

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

COLE, et al.,)	Consolidated
)	Case No. 96-3-0009c
Petitioners,)	
)	FINAL DECISION AND ORDER
v.)	
)	
PIERCE COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
TALMO, INC. and ADAM SIMS,)	
)	
Intervenors.)	
)	

I. PROCEDURAL BACKGROUND

The Central Puget Sound Growth Management Hearings Board (the **Board**) has previously examined the Pierce County (the **County**) 1994 Comprehensive Plan (the **1994 Plan**) for compliance with the Growth Management Act (**GMA** or the **Act**.)

On January 27, 1995, the Board received the first of seven petitions for review challenging the Pierce County (the **County**) adoption of the Plan and related interim regulations. Subsequently, five of the seven petitions were dismissed after the County and petitioners reached settlement agreements.

On October 31, 1995, the Board issued a Final Decision and Order (the **Order**) on the remaining two petitions: *Gig Harbor, et al., v. Pierce County [Gig Harbor]*, CPSGMHB Case No. 95-3-0016, Final Decision and Order (October 31, 1995.) The Order held that the Plan: made adequate provision for parks and open space; complied with the Act's requirements regarding aquifer water quality and agricultural lands; did not exceed the state's population forecast; and included Final Urban Growth Area (the **Final UGA**) boundaries that complied with the Act's requirements, except for documentation of the market factor used by the County. The Plan was remanded for modifications to provisions regarding rural area development and open space corridors, and the addition of documentation for the market factor used in designating the Final

UGAs. None of the petitions challenged the land use designations for the Frederickson area.

On January 23, 1996, the Board received a Petition for Review from Allen J. Cole and Karen L. Cole and the Frederickson/Clover Creek Community Council (**Cole**), challenging the County's failure to adopt an amendment to the 1994 Plan, the proposed Frederickson 2.3 amendment.

On February 1, 1996, the Board received a Petition for Review from Michael Millsap, Michele Millsap, Steve Burnside, Kim Burnside, Cathy Hyneman, Cynthia Meyer, Bryant Meyer, Pete Holt, Randy Mohoric, Julie Ann Cunningham, and Laura Roberts (**Millsap**), challenging the County's adoption of an amendment to its 1994 Plan, the Frederickson 2.4 Amendment.

On February 2, 1996, the Board received a Petition for Review from the Peninsula Neighborhood Association (**PNA**) challenging the County's adoption of Plan amendments, together with associated environmental review documents.

On February 5, 1996, issued an Order of Consolidation and Notice of Hearing, assigning Consolidated Case No. 96-3-0009c to the consolidation of the following petitions for review: Case No. 96-3-0004, Cole; Case No. 96-3-0007, Millsap; and Case No. 96-3-0009, PNA.

On February 13, 1996, the Board received "Respondent Pierce County's Answer to [Cole's] Petition for Review;" "Respondent Pierce County's Answer to [PNA's] Petition for Review;" and "Respondent Pierce County's Answer to [Millsap's] Petition for Review."

On March 6, 1996, the Board received a Motion to Intervene from Adam Sims d/b/a Adam Sims Limited (**Sims**). Sims asked to intervene in PNA's case only, with intervention limited to Issue No. 3.

On March 11, 1996, the Board received Talmo Inc.'s Motion for Intervention. Talmo asked to intervene in PNA's case only, with intervention limited to Issue No. 3.

On March 15, 1996, the Board held a prehearing conference in the above-captioned matter. At that time, the Board's presiding officer established deadlines for filing dispositive motions and briefs, and set forth the legal issues to be decided.

On April 9, 1996, Intervenor Adam Sims filed a "Motion to Dismiss" Peninsula Neighborhood Association's third legal issue as it pertained to Area-wide Amendment 1.4, Wright-Bliss Road & SR 302, a "Memorandum of Points and Authorities," and "Declaration of Paul Cyr."

On April 10, 1996, the County filed a "Motion to Dismiss Cole Petition," with a "Brief in Support of Motion to Dismiss Cole Petition," and an "Affidavit of Anna Graham" attached.

On April 12, 1996, the County filed a "Preliminary Exhibit List" and a "Motion to Dismiss

PNA's Petition," with a "Brief in Support of Motion to Dismiss PNA's Petition," and "(Second) Affidavit of Anna Graham" attached.

Also on April 12, 1996, the Board received Millsap's "Motion to Supplement the Record;" a "Motion to Supplement the Record" and a "Joint Preliminary Exhibit List of Intervenors Talmo, Inc. and Adam Sims" from Talmo and Sim; and Cole's "Preliminary List of Exhibits."

On April 19, 1996, Cole filed "Petitioner's Brief in Support of Denying Respondents Motion to Dismiss" (**Cole's Response Brief**) with eight attached exhibits, and Talmo filed "Talmo's Memorandum in Support of Motions to Dismiss."

On May 8, 1996, the Board received Cole's "Prehearing Brief" and Millsap's "Prehearing Brief."

On May 20, 1996, the Board issued a Finding of Compliance in *Gig Harbor*.

On May 22, 1996, the Board received the County's "Response to Petitioners' Prehearing Briefs."

On May 23, 1996, the Board received PNA's "Withdrawal of Petition for Review."

On May 28, 1996, the Board received from the County revisions to its Brief; from Millsap its "Reply Brief," and from Cole "Petitioner Cole's Response to Respondent's Prehearing Brief."

On May 29, 1996, the Board received "Pierce County's Reply to Petitioners' Responses" and the County's "Revised Exhibit List."

On May 30, 1996, the Board held the Hearing on the Merits at the Metropolitan Park District office, Tacoma. Present were Board members Chris Smith Towne, Presiding Officer, and M. Peter Philley. Representing Cole **pro se** was Allen J. Cole. Representing Millsap was Laura Roberts. Representing the County was Eileen McKain. The court reporter was Cynthia LaRose of Robert Lewis & Associates, Certified Court Reporters, Tacoma. Because M. Peter Philley is no longer a member of the Board, Board member Joseph W. Tovar has read a transcript of the hearing as well as reviewed the briefs and exhibits before the Board.

On May 30, 1996, the Board received from the County an "Exhibit List (Consolidated)" and from Millsap a "Reply Brief."

On June 4, 1996, the Board received from the County certain documents related to Exhibits 8710 and 8724.

II. Findings of fact

County Enactments and SEPA Actions

1. On October 8, 1991, the Council passed Ordinance No. 91-117S2, adopting critical area and natural resource lands regulations. *Gig Harbor*, Finding of Fact 3.
2. On October 8, 1991, the Council passed Ordinance No. 91-119S2, adopting aquifer recharge area regulations. *Gig Harbor*, Finding of Fact 4.
3. On January 14, 1992, the Council passed Ordinance No. 91-128S3, adopting wetland management regulations. *Gig Harbor*, Finding of Fact 7.
4. On March 24, 1992, the Council passed Ordinance No. 91-120S5, adopting fish and wildlife habitat area regulations. *Gig Harbor*, Finding of Fact 9.
5. On July 28, 1993, the County released a Draft Environmental Impact Statement (**DEIS**) for its proposed comprehensive plan. *Gig Harbor*, Finding of Fact 17.
6. On September 20, 1993, the county issued its Final Environmental Impact Statement (**FEIS**) for the plan. *Gig Harbor*, Finding of Fact 18.
7. On June 10, 1994, the County issued a Final Supplemental Environmental Impact Statement (**FSEIS**) for its proposed comprehensive plan. *Gig Harbor*, finding of Fact 25.
8. On November 29, 1994, the County issued an Addendum to the FSEIS, evaluating the differences between the March, 1994 draft plan and the November, 1994 draft plan. *Gig Harbor*, Finding of Fact 29.
9. On November 29, 1994, the County Council passed and the Executive approved Ordinance No. 94-82S, which adopted the Pierce County Comprehensive Plan (the **1994 Plan**), codified as Chapter 19A.10, Pierce County Code (**PCC**.) Ex. 8801.
10. Both areas in dispute in this matter lie within a Final UGA designated in the 1994 Plan. The Plan designated approximately 3280 acres, referred to as the Frederickson area, as a High Intensity Employment Center (**HEC**). Such a designation was intended to accomplish the County's intent to create a "jobs-based economy," through availability of large tracts of land for employment centers. Ex. 8253.c, at 3.
11. In the Plan, the South Frederickson 2.3 Area was given a land use designation of HEC, and the East Frederickson 2.4 Area a designation of Moderate Density Single Family (**MSF**).
12. The 1994 Plan, at I-14 and I-15, provides a procedure for the County's consideration of Plan amendments. Ex. 8801.

13. On April 18, 1995, the Council enacted Ordinance 95-27S, implementing regulations for those Plan procedures, which amend the Pierce County Code (**PCC**), Chapters 2.76 and 2.78, and add a new chapter, 19C.10. Graham Affidavit, Attachment 2, with attached Exhibits A, B and C.

14. Chapter 2.76 PCC, as amended, authorizes the County's planning agency [Planning and Land Services Department (**PALS**)] to prepare amendments to the Plan and implementing regulations on its own initiative or in response to a request by the Council. Graham Affidavit, Exhibit A.

15. Chapter 2.78 PCC, as amended, directs the Planning Commission to hold hearings and make recommendations to the Council on proposed Plan amendments, and provides that the Council "may accept or reject, in whole or in part, the recommendation of the Planning Commission and may modify any proposed Plan amendment ..." Graham Affidavit, Exhibit B.

16. Chapter 19C.10 PCC establishes procedures for amendments to the comprehensive plan, pursuant to the requirements of RCW 36.70A.130. Graham Affidavit, Exhibit C.

17. Section 19C.10.030 defines six types of Plan amendment; section 19C.10.040 sets forth the procedure for Council adoption of Plan amendments, including adoption by ordinance after a public hearing and review and recommendation of the Planning Commission; section .050 describes alternative methods of initiating an amendment, including initiation by one or more owners of property which are directly affected by the proposal. Section 19C.10.060 establishes the requirements for PALS' review and evaluation of proposed amendments. Section 19C.070 establishes the time frame and sequence of actions for adoption. Section 19C.10.080 requires Planning Commission public hearings pursuant to Section 2.78.020 PCC. Section 19C.10.090 mandates a Council hearing pursuant to the relevant requirements of the Pierce County Charter and the Permanent Rules of the Pierce County Council governing the enactment of ordinances. Graham Affidavit, Exhibit C.

Plan Amendments

18. Prior to June 1, 1995, at the request of Allen and Karen Cole, the Pierce County Executive initiated a proposed amendment to the Plan affecting the South Frederickson area, identified as [Proposed] Map Amendment 2.3. The 200-acre area lies east of 30th Ave. E. and north of 208th St. E. The proposed amendment would reclassify approximately 200 acres from a land use designation of HEC to MSF. Existing land uses include 90 acres of agricultural, actively farmed; 15 acres of single family residential; and 95 acres vacant. The site is within an aquifer

recharge area, and contains a 3-acre wetland. There are three acres with slopes exceeding 30 percent. Graham Affidavit, at 2, Ex.8850.g, at 25.

19. Ken Enslow requested a proposed amendment to the Plan affecting the East Frederickson area, identified as [Proposed] Map Amendment 2.4. The proposed amendment would reclassify 80 acres ^[1] in 21 parcels, lying south of 176th Ave. E., from MSF to HEC. Existing land uses include 20 acres of single family residential and 60 acres vacant. The site is within an aquifer recharge area; 40 acres is within a seismic hazard area; and several acres are part of a wildlife habitat area. Ex. 8350; Ex. 8850.g, at 26.

20. PALS reviewed proposed map Amendments 2.3 and 2.4; it recommended denial of Amendment 2.3, noting that the County's Transportation Improvement Program would extend a major arterial in the vicinity and improve an existing arterial, and that sewers are available in the vicinity. It noted that single family residences within the HEC zone are "allowed expansion outright." PALS recommended approval of Amendment 2.4, noting that the County's Transportation Improvement Program would improve an existing arterial, and that the area adjoins HEC-designated property on the west and HRD-designated land on the east. Ex. 8350; Ex. 8253.c, at 2-5.

21. The Planning Commission published notice of and held several public meetings and hearings on the proposed Plan amendments, with the first meeting on June 27, 1995 and the final meeting on November 9, 1995. Ex. 8801; Graham Affidavit, Attachment 5.

22. In September, 1995, the County issued a Draft Supplemental Environmental Impact Statement (**Draft SEIS.**) Ex. 8850.g.

23. On October 30, 1995, PALS issued a cumulative evaluation of proposed amendments to the Plan. Ex. 8253.j.

24. The Planning Commission's recommendations, dated November 9, 1995, recommended approval of proposed Amendment 2.3 and disapproval of Amendment 2.4. Ex. 8301; Ex. 8350.

25. On November 9, 1995, the County issued a FSEIS and Addendum for the proposed amendments to the Plan. Ex. 8801, at 4.

26. The Planning and Environment Committee of the Pierce County Council (the **Council Committee**) held public meetings on the Planning Commission's recommendations on the proposed amendments, commencing on October 5 and concluding on October 26, 1995. Graham Affidavit, at 3; Attachment 7.

27. At the October 5, 1995 meeting, Petitioner Cole testified before the Council Committee in favor of proposed amendment 2.3; Laura Roberts (representing Petitioner Millsap,) testified against proposed amendment 2.4. Ex. 8721.

28. On October 26, 1995, the Council Committee submitted its recommendations to the Council, including approval of the PALS recommendation to deny amendment 2.3 and to approve amendment 2.4. Graham Affidavit, at 3, Attachment 7; Ex. 8801, at 5; Ex. 8724, at 3-4.

29. The Council reviewed the PALS report and Planning Commission and Council Committee recommendations, and published notice of and held public meetings commencing on November 1 and concluding November 21, 1995. Graham Affidavit, at 3; Attachment 8.

30. On November 21, 1995, the Council enacted Ordinance No. 95-132S, adopting amendments to the Plan. Adopted map amendments, including Amendment 2.4, are shown on attachment B, third unnumbered page following page 70. Amendment 2.4 changed the land use designation of the area from MSF to HEC. Ex. 8801.

31. On December 20, 1995, the Council passed Resolution R95-211, adopting findings of fact "... documenting the actions taken by the Planning Commission and Council ..." pursuant to a requirement of Section 6, Ordinance No. 95-132S. Ex. 8802.6

32. Finding of Fact No. 58 states that:

The Planning Commission finds that South Frederickson should be amended to the designation of Moderate Density Single Family (MSF):

- The South Frederickson High Intensity Employment Area is surrounded by the Moderate Density Single Family designation on the east and west sides, and the Reserve designation on the south side.
- The South Frederickson area contains only existing single family residential development and agricultural production; and there are no existing commercial or industrial businesses within South Frederickson. Ex.8802, Attachment Ex. A, at 14.

33. Finding of Fact No. 59 states that:

The Planning Commission finds that East Frederickson remain in the MSF designation and should not be redesignated to HEC:

- The East Frederickson area consists entirely of single family residences and

does not contain any industrial business.

- The area is correctly designated as Moderate Density Single Family.
- The existing Frederickson Employment Center has numerous of (sic) vacant parcels and it is not necessary at this time to increase the amount of land designated industrial. Ex.8802, Attachment Ex. A, at 14.

34. Finding of Fact No. 121 states that:

Pertaining to Finding No. 58, based upon the August 3, 1995 Staff Report which recommended denial of the “South Frederickson” reclassification, and oral and written testimony, the Council disagrees with the Planning Commission’s recommendation and finding, thereby denying the reclassification to MSF. Additionally, this area contains larger parcels that could lend themselves to industrial development thereby supporting the jobs-based economy. Ex. 8802, Attachment Exhibit A, at 30.

35. Finding of Fact No. 122 states that:

Pertaining to Finding No. 59, based upon the August 3, 1995, Staff Report which recommended approval of the “East Frederickson” reclassification from MSF to Employment Center, the Council disagrees with the Planning Commission’s recommendation and finding, thereby approving the reclassification to Employment Center. Ex. 8802, Attachment Exhibit A, at 30.

III. COUNTY’S MOTION TO DISMISS PNA’S PETITION and Sims’ motion to partially dismiss pna’s legal issue 3

Petitioner PNA withdrew its Petition for Review as a result of the Board’s order in *Gig Harbor*. Therefore, the Board need not address the County’s and Sims’ motions to dismiss PNA. As a result of PNA’s withdrawal, Intervenors Sims and Talmo have withdrawn. Transcript of Hearing on the Merits, at 34. **The Board holds that PNA’s petition is dismissed with prejudice. Further, the Board holds that Sims’s and Talmo’s interventions are dismissed with prejudice.**

IV. COUNTY’S Motion to Dismiss COLE’S PETITION

The briefs and record before the Board prior to the hearing on this matter were not sufficient for the Board to make a fair determination on the County’s motion to dismiss Cole. Educated by the prehearing briefs and the hearing itself, the Board can now address the County’s motion.

Cole’s legal issues, as characterized in the Prehearing Order, allege that the County acted contrary to the GMA when it adopted Ordinance 95-132S amending the Plan, specifically

because those amendments did not include the amendment proposed by Cole, which would have changed the land use designation of the South Frederickson 2.3 area from HEC to MSF. Finding of Fact 18.

In its brief on the motions, the County argued that the County's failure to include the Cole proposal in its amendments to the Plan does not violate the GMA. The County asserts that, because Cole's proposed amendment remained in a preliminary status and did not become part of the GMA Plan, the Council's decision to not amend the Frederickson 2.3 parcel is not subject to review by the Board. County's Brief to Dismiss Cole, at 1.

The County pointed out that the portions of the 1994 Plan identified in Cole's petition as failing to comply with the Act (absent the proposed amendment) were not challenged or remanded to the County during the initial plan adoption and are, therefore, irrefutably valid. Furthermore, although the County has a method to consider and adopt amendments to the Plan, it is not required to adopt a proposed amendment. Cole's petition should be dismissed. County Response Brief, at 3.

In its Response Brief, Cole stated that its petition was filed in response to the County's "failure to act on correcting a GMA enactment" and that the Board has jurisdiction to hear its petition. Cole's Response Brief, at 1.

Discussion

Cole argues that the Board does have jurisdiction when a state agency, county or city planning under the GMA is not in compliance with the Act and cites to RCW 36.70A.280(1)^[2] and WAC 242-02-220(5)^[3]. See Cole's Response Brief, at 3-5. Cole reasons that, because Cole's requested amendment is necessary to bring the 1994 Plan into compliance with the Act, the County's failure to amend the plan accordingly results in a non-compliance, which, in turn, subjects the County's inaction to Board review. Additionally, Cole asserts that the amended plan will be a completely new plan, and therefore requires full review and public participation before adoption. *Id.*, at 5.

Having now read the motion and the hearing briefs, heard the arguments or read the hearing transcript, and reviewed the record, the Board concludes that Cole is, in fact, attacking the County's 1994 Plan. This is evinced by the way that Cole's brief characterizes the County as having failed to "correct" a GMA enactment (i.e., the 1994 Plan). The time for Cole to take issue with the GMA correctness of the 1994 Plan was within sixty days of publication of the notice of adoption of the 1994 Plan. RCW 36.70A.290(2). That time has long since passed. **The Board holds that the 1994 Plan is irrefutably valid and is not subject to attack in the present case.**

Cole is correct that RCW 36.70A.280(1) defines the subjects that the Board may review. However, while Cole elaborated on its argument regarding its legal issues in its Response Brief, it did not provide (nor was it required to provide at that point in the proceedings) sufficient briefing for the Board to determine that the County's failure to adopt proposed amendment 2.3 does not comply with the requirements of the Act, or even whether that issue was properly before the Board.

Additionally, Cole misinterprets the requirements of WAC 242-02-220(5). A petition may include an allegation that a local government failed to act; however, Cole overlooks the qualification contained in that section, and pointed out to the Board by the County: "action by a [\[4\]](#) deadline specified in the act. . ." While RCW 36.70A.130 authorizes a local government to amend comprehensive plans annually, it does not require amendments. Moreover, it does not dictate that a specific proposed amendment be adopted. Cole did not point out any other statutorily created duty with which the County has failed to comply. At such time as the County takes an action pursuant to the authority of RCW 36.70A.130 or fails to meet a duty imposed by some other provision of the GMA, Cole may have an action that could properly be brought before the Board. Absent such facts, Cole's recourse is elsewhere.

The Board holds the County's failure to act cannot be construed to be an "action" under RCW 36.70A.130. The Board further holds that the actions challenged in Cole's petition were not taken in response to a GMA duty to act by a certain deadline, or in response to any other duty imposed by the Act, and that WAC 242-02-220(5) does not apply to this case. Finally, the Board holds that the County's failure to adopt proposed amendment 2.3 is not subject to the Board's jurisdiction under RCW 36.70A.280.

Conclusion

The only substantive arguments raised by Cole in its briefs and at the hearing go to the "incorrectness," as alleged by Cole, of the County's 1994 Comprehensive Plan, absent enactment of Cole's proposed amendment. The Board agrees with the County and **holds that the 1994 Plan is irrefutably valid and its alleged noncompliance with the Act is not now properly before the Board.** Therefore, the County's Motion to Dismiss Cole's Petition is **granted** and the Cole petition is **dismissed with prejudice.**

V. millsap

Petitioner Millsap asserts that the County, by adopting the Frederickson 2.4 Amendment changing the designation of that parcel from MSF to HEC, has not complied with the planning goals of RCW 36.70A.020, specified provisions of the 1994 Plan, and the requirements of RCW 36.70A.130(2) and RCW 36.70A.140.

To prevail on its issues, Millsap must first demonstrate as to each issue that the County had a duty to act under the GMA, and then must show, by a preponderance of the evidence, how the County violated that duty. *Litowitz v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order, at 5 (July 22, 1996); see also, *Robison v. City of Bainbridge Island*, CPSGMHB Case No. 94-3-0025, Final Decision and Order (May 3, 1995).

Board Jurisdiction to Consider Alleged Violations of RCW 36.70A.020

Millsap's Issue No. 1 alleges noncompliance with several goals in RCW 36.70A.020. The County argues that "[t]here is no authority granted to the Boards to determine compliance with the goals of the Act" that are set forth at RCW 36.70A.020. It argues that "both the legislature and the voters chose to limit the boards' role in local planning decisions." County's Response Brief, at 17. It asserts that the Board may only measure a local government's compliance with the requirements, as opposed to the goals, of the Act.^[5] In interpreting the legislature's intent, the County recites its version of the legislative history of the GMA, while in divining the voters' intent, the County invokes the results of the Initiative 547 (I-547) campaign. County's Response Brief, at 18. The County is selective in its recitation of the Act's provisions and its legislative history, speculative with regard to what the I-547 voters intended, and incorrectly characterizes how narrowly this Board construes its jurisdiction.

The County cites and emphasizes certain portions of the Act. It cites RCW 36.70A.280, which states that the Board will hear and determine only those petitions alleging that a local government planning under the Act is "not in compliance with the requirements of this chapter." Emphasis supplied by County. It also cites RCW 36.70A.300(1) which directs that a Board's final order must be based exclusively on whether or not a local government is "in compliance with the requirements of this chapter." Emphasis supplied by County.

The County's argument fails to acknowledge that "this chapter" is Chapter 36.70A RCW, that RCW 36.70A.020 is a part of "this chapter" and that nowhere in the statute is there any explicit direction that narrows or limits the portions of "this chapter" with which a local government is required to comply. Nor is there any provision of the Act which explicitly removes from board review allegations of noncompliance with any of the sections of the chapter. Further, the County makes no mention of RCW 36.70A. 290(2) which provides:

All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city. Emphasis added.

This provision informs potential petitioners before the Board as to the deadline by which a petition for review must be filed. The above emphasized phrase "in compliance with the goals"

clearly connotes that the scope of the petition may include allegations of noncompliance with the goals, not simply the requirements, of this chapter (i.e., the GMA). What would be the purpose of a petitioner's including in her/his petition for review an allegation of noncompliance with the planning goals unless the legislature contemplated that the Board would be hearing and deciding upon such an allegation?

Furthermore, RCW 36.70A.300(2) explicitly directs the Board to look to the planning goals when determining whether or not a noncompliant local action should be invalid during the period of remand. It provides:

A finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand, unless the board's final order also:

(a) Includes a determination, supported by findings of fact and conclusions of law, that the continued validity of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(b) Specifies the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity. [1995 c 347 § 110; 1991 sp.s. c 32 § 11.]
Emphasis added.

Unlike a finding of noncompliance and remand for correction without invalidation, a circumstance in which the offending local enactment would continue as valid in the interim, the explicit terms of RCW 36.70A.300(2) direct that the immediate invalidation of a local enactment can occur when a Board finds that its continued validity would interfere with the fulfillment of the *goals of this chapter*. Not only does this underscore the importance that the legislature places upon the compliance of local government actions with the planning goals, but it explicitly directs the Board to determine whether the continued validity of the challenged action would “interfere ... with ... the goals of this chapter”, i.e., the planning goals set forth at RCW 36.70A.020. Thus, to agree with the County's assertion that the Board has no jurisdiction to measure compliance against the planning goals of RCW 36.70A.020 would render meaningless the Act's direction to the petitioners at .290 and its direction to the Board at .300(2). This would be an absurd result. The Board's conclusion that it has jurisdiction to determine a challenged local government action's compliance with the goals and requirements of the Act is clear and inescapable.

As to the matter of the “voters' intent” in rejecting I-547, the Board concludes that the County's brief indulges in self-serving speculation. This alone would not be worthy of comment; however, the Board cannot let pass without comment the County's assertion that “[t]he Board appears to have mistaken its relatively narrow role under the adopted GMA with that which was proposed

under the rejected Initiative 547.” County’s Response Brief, at 18.

Contrary to the County’s implication, the Board does not construe its jurisdiction as being as broad as the County’s description of the scheme under I-547. The Board in numerous cases has repeatedly interpreted its subject matter jurisdiction narrowly. This narrow view of its own jurisdiction was summarized in *South Bellevue Limited Partnership, et al., v. City of Bellevue and Issaquah School District No. 411*, CPSGMHB Case No. 95-3-0055, Order of Dismissal (September 5, 1995) (*South Bellevue*):

The Board lacks authority to determine whether the United States or Washington Constitutions have been violated, whether the common law (e.g., tortious interference with contractual relations or the indispensable party rule) has been violated, whether equitable doctrines (e.g., the doctrine of estoppel) have been violated, or whether statutes other than the GMA, the Shoreline Management Act or the State Environmental Policy Act (**SEPA**) as it relates to GMA have been violated. *South Bellevue*, Order of Dismissal, at 4-6.

The Board has given long and careful thought to the matter of its jurisdiction, and wishes to disabuse the County of the notion that this Board mistakes its role with that of an appellate body contemplated by I-547. The Board’s role under the GMA is clearly limited to a review of allegations of noncompliance with Chapter 36.70A RCW, Chapter 90.58 RCW as it pertains to shoreline master programs and amendments thereto, and Chapter 43.21C RCW as it pertains to enactments pursuant to either of the two prior statutes. While this reviewing role is limited to the three statutes named, the Board rejects the County’s argument that, within RCW 36.70A, the Board’s jurisdiction is limited to evaluating compliance of local enactments with all sections of the Act except RCW 36.70A.020.

Dismissal of Unbriefed Issues

Section XII of the *Cole* Prehearing Order established the Final Schedule for this case. Additionally, section XI.B of that Order set forth the statement of Petitioner Millsap’s legal issues. Pursuant to the case schedule, Millsap filed her prehearing brief with the Board on May 8, 1996. However, Millsap did not brief all of the issues set forth in the *Cole* Prehearing Order. Specifically, Millsap failed to brief the following issues as set forth in the Prehearing Order:

- (1) Issue 1.a with respect to the alleged violation of RCW 36.70A.020(4) and (5);
- (2) Issue 1.d with respect to the alleged violation of RCW 36.70A.020(8), (9), and (10);
- (3) Issue 1.i with respect to the alleged violation of Plan ENV Objective 9.4.6; and
- (4) Issue 2.

The Board has previously considered the question of unbriefed issues in *Twin Falls, Inc., et al., v. Snohomish County [Twin Falls]*, CPSGMHB Case No. 93-3-0003, Final Decision and Order (September 7, 1993). There the Board began its analysis by observing that the burden of proof in a case before the Board is on the petitioner. To meet that responsibility a petitioner must:

. . . show why the actions of a local government are not in compliance with the GMA. Simply raising an issue is not enough for the Board to resolve it. The Board must review the Petitioner's rationale for its contention, and weigh that argument against the local government's response. Without preparing a brief or legal memoranda, a petitioner cannot meet its burden.

. . .

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

Thus, a petitioner's issues which are unbriefed will be considered abandoned, and accordingly, will not be considered further and will be dismissed with prejudice. **The Board therefore holds that Millsap's unbriefed legal issues are abandoned, and the Board dismisses those issues with prejudice.**

Legal Issue 1:

Did the County violate RCW 36.70A.020 when it amended portions of the Plan affecting the South Frederickson 2.4 Area? Specifically, were the Amendments inconsistent with the following Objectives and Goals?

Discussion

The planning goals of RCW 36.70A.020 guide the development and adoption of comprehensive plans. Planning goals also serve to guide the adoption of amendments to comprehensive plans.

Any amendment or revision to a comprehensive land use plan shall conform to this chapter RCW 36.70A.130(1).

The preamble to RCW 36.70A.070 requires that comprehensive plans be internally consistent. RCW 36.70A.130(1) requires that amendments to a plan be consistent with the adopted plan. Since Millsap did not argue that the County had not met the requirements of either of these

statutory provisions, the Board’s analysis is limited to whether the County’s action is in compliance with the planning goals of RCW 36.70A.020.

In *Aagaard*, the Board stated:

[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
Aagaard, et al. v. City of Bothell [Aagaard], CPSGMHB Case No. 94-3-0011, Final Decision and Order, at 9 (February 21, 1995).

The Board holds that cities’ discretion, recognized by the Board in *Aagaard*, also applies to counties; they enjoy similarly broad discretion to make many specific choices about how growth is to be accommodated within UGAs.

Millsap must show that RCW 36.70A.020 and the specific Plan objectives impose a GMA duty on the County, and that the County, in adopting the Frederickson 2.4 Amendment, has failed to comply with that duty.

a. Were the Amendments inconsistent with LU-UGA Objective 4.3.1? (Goal 1) [Brief Issue 3]^[6]

LU-UGA Objective 4.3.1 guides the County to convert Tier 3 lands to Tier 1 lands when there is not sufficient land in Tier 1 or Tier 2 to accommodate projected six-year population growth. RCW 36.70A.020(1) is the planning goal to “encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.”

Millsap has failed to show that LU-UGA Objective 4.3.1 and RCW 36.70A.020(1) impose a duty on the County to reject the Frederickson 2.4 Amendment. The County was exercising its broad discretion in choosing to adopt the amendment.

b. Were the Amendments inconsistent with LU-UGA Objective 7.2? (Goals 2 and 5) [Brief Issue 4]

LU-UGA Objective 7.2 guides the County to locate industrial development in compact, well-defined centers within UGAs. Millsap cites to and argues non-compliance with RCW 36.70A.020 (1). Because that goal is not a part of Issue 1.b., Millsap’s argument will not be considered by the Board. Millsap argues that the Frederickson area, as a whole, ceases to be compact with the addition to HEC of the Frederickson 2.4 parcel. Prehearing Brief, at 5.

Millsap has failed to show that LU-UGA Objective 7.2 imposes a duty on the County to reject the

Frederickson 2.4 Amendment. The County was exercising its broad discretion in choosing to adopt the amendment.

c. Were the Amendments inconsistent with LU-EC Objective 9.1.2? (Goal 2) [Brief Issue 5]

LU-UGA Objective 9.1.2 states that the range of business within HEC areas should generally accommodate a high number of employees per acre. RCW 36.70A.020(2) guides jurisdictions to reduce sprawl. Millsap asserts that, because part of the Frederickson 2.4 parcel is within a seismic hazard area, it is unwise to designate such an unsafe area as an employee-dense HEC. Millsap did not argue why HEC classification is any greater hazard to life and property than a residential classification.

The County's Critical Areas regulations were adopted in 1991. Finding of Fact 1. **The Board holds that they are irrefutably valid.** The Board must assume that they will accomplish their intent.

Millsap has failed to show that LU-UGA Objective 9.1.2 and RCW 36.70A.020(2) impose a duty on the County to reject the Frederickson 2.4 Amendment. The County was exercising its broad discretion in choosing to adopt the amendment.

d. Were the Amendments inconsistent with LU-IN Objective 51, 51.1, 51.4, 51.5, 51.8, 51.13 and 51.14? (Goal 3) [Brief Issue 6]

LU-IN Objective 51 provides guidelines to the County in locating Employment Centers. RCW 36.70A.020(3) encourages efficient, multimodal transportation systems. Millsap argues that classification of the Frederickson 2.4 parcel as HEC is contrary to Objective 51's guidelines, because Millsap asserts that transportation systems do not adequately serve this parcel.

The guidelines of Objective 51 and GMA Planning Goal 3 serve to guide the County in its decision-making. Millsap has failed to show that LU-IN Objective 51 and RCW 36.70A.020(3) impose a duty on the County to reject the Frederickson 2.4 Amendment. The County was exercising its broad discretion in choosing to adopt the amendment.

e. Were the Amendments inconsistent with LU-IN Objective 52, 52.2, 52.2.2, 52.1.2, 52.2 and 52.3? (Goals 1, 2 and 5) [Brief Issue 7]

LU-IN Objective 52 provides guidelines for the County to provide a predictable development atmosphere. RCW 36.70A.020(5) encourages economic development consistent with comprehensive plans. Millsap asserts that, because the affected area was classified MSF when the comprehensive plan was adopted, and reclassified as HEC by the Frederickson 2.4

Amendment one year after adoption of the Plan, the County's action does not foster predictability.

The guidelines of Objective 52 and GMA Planning Goals 1, 2, and 5 serve to guide the County in its decision-making. Millsap has failed to show that LU-IN Objective 52 and RCW 36.70A.020 (1), (2), and (5) impose a duty on the County to reject the Frederickson 2.4 Amendment. The County was exercising its broad discretion in choosing to adopt the amendment.

f. Were the Amendments inconsistent with LU-OS Objective 57, 57.2, 57.3, 57.4, 57.5 and 57.6? (Goals 8, 9 and 10) [Brief Issue 8]

LU-OS Objective 57 provides guidelines for the County to consider in locating open space. RCW 36.70A.020(8), (9) and (10) pertain to natural resource industries, open space and recreation, and protection of the environment, respectively. Millsap asserts that, if there was a need to reclassify the Frederickson 2.4 parcel, perhaps the appropriate classification is open space.

Millsap has failed to show that LU-OS Objective 57 and RCW 36.70A.020(8), (9) and (10) impose a duty on the County to reject the Frederickson 2.4 Amendment. The County was exercising its broad discretion in choosing to adopt the amendment.

g. Were the Amendments inconsistent with LU-OS Objective 58? (Goals 8, 9 and 10) [Brief Issue 9]

LU-OS Objective 58 guides the County in preserving open space, natural areas, and parks. Millsap asserts that the Frederickson area lacks recreational facilities.

Millsap has failed to show that LU-OS Objective 58 and RCW 36.70A.020(8), (9) and (10) impose a duty on the County to reject the Frederickson 2.4 Amendment. The County was exercising its broad discretion in choosing to adopt the amendment.

h. Were the Amendments inconsistent with ENV Objective 8, 8.2, 8.4.3, 8.4.3.1 and 8.5? (Goals 8, 9 and 10) [Brief Issue 10]

ENV Objective 8 provides objectives to maintain and protect fish and wildlife habitat. ^[7] Although Millsap discusses public environmental-related workshops, Millsap does not explain how this Objective or the GMA Planning Goals was transgressed.

Millsap has failed to show that ENV Objective 8 and RCW 36.70A.020(8), (9), and (10) impose a duty on the County to reject the Frederickson 2.4 Amendment. The County was exercising its broad discretion in choosing to adopt the amendment.

i. Were the Amendments inconsistent with ENV Objective 9, 9.2.2 and 9.4.6? (Goals 8, 9

and 10) [Brief Issue 11] [NOTE - 9.4.6 dropped]

ENV Objective 9 directs the County to avoid endangering lives, property, and resources in geologically hazardous areas. Millsap asserts that part of the Frederickson 2.4 parcel is in an area of seismic hazard; thus, establishing an employee-dense HEC is improper.

Millsap has failed to show that ENV Objective 9 and RCW 36.70A.020(8), (9), and (10) impose a duty on the County to reject the Frederickson 2.4 Amendment. The County was exercising its broad discretion in choosing to adopt the amendment.

Conclusion

Petitioner Millsap has failed to prove that the identified Pierce County Comprehensive Plan Objectives and the GMA Planning Goals of RCW 36.70A.020 impose a duty on the County to reject the Frederickson 2.4 Amendment. Petitioner has failed to carry its burden of proof to show that the County violated the goals and requirements of the GMA.

Legal Issue 3:

Did the County violate RCW 36.70A.130(2) when it amended portions of its Plan affecting the South Frederickson 2.4 Area?

Millsap did not brief this issue. Rather, Millsap requested to incorporate Petitioner Cole's Prehearing Brief regarding this issue. Prehearing Brief, at 13. The County did not object and the Board will consider Petitioner Cole's argument as Millsap's. See Cole's Prehearing Brief, at 32-37. Since Cole's argument is necessarily focused on a proposed amendment that was not adopted by the County, and not an amendment adopted by the County, Cole's argument will be of limited value to Millsap.

RCW 36.70A.130(2) directs counties and cities to establish public participation procedures for adopting comprehensive plan amendments:

. . . (b) All proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained.

In other words, for Millsap to prevail, it must show, by a preponderance of the evidence, that the Council failed to concurrently consider the proposed amendments. The record does not support Millsap's position.

The "governing body" in this instance is the Council. On October 30, 1995, PALs issued a cumulative evaluation of proposed amendments to the Plan. Finding of Fact 23. On November

9, 1995, the County issued the FSEIS and Addendum for the proposed amendments to the Plan. Finding of Fact 25. Finally, the Council was presented with a matrix showing all proposed area-wide map amendments for 1995. The matrix included a brief description of the amendment request, PALs' recommendation to the Council, and the Planning Commission recommendation to the Council. County's Ex. 8350. All of those documents were before the Council when it made its decision on the proposed amendments. **The Board holds that the Council considered the proposals concurrently.**

Conclusion

Millsap has failed to carry its burden of proof to show, by a preponderance of the evidence, that the County has failed to comply with the requirements of RCW 36.70A.130(2) of the Act.

Legal Issue 4:

Did the County violate RCW 36.70A.140 when it amended portions of its Plan affecting the South Frederickson 2.4 Area? [Brief Issue 1]

Positions of the Parties

Millsap

Millsap contends that the County violated (1) RCW 36.70A.020(11) and 36.70A.140 and (2) WAC 365-195-600(1), 365-195-600(2)(a)(ix), and 365-195-630 when it amended portions of its Plan affecting the South Frederickson 2.4 Area. Millsap argues that the County provided notice for only two of the of the twenty-two Planning Commission hearings concerning the South Frederickson amendment, and that there was no notice provided for any of the Council Planning and Environment Committee Meetings. Additionally, Millsap contends that due to the chronology of the various County actions in this matter, the Planning and Environment Committee could not have considered the final recommendation of the Planning Commission or the Staff Report. Millsap PHB, at 2-3.

The County

In response, the County contends that notice of the various hearings and the proposals was properly published and several months of public hearings were held. The County argues that the proposed amendment of the South Frederickson 2.4 Area was not changed throughout the entire process, and that the County Council adopted the amendment as originally submitted. In addition, the County argues that the Planning and Environment Committee was apprised of the Planning Commission's preliminary recommendations, and that the petitioner was aware of the

Planning and Environment Committee's meetings. County Response Brief, at 10-14.

The County also contends that the Planning Commission and the Council actually exceeded the public participation requirements specified in its Plan Amendment Ordinance (Ordinance 95-27S). Additionally, the County argues that the Council had ample time to review the Planning Commission's recommendations. County Response Brief, at 12-14.

Lastly, the County argues that Millsap is prohibited from raising public participation challenges related to RCW 36.70A.020(11) and under Chapter 365-195 WAC. The County argues that these issues were not alleged in Millsap's petition or set forth in the Prehearing Order, and thus can not be raised at in Millsap's Prehearing Brief. County Response Brief, at 2; Attachment to Brief, Millsap Matrix (of Issues).

Public Participation

Millsap RCW 36.70A.020(11) and WAC 365.195.600 and .630 Challenges

As a preliminary matter, the Board considers Millsap's various public participation challenges that were not alleged in Millsap's petition or set forth in the Prehearing Order. As argued by the County, section X of the Prehearing Order states:

The parties shall specify which Legal Issues, as set forth in Part XI of this order, are being addressed in the Prehearing, Response, and Reply Briefs. The parties are reminded that their briefs and arguments must be confined to those issues....

Prehearing Order of April 5, 1996, at 5. The County argues that the portions of Millsap's Prehearing Brief that do not comply with this requirement must be dismissed.

The Board agrees with the County's argument. Notwithstanding this fact, even if the Board were to hold that the scope of the legal issues stated in the Prehearing Order encompassed Millsap's other challenges, the Board would still dismiss these claims for two reasons.

First, as the Board held in *Litowitz, et al., v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order (July 22, 1996):

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. *Litowitz*, Final Decision and Order, at 7.

Millsap has not demonstrated that the County had a compliance duty under RCW 36.70A.020(11) separate from the duty under RCW 36.70A.140. Thus, here also, Millsap's RCW 36.70A.020 (11) challenge should not be considered by the Board.

Second, with respect to Millsap's Chapter 365-195 WAC claims, in order 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. ^[8] In addressing the Chapter 365-195 WAC challenges in the present case, the Board will first determine whether Millsap has identified a GMA-imposed duty that the County was required to meet. For the following reasons, the Board concludes that there is no GMA-imposed duty that the County comply with the standards set forth in Chapter 365-195 WAC.

RCW 36.70A.190(4) requires the Department of Community, Trade, and Economic Development (**CTED**) to "establish a program of technical assistance . . . adopting by rule procedural criteria to assist counties and cities in adopting comprehensive plans" The GMA also provides that "[i]n making [a] determination, the [Growth Management Hearings Boards] shall consider the criteria adopted by the department under RCW 36.70A.190(4). RCW 36.70A.320(1). These are the only provisions in the GMA related to Chapter 365-195 WAC, and they do not impose any duty upon local governments as to Chapter 365-195 WAC. Millsap has not established that the County had a duty under WAC 365-195.

Because Millsap's Issue 3 did not include a challenge under RCW 36.70A.020(11) or Chapter 365-195 WAC, Millsap has not established that the County had a duty under WAC 365-195, **the Board holds that Millsap's RCW 36.70A.020(11) and Chapter 365-195 WAC claims are dismissed with prejudice.**

Millsap RCW 36.70A.140 Challenge

The GMA public participation provision, RCW 36.70A.140 provides in part:

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.... The procedures shall provide for broad dissemination of proposals and alternatives, opportunity

for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. ... Errors is 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).

Ordinance 95-27S specifies the requirements of the County's plan amendment process. This process only requires the Planning Commission and the Council each to hold one hearing on all proposed amendments. *See* PCC 19C.10.070 and .090. Here, the Planning Commission and County Council held more than the required minimum of public hearings. Additionally, the County provided public notice of the hearings on the proposed Plan amendments. *See* Affidavit of Anna Graham, at 2-4.

Millsap's argument that the Planning Commission hearings held between the June 27 and November 9, 1996, meetings were not properly noticed is unpersuasive. These meetings were a continuation of the Planning Commission's June 27, 1996, meeting. Furthermore, the Planning Commission identified a telephone number with a recorded message for the purpose of notifying interested citizens when continuation meetings would be held. Transcript of May 30, 1996, Hearing on the Merits, at 56.

Therefore, **the Board holds that the County complied with the GMA requirements under RCW 36.70A.140.**

Vi. ORDER

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

1. The PNA petition for review is **dismissed with prejudice**; Intervenors Sims and Talmo are also **dismissed with prejudice**.
2. The County's motion to dismiss Cole's petition is **granted** and it is **dismissed with prejudice**.
3. As to Millsap, the County **has complied** with the goals and requirements of the GMA as to Frederickson Area Plan Amendment 2.4.

So ORDERED this 31st day of July, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

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

[1] The Frederickson 2.4 area amendment application stated that the area in question was 63.29 acres. Ex. 8151.k.1, at 2. An attachment to the application entitled “Comprehensive Plan Amendments Checklist for Environmental Review,” stated that the area was approximately 76 acres. Ex. 8151.k.2, at 1. A second attachment, entitled “Checklist for Area-Wide Amendments” stated that the area was 71.3 acres. The adopted amendment area is shown in Ex. 8801, third unnumbered page following p. 70.

[2] RCW 36.70A.280 provides in part:

- (1) A growth management hearings board shall hear and determine only those petitions alleging either:
 - (a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or
 - (b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

[3] WAC 242-02-220(5) provides:

A petition relating to the failure of a state agency, city or county to take an action by a deadline specified in the act may be brought at any time after the deadline for action has passed.

[4] RCW 36.70A.130 provides:

1) Each comprehensive land use plan and development regulations shall be subject to continuing evaluation and review by the county or city that adopted them.

Any amendment or revision to a comprehensive land use plan shall conform to this chapter, and any change to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program identifying procedures whereby proposed amendments or revisions of the comprehensive plan are considered by

the governing body of the county or city no more frequently than once every year except that amendments may be considered more frequently under the following circumstances:

(i) The initial adoption of a subarea plan; and

(ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW.

(b) All proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court.

(3) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period.

[5] The County's implication that RCW 36.70A.020 is not a "requirement" of the Act appealable to a board is problematic. If a local government must be "guided by" the goals, as the Act explicitly states, and an obligation that the County seems to acknowledge, how can that obligation be described as anything other than a requirement? If it is not a "requirement", but still an obligation or duty under the Act, then where is a citizen's recourse if she/he believes that the obligation or duty has been breached? To suggest that such an appeal should be filed in superior court bifurcates the Act's dispute resolution mechanism, incurring delay and inviting uncertainty.

[6] Millsap has employed a different numbering system to identify the subparts of issue 1; those are shown in brackets following the issue statements.

[7] As noted earlier, the County adopted its Critical Areas regulations in 1991. See Finding of Fact 1.

[8] The Board set forth this bifurcated analysis in *Robison, et al., v. City of Bainbridgse Island*, CPSGMHB Case No. 94-3-0025, Final Decision and Order, at 4, fn.1 (May 3, 1995).