation of a pattern of low-density sprawl.<sup>[7]</sup> If a substantial portion of the rural area were to develop at the 2.3-acre density, it is possible that a county-wide pattern of low-density sprawl would result, undermining the GMA’s goals by permitting a significant amount of population growth far afield from employment centers and transportation facilities, increasing the cost of service provision, and dissipating the vigor of efforts to encourage new growth within the UGAs.

In the present case, the Board concludes that the Plan contains sufficient parameters to avert this “low-density sprawl” scenario at the county-wide level. The Plan’s saving grace in this regard is the County’s commitment to **monitoring** of rural cluster subdivisions, to ensure that it will not occur. See Finding of Fact 10. While Petitioners characterize the County’s monitoring as “hollow” (CCSV Reply Brief, at 26), the Board must presume that the County will act in good faith and will bear in mind that urban and rural policy decisions at the countywide level cannot be made in isolation. The practical and functional linkages between urban land, rural land and

resource lands are reflected in specific GMA provisions.<sup>[8]</sup> More recently and directly on point is the new requirement imposed by the legislature in 1997 that the County, and its cities, are to monitor the supply of buildable lands within the UGAs. Sec. 25, Chapter 429, Laws of 1997. The County’s duty to allocate population county-wide, including both the UGAs and the rural areas (RCW 36.70A.110), combined with its duty to monitor buildable lands within the UGA, necessarily implies a duty to monitor rural land development as well. If, as a result of this urban and rural monitoring, the County concludes that the GMA or the Plan is not being met, it has the authority and the obligation to take appropriate action.

However, the majority of the Board concludes that the RR-RD land use designation in the

Darrington valley would constitute an impermissible urban land use pattern at a more localized level. A detailed discussion of this conclusion and Board Member McGuire's dissent appear below.

#### **v. standard of review**

The County urges the Board to apply Engrossed Senate Bill (**ESB**) 6094, specifically Section 20. *See* Snohomish County's Request for Board to Take Official Notice of 1997 Growth Management Legislation and Motion to Defer Final Decision Until Effective Date of Legislation (July 27, 1997); County Response, at 38-47; *see* Chapter 429, Laws of 1997. Section 20 changes the standard of review to be used by the Boards. The Board takes official notice of ESB 6094, which became effective on July 27, 1997. Section 53 expressly provides that this new law is prospective in effect, except for Section 22, which is explicitly retroactive. <sup>[9]</sup> In other words, the 1997 amendments to the GMA became effective on July 27, 1997.

RCW 36.70A.320(1), as it existed prior to ESB 6094, provides that:

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.

The Board obtained jurisdiction to review Snohomish County's remand actions when the PFRs were filed between July and September 1995. FDO, at 3. Briefing, pursuant to the Board's Rules of Practice and Procedure, was received through July 11, 1997. The third compliance hearing was held on June 18, 1997. But for the issuance of this Order, all events in this proceeding occurred prior to July 27, 1997 – the effective date of ESB 6094.

If, as the County suggests, the date of issuance of the Board's decision is determinative as to the law to be applied, the Board could select the law to apply based on its desire and ability to accelerate or delay the issuance of its decision. This is an outcome the Board cannot reach, nor can the Board conclude that it is a result the legislature intended. <sup>[10]</sup> Consequently, to give effect to the legislature's clear direction, as contained in Section 53, the Board has a duty to apply the provisions of the GMA as they existed at the time the actions were taken and, in this case, the times the compliance hearings were scheduled and held. <sup>[11]</sup> Thus, Petitioners and Participant

must show, by a preponderance of the evidence, that the County has erroneously interpreted or applied the GMA.

## **Vi. DISCUSSION and conclusions**

The Board's Final Decision and Order remanded five issues to the County.FDO, at 134.The Board's Order on Motions to Reconsider and Correct amended one issue and added two issues so that seven issues remained for determination by the Board.Order on Motions to Reconsider and Correct (April 15, 1996), at 15.In this compliance order, Issue No. 1 is subdivided into four sub-issues.

### **Issue No. 1**

***(a) Did the County "show its work" with regard to the amount, locations and rationale for its rural residential designations?***

The County provided a summary of the Plan showing the amount of land in each of its rural residential designations.*See* Finding of Fact 7.The County's amended FLUM shows the locations of its rural residential designations.Exhibit B to CD-25.The findings and conclusions in Ordinance No. 96-074 provide the County's rationale for its rural residential designations.CD-25. On its face, the County's action complies with the GMA as set forth in the Board's FDO.

None of the Petitioners challenged the County's actions regarding this portion of remand issue 1. CCSV concedes that the County has "shown its work" and has procedurally and substantively complied with remand issue 1(a).CCSV PHB, at 29.

**Therefore, the Board finds that, by adopting Ordinance No. 96-074, the County has complied with the GMA with regard to remand issue 1(a).**

### **CONCLUSION NO. 1(a)**

The Board, having reviewed its Final Decision and Order, the file and the above referenced documents pertaining to remand issue 1(a), concludes that the County has complied with the requirements of the GMA as set forth in the Board's Final Decision and Order.

***(b) Did the County 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 in the Plan and the Future Land Use Map?***

The County deleted all rural designations of less than 5 acres except for RR-RD (1 du/2.3 acres), located in the Darrington area.Where the County once had 124,490 rural acres designated at less

[12]  
than 5 acres, the County now has 7,822 acres. On those rural lands now designated at less than 5 acres, rural cluster subdivisions are not permitted. See Finding of Fact 13. In order to overcome the Act's presumption of validity, Petitioners must show, by a preponderance of the evidence, that the RR-RD designation will constitute a pattern of urban growth.

CCSV states that the RR-RD designation "is used *extensively* in a contiguous 12.2 square-mile area both east and west of the Darrington UGA along Highway 530." CCSV PHB, at 31 (emphasis in original). CCSV argues that "[s]uch a widespread use of 2.3-acre residential zoning clearly constitutes a pattern of urban growth." CCSV Reply, at 32; see, also, CCSV PHB, at 31.

The County's response to CCSV's argument is that "the local circumstances are such that a smaller-lot designation is permissible and there is no threat of a pattern of urban growth emerging from that designation in the near future." County Response, at 58. The County also argues that its "new growth monitoring system" and Plan policies will protect against unexpectedly high growth rates in the RR-RD designation. *Id.*

The Board has previously construed *pattern*, in a residential land use context, to refer to the number, location and configuration of lots. *Vashon-Maury v. King County [Vashon-Maury]*, CPSGMHB Case No. 95-3-0008c, Final Decision and Order (1995), at 79. The Board agrees with CCSV that the designation of 7,822 acres (approximately twelve square miles) of RR-RD, which permits 2.3-acre lots, creates an impermissible pattern of urban growth in the rural area. This designation would permit, as a matter of right (as opposed to via discretionary review), 3,400 lots of 2.3 acres (7,822 divided by 2.3 = 3,400) astride the North Fork of the Stillaguamish River east, west and south of the Darrington UGA. This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern.

While twelve square miles is less than three percent of all rural lands, it is not a small or insignificant quantity, whether at a county-wide or localized level. It is equal to the combined area

[13]  
of the cities of Monroe, Sultan, Lake Stevens, and Snohomish and is the predominant land use pattern in the Darrington valley. The Board cannot conclude that such a large area that would permit, as a matter of right, over 3,000 land-consumptive 2.3-acre lots, is anything other than classic low density sprawl. The County has presented no persuasive argument or evidence to

[14]  
justify this designation in light of the FDO's clear direction on the matter. For the County to argue that this land is in a "remote corner" of Snohomish County and that growth is unlikely to occur there "in the near future" misses several critical points entirely -- sprawl is sprawl whether it is adjacent to the main body of a metropolitan area or in the far reaches of the rural area. Further, the Act requires that land capacity assumptions and land-use designations be made using

the GMA's twenty-year planning horizon, not simply the expected "near future."RCW 36.70A.110(2).

With respect to the monitoring system, what the County refers to is a draft proposal; the County does not identify where, in the record, such an adopted monitoring system exists. <sup>[15]</sup> More fundamentally, however, the use of a monitoring system would not cure the noncompliance of designating a block of twelve square miles of rural land at 2.3-acre densities. A sprawling land use pattern on the FLUM cannot be remedied by a mechanism that simply meters the rate at which the land-consumptive sprawl pattern is implemented.

**Therefore, the Board finds that, by including the existing RR-RD designation in its Plan and FLUM, the County has failed to comply with the GMA with regard to remand issue 1 (b).**

### CONCLUSION NO. 1(b)

The Board, having reviewed its Final Decision and Order, the file and the above referenced documents, and having considered the arguments of the parties pertaining to remand issue 1(b), concludes that the County has failed to comply with the requirements of the GMA as set forth in the Board's Final Decision and Order.

*(c) Did the County 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 amended its FLUM to include the RUTA overlay designation. *See* Finding of Fact 9. The RUTA generally overlays rural areas within approximately one-half mile of a UGA, with several exceptions for those areas that the County determined were restricted by "critical areas [and] other natural or artificial features which create a barrier to expansion of the UGA." County PHB, at 63-64. The County encourages the use of clustering within the RUTA by the application of density incentives. *See* Finding of Fact 8. The open space resulting from the use of clustering is preserved until the area becomes included within a UGA. *Id.* On its face, the County's action complies with the GMA as set forth in the Board's FDO. In order to overcome the Act's presumption of validity, Petitioners must prove that the RUTA provisions fail to assure that flexibility will be retained to permit the potential future expansion of the UGA.

1000 Friends' only argument on this issue addresses the temporary nature of open space within the RUTAs. CCSV argues that the County's action fails because clustering is optional within the RUTAs, RUTAs are not next to every UGA, and the RUTAs are too small.

CCSV does not persuasively argue why the density incentives provided by the County will not furnish sufficient encouragement for developers to utilize clustering within the RUTA, thus retaining the necessary flexibility to expand the UGA. Nor does CCSV persuasively argue why the County's decision to place the RUTA overlay only where it believed expansion is likely fails to retain flexibility. Finally, CCSV's assumptions and conclusion that "it is highly possible that the County will require the use of the entire RUTA as shown on the FLUM when it makes its next adjustment to UGA boundaries" is not sufficient to convince the Board that the RUTA will not retain the flexibility necessary to expand the UGA. See CCSV PHB, at 55. Petitioners have not met their burden of proof.

**Therefore, the Board finds that, by creating the RUTA and providing clustering incentives, the County has complied with the GMA with regard to remand issue 1(c).**

### CONCLUSION NO. 1(c)

The Board, having reviewed its Final Decision and Order, the file and the above referenced documents, and having considered the arguments of the parties pertaining to remand issue 1(c), concludes that the County has complied with the requirements of the GMA as set forth in the Board's Final Decision and Order.

***(d) Did the County include in the Plan sufficient policy direction and parameters to assure that any future residential clustered development will constitute compact rural development rather than urban growth?***

The County amended Plan policy LU 6.B.1 to include ten specific parameters and performance standards that must be included in the County's rural cluster subdivision regulations, including a provision for "modest" density incentives. See Finding of Fact 8. The County also added a new policy, LU 6.B.8, requiring the County to monitor the effect of rural cluster subdivisions. On its face, the County's action complies with the GMA as set forth in the Board's FDO. In order to overcome the Act's presumption of validity, Petitioners must prove that the Plan does not contain sufficient policy direction and parameters to assure that the use of residential clustered development will not constitute urban growth.

CCSV argues that the Plan policies do not provide sufficient parameters because the implementing regulations allow up to a 100 percent density incentive for the use of clustering. At the third compliance hearing, CCSV stated that they are not challenging the Plan policy providing for modest density incentives; "[w]e're challenging the specific number that the County determines to be modest." Excerpt of Hearing, Preliminary Discussion and Argument of Steve Erdman (June 18, 1997), at 27. Thus, CCSV has not shown that the Plan fails to address this remand issue. Likewise, 1000 Friends argues that the implementing regulations fail to comply with the GMA. They do not argue about the Plan. As explained in the Summary, only the Plan is

presently before the Board in this compliance proceeding. Petitioners have not met their burden to show that the Plan fails to contain sufficient policy direction and parameters to assure that any future residential clustered development will constitute compact rural development rather than urban growth.

**Therefore, the Board finds that, by adopting the amendments to LU 6.B.1 and LU 6.B.8, the County has complied with the GMA with regard to remand issue 1(d).**

### **CONCLUSION NO. 1(d)**

The Board, having reviewed its Final Decision and Order, the file and the above referenced documents, and having considered the arguments of the parties pertaining to remand issue 1(d), concludes that the County has complied with the requirements of the GMA as set forth in the Board's Final Decision and Order.

### **Issue No. 2**

*Did the County delete the Maltby Employment Area portion of the Plan 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 the Final Decision and Order?*

The Board's remand order provided an option that the County could use to satisfy the remand: designating the Maltby Employment Area as a UGA. The County designated Maltby as a UGA through Ordinance 96-073. *See* CD-24. On its face, the County's action complies with the requirements of the GMA as set forth in the Board's Order. In order to overcome the Act's presumption of validity, Participant Postema must show, by a preponderance of the evidence, that the County's designation of the Maltby UGA fails to comply with the GMA as set forth in the Board's FDO. Participant Postema claims that the County failed to comply with the public participation requirements of RCW 36.70A.140.

The County held public hearings on October 14 and October 21, 1996, after giving adequate notice. The result of these meetings produced an extension of the public comment period to October 28, 1996. The County Council held public deliberations on October 30, November 4, 6, 18, 25, and 27, 1996.

Participant has not persuaded the Board that the County failed to comply with the public participation requirements of the Act when it adopted Ordinance No. 96-073.

**Therefore, the Board finds that, by designating the Maltby UGA, the County has complied**

**with the GMA with regard to remand issue 2.**

## **CONCLUSION NO. 2**

The Board, having reviewed its Final Decision and Order, the file and the above referenced documents, and having considered the arguments of the parties pertaining to remand issue 2, concludes that the County has complied with the requirements of the GMA as set forth in the Board's Final Decision and Order.

### **Issue No. 3**

***Did the County amend Plan Policy LU 8.A.4 so that landowner intent is not the sole criteria [sic:criterion] for removal of designated forest lands?***

The County amended several forest lands policies when it amended its Plan. The County's amendment of LU 8.A.4 specifically addresses the Board's remand. LU 8.A.4, as amended, provides:

Designations of Commercial Forest Lands within one half mile of an urban growth boundary shall be removed from Commercial Forest land designation reviewed for consistency with the criteria contained in GPP policy 8.A.2 at the landowner's written request. Those properties that do not meet the criteria shall be removed from Commercial Forest land designation.

See Finding of Fact 13.

None of the Petitioners challenges the County's actions regarding this remand issue.

**Therefore, the Board finds that, by adopting the amendments to LU 8.A.4, the County has complied with the GMA with regard to remand issue 3.**

## **CONCLUSION NO. 3**

The Board, having reviewed its Final Decision and Order, the file and the above referenced documents pertaining to remand issue 3, concludes that the County has complied with the requirements of the GMA as set forth in the Board's Final Decision and Order.

### **Issue No. 4**

***Did the County, within the forest land designations of the Plan, show how the reduction in designated forest lands was consistent with the Plan?***

The County, in response to the FDO, reviewed its removal of 15,420 acres from forest lands

designation. The County provided its reasoning for removing all but six sites (totaling 462 acres). *See* Snohomish County's Second Statement of Actions Taken to Comply With the GMA and Final Decision and Order (Dec. 2, 1996), at 1-6 and 10-15. It is this lack of explanation for removing these six sites that Petitioners challenge. *See* CCSV PHB, at 69.

At the third compliance hearing, the County admitted that it had not yet completed its actions to comply with this remand issue. The County informed the Board that County Council action was imminent and the County would provide the Board with a copy of the ordinance adopting its response to this remand issue. On July 2, 1997, the County provided the Board with a copy of Ordinance No. 97-056, passed on July 2, 1997. Snohomish County's Motion to Take Official Notice of and Supplement the Record With Snohomish County Ordinance 97-056, Relating to Commercial Forest Land Designations Under the GMA Comprehensive Plan, at 1. Petitioners did not object to this motion.

**Therefore, the Board finds that, by stating its reasons for removing certain lands from forest lands designation and by adopting Ordinance No. 97-056 designating those six sites in question as forest lands, the County has complied with the GMA with regard to remand issue 3.**

#### **CONCLUSION NO. 4**

The Board, having reviewed its Final Decision and Order, the file and the above referenced documents, and the arguments of the parties pertaining to remand issue 4, concludes that the County has complied with the requirements of the GMA as set forth in the Board's Final Decision and Order.

#### **Issue No. 5**

***Did the County identify lands useful for public purposes pursuant to RCW 36.70A.150?***

Ordinance 96-074 adopted a map entitled "Lands Useful for Public Purpose." Exhibit D (Map 6) to CD-25; CD-25, at 20. None of the Petitioners challenged the County's actions regarding this remand issue.

**Therefore, the Board finds that, by adopting this map, the County has complied with the GMA with regard to remand issue 5.**

#### **CONCLUSION NO. 5**

The Board, having reviewed its Final Decision and Order, the file and the above referenced documents pertaining to remand issue 5, concludes that the County has complied with the

requirements of the GMA as set forth in the Board's Final Decision and Order.

### **Issue No. 6**

***To comply with RCW 36.70A.070(4), did the County indicate, within the utilities element of the Plan, the general location, proposed location, and capacity of all existing and proposed utilities?***

The Utilities Element of the County's Plan refers to technical reports contained in the Introduction to the Plan.CD-29 (Plan), at UT-1 and IN-15; *see also*, Exhibit A to CD-25, at 1 (amending the Plan, at IN-15).Ordinance No. 96-074 states:

The planning commission and the county council reviewed the newly updated version of the "Countywide Utility Inventory of Snohomish County" which expands this technical report to include information concerning electric power, natural gas and telecommunications.The updated version adequately responds to the Board's order on this issue.

CD-25, at 21.

None of the Petitioners challenged the County's actions regarding this remand issue.

**Therefore, the Board finds that, by referencing the updated technical report in the Utilities Element, the County has complied with the GMA with regard to remand issue 6.**

### **CONCLUSION NO. 6**

The Board, having reviewed its Final Decision and Order, the file and the above referenced documents pertaining to remand issue 6, concludes that the County has complied with the requirements of the GMA as set forth in the Board's Final Decision and Order.

### **Issue No. 7**

***To comply with RCW 36.70A.160, did the County identify open space corridors within and between UGAs when it amended the Future Land Use Map?***

Ordinance No. 96-074 adopted a new map entitled "Open Space Corridors/Greenbelt Areas."Exhibit D (Map 5) to CD-25.

None of the Petitioners challenged the County's actions regarding this remand issue.

**Therefore, the Board finds that, by adopting this map, the County has complied with the GMA with regard to remand issue 7.**

## CONCLUSION NO. 7

The Board, having reviewed its Final Decision and Order, the file and the above referenced documents pertaining to remand issue 7, concludes that the County has complied with the requirements of the GMA as set forth in the Board's Final Decision and Order.

### VII. Invalidity

Petitioners' motions for invalidity are **denied**.

### Viii. ORDER

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

The County has complied with the Growth Management Act with regard to the *Sky Valley* remand issues, except:

The RR-RD Plan designation, as shown in the FLUM, is remanded to the County, and the County shall bring the Plan and the FLUM into compliance with the requirements of the Act as set forth in this Order on Compliance.

Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Order on Compliance no later than **4:00 p.m. on March 24, 1998**. By no later than **4:00 p.m. on Friday, April 3, 1998**, the County shall submit four copies to the Board, with a copy to all parties and participants, a "Statement of Actions Taken to Comply with the Board's October 2, 1997 Order." Attached to each of the Board copies shall be a copy of the Plan, as amended in response to this Order.

So ORDERED this 2nd day of October, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP

Board Member

(Board Member McGuire filed a dissenting opinion  
as to remand issue 1(b) - Darrington)

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Joseph W. Tovar, AICP

Board Member

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Chris Smith Towne

Board Member

Note: This Order on Compliance constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-020-830.

**Board Member McGuire's Dissent on Remand Issue 1(b) - Darrington**

I respectfully dissent from the conclusion reached by my colleagues in their analysis of remand issue 1(b) - the Darrington area. For the reasons noted below, I find that even for the Darrington area, the County has complied with the GMA as set forth in the Board's FDO.

For purposes of the compliance hearings, the remand issue has been restated as follows:

***1(b) Did the County delete those provisions or otherwise amend the Plan to assure that any rural designation of less than 5 acres will not constitute a pattern of urban growth in the Plan and the Future Land Use Map?***

The answer to this question is -- yes. But for the Darrington area, the County eliminated rural residential land use designations of less than 5 acres. Other than the Darrington area, there are no rural residential designations that allow - by right - a dwelling unit on less than 5 acres. Therefore, [\[16\]](#) for the vast majority of rural area, the County has clearly complied with the GMA as set forth in the Board's Order.

The only rural residential designation of less than 5 acres that the County now has affects 7,822 acres in the Darrington area. The County's FLUM designates the Darrington area as Rural Residential - Rural Diversification (RR-RD, 1 du / 2.3 acres). It is important to recognize that, while the GMA prohibits urban growth in the rural area, no provision of the GMA bans lot sizes of under five acres in the rural area. In fact, the Board has acknowledged and recognized that there can be lots of less than five acres in the rural area. The issue is even addressed in the remand Order, which states: "or otherwise amend the Plan to assure that *any rural designation of less than 5 acres* will not constitute a pattern of urban growth." Thus, designations of less than 5 acres, that do not constitute a pattern of urban growth, are contemplated.

As CCSV notes, the RR-RD designation "is used *extensively* in a contiguous 12.2 square-mile area both east and west of the Darrington UGA along Highway 530." CCSV PHB, at 31. CCSV's argument is that "Such a widespread use of 2.3-acre residential zoning will ultimately lead to a pattern of urban growth that is not justified by the argument that it will not occur next year or the year after that." *Id.* Such a conclusory and speculative statement, without more explanation, fails to meet Petitioners' burden of proof. Petitioners offer no other argument pertaining to the RR-RD designation in the Darrington area. As the majority recognizes, the actions taken by the County to respond to the remand Order are presumed valid; and in order to overcome this presumption, the **petitioner** must show, by a preponderance of the evidence, that the RR-RD designation constitutes a pattern of urban growth.

However, even in examining CCSV's allegation and the discussion provided by the majority, I am not persuaded that the RR-RD designation is used in such a "widespread" manner as to constitute a pattern of urban growth. I find the Darrington area designation to be in compliance with the GMA.

The RR-RD designation accounts for just over *three percent* of all the lands designated *rural residential* in the County. This percentage would be even *less than* three percent if other, non-residential County land use designations were included. The majority suggest that 7,822 acres is not a small quantity. I disagree; three percent is a small quantity of the affected rural residential land in the County. The fact that the RR-RD designation is located and concentrated in this relatively isolated area of the County is appropriate. There is no GMA requirement that such designations be scattered throughout the County -- like pepper on an egg. Viewed in this county-wide context, the isolated location and minimal area affected by this designation does not constitute a *pattern* of urban growth, widespread or otherwise, in Snohomish County's rural area. To the contrary, allowing a small percentage of such designations in certain limited and isolated areas of the County adds to the *variety* of rural densities required by the GMA and avoids a county-wide pattern of repetitious large lot designations.

Therefore, I **dissent** from the conclusion drawn by the Board's majority on remand issue 1(b) - as it relates to the Darrington area. I find that Petitioners have not shown, by a preponderance of the evidence, why the RR-RD designation in the Darrington area constitutes a pattern of urban growth. I further find that the actions taken by the County to address remand issue No. 1(b), as they apply to the Darrington area, do comply with the requirements of the GMA as set forth in the Board's FDO.

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[1] The FDO remand was modified in the Board's Order on Motions to Reconsider and Correct, issued April 15, 1996.

[2] LU 6.B.1 provides:

Use of a clustering subdivision technique should be encouraged by the County in rural residential areas to 1) preserve the rural character of Snohomish County; 2) avoid interference with resource land uses; 3) minimize impacts upon critical areas; and 4) allow for future expansion of the UGAs. The primary benefit of clustering is the preservation of open space. Modest density incentives should be provided in a manner which encourages use of the technique and maximum preservation of open space. The open space tracts in rural cluster subdivisions shall be preserved in perpetuity, except for those located in the Rural/Urban Transition Area. In the Rural/Urban Transition area, open space tracts shall be preserved until such time as the subdivision is included within a UGA, so that it may be used for future urban development. Rural cluster subdivision regulations implementing this policy shall include performance standards to ensure that:

(1) The number, location and configuration of lots will constitute compact rural development rather

than urban growth. Performance standards shall include the following:

- (a) Preservation of a substantial percentage of total site area in open space to be held in single ownership and in a separate tract or tracts;
- (b) Provision of a density incentive which is tied to the preservation of open space;
- (c) Connection of open space tracts with open space tracts on adjacent properties;
- (d) Density at no greater than the underlying zoning density together with a modest density bonus as an incentive for use of the clustering technique;
- (e) Allowance of open space uses consistent with the character of the rural area;
- (f) Division of the development into physically separated clusters with a limitation of the maximum number of lots per cluster;
- (g) Physical separation between clusters consisting of a buffer of wind resistant vegetation;
- (h) Design that configures residential lots to the greatest extent possible to maintain rural character by
  - (i) maximizing visibility of open space tract and minimizing visibility of clusters from adjoining collector roads, arterial roads, or state and federal highways through the placement of lots in the interior of the site and through vegetative buffers; and
  - (ii) placing buildings and lots in a manner which does not intrude on the visual character of the rural landscape, in particular, avoiding placement of houses or buildings on forested ridgelines or other prominent physical features;
- (i) Submittal of a planting and clearing plan to ensure that any planting or clearing proposed will not interfere with the rural character of the site;
- (j) Submittal of a site plan to ensure that siting of lots and built areas will not interfere with the rural character of the site and is consistent with the performance standards of the ordinance. The site plan must include:

- (i) location of clusters, roads and open space;
- (ii) within clusters, location and placement of buildings, useable building areas, driveways, and drainage systems; and
- (iii) location of critical areas and all buffers;

(2) The development does not present an undue threat to large-scale natural resource lands, such as forest lands, agricultural lands and critical areas. Performance standards shall include the following:

- (a) Minimization of alterations to topography, critical areas, and drainage systems; and
- (b) Adequate separation between rural buildings and clusters and designated natural resource lands;

(3) The development does not thwart the long-term flexibility to expand the UGA. In the Rural/Urban Transition area, open space tracts shall be preserved until such time as the subdivision is included within a UGA, so that the tract may be reserved for future urban development. When an open space tract is added to a UGA and adequate services can be provided, the County may allow redevelopment of the open space tract into additional lots to provide appropriate urban level density.

(4) The development is not otherwise inconsistent with the goals and requirements of the GMA and the Plan. Performance standards shall include:

- (a) controls for access to the rural cluster subdivision from public roads;
- (b) requirements to meet rural concurrency standards; and
- (c) requirement that the development be located within a rural fire district.

Exhibit A to CD-25, at 5-7.

[3]

The compliance of the Rural Cluster Subdivision Ordinance (RCS) with the GMA was raised as a legal issue in *Kelly, et al., v. Snohomish County [Kelly]*, CPSGMHB Case No. 97-3-0012, Final Decision and Order (July 30, 1997). 1000 Friends Legal Issue No. 5 read:

***Did the County’s adoption of Ordinances 96-074, 96-076 and 96-096 amending the Rural Cluster Subdivision ordinance, where the ordinance, as amended, permits urban growth in rural areas, prohibits flexibility for future urbanization adjacent to UGAs, fails to protect water quality, and fails to control rural cluster subdivisions, violate the Act, specifically:***

***a. RCW 36.70A.020(2), (9) and (10)***

***b. RCW 36.70A.070(5)***

***c. RCW 36.70A.110(2)***

***d. RCW 36.70A.160***

This legal issue was abandoned by petitioners. *Kelly*, at 15. Therefore, the Board did not reach the question of the compliance of the RCS with the GMA, specifically, the question of whether the RCS permits urban growth in the rural area.

[4]

“Rural by design” is used here generically to refer to the methodology of identifying visual and functional components of rural areas and employing design principles to enable new growth in the rural area to suit the context. The Board has previously taken official notice of a land use planning text of the same name -- Randall Arendt, *Rural by Design: Maintaining Small Town Character* (1994). See *Bremerton*, at 26.

[5]

It is important to note a distinction between clustering as a technique and density bonuses as a component of a clustering program. While the Plan calls for “modest” density bonuses for clustering, the actual bonuses in the RCS may reach 100 percent. The Board does not reach the question of what constitutes a “modest” bonus because that question is not a legal issue in *Sky Valley*, and the petitioners in *Kelly* abandoned that issue.

[6]

ESB 6094, Section 7, amended RCW 36.70A.070(5) by the addition of a new subsection which provides:

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

...

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new *pattern* of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical outer boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the

prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl.(Emphasis added.)

[7]

A land use pattern can be evident at a localized level (i.e., project and immediate vicinity) or an area-wide level (i.e., county-wide or a large portion of a county).*See Vashon-Maury*, at 68.*See also, Bremerton*, Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble*, at 26.

[8]

The Board has previously held:

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.In order to discern the uses permitted in each of these types of lands, it is important to recognize that various provisions of the Act create a relationship between and among them.*Bremerton*, at 47 (footnote omitted).

[9]

Section 22 enables a county or city subject to an order of invalidity to request, by motion, that the Board review the order of invalidity in light of certain procedural changes in the law made by ESB 6094.

[10]

The Board takes notice of the legislature’s clear intent that the Boards defer to city and county decisionmakers in how they plan for growth and how they implement those plans, so long as the adopted plans and implementing regulations comply with, and are consistent with, the goals and requirements of Chapter 36.70A RCW.

[11]

The Board notes that any actions taken by a local government after July 27, 1997, including actions taken to comply with a Board remand order, will be subject to the provisions of ESB 6094.Likewise, the Board’s compliance review of such a remand action will be subject to ESB 6094.

[12]

The 1995 Plan included 103,256 acres designated Medium Density Rural Residential-2.3 (1 du/2.3 acres), 13,412 acres designated High Density Rural Residential (1-2 du/acre), and Medium Density Rural Residential-RD (1du/2.3 acres), for a total of 124,490 acres.*See County PHB*, at 25-26.

[13]

The Board takes official notice of the 1995 Washington State Data Book, which lists the area of these Snohomish County cities as:Monroe, 3.9 square miles; Sultan, 3.6 square miles; Snohomish, 2.5 square miles, and Lake Stevens, 1.9 square miles.

[14]

In *Sky Valley*, the Board adopted prior analyses of the requirements of RCW 36.70A.110 and .070((5) as set forth in prior 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 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.”*Sky Valley*, at 45.

[15]

Plan Policy LU 6.B.8 provides for monitoring related to the use of rural cluster subdivisions. However, rural cluster subdivisions are not authorized within the RR-RD designation. *See* Finding of Fact 10.

[16]

As the majority notes, the County once designated 124,490 rural acres at less than five acres. In this Plan over 116,000 rural acres have been redesignated; now, only 7,822 acres are designated below the five-acre size.