



. . . 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.(First) Order on Compliance, at 13-14.

The Order portion of the (First) Order on Compliance found that:

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

The RR-RD [Rural Residential-Rural Diversification] Plan designation, as shown in the FLUM [Future Land Use Map], 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.

On April 2, 1998, the Board received “Snohomish County’s Statement of Actions Taken to Comply” (the **Statement of Actions** or **SOA**) with two attachments.

On April 10, 1998, the Board received “Pilchuck Audubon Society and Concerned Citizens for Sky Valley’s Response to Snohomish County’s Statement of Actions Taken to Comply.”

On April 30, 1998, the Board issued a “Notice of Fourth Compliance Hearing, Order on the Record and Order Establishing Briefing Schedule” (**Notice of Fourth Compliance Hearing**).

On May 11, 1998, the Board received “Pilchuck Audubon Society and Concerned Citizens for Sky Valley’s Request for Official Notice” (the **Pilchuck Request for Official Notice**).

On May 26, 1998, the Board received “Pilchuck Audubon Society and concerned Citizens for Sky Valley’s Forth Compliance Hearing Brief” (**Pilchuck Hearing Brief**) with four attached exhibits.

On June 5, 1998, the Board received “Snohomish County’s Compliance Hearing Brief” (the **County Brief**) with ten attached exhibits, and “Snohomish County’s Request for Official Notice and Motion to Supplement the Record” (the **County Request for Official Notice**) with one attachment.

On June 8, 1998, the Board received a letter from the City of Woodinville, notifying the Board that the City would not be participating in the Compliance proceedings.

On June 9, 1998, the Board received Notices of Withdrawal from Marilyn Hoggarth for Agriculture for Tomorrow and from Dean Jensen.

On June 9, 1998, the Board received “Pilchuck Audubon Society and Concerned Citizens for Sky Valley’s Request for Official Notice [of Darrington’s Draft Comprehensive Plan] and Motion to Supplement the Record” with eight attachments.

On June 10, 1998, the Board received “Pilchuck Audubon Society and Concerned Citizens for

Sky Valley's Fourth Compliance Hearing Reply Brief" (the **Reply Brief**).

On June 11, 1998, the Board received "Pilchuck Audubon Society and Concerned Citizens for Sky Valley's Amended Request for Official Notice and Motion to Supplement the Record."

On June 11, 1998, Board members Edward G. McGuire, Joseph W. Tovar and Chris Smith Towne, presiding, held a hearing on compliance at the former Everett City Hall building. Pilchuck Audubon Society and Concerned Citizens for Sky Valley were represented by Steve Erdman; the County was represented by Patrick Downs and Duana Kolouskova. Court reporting services were provided by Cynthia LaRose, Robert Lewis & Associates.

## **II. FINDINGS OF FACT**

1. On June 28, 1995, the County adopted its Plan. Ordinance No. 94-125, Core Document (**CD**) 29.
2. The Board incorporates by reference the Findings of Fact in the Board's March 12, 1996 Final Decision and Order and the Board's October 2, 1997 Order on Compliance.
3. The RR-RD designation, with a density of 1 dwelling unit/2.3 acres and a prohibition on rural clustering, encompasses approximately 7,822 acres along the North Fork of the Stillaguamish River and the Sauk River, near the City of Darrington. The designation and zoning were first applied to the area in 1979. Statement of Actions, Attachment A, at 4; Map.
4. The designated area is largely on and/or surrounded by flood plains, steep topography and resource lands. Statement of Actions, Attachment A, at 6.
5. The Stillaguamish River is a "shoreline" pursuant to RCW 90.58.030(2).
6. The RR-RD designated lands comprise just over three percent of all lands designated rural residential within the county. Statement of Actions, Attachment A, at 4.
7. The area in question "is characterized by its isolation, rudimentary utilities and public services, limited road network and natural features not generally suited to intensive development." County Statement of Actions, Attachment B, at 3.
8. Much of the acreage designated RR-RD lies within the Federal Emergency Management Agency (**FEMA**) 100-year Flood Hazard Area. Statement of Actions, Map.
9. Three Mineral Lands areas are shown on the FLUM within the RR-RD area. Statement of Actions, Map.

10. On March 9, 1998, the National Marine Fisheries Service (NMFS) issued a proposed rule to list chinook salmon under the Endangered Species Act. *Endangered and Threatened Species: West Coast Chinook Salmon; Listing Status Change; Proposed Rule*, 63 Fed. Reg. 11,481 (1998). The Darrington Valley is within the Puget Sound Evolutionarily Significant Unit, for chinook salmon, and is proposed to be listed by NMFS. *Id.* at 11,488.

11. Since 1979, 178 new housing units were permitted within the RR-RD area. County Brief, at 44; Attachment 5, at 8.

12. The average annual growth rate in the RR-RD designated area between 1990 and 2002 is expected to be 0.91%, and between 2002 and 2012 is expected to be 0.17%. County Brief, Attachment 6, Table 1, at 4.

13. The County expects a population growth of 330 persons in the affected area during the Plan period. Statement of Actions, at 4.

14. While the County engaged in an extensive legislative process and developed a more comprehensive record on the original action adopting the RR-RD designation, it did not amend its Plan. County Statement of Actions, at 3.

15. County staff prepared three options for land use designation in the area in question, including the previously adopted designation. The options were considered by the Planning Commission at a public hearing, and by the Council at a subsequent public hearing. Notice of those hearings was published on February 25, 1998. County Brief, Ex. 8.

16. On March 23, 1998, the Snohomish County Council adopted Motion 98-078, “Concerning Retention of the Rural Residential--Rural Diversification (RR-RD) Comprehensive Plan Designation in the Darrington Area.” Statement of Actions, Attachment A. This is the sole action taken by the County in response to the Board’s remand.

### **III. remand direction and applicable law**

The Board’s Notice of Fourth Compliance Hearing informed the parties that “[t]he scope of the fourth compliance hearing will be whether the County has complied with the requirements of the Act as set forth in the Board’s Order on Compliance.”

The Board’s (First) Order on Compliance, at 15, found that:

... by including the existing RR-RD designation in its Plan and [Future Land Use Map], the County has failed to comply with the GMA with regard to remand issue 1(b).

The Board’s March 12, 1996 FDO did not subject the County to a determination of invalidity on

any portion of its plan. Therefore, pursuant to RCW 36.70A.320(2), the burden is on the Petitioners to demonstrate that the County's actions taken to respond to the remand have not brought the County into compliance with the requirements of the GMA as set forth in the FDO.

In determining whether the County has complied with the requirements of the GMA, the Board shall find compliance unless it determines that the County's action is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3).

#### **IV. supplementation of the Record and official notice**

Pilchuck asks the Board to take official notice of an excerpt from the March 9, 1998 Federal Register, a notice of proposed listing under the Endangered Species Act. Pilchuck Request for Official Notice. It also asks that the Board take official notice and supplement the record with Darrington's draft Comprehensive Plan (**Darrington Draft Plan**). At the hearing on the merits, Pilchuck asked the Board to take official notice of Darrington's adopted Comprehensive Plan, adopted on June 10, 1998. The Board takes official notice of the Federal Register excerpt, the Darrington Draft Plan, and the adopted Darrington Plan, provided that the adopted Plan is accepted solely to address the question of urban services provided or to be provided by Darrington.

The County asks the Board to take official notice of, and supplement the record with, "Snohomish County Council Joint Resolution 98-004: Concerning Snohomish County's Response to a Proposed Listing of Chinook Salmon Under the Federal Endangered Species Act." The Board takes notice of the Resolution.

#### **V. DISCUSSION**

##### **A. Background**

The area under scrutiny is 7,822 acres in the Darrington Valley. This 12.2 square mile area lies mostly east and west of the Darrington UGA along Highway 530. "The area is a narrow river valley bordered by mountainous terrain. The valley contains river channels, meandering creeks, and significant floodplain and wetland areas." Motion 98-078, at 3 (Finding 4). The County designated this area Rural Residential – Rural Diversification (**RR-RD**), which allows as a matter of right residential development at 1 unit per 2.3 acres. This designation permits rural industrial uses on the 2.3-acre lots, but establishment of such a use is not a prerequisite for creating a 2.3-acre lot.

The Board previously examined this designation, as presented in the Plan text and Future Land Use Map (**FLUM**), and determined that it "creates an impermissible pattern of urban growth in the rural area." (First) Order on Compliance, at 13. The Board stated that it "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.”(First) Order on Compliance, at 14.The Board remanded the RR-RD designation and directed the County to bring its land use for the area into compliance with the Act and the (First) Order on Compliance.(First) Order on Compliance, at 20.The County Council determined it would retain the designation, by means of a motion, and supplement the record with findings and conclusions, relying on amendments to the Act to justify its decision.SOA, at 4-5.

The Board was aware of the amendments to the Act made by ESB 6094 <sup>[1]</sup> when the Board issued its (First) Order on Compliance on October 2, 1997.However, as articulated in that Order, the Board at that time lacked authority to apply the amendments in its review of the County’s

<sup>[2]</sup> Plan. Nonetheless, the (First) Order on Compliance made clear the Board’s intention to apply the amendments to the Act when the County acted in response to the Board’s Order.*See* (First) Order on Compliance, at 12, footnote 11.The Board will now apply the amendments to the Act made by ESB 6094 in its analysis of the County’s determination to retain in whole the RR-RD designation.

## **B.The Amended GMA**

Relevant provisions of the Act, as amended by ESB 6094, are as follows:

RCW 36.70A.030(14) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- (f) That generally do not require the extension of urban governmental services; and
- (g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

RCW 36.70A.030(17)“Urban growth” refers to 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 land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and

natural resource lands designated pursuant to RCW 36.70A.170. **A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth.** . . . (Emphasis added.)

RCW 36.70A.070(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, **a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.**

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. **In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.**

(c) Measures governing rural development. **The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:**

(i) **Containing or otherwise controlling rural development;**

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) **Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;**

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(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:**

(i) Rural development consisting of the **infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas**, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. **A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection.** An industrial area is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that **do not include new residential development.** A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) **The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents.** Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(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 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;**

(v) For purposes of (d) of this subsection, **an existing area or existing use is one that was in existence:**

(A) **On July 1, 1990**, in a county that was initially required to plan under all of the provisions of this chapter;

(Emphasis added.)

### **C. Analysis**

#### **1. Limited More Intensive Rural Development is Permitted in the Rural Area**

The GMA, as amended, still prohibits urban growth in the rural area. *See* RCW 36.70A.070(5)(d)(ii), (d)(iii), (d)(iv), and .110(1). The Act states that even the “innovative techniques” for rural development must not allow urban growth. RCW 36.70A.070(5)(b). However, a pattern of more intensive rural development, as limited by the provisions of RCW 36.70A.070(5)(d), does not constitute urban growth in the rural area. <sup>[3]</sup> RCW 36.70A.030(17). Therefore, unless the RR-RD designation, as presently configured, satisfies the provisions of RCW 36.70A.070(5)(d), it does not comply with the requirements of the Act. <sup>[4]</sup>

RCW 36.70A.070(5)(d)(i) applies to infill, development, or redevelopment of **existing** commercial, industrial, residential, or mixed-use areas. An “existing area or existing use is one that was in existence . . . [o]n July 1, 1990.” RCW 36.70A.070(5)(d)(v)(A). As petitioner points out, the County did not dispute that the Darrington RR-RD area is undeveloped. *See* Reply Brief, at 28. The only evidence in the record shows that the only thing “existing” is the twenty-year-old 2.3-acre zoning. In response to a Board question at the June 11, 1998 compliance hearing, the County stated that it has no inventory of existing “cottage industry” uses in the Darrington Valley and has no system in place to monitor their future location or number. The County did not refute Petitioner’s argument that the RR-RD designation will not consist of “the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas.” Pilchuck Prehearing Brief, at 8. Even if there were an existing area or use, the restrictions of 070(5)(d)(iv) apply and, as discussed below, the County’s designation does not satisfy the limitations imposed by 070(5)(d)(iv).

RCW 36.70A.070(5)(d)(ii) applies to development that does “not include new residential development.” The RR-RD designation clearly does not preclude new residential development (indeed, it permits it as a matter of right); thus, (5)(d)(ii) cannot be invoked by the County here – it does not apply.

RCW 36.70A.070(5)(d)(iii) contemplates the rural industrial uses permitted (but not required) by

the County. However, the application of (5)(d)(iii) is limited by that paragraph's reiteration of the Act's prohibition of low-density sprawl and by (5)(d)(iv)'s requirements to minimize and contain any existing areas or uses of more intensive rural development. While the Board has recognized that (d)(iv) provides that "some accommodation may be made for infill of certain 'existing areas' of more intense development in the rural area, that infill is to be 'minimized' and 'contained' within a 'logical outer boundary.'" *Bremerton Finding of Noncompliance*, at 24.

That logical outer boundary for existing areas is to be "delineated predominantly by the built environment, but [] may also include undeveloped lands if limited as provided in this subsection [(d)]." RCW 36.70A.070(5)(d)(iv). Although RCW 36.70A.070(5)(d)(iv)(A) through (D) provides guidance to counties in establishing the logical outer boundary, this guidance is predicated on there **being** existing areas or uses. In this instance, not only are there no existing areas of more intensive uses, but the **only** boundaries are natural features (steep slopes, flood plains, and natural resource lands). The record and argument by the County are devoid of any reliance on "the built environment" to establish the boundaries for the RR-RD designation. Relying on, in effect, the valley's geographic boundaries, the County has designated a more than twelve square mile area. This is massive in scale – not only is the RR-RD area beyond the scale of "villages, hamlets, rural activity centers, or crossroads developments" specifically named in RCW 36.70A.070(5)(d)(i), but the RR-RD area is even larger than the combined UGAs of several Snohomish County cities. *See* (First) Order on Compliance, at 14.

## 2. Consideration of Local Circumstances

The County argued that its decision to not alter the RR-RD designation is justified by its consideration of local circumstances, as permitted by RCW 36.70A.070(5)(a). This provision allows counties, in developing the rural element of the plan, to consider local circumstances "in establishing patterns of rural densities and uses." Among the local circumstances identified by the County is the history and future need for cottage industries in this portion of the County. Motion 98-078, at 2-4 (Finding 3 and Conclusion 1.c.). Petitioner argued that "[w]hile the County's charts show the rate of 2.3-acre development, they do not indicate what percentage of residents have actually utilized the RR-RD designation for 'cottage industry' purposes in the past, nor do they indicate the number that are expected to do so in the future." Pilchuck Prehearing Brief, at 27. The County has not refuted this argument and the record is without support for the proposition that the permitted 2.3-acre lots will be utilized for rural industrial uses rather than low-density, residential sprawl with no economic development purpose. For example, there is no mechanism in the Plan or elsewhere to monitor, let alone limit, the number of rural non-cottage industry lots created relative to projected demand.

When considering local circumstances, there must be "a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of [the GMA]." RCW 36.70A.070(5)(a). Although the County has the burden of harmonizing the Act's

planning goals (*see also*, RCW 36.70A.3201), that is not enough, *per se*, to overcome its additional duty to assure that the rural element meets the requirements of the GMA.RCW 36.70A.070(5)(a).The Act requires the County to “explain[] how the rural element harmonizes the planning goals . . . and meets the requirements of [the Act].”RCW 36.70A.070(5)(a).The County made no attempt to **harmonize** the planning goals.The County attempted to explain how [5] the RR-RD designation achieves six of the GMA’s fourteen planning goals. *See* Motion 98-078, at 4-5.The County selected goals 2 (reduce sprawl), 4 (housing), 5 (economic development), 6 (property rights), 8 (natural resource industries), and 11 (citizen participation and coordination). Conspicuously absent from the County’s explanation is how the presently configured RR-RD designation harmonizes planning goals 1 (urban growth), 3 (transportation), 7, (permits), 9 (open space and recreation), 10 (environment), 12 (public facilities and services), 13 (historic [6] preservation), and the goals and policies of the shoreline management act. Absent the Act’s mandated written explanation of how the rural element harmonizes the planning goals, the County has not complied with RCW 36.70A.070(5)(a). [7]

#### **D.Conclusion**

In the (First) Order on Compliance, the Board found that the RR-RD designation, as presently configured, constituted an impermissible pattern of urban growth in a rural area.Applying the 1997 amendments to the GMA, the Board determines that the RR-RD designation does not satisfy the exception from the prohibition on urban growth in rural areas provided by RCW 36.70A.070(5)(d).The Board finds that the designation continues to constitute an impermissible pattern of urban growth in a rural area.In addition, the County has failed to explain how the RR-RD designation harmonizes the planning goals of the GMA as required by RCW 36.70A.070(5) (a).The Board concludes that the County’s decision to retain the RR-RD designation, as presently configured, is clearly erroneous and fails to comply with the requirements of the GMA.

#### **VI. finding of NONCOMPLIANCE**

The Board, having reviewed its prior orders in this matter and having considered the arguments of the parties in this proceeding, and based upon the Findings and Conclusions entered above, finds that Snohomish County has failed to comply with the requirements of the GMA, as set forth in the Board’s Orders.Therefore, the Board issues a Second Finding of Noncompliance to Snohomish County in CPSGMHB Case No. 95-3-0068c.

#### **VII.REQUEST FOR FINDING OF INVALIDITY OR RECOMMENDATION OF SANCTIONS**

At the time of the (First) Order on Compliance, the Board lacked authority to apply the 1997 amendments related to rural development in its review of the RR-RD designation.Now that the

Board has the authority to do so, it has applied the new statutory language of RCW 36.70A.070 (5).The foregoing Board application of the law to the facts of the instant case now provides the County with clarification of the requirements of RCW 36.70A.070(5) and, specifically, the nature and extent of the flexibility that it affords the County.The Board is not persuaded that either invalidity or a recommendation of sanctions is warranted during the compliance period established by this Order.Therefore, Pilchuck's request that the Board make a finding of invalidity is **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 failed to comply with the Growth Management Act with regard to the RR-RD Plan designation, as shown in the FLUM.

The County's Plan and FLUM are remanded to the County and the County is ordered to:

Amend the ordinance to repeal or amend the Plan's RR-RD designation, as shown on the FLUM, to bring it into compliance with the GMA as set forth in this Second Order on Compliance, and to prepare, and submit to the Board, a written record explaining how the County's action on the rural element, as amended, harmonizes the Act's planning goals.

Pursuant to RCW 36.70A.300(1)(b), the Board directs the County to comply with the Second Order on Compliance no later than **4:00 p.m. on March 8, 1999**.By no later than **4:00 p.m. on March 15, 1999**, 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 September 8, 1998 Second Order on Compliance."Attached to each of the Board copies shall be a copy of the ordinance amending the Plan in response to this Order.

So ORDERED this 8<sup>th</sup> day of September, 1998.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Joseph W. Tovar, AICP  
Board Member

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Chris Smith Towne  
Board Member

NOTICE:This is a final order for purposes of appeal.Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within ten days of service of this final order.

Board Member McGuire's Dissent

As I concluded in the Board's October 2, 1997 (First) Order on Compliance, the RR-RD designation and its limited application to the Darrington Valley does not constitute a countywide pattern of urban growth.(First) Order on Compliance, at 22-23.I simply do not find that the RR-

RD designation in the Darrington Valley will produce the negative consequences of low-density sprawl.<sup>[8]</sup> Therefore, I **dissent**.

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Edward G. McGuire, AICP  
Board Member

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<sup>[1]</sup> 1997 Wash. Laws ch. 429.

<sup>[2]</sup> In its (First) Order on Compliance, the Board stated:

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. [footnote omitted] In other words, the 1997 amendments to the GMA became effective on July 27, 1997. (First) Order on Compliance, at 11.

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. (First) Order on Compliance, at 11-12.

. . . 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. [Footnote 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.] (First) Order on Compliance, at 12.

<sup>[3]</sup> The Board has previously stated:

With such limitations and conditions [specified in RCW 36.70A.070(5)(d)(iv)], more intense rural development in areas where more intense development already exists could constitute permissible compact rural development; without such limitations and conditions more intense rural development would constitute an impermissible pattern of urban growth in the rural area." *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c (coordinated with Case No. 97-3-0024c), Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble [Bremerton Finding of Noncompliance]* (Sept. 8, 1997), at 24.

<sup>[4]</sup> Although the Board characterizes the RR-RD designation, as presented in the Plan text and FLUM, to be urban growth in the rural area, the Board is not determining that this designation is an appropriate urban density within a UGA. See *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order (Oct. 6, 1995), at 49.

<sup>[5]</sup> Thirteen planning goals are listed at RCW 36.70A.020. The fourteenth planning goal is provided at RCW

36.70A.480(1), which provides, in relevant part:“For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020.”

[6]  
See RCW 36.70A.480(1).

[7]  
This is the first opportunity for the Board to review the “harmonize” provision of RCW 36.70A.070(5)(a). However, resolution of the present compliance case does not require the Board to explore the meaning of “harmonize.”The Board’s conclusion regarding the County’s compliance with RCW 36.70A.070(5)(a) turns on the County’s limited written explanation, which addressed only a portion of the Act’s planning goals.

[8]  
Although the Board has not defined “low-density sprawl,” the Board set forth its conclusions regarding the negative consequences of sprawl in *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order (Oct. 6, 1995), at 28.