

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

AARON LITOWITZ, et al.,	)	<b>Case No. 96-3-0005</b>
	)	
Petitioners,	)	<b>FINAL DECISION AND ORDER</b>
	)	
v.	)	
	)	
CITY OF FEDERAL WAY,	)	
	)	
Respondent.	)	
	)	

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**i. Procedural Background**

On January 24, 1996, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from Aaron Litowitz, et al., (**Litowitz** or **Petitioners**) alleging that the City of Federal Way (**Federal Way, the City, or Respondent**) Comprehensive Plan (the **Plan**) does not comply with certain goals and requirements of the Growth Management Act (**GMA** or the **Act**).

A prehearing conference was held on February 28, 1996, in the Board’s Seattle office, and a Prehearing Order (the **Prehearing Order**) was entered on March 1, 1996 that set forth the legal issues to be determined by the Board and established deadlines for the filing of motions and briefs.

On April 19, 1996, the Board issued an “Order on Motions to Supplement” (the **Order on Motions**). Certain of the proposed exhibits were neither admitted nor denied, but listed with the notation “may be offered.”

On April 22, 1996, the Board received from Litowitz a “Request for Extension of Deadline for Litowitz Prehearing Brief (With Exhibits).”

On April 26, 1996, the Board issued an “Order Amending Briefing Schedule and revising Date for Hearing on Merits.”

On May 6, 1996, the Board received the “Petitioners’ Pre-Hearing Brief with Exhibits” (the **Litowitz PHB**) together with Transcripts of Federal Way Planning Commission and City Council meetings.

On May 23, 1996, the Board received “Respondent City of Federal Way’s Response to Petitioners’ PHB” (the **City PHB**).

On May 29, 1996, the Board received “Petitioners’ Pre-Hearing Reply Brief with Exhibits” (the **Litowitz Reply**).

The Board held a hearing on the merits beginning at 9:30 a.m. on Friday, May 31, 1996 in the conference room of the Board’s office at 2329 One Union Square in Seattle, Washington. Board Members Chris Smith Towne and Joseph W. Tovar, Presiding Officer, were present for the Board. Carolyn A. Lake represented Litowitz, and the City was represented by Eric Laschever and Londi K. Lindell. Court reporting services were provided by Cynthia J. LaRose of Robert H. Lewis & Associates, Tacoma. No witnesses testified.

### **ii. ORDER ON SUPPLEMENTAL EXHIBITS**

The following Litowitz proposed exhibits were listed in the Order on Motions with the notation “may be offered” and are now **denied**: proposed exhibit N (10/16/95 minutes, tapes, handwritten notes, attendance roster, distributed material and any other information relating to the 2:00 p.m. staff-City Council “briefing session” on comprehensive plans issues held this date); proposed exhibit W (11/75/95 letter re: Parcel #42); and proposed exhibit DD (Report on Housing prepared by the Forum for Regulatory Balance).

The Presiding Officer orally admitted the following exhibits submitted by the City at the hearing on the merits: Exhibit 335, a concept map of the proposed Federal Way Center; Exhibit 336, an updated City zoning map; and Exhibit 337, a letter dated May 31, 1996 from Steve Wells of the Washington State Department of Community, Trade and Economic Development to the City of Federal Way. These exhibits are **admitted**.

### **iii. FINDINGS OF FACT**

1. On July 28, 1991, the King County Surface Water Management Division issued the Executive Proposed Basin Plan for Hylebos Creek and Lower Puget Sound (**Hylebos Creek Basin Plan**). This report proposed management strategies for controlling degradation of Hylebos Creek and the Lower Puget Sound. Respondent’s Exhibit R-4, at 1-5. The study area includes most of the City of Federal Way. *Id.* at Figure 1.1.
2. On August 15, 1994, the King County Council passed Ordinance 11446, which adopted the King County Growth Management Planning Council County-wide Planning Policies (**CPPs**). Petitioners’ Exhibit 15. The CPPs allocated to Federal Way a “new household” range of 13,425 - 16,566. The CPPs also allocated to Federal Way a “net new employment”

range of 13,300 - 16,400. *Id.* at Appendix 2, page 50.

3. On July 5, 1995, the City issued the Comprehensive Plan Hearing Draft. Respondent's Exhibit R-5.
4. On September 27, 1995, the City issued the Planning Commission Recommendations on the comprehensive plan. Included in these recommendations is an explanation of the population capacity calculations used by the City. Respondent's Exhibit R-6.
5. On November 8, 1995, the City of Federal Way held its first reading of a proposed ordinance to adopt the City's Plan. Litowitz PHB, at 57; Federal Way's Response to Litowitz PHB, at 6.
6. Also on November 8, 1995, the Council announced that it was preparing a list of amendments to the proposed Plan. Litowitz PHB, at 58.
7. On November 21, 1995, on the second reading of the ordinance, the City of Federal Way passed Ordinance 95-248, which adopted the Plan. Attachment to Petition for Review.
8. Also on November 21, 1995, the City adopted 25 amendments to the Plan. Litowitz PHB, at 58.
9. The Plan indicated the City could accommodate growth of 16,723 - 23,994 new households, and 69,358 net new employment. Plan, at II-9, Table II-4, and at II-8, Table II-1.
10. Federal Way's Plan includes an urban center, the City Center Core. This core is surrounded by the City Center Frame. Plan, at VII-1. The combined City Center Core and Frame is intended to accommodate from 17 to 24 percent of the City's allocated population growth. Plan, at II-9 (extrapolated from Tables II-3 and II-4).
11. The City Center consists of the City Center Core and the City Center Frame. The City's total land area is approximately 21.2 square miles. Plan, at I-1.
12. The Plan considered environmental concerns identified by the Hylebos Creek Basin Plan in developing land use designations. Plan, at II-11.
13. Litowitz parcels 32 and 38 are designated Medium Density Residential. Litowitz PHB, at 78. Petitioners Johal's parcel 20 is designated Business Park. Litowitz PHB, at 83.

#### **iv. GENERAL DISCUSSION**

Before answering the specific legal issues in this case, the Board first reviews prior cases that

bear on the question of local discretion in city comprehensive plans, and identifies the standard of review that it will use in answering the specific questions in this case.

### **A. city comprehensive plans and local discretion**

The GMA requires a balance between regional duties, as set forth in county-wide planning policies, and local choice, in the development of a city comprehensive plan. In *Edmonds, et al., v. Snohomish County* [*Edmonds*], CPSGMHB Case No. 93-3-0005, Final Decision and Order, (October 4, 1993), the Board held that:

Each city retains the local prerogative of determining just how the regional policy allocation of population and employment is going to be accommodated and configured through local development regulations and other exercise of the land use powers of cities. *Edmonds*, at 29.

In its first case dealing with a city comprehensive plan, the Board examined the range of discretion enjoyed by cities in complying with the Act. In *Aagaard, et al., v. City of Bothell* [*Aagaard*], CPSGMHB Case No. 94-3-0011, Final Decision and Order, (February 21, 1995), the Board observed that:

Washington's approach to growth management is unique among states. Under GMA, many critical choices are to be made at the local rather than the state level. There is no requirement for a "state land use plan" under GMA. Instead, the primary instruments for managing future growth are the comprehensive plans adopted by cities and counties.

Comprehensive plans provide policy direction to actions by local governments as well as state agencies. *See* RCW 36.70A.120 and .103. The comprehensive plans provide the mechanism for balancing local, regional and state interests into coherent policies to guide specific actions. Within a framework of certain state mandates (e.g. the projected twenty year population must be accommodated, resource and critical areas must be protected) and regional policies (i.e., CPPs and UGAs), the GMA leaves broad discretion for locally adopted comprehensive plans to reflect local choices. *Aagaard*, at 7. Footnotes omitted; emphasis added.

Within this state and regional framework the Board identified a broad range of matters over which a city has the authority to exercise its land use judgment:

...[a city]... enjoys broad discretion in its comprehensive plan to make many specific choices about how growth is to be accommodated. These choices include the specific location of particular land uses and development intensities, community character and

design, spending priorities, level of service standards, financing mechanisms, site development standards and the like. *Aggaard*, at 9.

The Board also clarified that the exercise of city discretion does have a number of practical and legal limitations, including the Act's requirements that:

... critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan. While those regulations are subsequently to be made consistent with the plan, rather than vice-versa, it must be remembered that they continue in force and effect, unless and until modified. For example, simply because the land use element of a comprehensive plan identifies a particular area as appropriate for commercial development does not eliminate whatever procedures or protections the city has previously determined apply to a wetland that may exist in the vicinity. *Aggaard*, at 9.

## **B. Standard of Review**

Comprehensive plans are presumed valid upon adoption. This presumption can be overcome by a preponderance of the evidence that a local government "erroneously interpreted or applied" [the Growth Management Act]. RCW 36.70A.320(1) provides:

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. [1995 c 347 § 111; 1991 sp.s. c 32 § 13.] Emphasis added.

To successfully challenge a local government's GMA actions, a petitioner must first demonstrate that the local government had a duty to act under the GMA and then must show, by a preponderance of the evidence, how the City violated that duty.<sup>[1]</sup> In addressing the legal issues in the present case, the Board will first determine whether Litowitz has identified a GMA-imposed duty that the City was required to meet. Where such a duty is demonstrated, the Board will then determine whether the petitioners have proven, by a preponderance of the evidence, that the City has breached that duty.

## **v. DISCUSSION of legal issues**

### **LEGAL ISSUE NO. 1**

***Did the City fail to comply with RCW 36.70A.020(11) and RCW 36.70A.140 by adoption of twenty-five substantive Plan amendments?***

### Litowitz's Position

Litowitz argues that the City adopted twenty-five “last-minute” amendments without first providing to the public copies of the text of the amendments, and in so doing, “failed to provide for early and continuous public participation throughout the [Plan] adoption process in contravention of RCW 36.70A.020(11) and RCW 36.70A.140.” Litowitz PHB, at 57-59.

Litowitz argues that the City can adopt changes that are substantially different from recommendations received only when (1) they are sufficiently supported by information and analysis in the record, and (2) the public has had a reasonable opportunity to review and comment on the proposed changes. Petitioners assert that the public was not provided with a reasonable opportunity to review and comment on the City's amendments to the Plan. Litowitz PHB, at 62-64.

Petitioners further argue that many of the amendments are substantive. The substantive amendments changed the densities of the Plan's single family residential designations; changed the Plan's methodology for calculating residential land capacity; deleted statistical information from the Plan; and adopted a Plan Map which was not prepared at the time of its adoption. Litowitz PHB, at 59.

Petitioners recognize that elected officials are not obligated to agree with or obey public comments, but assert that “local government does have a duty to inform the public about the scope and purpose of proposed planning enactments.” Litowitz PHB, at 61.

### Federal Way's Position

The City argues that Petitioners have not established that (1) the amendments substantially changed the Plan, and (2) information and analysis in the record did not support those changes. The City asserts that these changes “were not substantially different from the recommendations presented in the Hearing Draft and Planning Commission Draft Plans,” and that Petitioners were provided with copies of the twenty-five amendments in advance of the City Council Meeting at which the amendments were adopted, and that Petitioners testified at that City Council Meeting.

### Discussion

RCW 36.70A.020(11) establishes the planning goal to “encourage the involvement of citizens in the planning process.” More specifically, RCW 36.70A.140 provides in part:

Comprehensive plans -- ensure public participation. Each county and city. . . shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans. . . . Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan . . . invalid if the spirit of the program and procedures is observed. (emphasis added).

The Board has previously observed that a number of the planning goals listed at RCW 36.70A.020 are implemented by the specific requirements contained in subsequent sections of the Act. In the present instance, the public participation goal, RCW 36.70A.020(11), is implemented by a section which provides specific requirements, RCW 36.70A.140. As both a practical and a policy matter, if a local government has violated the specific requirements (RCW 36.70A.140), it follows that the more general goal (RCW 36.70A.020(11)) was also violated. Conversely, if a local government can demonstrate compliance with the more rigorous standard of .140, it does not follow that the less specific goal upon which the standard is based can have been violated. Therefore, **the Board holds that, where a petition alleges noncompliance with both the public participation goal and the specific public participation requirements of the Act, the Board will scrutinize only the latter.**

Public participation in amendments to comprehensive plans is subject to the test articulated in *West Seattle Defense Fund v. City of Seattle [WSDF I]*, CPSGMHB Case No. 94-3-0016, Final Decision and Order, (April 4, 1995). If the amendments which the city wishes to make are substantially different from the recommendations received during public participation in developing the comprehensive plan, two conditions must be satisfied: (1) the record must contain sufficient information to support the city's new choice; and (2) the public must have had a reasonable opportunity to review and comment on the contemplated amendment. *WSDF I*, at 76-77.

Thus, the threshold question is whether the amendments to Federal Way's plan are "substantially different" from the recommendations received. Only if the answer is yes does the inquiry move to the questions of whether there was sufficient analysis and information in the record to support the changes, and whether "the public had a reasonable opportunity to review and comment on the changes." *Benaroya v. City of Redmond [Benaroya]*, CPSGMHB Case No. 95-3-0072, Final Decision and Order, (March 25, 1996), at 31. If the City's amendments are not substantially different from the recommendations received, additional public participation is not required by the Act.

Only one amendment identified by Petitioner arguably appears to be substantially different. This amendment changed the densities of the proposed Plan's single family residential designations. Both the Planning Commission Recommendation and the Hearing Draft described Suburban Residential with a density range of 1-4.5 dwelling units per acre (**du/acre**), and Urban Residential

with a density range of 6-8.5 du/acre. The City Council amendment decreased these densities. Medium Density Residential (previously Suburban Residential) is now 1-3 du/acre, and High Density Residential (previously Urban Residential) allows for lots ranging in size from 5000 to 9600 square feet, comparable to the previous densities. Plan, at II-13.

Petitioners have not demonstrated that this change is substantially different from the recommendations received during the public participation period.

**The Board holds that Petitioners have failed to meet their burden of proof to show, by a preponderance of the evidence, how or why Federal Way's Plan fails to comply with the public participation requirements of RCW 36.70A.020(11) and RCW 36.70A.140.**

### Conclusion No. 1

Petitioners have not demonstrated that the City's amendments are substantially different from the recommendations received during the public participation period. Petitioners failed to carry their burden of proof to show that Federal Way violated the public participation requirements of the GMA when it adopted its amendments.

### **LEGAL ISSUE NO. 2**

*Does the Plan fail to comply with RCW 36.70A.020(1) and (2) and the Final Decision and Order in Association to Protect Anderson Creek, et al. v. Bremerton and Intervenors Scipeko and Lunde [Anderson Creek], CPSGMHB Case No. 95-3-0053 (December 26, 1995), at p. 19, lines 9-29, and p. 20, lines 2-3, where it precludes development at appropriate urban level densities based on the existence of critical areas, where development will be subject to protections contained in the City's critical areas ordinance?*

#### Litowitz's Position

Petitioners argue that the existence of critical areas within UGAs does not preclude appropriate urban-level densities when development will be subject to critical areas regulations. Petitioners assert that both citizens and City Council members noted that Federal Way "was not required to depress density" because of the City's critical areas ordinance. Litowitz PHB, at 56.

#### Federal Way's Position

The City argues that Petitioners have failed to establish that the GMA obligates Federal Way "to rely solely on its critical areas ordinances to protect sensitive areas." The City asserts that the GMA goals of "conserving fish and wildlife habitat" and "protecting the environment" are no less important than the goals of "encouraging urban growth" and "reducing sprawl." City PHB, at 9-10.

In addition, Federal Way argues that cities may protect environmentally sensitive areas to a greater degree than required by RCW 36.70A.060 and .170, and that the City's residential densities of less than 4 dwelling units (**d/u**)/acre supplement the protection provided by its critical areas regulations. Federal Way asserts that this is the result intended by the Legislature. City PHB, at 10-12.

### Discussion

RCW 36.70A.020(1) and (2), and the Board's decision in *Anderson Creek*, do not preclude all development in critical areas. However, the Board rejects the Petitioners' suggestion that this statutory provision and *Anderson Creek* preclude a city from limiting the scope and magnitude of development in environmentally sensitive areas. A Board holding in a prior case does not impose in a subsequent case a duty separate from a GMA duty.

RCW 36.70A.020 provides goals to guide cities in developing their comprehensive plans. RCW 36.70A.020(1) and (2) read:

. . . The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

In *Anderson Creek*, the petitioners argued that the City of Bremerton violated the GMA because Bremerton redesignated a critical area from "forest management" to "industrial park," and because Bremerton "will allow urban sprawl in an otherwise rural area." *Anderson Creek*, at 19. The Board noted that the GMA requires that critical areas be protected. As long as critical areas are protected, "other, non-critical portions of land can be developed as appropriate under the applicable land use designation and zoning requirements." *Id.*

**The Board holds that Petitioners failed to establish a duty under RCW 36.70A.020 (1) and (2) or the Board's holdings in *Anderson Creek* decision that requires Federal Way to designate critical areas or environmentally sensitive areas at densities greater than now exist in the Plan.** Because Petitioners have failed to establish a duty, their challenge of Legal Issue 2 must fail.

### Conclusion No. 2

Petitioners failed to prove that RCW 36.70A.020(1) and (2) or the Board's holdings in *Anderson Creek* impose duty on Federal Way to increase the development densities on Litowitz properties. Petitioners have failed to carry their burden of proof to show that Federal Way violated the goals and requirements of the GMA.

### LEGAL ISSUE NO. 3

***Does the Plan fail to comply with RCW 36.70A.020(2) and RCW 36.70A.110(1) by including residential designations of “low density single family residential,” “medium density single family residential” and by specifically designating Litowitz parcels #32 and #38 as “medium density single family residential”?***

#### Litowitz's Position

Petitioners argue that the City has impermissibly depressed development densities based on “claimed environmental concerns.” Petitioners assert that the record does not contain sufficient foundation for the City to use “environmental concerns” to depress densities across broad areas. Petitioners argue that Federal Way has disregarded the mandate of the GMA “for compact urban densities and against sprawl in urban areas.” Litowitz PHB, at 45-46.

Petitioners further argue that there is a bright line rule that “urban densities must average 4 dwelling units (d/u) per acre.” Next, Petitioners argue that the burden is on the City to justify its low-density designations. Litowitz Reply, at 2 (emphasis added).

In particular, Petitioners assert that, because the record does not show that Litowitz's parcels 32 and 38 contain environmentally sensitive areas, the “City's density restraint [by designating these parcels as 1-3 du/acre] is incorrect.” Petitioners argue that, since the City has not shown that these two parcels are environmentally sensitive, the City may not apply environmentally-protective low-density designation to Petitioners' property.” Litowitz PHB, at 46-48.

#### Federal Way's Position

First, the City asserts that RCW 36.70A.110(1) applies only to counties; it imposes no duty on cities, therefore, Federal Way has not violated this statute. City PHB, at 12.

Next, the City argues that Petitioners have not demonstrated how the Plan's medium-and low-density residential designations encourage sprawl within the meaning of the GMA. Federal Way argues that, when located on or near environmentally sensitive areas, densities of less than 4 du/acre are not inconsistent with RCW 36.70A.020(2). The City asserts that the record amply demonstrates that there are environmentally sensitive areas within the area containing Petitioners' parcels.

Federal Way further argues that designating Litowitz's parcels 32 and 38 as medium-density single family residential is consistent with the "unique area-wide circumstances." The City argues that a specific parcel receiving the lower density designation need not be marked by "special environmental constraints" as long as the parcel is included within an area that warrants environmental protection. City PHB, at 17-18.

### Discussion

Federal Way correctly states that RCW 36.70A.110(1), by its terms, creates a duty only upon counties. The only duty and authority cities have pursuant to RCW 36.70A.110(1) are consultative in nature. *Agriculture for Tomorrow v. City of Arlington [AFT]*, CPSGMHB Case No. 95-3-0056, Final Decision and Order (February 13, 1996), at 19. Thus, the remaining challenge is whether Federal Way failed to comply with the Act's goal of reducing sprawl. The GMA planning goal of RCW 36.70A.020(2) provides:

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

Petitioners have cited no authority to support their assertion that the City's low- and medium-density single family residential designations violate the GMA goal of reducing sprawl. Instead, the heart of the Litowitz argument is that the City is obliged to have urban densities of at least 4 du/acre, and that since the designations assigned to the petitioners' properties are less than 4 du/acre, the City has impermissibly allowed sprawl within an urban growth area (UGA). While the Board first identified 4 du/acre as an appropriate urban density in *Bremerton*, which was a county comprehensive plan case, it has more recently applied this bright line test to a city comprehensive plan in *Benaroya*. The Board rejected the petitioners' argument that the City of Redmond had failed to comply with the requirement for 4 du/acre within the UGA, explaining that:

The Board has not said that anything less than 4 du per acre is not urban — rather, the *Bremerton* holding cited [by petitioner] 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. *Benaroya*, at 33. Emphasis added.

As originally discussed in *Bremerton*, and reiterated above in *Benaroya*, when a petitioner challenges an urban density of less than 4 du/acre, the Board will look to the plan and the record to see if adequate justification has been presented. In the present case, the City has argued that the "presence of environmentally sensitive features," namely the Hylebos wetlands, justifies

residential densities on the subject properties that are less than 4 du/acre. The Board concludes that the record shows the Hylebos system to be a high rank order environmentally sensitive feature that amply justifies the lower residential density that the City has assigned to significant portions of its jurisdiction, including the properties in question.

The Board presumes that the City's development regulations will operate to protect critical areas, regardless of land use designations, because RCW 36.70A.060 and .170 require it. *See Pilchuck Audubon, et al. v. Snohomish County [Pilchuck II]*, CPSGMHB Case No. 95-3-0047c, Final Decision and Order, at 19. Nevertheless, local governments retain broad discretion in determining specifically how and to what degree they will meet the Act's mandate to protect critical areas. The GMA provisions cited establish a minimum level of critical areas protection, but do not pre-empt a local government's discretion to select and effect in its plan a higher level of environmental protection. **The Board holds that when environmentally sensitive systems are large in scope (e.g. a watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may also choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre.**

The consequence of Federal Way's designating urban densities lower than 4 du/acre was to fix the Board's scrutiny on the justification for such designation. Having considered the facts in this case, and applying the holding articulated above to the facts, the Board concludes that the City was within its authority to designate portions of an urban area at densities lower than 4 du/acre. Petitioners have not shown that the Plan's designations constitute sprawl.

**The Board holds that Petitioners have failed to meet their burden of proof to show, by a preponderance of the evidence, how or why Federal Way's Plan fails to comply with RCW 36.70A.020(2).**

### **Conclusion No. 3**

RCW 36.70A.110(1) does not create a substantive duty for cities and creates only a consultative procedural duty for cities. The City's designation of land below a density of 4 du/acre was supported by adequate justification; Petitioners failed to prove that Federal Way did not comply with RCW 36.70A.020(2) to reduce urban sprawl.

### **LEGAL ISSUE NO. 4**

***Does the Plan fail to comply with RCW 36.70A.010 and the Final Decision and Order in Bremerton v. Kitsap County, CPSGMHB Case No. 95-3-0039 (October 6, 1995), at p. 1215, columns 1 and 2, and the Final Decision and Order in Anderson Creek, at p. 20, lines 22-24, and p. 21, lines 1-10 and 15-17, by including as a primary criterion for residential designations***

## *the maintenance of the parcels' pre-GMA zoning designation and density?*

### Litowitz's Position

Petitioners assert that the GMA “requires cities to break from historical land use patterns,” and that Federal Way failed to do so because the City “maintain[ed] the parcels’ existing (pre-Growth Management Act) zone designation and density.” The City, therefore, is in violation of the GMA. Litowitz PHB, at 19-21.

### Federal Way's Position

Federal Way asserts that Petitioners have not established a duty that requires the City to abandon all pre-GMA zoning designations. The City argues that cities must change their prior practices only when necessary to comply with the GMA. The City argues that the GMA has never been interpreted to “require change for the sake of change,” at 21.

### Discussion

Petitioners have cited no authority to establish a GMA duty prohibiting a city from using its pre-GMA zoning designation as a starting point or a benchmark in the development of its GMA-required comprehensive plan. It is logical that counties and cities would acknowledge the investment of many hours of public involvement in pre-GMA plans, and the potential continued viability of certain policies; however, this does not equate with being bound by those pre-GMA enactments. *See Tacoma, et al., v. Pierce County*, CPSGMHB Case No. 94-3-0001 (July 5, 1994), at 46. Similarly, it follows that local governments may consider pre-GMA planning and zoning as a starting point for a GMA compliance exercise.

The Board agrees with the City that the GMA does not require change for its own sake. Rather, GMA requires local governments to meet a variety of procedural and substantive requirements, some of which may oblige a change in local plans and/or zoning. Whether those changes are subtle or profound will vary from issue to issue and from jurisdiction to jurisdiction.

**The Board holds that Petitioners have failed to establish a GMA duty that would prohibit Federal Way from considering its pre-GMA zoning when developing its Plan.**

Turning to the allegation of noncompliance with RCW 36.70A.010, the Board notes that this section is entitled “Legislative findings.” It provides:

The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest

that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth. [1990 1st ex.s. c 17 § 1.]

The sequence of this section in the GMA (it is the first one) and its labeling (i.e., legislative findings) indicates that it functions, in effect, as a purpose statement for the Act, and is fundamentally different in nature than all the sections that follow. It identifies in general terms the threat presented by uncoordinated and unplanned growth, and directs that comprehensive planning is to be undertaken to avert the threat in the face of projected growth.

**The Board holds that RCW 36.70A.010 is not a substantive or even a procedural requirement of the Act, and it creates no specific local government duty for compliance apart from the subsequent goals and requirements of the Act. The Board further holds that neither RCW 36.70A.010 nor Board decisions in prior cases impose a duty on a jurisdiction to avoid the use of previous plans and regulations in preparing its GMA plan.**

#### Conclusion No. 4

Petitioners failed to prove that either RCW 36.70A.010, or prior Board holdings in *Anderson Creek* and *Bremerton*, impose a duty on Federal Way that would prohibit the City from considering its past zoning when it developed its comprehensive plan. Petitioners have failed to carry their burden of proof to show that Federal Way did not comply with the requirements of the GMA.

#### LEGAL ISSUES NOs. 5 and 12

*No. 5*

***Do the Plan designations accommodate the increased population and housing units allocated to the City by the King County Countywide Planning Policies (CPPs) in Appendix 11 and Policy FW-11, as required by RCW 36.70A.100, RCW 36.70A.110(2) and RCW 36.70A.130(3).***  
[\[2\]](#)

*No. 12*

***Does the Plan fail to comply with RCW 36.70A.100 and .210 and King County CPPs FW-1, Steps 2(f)***  
[\[3\]](#) ***and 9; LU-26, LU-66, LU-68, LU-28, LU-29, FW-14, LU-39, LU-45, and LU-49?***

Litowitz's Position

Petitioners assert that Federal Way's Plan does not accommodate the increased population and housing units allocated to the City by King County's CPPs, as required by RCW 36.70A.100, RCW 36.70A.110(2), and RCW 36.70A.130(3). Litowitz PHB, at 16. Petitioners argue that the City's capacity analysis methodology creates results that do not comply with the GMA and the CPPs. Petitioners argue that assumptions relied on by the City in its calculations produce a population capacity that is not realistic, and that the methodology "significantly underestimates the land-use designations needed to realistically accommodate the true population targets." Litowitz PHB, at 23, 26. At the hearing on the merits, Petitioner complained that the City Center concept is premised upon "towering condos that are not there yet."

Next, Petitioners argue that Federal Way impermissibly declines to undertake a "city-wide residential transformation." Instead, Petitioners argue, the City relies on the unlikely event that the City Center Core will accommodate the bulk of the population growth. Litowitz PHB, at 29.

Finally, Petitioners list, without supporting argument, CPP policies that they assert the City failed to meet. Litowitz PHB, at 17-18.

Petitioners also assert the City has not complied with RCW 36.70A.130(3). Litowitz PHB at 16.

#### Federal Way's Position

Federal Way states that the Plan exceeds the requirements of the CPPs for accommodating allocated population growth. The City argues that Petitioners misunderstand the terms used in the City's methodology. The City asserts that its methodology included discounting factors in calculating the amount of land necessary to accommodate its allocated population growth. City PHB, at 26-28.

The City also argues that Petitioners have failed to establish that the GMA requires Federal Way to undertake a city-wide transformation. Federal Way argues that to concentrate population growth in the City Center is consistent with the GMA and with the CPPs. City PHB, at 30.

Federal Way argues that the Plan is consistent with the enumerated CPP requirements. The City further argues that Petitioners have failed to establish a GMA or CPP obligation created by LU-29, FW-14, LU-39, LU-45, and LU-49.

#### Discussion

Petitioner failed to brief the issue regarding RCW 36.70A.110(2); therefore **the Board holds that this part of Legal Issue No. 5 is deemed to have been abandoned. See Prehearing Order, at 6.**

RCW 36.70A.100<sup>[4]</sup> and .210 require a city's comprehensive plan to be coordinated and consistent with its encompassing county and adjacent cities. Cities must accommodate the population growth allocated to them by the county. *Edmonds*, at 31.

Petitioners have presented no persuasive evidence that Federal Way's Plan does not accommodate its allocated population growth. Petitioners have cited no authority to support their argument that the City must undertake a city-wide residential transformation to comply with the GMA.

**The Board holds that Petitioners have failed to meet their burden of proof to show, by a preponderance of the evidence, how or why Federal Way's Plan fails to comply with RCW 36.70A.100, and the King County County-wide Planning Policies.**

RCW 36.70A.130(3) requires that the City review its Plan's performance at least every ten years. **The Board holds that a challenge alleging noncompliance with RCW 36.70A.130 is not ripe for review.**

### **Conclusion Nos. 5 and 12**

The portion of issue No. 5 that alleges noncompliance with RCW 36.70A.110 has been abandoned. Petitioners have not presented sufficient evidence to show that the City has not accommodated the population growth allocated by the King County CPPs or that the City has a duty to undertake a "city-wide residential transformation." Therefore Petitioners have failed to carry their burden of proof to show that Federal Way failed to comply with RCW 36.70A.100 and .210. Furthermore, the allegations of noncompliance with RCW 36.70A.130(3) is not ripe.

### **LEGAL ISSUE NO. 6**

***Did the City comply with RCW 36.70A.070 which requires jurisdictions to "show their work"?***

#### **Litowitz's Position**

Petitioners argue that the City must "show its work" by including data sufficient to determine the Plan's city-wide average residential density, and to support the City's claim that the majority of the City's single family properties are designated "high density single family residential." Litowitz PHB, at 67-69.

#### **Federal Way's Position**

The City argues that Petitioners have failed to establish a GMA obligation to include in the Plan

the data identified by Petitioners. In addition, the City argues that even if there were a duty, the City would be in compliance, because “the record amply supports the Plan on those points identified by Petitioners.” City PHB, at 32.

### Discussion

The phrase “show your work” was first used by this Board to describe the explicit documentation of factors and data used in the accounting exercise that RCW 36.70A.110 requires counties to undertake in sizing UGAs. *Association of Rural Residents [Rural Residents]*, CPSGPHB Case No. 93-3-0010, Final Decision and Order, (1994) at 35. The Board has yet to use that phrase to describe a local government duty pursuant to RCW 36.70A.070, as is alleged here.

**The Board holds that Petitioners have failed to meet their burden of proof to show, as matter of law, that the City is required to “show its work” in order to comply with RCW 36.70A.070. Having failed to demonstrate that the Act creates such a duty, this portion of the Petitioner’s challenge must fail.**

### Conclusion No. 6

Petitioners have presented no evidence that RCW 36.70A.070 creates a duty for the City to “show its work.” Therefore, petitioners have failed to show noncompliance with the requirements of the Act.

### **LEGAL ISSUE NO. 7**

*Does the Plan fail to comply with the preamble to RCW 36.70A.070 which requires a jurisdiction’s plan to be internally consistent?*

#### Litowitz’s Position

Petitioners argue that Federal Way’s Plan is internally inconsistent because the Plan’s designation of density for Litowitz parcels 32 and 38 contrasts with a proposed zoning action regarding a parcel located between parcel 32 and 38. Litowitz PHB, at 54.

#### Federal Way's Position

Federal Way asserts that the Plan is internally consistent. The City argues that RCW 36.70A.070 (preamble) requires consistency within the Plan itself but does not require consistency between the Plan and development regulations. In addition, Federal Way asserts that Petitioners rely on an early draft of a proposed zoning map.

### Discussion

The GMA requires comprehensive plans to be internally consistent. RCW 36.70A.070. It also requires that development regulations be consistent with comprehensive plans. RCW 36.70A.040 and .120. However, there is no GMA duty for a comprehensive plan designation for a particular parcel to be consistent with the zoning that pertains to some other parcel. Here, the connection is even more tenuous, because the petitioners' argument makes reference to the *proposed* zoning of other parcels.

Petitioners offer a list of conclusory statements alleging internal inconsistency, but they present no argument to show how the Plan is internally inconsistent. Litowitz PHB, at 77-80. Unsupported allegations of inconsistency are insufficient to carry the burden of proof.

**The Board holds that Petitioners have failed to meet their burden of proof to show, by a preponderance of the evidence, how or why Federal Way's Plan fails to comply with the RCW 36.70A.070 requirement to be internally consistent.**

### Conclusion No. 7

Federal Way's Plan must be internally consistent. Petitioners have failed to show by a preponderance of the evidence that Federal Way has breached this duty and violated that requirement of the GMA.

### **LEGAL ISSUE NO. 8**

*Does the Plan fail to comply with RCW 36.70A.020(4) and RCW 36.70A.070(2)(c) and (d) by not encouraging affordable housing for all economic segments and by not promoting a variety of residential densities and housing types?*

#### Litowitz's Position

Petitioners assert that the City's Plan maintains residential densities "which are designed to and/or will result in the exclusion of low-cost affordable housing options," contrary to the requirements of RCW 36.70A.020(4) and RCW 36.70A.070(2)(c) and (d). Petitioners argue that Federal Way's final Plan fails to encourage or promote a variety of residential densities and housing types. Litowitz PHB, at 36.

#### Federal Way's Position

The City argues that it has encouraged and provided for a variety of affordable housing types as required by the GMA and the CPPs. The City identifies two Plan goals and twenty-one different Plan policies directed at encouraging and providing for a variety of affordable housing. Federal Way argues that neither the GMA nor the CPPs requires the City to include a detailed implementation scheme in the Plan as to how these policies will be achieved. City PHB, at 36-37.

## Discussion

RCW 36.70A.020 planning goal (4) provides:

Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock. Emphasis added.

To further this goal, RCW 36.70A.070(2) requires the housing element of comprehensive plans to:

- (c) identif[y] sufficient land for housing, including, but not limited to, government-assisted housing, multifamily housing, and group homes and foster care facilities; and
- (d) make[s] adequate provisions for existing and projected needs of all economic segments of the community. Emphasis added.

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*.”

**The Board holds that Petitioners have failed to carry their burden of proof to show, by a preponderance of the evidence, how or why Federal Way’s Plan fails to comply with planning goal RCW 36.70A.020(4) and the requirements of RCW 36.70A.070(2)(c) and (d).**

## Conclusion No. 8

Petitioners have not shown, by a preponderance of the evidence, that Federal Way has failed to comply with RCW 36.70A.020(4) and the requirements of RCW 36.70A.070(2)(c) and (d).

## **LEGAL ISSUE NO. 9**

***Does the Plan fail to comply with RCW 36.70A.020(1) and RCW 36.70A.110 by unlawfully prohibiting urban growth on properties within the City’s UGA where urban infrastructure exists and/or is available to serve those properties?***

### Litowitz's Position

Petitioners assert that where the infrastructure necessary to develop Petitioners' parcels is available the City has "unlawfully prohibit[ed] urban growth" on petitioners' parcels in violation of RCW 36.70A.020(1) and RCW 36.70A.110, Litowitz PHB, at 52-53.

### Federal Way's Position

First, the City asserts that RCW 36.70A.110 applies only to counties; it imposes no duty on cities; thus Federal Way has not violated this statutory provision. City PHB, at 38.

Next, Federal Way argues that "the GMA does not require a city to designate a property for the highest intensity uses simply because infrastructure exists that is capable of supporting urban growth." In addition, because the area where Petitioners' parcels are located probably has the lowest concentration of infrastructure in Federal Way, it would be less efficient to supply infrastructure to this area than elsewhere in the City. City PHB, at 39.

### Discussion

In answering Legal Issue No. 3 above, the Board pointed out that RCW 36.70A.110 creates no duty for cities, other than a consultative one. Thus, the remaining challenge is whether Federal Way failed to comply with RCW 36.70A.020(1). RCW 36.70A.020(1) reads:

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

However, the GMA does not require cities to designate for the highest intensity uses every parcel of property with infrastructure adequate to support urban development. *Benaroya*, at 37; *see also, Robison*, at 20. Just because infrastructure may be available to support intense development does not mean the land must be designated for intense development. Other GMA planning goals and requirements must be considered.

**The Board holds that Petitioners have failed to establish a GMA duty requiring Federal Way to designate property with urban infrastructure for a particular intensity of use. The Board further holds that Petitioners have failed to meet their burden of proof to show, by a preponderance of the evidence, how or why Federal Way's Plan fails to comply with the requirements of RCW 36.70A.020(1).**

### Conclusion No. 9

In answering Legal Issue No. 3 the Board determined that the City had no duty under RCW 36.70A.110. The same conclusion applies here. Petitioners have not shown, by a preponderance

of the evidence, that Federal Way has failed to comply with RCW 36.70A.020(1).

## LEGAL ISSUE NO. 10

*Does the Plan fail to comply with RCW 36.70A.070(3) because it fails to contain an analysis of existing and future capital facilities sufficient to support the City’s policy of concentrating the large percentage of its employment growth in the small localized area(s) designated “City Center Core” and/or “City Center Frame”?*

### Litowitz’s Position

Petitioners argue that, contrary to the requirements of RCW 36.70A.070(3), the Plan fails to contain an infrastructure analysis and forecast of capital facility needs of the City Center Core and City Center Frame. Petitioners argue that more than a “generalized document” is required where a city focuses intense growth in a small, defined area. Litowitz PHB, at 72.

Petitioners assert that the Plan must show that public facilities can accommodate the planned growth in the City Center Core and City Center Frame. Specifically, Petitioners argue that the Plan does not include an inventory of existing capital facilities located within the City Center, nor a forecast of future needs. Litowitz PHB, at 74, 76.

### Federal Way's Position

The City argues that the Plan complies with RCW 36.70A.070(3) because the Plan includes an analysis of the existing capital facilities and future capital facilities needed to support the City Center. In the Plan’s capital facilities element, the City specifically discusses parks and recreation; surface water facilities; sewers; schools; fire protection; and water. Within each area, Federal Way asserts that it has met the requirements of RCW 36.70A.070(3). City PHB, at 39-43.

### Discussion

RCW 36.70A.070(3) requires that each comprehensive plan includes a plan, scheme, or design for:

A capital facilities plan element consisting of:

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

(emphasis added).

In *WSDF I*, Seattle’s comprehensive plan assigned 75 percent of the city’s population growth

and 65 percent of its employment growth to urban centers comprising only six percent of the city's total acreage. *WSDF I*, at 44 . In that decision, the Board held that such a concentration has “significant implications on the amount of analysis required for the capital facilities element of the Plan,” and held that Seattle’s generalized city-wide discussion of infrastructure was inadequate. *Id.* at 50.

Similarly, the City of Bainbridge Island proposed to focus 50 percent of its growth in one localized area. *Robison*, at 27. Like Seattle in *WSDF I*, Bainbridge Island’s comprehensive plan contained a generalized city-wide infrastructure analysis. Also as in *WSDF I*, this Board held that such a “generalized system-wide inventory and analysis is inadequate to describe how such an intense localized growth allocation can be served to meet the Act’s requirements.” *Robison*, at 27.

The facts now before the Board make Federal Way’s Plan distinguishable from the cities’ plans in both *WSDF I* and *Robison*. Federal Way’s City Center occupies approximately three percent of the City’s land area. The City’s Plan shows the City Center may accommodate from 17 to 24 percent of the City’s population growth, and nearly 13 percent of the City’s employment growth. Findings of Fact 10-22. Twenty-four percent is not of the same magnitude order of as the 50 percent in *Robison*, or the 75 percent in *WSDF I*.

Although Federal Way’s City Center will take a significant portion of the City’s growth, that concentration of growth is not of a magnitude sufficient to demand its own specific infrastructure analysis. The Plan’s capital facilities element includes sufficient analysis to support the City’s policy of concentrating growth in the City Center. In Federal Way’s case, a capital facilities analysis dedicated specifically to the City Center is not required by the GMA. **The Board holds that Petitioners have failed to meet their burden of proof to show, by a preponderance of the evidence, how or why Federal Way’s Plan fails to comply with the requirements of RCW 36.70A.070(3) by failing to provide a capital facilities analysis specific to the City Center.**

### Conclusion No. 10

Petitioners have failed to provide sufficient evidence to demonstrate that the GMA requires Federal Way’s Plan to contain a localized City Center capital facilities analysis. Petitioners have not shown, by a preponderance of the evidence, that Federal Way has violated the requirements of RCW 36.70A.070(3).

### **Legal Issue No. 11**

***Does the Plan fail to comply with RCW 36.70A.020(6)?***

### Litowitz’s Position

Petitioners argue that the City violated RCW 36.70A.020(6) by the Plan's designations for Petitioners' parcels 20, 32, and 38. *See* Finding of Fact 13. Citing an interpretation of the statute by the Western Washington Growth Management Hearings Board, Petitioners argue that the City's designation for parcels 32 and 38 is both arbitrary and discriminatory. The designation is arbitrary because the City "artificially depressed" the density designation for these parcels based on an "environmental" rationalization that is unsupported by facts. The designation is discriminatory because the "Council singled out the owners of unconstrained property . . . for different treatment (depressed density) without any rational basis for doing so." Litowitz PHB, at 82-83.

Petitioners seek an "urban commercial use" for parcel 20. Litowitz PHB, at 85. Petitioners assert that the City has designated parcel 20 as "Business Park" while the land supply in that classification exceeds a sixty-year supply. Petitioners assert that the City Council designated parcel 20 as Business Park "with knowledge that the uses it allows offers little or no chance for development within the GMA's planning horizon," thus violating RCW 36.70A.020(6). Litowitz PHB, at 83-84.

### Federal Way's Position

Federal Way argues that the Plan's treatment of parcels 20, 32, and 38 is based on sound policy and is supported by the record, thus complying with RCW 36.70A.020(6). City PHB, at 44.

The City argues that the record substantiates its claim that lower density designations are appropriate for parcels 32 and 38, because of the proximity of these parcels to environmentally sensitive areas. The City argues that the final densities contained in the Plan for these parcels are higher than recommended in the Hylebos Creek Basin Plan. Further, the final density on these parcels is the same as under the current zoning code. City PHB, at 44.

As for parcel 20, the City asserts that Petitioners have not argued that Federal Way's action was discriminatory. In addition, the City argues that, because its capacity analysis assumed that all land is currently available and accessible, the conclusion that there is a sixty-year supply of Business Park lands overestimates the available amount of land. Response, at 45.

### Discussion

RCW 36.70A.020(6) provides:

Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

A City has not complied with the property rights planning goal if Petitioners can demonstrate, by

a preponderance of the evidence, that the City's action was both arbitrary and discriminatory. *Shulman v. City of Bellevue [Shulman]*, CPSGMHB Case No. 95-3-0076, Final Decision and Order (May 13, 1996). In that case, the Board noted:

It is important to note that, in order for petitioners to prevail in this type of challenge, they must prove that the action taken by a city or county is both arbitrary and discriminatory. Showing either an arbitrary or discriminatory action is insufficient to overcome the presumption of validity that actions of cities and counties are granted by the Act. *See* RCW 36.70A.320. *Shulman*, at 12. Emphasis in original.

**The Board holds that Petitioners have failed to meet their burden of proof to show, by a preponderance of the evidence, how or why Federal Way's Plan is arbitrary and discriminatory and failed to show that it fails to comply with RCW 36.70A.020(6).**

### Conclusion No. 11

Petitioners have failed to provide sufficient evidence to demonstrate that Federal Way acted in an arbitrary and discriminatory manner, evincing lack of consideration of RCW 36.70A.020(6), when the City determined the density designations of Petitioners' parcels. Petitioners have not shown, by a preponderance of the evidence, that Federal Way has violated the requirements of RCW 36.70A.020(6).

### Vi. ORDER

Having reviewed and considered the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board finds that the City of Federal Way is **in compliance** with the goals and requirements of the Growth Management Act and the King County County-wide Planning Policies.

So ORDERED this 22nd day of July, 1996.

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

Note: This Final Decision and Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

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[1] The Board set forth this bifurcated analysis in *Robison, et al., v. City of Bainbridge Island* [**Robison**] CPSGMHB Case No. 94-3-0025, Final Decision and Order (May 3, 1995):

When challenging a local government's compliance with the GMA, the petitioner must first show that the jurisdiction had a duty to take certain action under the Act. Second, the petitioner must explain, by a preponderance of the evidence, how the local government violated that duty. The petitioners in this case frequently failed to show that the GMA actually imposed a specific alleged duty upon the City. Even where such a duty was specifically identified, the petitioners frequently failed to cite facts or otherwise explain how or why the City had failed to comply with a duty imposed by the Act. *Robison*, at 4, fn.1.

[2] Specific CPPs listed in Statement of Legal Issues of the Prehearing Order are: I. Framework; FW-1, Step 1; FW-1, Step 3; FW-1, Step 4; FW-1, Step 9; II. Land Use Patterns, ¶ C. Urban Areas; II ¶ C (1) Urban Growth Areas; LU-26; LU-28; II. ¶ D Urban Manufacturing/Industrial Centers; II. ¶ D (2) Urban Center Criteria; LU-40; II. ¶ F Urban Growth Outside of Centers; II. ¶ F (1) Urban Residential Areas, LU-66, AH-1, AH-2, and V. Affordable Housing, ¶ B.

[3] The Prehearing Order and Litowitz PHB erroneously referred to FW-1, Step 1(f).

[4] RCW 36.70A.100 provides:

Comprehensive plans -- Must be coordinated. The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.