



Actions Taken to Comply with Final Decision and Order” (**Intervenors’ Response to First Statement**) and “Intervenors’ Response to Respondent’s Motion for Continuance of Hearing and Response Dates.”

On November 15, 1996, the Board issued its “Order Granting Motion for Continuance of Date for Compliance Hearing.”

On November 20, 1996, the Board received the “City of Redmond’s Reply to Petitioners’ and Intervenors’ Responses” (**City’s Reply to Response to First Statement**).

On December 17, 1996, the Board held a compliance hearing at the Board’s office. Present for the Board were members Chris Smith Towne and Joseph W. Tovar, presiding officer. Participating via telephone was Board member Edward G. McGuire. At the compliance hearing, the Intervenors submitted a proposed Exhibit D. The Board heard argument from the parties as to the City’s compliance with the FDO.

Also on December 17, the Board received the “City of Redmond’s Additional Statement as to Compliance on Agricultural Issues” (**Second Statement of Actions**).

On December 30, 1996, the Board issued its Notice of Second Compliance Hearing.

On January 8, 1997, the Board received City of Redmond’s Response to Intervenors’ Exhibit D and to Additional Arguments of Petitioners and Intervenors (**City’s Response to Exhibit D**).

On January 15, 1997, the Board received the “Intervenor’s [sic] Response to City of Redmond’s Response to Intervenor’s [sic] Exhibit D and to Additional Arguments of Petitioners and Intervenors” (**Intervenors’ Response to City’s Response**).

Also on January 15, the Board received “Memorandum of Benaroya and Cosmos Regarding the City of Redmond’s Failure to Comply with This Board’s Order and the GMA” (**Benaroya’s Response to Second Statement**).

On January 22, 1997, the Board received “City of Redmond’s Reply to Benaroya and Cosmos’ Response on Remands 1, 2, and 5” (**City’s Reply to Response to Second Statement**).

Also on January 22, the Board received “Respondent, City of Redmond’s Motion to Supplement Record.” Attached to this pleading was a “Declaration of Timothy R. Trohimovich re: Photographs of the Benaroya and Cosmos Properties” (the **Trohimovich Declaration and Photographs**).

The Board held a second compliance hearing in this matter on January 29, 1997, at the Board’s office. Joseph W. Tovar served as presiding officer and Board members Chris Smith Towne and

Edward G. McGuire were also present. Elaine L. Spencer appeared for Petitioners; Michael A. Spence appeared for Intervenors; and James E. Haney represented the City. Court reporting services were provided by Cynthia LaRose of Robert H. Lewis & Associates, Tacoma. During the hearing, the presiding officer denied the admission of the Trohimovich Declaration and Photographs.

## **II. findings OF FACT**

1. In its FDO, the Board issued the following Order:

[T]he Board finds that the Redmond Comprehensive Plan is **in compliance** with the requirements of the GMA and the King County County-wide Planning Policies, except for those provisions discussed below.

1) The Plan's agricultural land designations are **remanded** with instructions for the City to re-designate these lands, until and unless the City adopts a program authorizing transfer of [sic] purchase of development rights pursuant to RCW 36.70A.060(4).

2) The Plan's agricultural land designation of the Benaroya property is **remanded** with instructions for the City to re-designate the property consistent with the Act.

3) The Plan's new household allocation and population projections for the year 2012 are **remanded** with instructions for the City to make them internally consistent and consistent with the King County County-wide Planning Policies.

4) The Plan's policies at LU-30 through LU-32 are **remanded** with instructions to bring them into compliance with the Act and the Board's findings and conclusions as set forth in this Order.

5) The Plan's designation of the Cosmos property is **remanded** with instructions for the City to bring the average net density of the property within urban densities.

6) The amendments made to the Plan as listed in the discussion of Legal Issue No. 18 are **remanded** with instructions to the City to provide additional information and analysis to support the changes and to provide the public with a reasonable opportunity to review and comment upon the changes prior to any subsequent re-adoption. FDO, at 38.

2. The Sammamish River Valley extends from the center of the City of Redmond to the City of Woodinville. FDO Finding of Fact 1.

3. Most of the Sammamish River Valley lies within the 100-year floodplain, as identified by the Federal Emergency Management Agency. Both the Benaroya property and that portion of the Cosmos property between the base of the slope and the Sammamish River lie within the floodplain. FDO Finding of Fact 4.

4. The Benaroya property is a 32-acre parcel located within the City on the northeast corner of

116th Street and Willows Road. The Benaroya Company acquired the property in 1969, two years after it was originally zoned Agriculture by the City. With the exception of three years of use as a dairy operation, the Benaroya property has lain fallow for 25 years. FDO Findings of Fact 5-7.

5. Cosmos represents property owners who own land within the city limits referred to as the “Redmond 74” site. The property consists of 74 gross acres of vacant land located west of the Redmond-Woodinville Road. The predominant natural features of the site are steep slopes along the center of the property, meandering forested ravines, and a large flat parcel of land along the Sammamish River Valley. FDO Findings of Fact 8-9.

6. The King County County-wide Planning Policies (the **CPPs**) allocated a range of net new households for the City from 9,637 to 12,760, calculated at 2.2 persons per household (**PPH**). The Plan accommodates 9,878 net new households through the year 2012. FDO Finding of Fact 14.

7. On January 30, 1996, the City passed Ordinance 1873, adopting a transfer of development rights program for agricultural lands. First Statement of Actions, Ex. B.

8. On May 7, 1996, the City passed Ordinance 1886, adopting interim zoning regulations to provide for interim floor area ratios and interim floor area transfer regulations for the agricultural lands transfer of development rights program. First Statement of Actions, Ex. C.

9. On June 4, 1996, the City passed Ordinance 1893, extending the interim regulations of Ordinance 1886. First Statement of Actions, Ex. D.

10. On July 16, 1996, the City passed Ordinance 1901, adopting permanent development regulations, including the floor area ratios. First Statement of Actions, Ex. E.

11. On September 17, 1996, the City passed Ordinance 1905, which adopted the Findings, Conclusions, and Analysis contained in the Planning Commission Report to the City Council dated September 17, 1996. First Statement of Actions, Ex. F

In Ordinance 1905, the City adopted a PPH factor of 2.2, the same PPH used by King County (the **County**); the City had previously used a PPH factor of 1.95. The City did not alter the target number of households it had adopted (9,878), but re-calculated its 2012 population based on the 2.2 PPH factor, and as a result, amended its 2012 population projection from 51,470 to 56,550 persons. Attachment A to Ordinance 1905, at A-1.

In Ordinance 1905, the City amended the Plan’s Land Use Policies by re-numbering Policies LU-30 through LU-32 and adding a new Policy, LU-34. In addition, the narrative preceding Policies LU-30 through LU-34 was amended. The City provided analysis for these

amendments, including a review of consistency within the Plan and with the CPPs. Attachment A to Ordinance 1905, at A-12 through A-16.

12. On October 21, 1996, King County Superior Court Judge Michael J. Trickey upheld the Board's FDO and, on November 1, 1996, entered a written Judgment. *See* Second Statement of Actions, Ex. 1 (Judgment, *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, King County Superior Court Cause No. 96-2-15468-7SEA).

13. On December 10, 1996, the City passed Ordinance 1917, adopting a new Plan designation, Urban Recreation and Open Space, and amending, among other things, the Plan's land use map, zoning districts, and zoning map. Second Statement of Actions, Ex. 2. Ordinance 1917 adopted the Findings, Conclusions, and Analysis contained in the draft Planning Commission Report to the City Council dated December 10, 1996 [the **Planning Commission Report**]. Ordinance 1917, at 2-3.

The December 10, 1996 Planning Commission Report contains the following Findings of Fact:

5. The Northern Sammamish Valley does not have the infrastructure to support certain urban uses and plans do not exist to provide the needed infrastructure. . . .

6. The Northern Sammamish Valley contains extensive areas of natural hazards and sensitive areas.

Second Statement of Actions, Ex. 3 (Planning Commission Report, at 4-8).

The Planning Commission Report also concludes:

The Cosmos property in the Northern Sammamish Valley has 40.2 acres with extensive natural constraints and sensitive features that make it unsuited to intense urban uses. This includes 21.8 acres designated Urban Recreation which include seismic (earthquake) hazards, one-hundred year flood plains, medium significance aquifer recharge areas, wetlands, soils unsuited to development, and important fish and wildlife habitats located nearby. Another 18.4 acres is within erosion hazards and steep, unstable slopes. Allowing development on erosions [sic] hazards will increase water pollution as the materials is [sic] eroded into tributaries of the Sammamish River and the river itself. Allowing development on the steep, unstable slopes puts the developments at risk.

Second Statement of Actions, Ex. 3 (Planning Commission Report, at 16).

### **III. DISCUSSION**

#### **A. Burden of proof**

Comprehensive plan amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320. Petitioners bear the burden of proving, by a preponderance of the evidence in the record, that the City's action does not comply with the Act and the Board's FDO.

### **b. Remand items 1 and 2**

Remand items 1 and 2 are intertwined. Therefore, these two remand issues will be discussed together.

The FDO provides:

1) The Plan's agricultural land designations are **remanded** with instructions for the City to re-designate these lands, until and unless the City adopts a program authorizing transfer of [sic] purchase of development rights pursuant to RCW 36.70A.060(4). FDO, at 38.

The Board remanded this Plan provision because the City designated agricultural land within its UGA prior to enacting a program authorizing transfer or purchase of development rights. FDO, at 11; see RCW 36.70A.060(4).

The FDO further provides:

2) The Plan's agricultural land designation of the Benaroya property is **remanded** with instructions for the City to re-designate the property consistent with the Act. FDO, at 38.

The Board remanded this Plan provision because the City designated the Benaroya property as agricultural when it did not meet the definition of agricultural lands under RCW 36.70A.030(2). FDO, at 10.

The city took several actions to comply with the Board's remand order. <sup>[1]</sup> First, the City enacted a program authorizing transfer and purchase of development rights (**TDR**). See Findings of Fact 7-10. The TDR program was not challenged by Petitioners or Intervenors and is presumed valid. Next, the City adopted an interim Urban Recreation and Open Space designation and interim zoning regulations for the Benaroya property. See Finding of Fact 13.

On its face, the City's action complies with the Board's FDO. The City re-designated the Benaroya property. Petitioners allege that this action fails to comply with the GMA because the new designation, Urban Recreation and Open Space, "does not encourage urban growth;" it allows only "rural residential densities" and only "de minimis urban uses." The heart of Petitioners' allegation rests on a premise that the GMA creates a duty for the City to "encourage urban growth" and that the City has breached that duty. The other contentions, that this designation is "rural" and allows only minimal urban uses, are simply buttressing arguments to the central allegation -- that the City has breached a GMA duty to "encourage urban growth."

What does the Act say about “encourage urban growth”? This phrase does not appear in exactly this form in the Act. This subject is dealt with first and most prominently in the Goals section of the Act, at RCW 36.70A.020, which provides:

(1) Urban Growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

The definition of “urban growth” appears at RCW 36.70A.030(14), which provides:

"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 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.

[2]  
The Act does not define “encourage.” Where, as here, a statute does not define a material term, the word should be given its ordinary meaning. In ascertaining common meaning, resort to dictionaries is acceptable. *TLR, Inc. v. Town of La Conner*, 68 Wn. App. 29, 33, \_\_\_ P.2d \_\_\_ (1992) (citations omitted). A dictionary definition of “encourage” is provided by *Webster’s II New Riverside Dictionary* (1988):

1. To inspire with hope, courage, or confidence; HEARTEN: 2. To give support to: FOSTER. 3. To stimulate. *Webster’s II*, at 430.

The Board has previously examined the roles, authorities and obligations contemplated for counties and cities by RCW 36.70A.020(1) and various substantive requirements of the Act. For example, the Board has held that, pursuant to RCW 36.70A.110, cities have a duty to accommodate the population and employment that is allocated to them by a county. *Edmonds, et al. v. Snohomish County*, CPSGPHB Case No. 93-3-0005 (*Edmonds*), Final Decision and Order (Oct. 4, 1993), at 28. More recently, the Board has held that this duty to accommodate a county allocation must be reflected both in city comprehensive plan land use designations and capital facilities plans. In *Hensley v. City of Woodinville*, CPSGMHB Case No. 96-3-0031 (*Hensley II*), Final Decision and Order, Feb. 25, 1997, the Board held that:

[T]he Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city’s comprehensive plan must include: (1) a future land use map that designates sufficient densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that

ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. *Hensley II*, at 9 (footnote omitted).

Here, Petitioners have suggested that the City has an additional duty to "encourage urban growth." Petitioners and Intervenors argued that, just as the GMA has required counties to alter past practice by discouraging more dense and intense development in rural areas, so, too must cities alter past practice by now actively encouraging urban growth within their corporate limits and their county-designated UGAs.

The City's initial response -- that its only duty under the Act is to accept the county population allocation rather than to "accommodate" or "encourage" urban growth -- causes the Board concern. In view of various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development,

[\[3\]](#) and the above cited provisions of *Edmonds* and *Hensley II*, the Board agrees with the heart of Petitioners' argument. **The Board holds that the GMA imposes an affirmative duty upon cities to "give support to," "foster" and "stimulate" urban growth throughout the jurisdictions' UGAs within the twenty-year life of their comprehensive plans.**

Nevertheless, the Board must stop short of Petitioners' implicit suggestion that this duty directs a specific outcome as to all parcels of land within a city. The Board considered, and rejected, a similar contention in *Litowitz, et al., v. City of Federal Way*, CPSGMHB Case No. 96-3-0005 (*Litowitz*), July 22, 1996, in which the Board concluded:

Petitioner cites to the above GMA provisions to argue that a specific outcome is required on particular properties (i.e., a higher residential density on its properties). The Board finds nothing in the Act to suggest that either the planning goal or the housing element requirements are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions (*see Aagaard*, at 9) suggests that the above-cited provisions provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-wide level. Thus, the Board construes these sections to read, in effect: "... identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction*." *Litowitz*, at 19.

While the GMA creates multiple duties which local governments must meet, and these duties are sometimes in tension if not outright conflict, the Act also reserves significant discretion to local governments to determine specifically how they will meet their multiple obligations. So long as they do not breach any of their duties, local governments are free to reflect local circumstances and priorities in the choices they embody in their comprehensive plans.

It is neither necessary nor timely for the Board to articulate a general rule, or exceptions thereto, regarding what cities must do in order to meet a duty to “encourage” urban growth. Suffice it to say that the Board concludes that Petitioners and Intervenors in the present case have failed to carry the burden to prove, by a preponderance of the evidence, that Redmond’s “Urban Recreation and Open Space” designation constitutes a breach of the City’s duty to encourage urban growth. **The Board holds that the City is in compliance as to Remand Items 1 and 2.**

### Conclusion

Since the City has adopted a TDR program which has gone unchallenged, Redmond complies with Remand Item 1. Additionally, Redmond has complied with that portion of the FDO which required the redesignation of the property. Although the Board is persuaded that the Act requires the City to “encourage urban growth” within the city limits and its County-designated UGA, the Petitioners and Intervenors have failed to prove, by a preponderance of the evidence, that the City has breached its duty. The Board concludes that the City is in compliance as to Remand Item 2.

### **C. remand item 3**

The FDO provides:

3) The Plan’s new household allocation and population projections for the year 2012 are **remanded** with instructions for the City to make them internally consistent and consistent with the King County County-wide Planning Policies. FDO, at 38.

The Board remanded this Plan provision because the City utilized a 1.95 PPH factor to calculate its allocated population when the County utilized a 2.2 PPH factor. Although the City planned for the number of households assigned to it by the County, the City’s use of a smaller PPH factor meant that the City did not meet its population allocation. FDO, at 15-19. The Board stated:

The Board will remand the Plan with instruction to the City to make one of two choices. First, the City could adjust its PPH factor to 2.2 to correspond to the assumption that underlies the household allocation in the CPP. In that event, the City must also make appropriate revisions to its 2012 population and any other population-driven assumptions contained in its Plan. The City’s second choice would be to retain its 1.95 PPH assumption, and instead make an upward adjustment to the number of future households sufficient to accommodate the 21,201 to 28,072 additional people allocated to the City. FDO, at 17 (emphasis added).

The City elected the first option presented by the Board. The City adjusted its PPH factor to 2.2, as used in the CPPs. *See* Finding of Fact 11. The City then used this new PPH factor to re-calculate its 2012 population. The result is that the City’s Plan not only accommodates the number of households allocated to it by King County, the Plan also accommodates the number of persons in those households as contemplated by the CPPs.

The City also revised its Parks, Recreation and Open Space plan in response to the increase in the 2012 population. *See* Finding of Fact 11. The City asserts that this plan contains the only population-driven assumptions in its Plan. Intervenor's allege that there are other population-driven assumptions and that the City failed to revise them. Intervenor's argument appears to be that, because there will be more people in Redmond than anticipated in the original Plan, there will be a greater impact on housing, transportation, capital facilities, infrastructure and utilities. Intervenor's conclude that these elements must be revised to reflect this greater impact. However, Intervenor's have not shown how any of these elements are based on population-driven assumptions rather than, for example, on development-driven assumptions.

Intervenor's point to Table TR-1 of the Plan's Transportation Element as evidence that the transportation element is based on population-driven assumptions. *See* Intervenor's Exhibit D. Intervenor's state:

Table TR-1 clearly illustrates that the [sic] when the City was drafting its Comprehensive Plan, it considered population to be a necessary component of its Transportation Element, hence Table TR-1's reference of the 2012 population forecasts. Intervenor's Response to Second Statement, at 3.

In contrast, the City states:

[P]opulation affects the transportation plan only indirectly: accommodating population leads to the development of the land use plan, which leads to the development of the transportation plan and policies. . . . [I]ncreasing the City's population did not increase the intensity of the land uses in the City. While the number of persons allocated to each household was increased, the number of households accommodated by the City's land use plan (9,878) did not. Since the land use assumptions did not change, and since the transportation plan and policies are based on those land use assumptions, the transportation plan and policies did not require any change due to the increase in population. City's Response to Exhibit D, at 2-3.

Intervenor's do not explain how the inclusion of the 2012 population in Table TR-1 proves that the transportation element is based on population-driven assumptions. The Board finds no evidence in the record to support Intervenor's allegation that the transportation plan should have been revised in response to the Board's remand. Nor does the record support Intervenor's assertion that other Plan elements are based on population-driven assumptions and must be revised.

Petitioners and Intervenor's have failed to meet their burden to prove, by a preponderance of the evidence, that the City has failed to comply with Remand Item 3. **The Board holds that the City is in compliance as to Remand Item 3.**

## Conclusion

The Petitioners and Intervenors have failed to meet their burden of proof as to Remand Item 3. The Board concludes that the City is in compliance as to Remand Item 3.

### **d. remand item 4**

The FDO provides:

4)The Plan's policies LU-30 through LU-32 are **remanded** with instructions to bring them into compliance with the Act and the Board's findings and conclusions as set forth in this Order.FDO, at 38.

The Board remanded this Plan provision because these policies appeared to require zoning densities to be consistent with neighborhood policies, notwithstanding the densities designated by the Plan.FDO, at 22-23.The Board held that:

[T]hese policies do not comply with the requirements of RCW 36.70A.070 and [the Board] will remand them to the City with instructions to amend the Plan to make clear that these policies cannot operate to lower the residential densities below those set forth in the Plan. FDO, at 22.

The City first corrected a numbering error (two policies were numbered LU-31) and renumbered these policies as LU-30 through LU-33.The City then added new language to the narrative preceding these policies, and added a new policy, LU-34.The new language in the narrative provides:

The Low-Moderate Density Residential designation shall be implemented by three residential zones. . . .

The following policies are intended to guide the application of the three zones.These policies will be used in applying zones through the city-wide rezone adopted in 1996 to implement the adopted comprehensive plan and applications to rezone property in the future.*See* Finding of Fact 11 (Ordinance 1905, at A-12).

Thus, policies LU-30 through LU-34 will be used to choose the appropriate zoning (R-4, R-5, or R-6) within the Low-Moderate Density Residential designation.These policies are not for the purpose of making individual development permit decisions.

New policy LU-34 appears to assure that no area will be zoned less than 4 du/acre (R-4) through application of policies LU-30 through LU-33.Policy LU-34 provides:

All properties designated Low-Moderate Density Residential shall be zoned R-4, R-5, or R-6.In no case shall policies LU-30 through LU-33 be applied so as to result in a zoned density less than four units per acre in areas designated as Low-Moderate Density

Residential.Neighborhood policies shall not result in a zoned density of less than four units per acre in areas designated as Low-Moderate Density Residential.

Policy LU-34 does two things:(1) it prevents the use of policies LU-30 through LU-33 to adopt zoning of less than R-4; and (2) it prevents the use of neighborhood policies to adopt zoning of less than R-4.Since the Plan sets residential densities in Low-Moderate Density Residential designations at R-4, R-5, or R-6, clearly Plan policies LU-30 through LU-34 “cannot operate to lower residential densities below those set forth in the Plan.”This is precisely the result sought by the FDO.

Intervenors argue that LU-34 does not prevent a density of 4 du/acre in areas zoned R-5 or R-6. Intervenors appear to misunderstand the application of policies LU-30 through LU-34.As stated above, these policies are used to determine the zoning that should be applied to areas within the Plan designation of Low-Moderate Density Residential.These policies are not used to make individual development permit decisions.

**The Board holds that the City has complied with Remand Item 4 of the Board’s FDO and that Plan policies LU-30 through LU-34 comply with the Act.**

### Conclusion

The Petitioners and Intervenors have failed to meet their burden of proof to demonstrate, by a preponderance of the evidence, that the City has failed to comply with Remand Item 4.The Board concludes that the City is in compliance as to Remand Item 4.

### **e. remand item 5**

The FDO provides:

5)The Plan’s designation of the Cosmos property is **remanded** with instructions for the City to bring the average net density of the property within urban densities.FDO, at 38.

The Board remanded this Plan provision to ensure that, after re-designating that portion of the Cosmos property erroneously designated agricultural, the new designations for the property results in an average net density that is urban.FDO, at 36.

The City re-designated that portion of the Cosmos property previously designated agricultural to Urban Recreation and Open Space.See Finding of Fact 13.Based on this new designation, the City calculates the average gross residential density allowed on the entire Cosmos property to be 3.32 du/acre.If this gross density is “within urban densities,” then the Board need not determine whether the average net density is within urban densities.Thus, if the average gross density of 3.32 du/acre allowed on the Cosmos property is within urban densities, then the City has complied with the FDO and the Act.

In the FDO, the Board stated:

The Board has not said that anything less than 4 du per acre is not urban – rather, the *Bremerton* holding cited by Cosmos simply identifies a “bright line” net density threshold, at or above which, the Board concluded, residential development would clearly constitute urban development. The consequence of a plan including a density designation below 4 du per acre on some portion of a city’s land area is simply increased Board scrutiny to determine if there was adequate justification, such as the presence of environmentally sensitive features. FDO, at 33.

The FDO recognized that, under certain justifiable circumstances, residential densities under 4 du/acre could be permitted in UGAs. One example contemplated by the Board in the FDO was environmentally sensitive features. *Id.*

In *Litowitz*, the City of Federal Way designated portions of its UGA under 4 du/acre, relying on the presence of “special environmental constraints” posed by a wetlands system of “high rank order” as justification for the lower residential density. *Litowitz*, at 10-12. The Petitioners in *Litowitz* failed to present sufficient evidence that the City’s justification was inadequate. *Id.*, at 12.

In the present case, the City refers to the “Findings, Conclusions, and Analysis” adopted in Ordinance 1917 as adequate justification. *See* Finding of Fact 13. Among the reasons contained in Ordinance 1917’s Findings are the presence of areas of natural hazards and environmentally sensitive areas within the Northern Sammamish River Valley. *See* Finding of Fact 13 (Planning Commission Report, at 4-8). The record supports the City’s claim that the Cosmos property is at least partially within areas of natural hazards.

The record shows that part of the Cosmos property is within a seismic hazard area and a floodplain. *See* Finding of Fact 13. Petitioners do not refute these facts; instead, Petitioners argue that more intense development is permitted in other areas that lie within seismic hazard areas and floodplains. Benaroya’s Response to Second Statement, at 15. Petitioners’ argument implies that the City cannot have different land use designations on similarly situated parcels of land.

As the Board stated in the FDO, “A city has broad discretion in its comprehensive plan to make many specific choices about how growth is to be accommodated.” FDO, at 35. In prior cases, the Board has concluded that many planning decisions made prior to GMA do not provide guidance for the planning required by the GMA. *Tacoma, et al., v. Pierce County*, CPSGMHB Case No. 94-3-0011 (*Tacoma*), Final Decision and Order, July 5, 1994, at 14. The City’s treatment of seismic hazard areas is within the discretion allowed to cities by the Act.

The record also shows that part of the Cosmos property is within environmentally sensitive areas, including aquifer recharge areas and wetlands. *See* Finding of Fact 13. As with the natural hazards, Petitioners do not refute these facts, but simply argue that development is allowed in

other properties located within environmentally sensitive areas. Again, such differential treatment is within the discretion allowed to cities by the Act.

In addition to arguments surrounding residential densities, the City asserts that, because the Urban Recreation and Open Space designation is a commercial designation, not a residential designation, the Board's 4 du/acre threshold does not apply. The Board need not and does not now respond to this argument.

**The Board holds that the Petitioners and Intervenors have failed to carry their burden to demonstrate, by a preponderance of the evidence, that the City has not complied with Remand Item 5.**

### Conclusion

The Petitioners and Intervenors have failed to carry their burden of proof. The Board concludes that the City is in compliance with Remand Item 5 since the net density, considering environmental constraints, falls within urban densities.

#### **f. remand item 6**

The FDO provides:

6) The amendments made to the Plan as listed in the discussion of Legal Issue No. 18 are remanded with instructions to the City to provide additional information and analysis to support the changes and to provide the public with a reasonable opportunity to review and comment upon the changes prior to any subsequent re-adoption. FDO, at 38.

The Board remanded this Plan provision because Plan amendments adopted by the City Council were substantially different from the recommendations it received, and the amendments were not supported by information and analysis in the record. FDO, at 32. The Board concluded that:

The Council's amendments to these policies will be remanded to the City with instructions to either delete the amendments or provide factual and analytical support for the amendments and subsequently, to provide the public with a reasonable opportunity to review and comment upon this information prior to any subsequent re-adoption. FDO, at 32.

First, the Board notes that neither the Petitioners nor the Intervenors have challenged the public participation portion of the Board's remand. Therefore, the City is presumed to have complied with the public participation requirement. Intervenors present several arguments that the City did not comply with Remand Item 6. Intervenors' Response to First Statement, at 11-13. Of these

conclusions, only one is relevant to determining compliance with item 6. [\[4\]](#) Intervenors state:

The City amended Policy LU-32 to reduce densities from 6 to 5 units per acre without

conducting an analysis of the effects of this reduction in capacity on other Plan elements or upon population or housing targets; . . . Intervenor’s Response to First Statement, at 12.

The City argues that it provided “five pages of analysis, together with detailed findings and conclusions, concerning the consistency of this change with the remainder of the Comprehensive Plan and with the GMA.” City’s Reply to Response to First Statement, at 21. The City refers the Board to Ordinance 1905, Attachment A, at pages A-12 through A-16. These pages contain the following: (1) the specific text amendments to Plan Policies LU-28 through LU-32; (2) the reasons for the amendments; (3) a review of the amendments for consistency with the GMA, the CPPs, and the Plan; (4) public comments on the amendments, including staff responses; and (5) the recommendation of the Planning Commission. In explaining its reasons for the amendments, the City states:

The City Council also amended to [sic] policies to provide that the density range in the Low-Moderate Density Residential Designation is four to six units per acre. This change was made to better maintain the desirable character of the city’s residential neighborhoods and better fit the capability of the land.

The Planning Commission recommended policies set the R-6 zone as the default zone in the Low-Moderate Density Residential Comprehensive Plan Designation and R-8 as the high end. This means that when the zoning is adopted, the R-6 zone would have been the zone chosen unless the area was very well suited to residential uses or not very well suited to residential uses. The amended regulations set R-5 as the default zone and R-6 as the high end. This means that the capacity of the Low-Moderate Density Residential Designation has been reduced. However, this reduction does not affect the target adopted by Redmond because staff never assumed any R-8 zoning in the Low-Moderate Density Residential Designation when calculating targets. . . .

Ordinance 1905, Attachment A, at A-13.

Thus, the record shows that City has provided adequate information to support the amendment. The Petitioners and Intervenor have failed to carry their burden to demonstrate, by a preponderance of the evidence, that the City did not comply with Remand item 6.

**The Board holds that the City has complied with Remand Item 6 of the Board’s FDO.**

### **Conclusion**

The Petitioners and Intervenor failed to carry their burden or proof. The Board concludes that the City is in compliance with Remand Item 6.

## **IV. FINDING OF COMPLIANCE**

The Board, having reviewed its Final Decision and Order and the file in this case, having

reviewed the above-referenced documents and attached exhibits, and having considered the arguments of the parties, concludes that the City **has complied** with the Board's Final Decision and Order. Therefore, the Board issues a Finding of Compliance to the City of Redmond.

So ordered this 13th day of March, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Joseph W. Tovar, AICP  
Board Member

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Chris Smith Towne  
Board Member

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[1] The Board notes that the City appealed the FDO to Superior Court; the City has also appealed the Superior Court's decision affirming the FDO. Petitioners assert that the City's appeal somehow demonstrates that the City "has no intention of complying with the GMA." Benaroya's Response to Second Statement, at 3. The Board infers nothing from the City's appeal; a jurisdiction's appeal of a Board decision is irrelevant to the Board's performance of its charge. See *Bremerton, et al. v. Kitsap County*, CPSGMHB Case No. 5-3-0039c (**Bremerton**) Finding of Noncompliance (May 28, 1996), at 9, fn. 1.

[2] In *Association of Rural Residents v. Kitsap County*, CPSGPHB Case No. 93-3-0010 (**Rural Residents**), Final Decision and Order, June 3, 1994, the Board observed that use of the word "encourage" in some planning goals imposes a less directive duty than other verbs used in other planning goals:

...when the language of a goal is less directory, more discretion will be permitted. Goals using the verb "encourage" permit a greater degree of flexibility than planning goal 12, for instance, which uses the verb "ensure." *Rural Residents*, at 28.

[3] In *Bremerton* the Board held that:

The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. *Bremerton*, at 28 (footnote omitted).

[4] Intervenors also object to the City's adoption of the 2.2 PPH factor "which [the City] believes to be incorrect"; the City's raising the population targets without revising all population-driven assumptions; and Policy LU-32 imposing a minimum density of 4 du/acre on R-5 and R-6 zoned land. These issues have been resolved by the Board elsewhere in this Order and will not be repeated here.