

On January 30, 1998, the Board received a PFR from the Hollywood Hill Association; Robert E. Tidball (d/b/a T & M Berry Farm); Preserve Land for Agriculture Now; Puget Sound Farm Trust; and Jun and Shelley Akutsu (referred to collectively as **Hollywood Hill or HH**). The matter was assigned Case No. 98-3-0007. Hollywood Hill alleges that amendments to the County's Plan and Section 21A.08.040 KCC, which were adopted on November 24, 1997, fail to comply with the goals and requirements of the GMA and are inconsistent with other provisions of the Plan and CPPs. Hollywood Hill also alleges that the County's actions do not comply with SEPA and requests that the Board invalidate the challenged actions.

On this same date, the Board received a PFR from Michael J. Alberg, Thomas A. Alberg, and Kay L. Alberg (**Alberg**). The matter was assigned Case No. 98-3-0008. Alberg alleges that amendments to the County Plan relating to mineral lands designations, adopted on November 24, 1997, fail to comply with the goals and requirements of the GMA.

On February 2, 1998, the Board issued an "Order of Consolidation and Notice of Hearing," consolidating the three cases and assigning Case No. 98-3-0008c to the consolidated case, captioned *Green Valley, et al., v. King County*.

On February 24, 1998, the Board received "Novelty Neighbors' Motion to Intervene."

On February 27, 1998, the Board received "Motion for Intervention by Northshore Youth Soccer Association."

On March 5, 1998, the Board conducted a prehearing conference in this consolidated matter.

On March 16, 1998, the Board issued an "Order on Motions to Intervene and Prehearing Order" (the **Prehearing Order** or **PHO**). The Prehearing Order granted intervention status to Northshore Youth Soccer Association (**NYSA**), Novelty Neighbors and the City of Woodinville (**Woodinville** or the **City**), and listed seventeen legal issues.

On March 23, 1998, the Board received "Albergs' Motion & Legal Memorandum on Legal Issue No. 3" (**Albergs' Motion on Legal Issue No. 3**).

On March 30, 1998, the Board received "King County's Response to Albergs' Motion & Memorandum on Legal Issue No. 3" and "Novelty Neighbors' Response and Cross-Motion to Albergs' Motion for Summary Disposition" (**Novelty Neighbors' Cross-Motion**).

On April 3, 1998, the Board issued an "Order Amending Legal Issue No. 9 and Setting Schedule for Oral Argument on Dispositive Motions."

On April 6, 1998, the Board received "Albergs' Reply Brief to King County & Novelty

Neighbors.”

On April 10, 1998, the Board conducted a hearing on Albergs’ Motion on Legal Issue No. 3 and Novelty Neighbors’ Cross-Motion.

On April 17, 1998, the Board issued an “Order on Albergs’ Motion on Legal Issue No. 3 and Novelty Neighbors’ Cross-Motion on Legal Issue Nos. 1, 2 and 3” (**Order on Alberg’s Motion**). On this same date, the Board issued an “Order on Motions to Supplement.”

On April 23, 1998, the Board issued an “Order Granting Pro Parks Motion to Intervene and Setting Schedule for Oral Argument.”

On May 4, 1998, the Board received “Opening Brief of Petitioners Hollywood Hill Association, Robert E. Tidball (d/b/a/ T & M Berry Farm), Preserve Land for Agriculture Now, Puget Sound Farm Trust, and Jun and Shelley Akutsu” (**HH PHB**). On this same date, the Board received “Upper Green Valley Preservation Society’s Prehearing Brief” (**UGVPS PHB**).

Also on May 4, 1998, the Board received “Albergs’ Motion for Continuance / Albergs’ Brief on Legal Issue No. 2.”

On May 11, 1998, the Board received “Woodinville Fire & Life Safety District’s Motion to Intervene or in the Alternative to Appear as Amicus” (the **WFLSD Motion to Intervene**).

On May 12, 1998, the Board issued an “Order on Alberg Motion for Continuance and Order on Woodinville Fire & Life Safety Motion for Intervention” which partially granted the motion for continuance and granted intervention to WFLSD.

On May 14, 1998, the Board received “Petitioner Upper Green Valley Preservation Society’s Motion to Reconsider Order on Woodinville Fire & Life Safety District’s Motion to Intervene” (the **UGVPS Motion re: WFLSD**). The UGVPS Motion re: WFLSD requested that the Board reconsider its Order granting intervention to the WFLSD or, in the alternative, that the Board reconsider its denial of UGVPS’ Motion to Supplement the record with two documents.

On May 18, 1998, the Board issued an “Order on UGVPS Motion Re: WFLSD” which denied the motion to reconsider WFLSD’s intervention and amended the Order on Motions to Supplement by admitting two exhibits that had previously been denied.

On May 21, 1998, the Board received “Albergs’ Supplemental Brief on Legal Issue No. 2.”

On May 28, 1998, the Board received “Intervenor City of Woodinville's Prehearing Brief”;

“Woodinville Fire & Life Safety District's Prehearing Brief”; “Pro Parks' and Little League Divisions' Prehearing Brief”; “Response Brief of Northshore Youth Soccer Association”; “Novelty Neighbors' Response to Albergs' Prehearing Brief and Supplemental Prehearing Brief”; “Respondent King County’s Prehearing Brief” (**County PHB**); and “King County's Brief on Legal Issue No. 2 (re. Alberg Petition).”

On June 11, 1998, the Board received “Upper Green Valley Preservation Society’s Reply Brief.” On this same date, the Board received “Reply Brief of Petitioners Hollywood Hill Association, Robert E. Tidball (d/b/a T & M Berry Farm), Preserve Land for Agriculture Now, Puget Sound Farm Trust, and Jun and Shelley Akutsu.”

The Board held the hearing on the merits on June 15, 1998, in Room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. Board members Edward G. McGuire, Chris Smith Towne, and Joseph W. Tovar, presiding officer, participated. Also present were the Board’s law clerk, Andrew Lane, and the Board’s legal extern, Paul Lipson. Alberg was represented by Gregory McElroy; Novelty Neighbors was represented by Jane Kiker and the County was represented, as to the Alberg issue, by Darren Carnell. Hollywood Hill was represented by Peter Eglick; UGVPS was represented by Patricia Paterson and Judy Taylor, *pro se*. Representing NYSA was John Keegan; representing Pro Parks was Peter Sorg, and representing the County, as to the agricultural lands issues, was Kevin Wright. Also present was Brian K. Snure for WFLSD. No oral testimony was heard. Court reporting services were provided by Cynthia LaRose of Robert Lewis & Associates, Tacoma. At the beginning of argument on the agricultural lands issues, Board member Towne disclosed a potential conflict. Mr. Tovar stated that any party wishing to file a motion to disqualify Ms. Towne from participation in this portion of the case must do so by 4:00 p.m. on June 19, 1998; no motions to disqualify were filed before the deadline. During the hearing, NYSA made a motion to strike the Paterson Declaration. The presiding officer stated that the Board would rule on motions to strike at a later time.

On June 16, 1998, the Board received from Hollywood Hill a letter commenting on citations to the record made by counsel for Pro Parks immediately after the close of the hearing, and responding with a citation to another exhibit in the record. On this same date, the Board received from Novelty Neighbors a letter providing citations to the King County Code concerning public participation.

On June 17, 1998, the Board received from counsel for Alberg a letter responding to the June 16, 1998 letter from Novelty Neighbors.

On June 18, 1998, the Board received from counsel for Novelty Neighbors a letter responding to the June 17, 1998 letter from Alberg. On this same date, the Board received a letter from counsel for Pro Parks, responding to the June 16, 1998 letter from Hollywood Hill.

On June 19, 1998, the Board received from counsel for Hollywood Hill a letter responding to the June 18, 1998 letter from counsel for Pro Parks.

II. FINDINGS OF FACT

1. The Comprehensive Plan's mineral resource map contains notations, for informational purposes, of sites with legal, non-conforming mineral use (**LNC**) status with operating permits. King County Comprehensive Plan, Chapter Six, Natural Resource Lands, Mineral Resources Map, and text on page 108 (Ex. A to Declaration of Jane S. Kiker, Attached to Novelty Neighbors' Cross-Motion).
2. LNC status is determined by the County's Department of Development and Environmental Services (**DDES**) through the application of County code provisions. *See* Excerpt of Transcript of the Proceedings Before the King County Council, November 24, 1997, Re: Alberg Amendment No. 6, at 38 (Ex. D to Albergs' Motion on Legal Issue No. 3).
3. As part of the County's 1995 amendments to its Plan, the County Council amended the Plan's mineral resource map by adding the LNC notation for Albergs' six parcels. Ex. B to Declaration of Jane S. Kiker, Attached to Novelty Neighbors' Cross-Motion.
4. The County distributed a Public Review Draft of proposed 1997 amendments to the County's Plan to the public on March 31, 1997. KC(Alberg)^[1] Ex. 7 (Index No. 3002). This draft was distributed to libraries, newspapers, and mailed to many citizens. KC(Alberg) Ex. 4 (Index No. 3001); KC(Alberg) Ex. 8 (Index No. 3002). The Public Review Draft contained no proposed action regarding Albergs' six parcels.
5. Subsequent to distribution of the Public Review Draft, a proposed amendment to the mineral resource map was developed and, included with other Executive-proposed amendments, transmitted to the County Council on June 2, 1997. KC(Alberg) Ex. 2 (Index No. 3005).
6. The Plan, at Chapter Thirteen, contains procedures for amending the Plan. This chapter was adopted in the County's 1994 Plan. King County Comprehensive Plan, Chapter Thirteen, Planning and Implementation, at 217-18.
7. The County Council conducted public hearings on the proposed 1997 amendments to the Plan on October 20, 1997 and November 24, 1997. *See* KC Ex. 14 and Excerpt of Transcript of the Proceedings Before the King County Council, November 24, 1997, Re: Alberg Amendment No. 6, (Ex. D to Albergs' Motion on Legal Issue No. 3).

8. Proposed Ordinance No. 97-326 was adopted as Ordinance No. 12927 on November 24, 1997. This Ordinance amended the County's Plan to permit, in certain circumstances, active recreational facilities in Agricultural Production Districts (**APDs**). Attachment A to Ordinance No. 12927, at 23, HH Ex. 3 (Index No. 1001). This Ordinance also amended the Mineral Resource Map of the Plan by deleting the LNC notation from the Albergs' six parcels. Attachment A to Ordinance No. 12927, at 26, Ex. C to Alberg PFR.

9. Proposed Ordinance No. 97-492 was adopted as Ordinance No. 12930 on November 24, 1997. This Ordinance amended the County Code to implement the agricultural lands amendments to the Plan adopted in Ordinance No. 12927, HH Ex. 4 (Index No. 2001).

III. STANDARD OF REVIEW

The Board "shall find compliance unless it determines that [the County's] action is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). For the Board to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

IV. ORDER ON MOTIONS

The NYSA Motion to Strike the Paterson Declaration is **denied**.

In its response brief, NYSA moved to strike the following references in the UGVPS PHB:

"King County Construction and Facilities Management Department Documents, Section 3.03(C)(4)," UGVPS PHB, at 36; certain information from "Tim Gustine of the King County Construction and Facilities Management Department," UGVPS PHB, at 36; and "Lyle Stoltman with the King County Conservation District," UGVPS PHB, at 37. NYSA PHB, at 19.

The NYSA Motion to Strike certain references in the UGVPS PHB is **granted**.

Alberg requests that the Board take official notice of an "almost adopted" public participation ordinance." Albergs' Supplemental Brief on Legal Issue No. 2, at 1. the Board construes this request to be a motion to take official notice of proposed Ordinance No. 13147. This ordinance was not adopted at the time the County took the challenged action and has no relevance to these proceedings. Alberg's Motion that the Board take official notice of Ordinance No. 13147 is **denied**.

V. DISCUSSION AND CONCLUSIONS

The Board will discuss the Legal Issues in the following order:

- A. Public Participation – (Legal Issues 2, 7, and 17)
 - 1. Mineral Resource Amendment – (Legal Issue 2)
 - 2. Agricultural Lands Amendments – (Legal Issues 7, and 17)
- B. Issues Over Which Board Has No Jurisdiction – (Legal Issues 12 and 16)
- C. Conservation of Agricultural Lands – (Legal Issues 8, 9, and 15)
- D. Planning Goals – (Legal Issue 6)
- E. Consistency – (Legal Issues 9, 10, and 11)
 - 1. With CPPs – (Legal Issue 10)
 - 2. Internal Consistency – (Legal Issues 9 and 11)
- F. Open Space – (Legal Issue 13)
- G. Critical Areas – (Legal Issue 14)
- H. SEPA – (Legal Issue 4)
- I. Invalidity – (Legal Issue 5)

A. Public Participation (Legal Issues 2, 7, and 17)

The GMA requires jurisdictions to “[e]ncourage the involvement of citizens in the planning process.” RCW 36.70A.020(11). The County must have “a public participation program identifying procedures whereby proposed amendments or revisions of the comprehensive plan are considered by the governing body of the county.” RCW 36.70A.130(2)(a). This public participation program must provide for “early and continuous public participation.” RCW 36.70A.140. “Errors in exact compliance with the established [public participation] program shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.” *Id.* The County’s notice must be “reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, and organizations of proposed amendments to comprehensive plans and development regulation [*sic*].” RCW 36.70A.035(1). Although the County is required to consider public input it receives regarding its proposed amendments, it is not required to “agree with” or “obey” public input. *Twin Falls v. Snohomish County*, CPSGPHB Case No. 93-3-0003, Final Decision and Order (Sept. 7, 1993), at 77.

1. Mineral Resource Amendment (Legal Issue 2)^[2]

The Plan's mineral resource map shows LNC sites with active permits. Finding of Fact 1. Those sites are shown on the mineral resource map for informational purposes. *Id.* To receive LNC status, property owners must demonstrate to DDES, pursuant to County code, that their property qualifies for LNC status. Finding of Fact 2. Consequently, the presence or absence of a parcel's LNC status on the mineral resource map does not affect the individual property interests of the owner of that parcel. As part of the County's 1995 amendments to its Plan, the County Council amended the mineral resource map by adding LNC notation for the Albergs' six parcels. Finding of Fact 3. As part of the County's 1997 amendments to its Plan, the County Council adopted Amendment No. 6, which amended the mineral resource map by removing the LNC notation from the Albergs' parcels. Finding of Fact 8. It is this amendment challenged by Alberg.

Alberg raised three Legal Issues. *See* Order on Motions to Intervene and Prehearing Order (Mar. 16, 1998). Two issues were previously dismissed; only one issue remains for Board resolution. *See* Order on Albergs' Motion on Legal Issue No. 3 & Novelty Neighbors' Cross-Motion on Legal Issue Nos. 1, 2, and 3.

The 1997 amendment process began early in 1997. The King County Executive produced a Public Review Draft of proposed 1997 amendments to the Plan and distributed it to the public on March 31, 1997. KC(Alberg) Ex. 7 (Index No. 3002). This draft was distributed to libraries, newspapers, and mailed to many citizens. *See, e.g.,* KC(Alberg) Ex. 4 (Index No. 3001); KC (Alberg) Ex. 8 (Index No. 3002). There was no mineral resource map amendment in this Public Review Draft. However, as a result of public comment, the Executive developed an amendment to remove the LNC notation for the Albergs' parcels from the mineral resource map. KC(Alberg) Ex. 2 (Index No. 3005). This proposed amendment, along with other Executive proposed amendments, was transmitted to the County Council on June 2, 1997. *Id.*

The County provided numerous opportunities for public participation subsequent to that transmittal. Alberg's representative sent a letter opposing the proposed amendment to the County Council's Utilities and Natural Resources Committee. *See* Ex. A to Alberg's PFR (June 26, 1997 letter from Gregory S. McElroy). Alberg, or a representative, also testified before the Council on October 20 and November 24, 1997. KC(Alberg) Ex. 9; Ex. B to Albergs' Motion & Legal Memorandum on Legal Issue No. 3. Alberg does not dispute the County's statement that "[b]eginning with dissemination of the Public Review Draft . . . , proposals and alternatives were distributed to the media and to local libraries, were posted on the County's internet WEB site, and were mailed to an extensive list of interested citizens." King County's Brief on Legal Issue No. 2 (Regarding the Alberg Petition), at 7. Nor does Alberg dispute that the County "gave specific notice to [Alberg]." *Id.*, at 2. Just as other citizens participated in the public process initiated by the County to encourage the County to consider amending the mineral resource map,

Alberg participated to persuade the County to refrain from amending the map. Alberg's statement that the development of the map amendments "was distinctly *ad hoc* and smacked of pure politics" is unfounded. *See* Albergs' Supplemental Brief on Legal Issue No. 2, at 1-3. Alberg has not shown that the County violated the requirements of RCW 36.70A.035 or .140.

Alberg also asserts that, at the time it adopted the amendments, the County did not have a public participation program in place that complied with the requirements of RCW 36.70A.130. However, the record contradicts this assertion. Chapter 13 of the Plan, "Planning and Implementation," includes a section entitled "Amending the Comprehensive Plan." Alberg did not respond to Intervenor Novelty Neighbors' identification of this Plan provision. *See* Novelty Neighbors' Response to Albergs' Prehearing Brief and Supplemental Prehearing Brief, at 3. Alberg has not shown that the County violated RCW 36.70A.130.

Conclusion

The Board concludes that Alberg has failed to meet its burden to show that the County's public participation process was clearly erroneous in violation of RCW 36.70A.035, .130, and .140; Alberg has not left the Board with the firm and definite conviction that a mistake has been made.

2. Agricultural Lands Amendments (Legal Issues 7 and 17) ^[3]

Petitioners Hollywood Hill and UGVPS allege that the County has failed to comply with the Act's public participation requirements, RCW 36.70A.035, .130, .020(11) and .140, when it amended its Plan and development regulations.

Petitioners argue that the County provided erroneous and misleading information to the public. The County's notice stated in pertinent part:

RL-308: This policy limits active recreational facilities in or near APD. The amendment allows active recreational uses within an APD if:

- the land was purchased using recreation funds prior to designation of the APD; or
- there is a transfer of active recreation uses from those lands purchased with recreation funds to other lands within the same APD.

This amendment would result in a permanent deed restriction on properties from which the active recreation use is transferred. The effect of this amendment is limited to three parcels of land purchased for public recreation prior to designation of the APDs. The most immediate effect will be in the Sammamish Valley APD where athletic fields are to be placed on lands abutting Woodinville and the Urban Growth Area boundary of King County to act as a buffer for other agricultural lands within the APD.

HH Ex. 34 (Index No. 3006), at 3-4. The notice also informed citizens of proposed amendments to the County's development regulations to implement policy amendments to RL-308 and other policies. *Id.*, at 7. While Petitioners questioned the accuracy of some information in staff reports (e.g., soccer fields on or near Horsehead Bend property), *see* UGVPS PHB, at 16-17, the public had the opportunity to present evidence to the Council contradicting the staff reports. *See* HH PHB, at 28-31. There was also a question of whether property purchased with Forward Thrust and IAC funds must be used solely for active recreation. Again, the public had the opportunity to present arguments to the Council. The County's notice, regarding the agricultural lands amendments, contains no erroneous or misleading information.

Petitioner UGVPS also asserts that the GMA's public participation provisions required the County to disclose its plans to develop an active recreation facility on the Kaplan property "prior to purchasing the Kaplan property and before irreversible steps were taken." UGVPS PHB, at 15. Although the purchase of this property was linked to subsequent Plan and development regulation amendments, the purchase itself is not a GMA action and thus was not subject to RCW 36.70A.140.^[4] Just as the Board lacks authority to consider and rule on the GMA propriety of the process or rationale for the County's purchasing decision, so, too, does the Board lack authority to assign any weight to the historical factors that ostensibly led the County to adopt the agricultural lands amendments that it did. It is not the Board's role to evaluate the advisability of different policy choices that a local government may make. The Board's sole statutory duty, when a petition for review is filed, is to review and determine whether the local choice it has made complies with the goals and requirements of the GMA. RCW 36.70A.280. In the instant case, the Board's duty is to review the agricultural lands amendments for compliance with the Act, regardless of whether the County intends to apply the amendments to the Kaplan property, privately owned property, or no site at all.

Petitioners argue that the County failed to provide early and continuous public participation in amending the Plan and development regulations. The record shows that properties for proposed active recreational facilities were identified within the APD as early as 1995. HH Ex. 12 (Index No. 5007); HH Ex. 13 (Index No. 4014). The record also shows that, as early as 1995, the County was conscious of a potential problem in utilizing APD lands for active recreation facilities that might require amendment of Plan policies and development regulations. *Id.* Although the County's pursuit of this project had GMA planning implications, there was no specific proposal to amend the GMA Plan and development regulations until the County's 1997 amendment cycle. The County provided public notice of that proposal in April 1997. KC Ex. 7 (Index No. 3002). The public had nearly seven months to comment on the proposed GMA action. The Act requires early and continuous public participation on proposed amendments of GMA plans and development regulations; the Act does not require public participation prior to the development and consideration of a proposal to amend the plan or development regulations. The County did not fail to provide early and continuous public participation regarding the

agricultural lands amendments.

Petitioners also argue that the County failed to comply with its own Plan amendment policy, I-202.^[5] This policy provides that each proposed Plan amendment should include seven “elements.” HH Ex. 33 (Index No. 7316); *see also*, Plan, at 217. The Board interprets I-202 to direct that a discussion of the elements accompany the proposed amendments. Petitioners’ arguments are that the County either failed to address an element or provided insufficient discussion of an element. Although policy I-202 is a component of the County’s effort to comply with the GMA public participation requirements, the Act does not explicitly require proposed amendments to include any specific elements. The language of policy I-202 does not mandate that the County include the enumerated elements. Policy I-202 provides that the County *should* include the seven elements. “Should” in a County Plan policy “provides non-compulsory guidance, and establishes that the County has some discretion in making decisions.” Plan, at 14. Thus, policy I-202 does not create a GMA duty compelling the County to rigorously analyze each element for every proposed Plan amendment.

Conclusion

The Board concludes that the County did not violate RCW 36.70A.020(11), .035, .130, and .140, the public participation requirements of the GMA, when it adopted the agricultural lands-related amendments.

B. Issues Over Which Board Has No Jurisdiction (Legal Issues 12 and 16)^[6]

The Board’s jurisdiction is limited to determining whether:

a state agency, county, or city planning under [chapter 36.70A RCW] is not in compliance with the requirements of [chapter 36.70A RCW], 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

RCW 36.70A.280(1). Chapter 89.08 RCW is not among the RCW chapters listed in RCW 36.70A.280(1). Therefore, the Board does not have jurisdiction to determine compliance with RCW 89.08.010. In addition, the Board has no jurisdiction to determine the County’s ability to deed-restrict itself.

Conclusion

The Board concludes that it does not have jurisdiction to determine compliance with RCW 89.08.010 and to determine the County’s ability to deed-restrict itself.

C. Conservation of Agricultural Lands (Legal Issues 8, 9, and 15)^[7]

The County amended its Plan and development regulations to allow active recreation, under certain circumstances, in the County's APDs, the County's designation for agricultural lands under the GMA.^[8] Petitioners allege that these amendments violate the GMA requirements to conserve agricultural lands.

Several GMA provisions combine to explain the GMA requirements to conserve agricultural lands. Among the GMA goals that must be considered in adopting and amending comprehensive plans and development regulations is the natural resource industries goal, which provides:

Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

RCW 36.70A.020(8). The goal's requirement to encourage the conservation of agricultural lands is in the context of maintaining and enhancing the agricultural *industry*. The GMA defines agricultural lands as:

land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

RCW 36.70A.030(2) (emphasis added). Counties and cities are required to designate “[a]gricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products.” RCW 36.70A.170(1)(a). The Act clarifies this requirement by defining “long-term commercial significance” as:

includ[ing] the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

RCW 36.70A.030(10). Once designation has occurred, counties and cities are required to adopt development regulations “to assure the conservation of” these agricultural lands. RCW 36.70A.060(1). Read together, .020(8), .030(2), .030(10), .170, and .060 reveal the GMA's

design – to maintain and enhance the agricultural industry by assuring the conservation of agricultural lands of long-term commercial significance, and preventing interference with agricultural activities by nearby non-agricultural land uses.

Recreational facilities, as contemplated in the County’s Plan and regulations, are “public facilities” under the Act. RCW 36.70A.030(12). The GMA provides a planning goal to guide counties and cities in the development of plans and regulations: “[e]ncourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.” RCW 36.70A.020(9). The Act also requires counties and cities to identify lands useful for public purposes and open space corridors, both of which include lands useful for recreational facilities. *See* RCW 36.70A.150^[9] and RCW 36.70A.160^[10].

The Board notes that the County has designated agricultural lands (APD) pursuant to the Act. Neither the designation process nor whether all or some of the original APD designations remain appropriate are at issue here. Rather, the question before the Board is whether allowing active recreational uses on those lands designated agricultural by King County complies with the GMA’s requirement to conserve agricultural lands and to maintain and enhance the County’s agricultural industry. Although the use regulations for the activities allowed by the challenged amendments may in fact function to conserve the soil for future agricultural use, the land will be unavailable for agricultural uses during the time that active recreational facilities are extant.^[11]

Intervenor Pro Parks asserts that recreational uses are no less important than conservation of agricultural lands. *See* Pro Parks’ and Little League Divisions’ PHB, at 18-19. This may or may not be true as a general proposition, but for purposes of the Board’s GMA analysis, such a supposition mischaracterizes the controversy before the Board. Petitioners do not attack the County’s determination that there is a need for active recreation fields, nor its authority to include in its GMA plans and regulations a strategy to address such a need. Nor does the Board question this need or authority. The controversy is whether the County has the discretion to meet its need for active recreation on lands that the County itself has designated as agricultural resource land. As detailed below, the Board rejects Pro Parks’ argument.

Pro Parks argues that there is no hierarchy of goals under the GMA and that it is within the County’s discretion to weigh goals to achieve a specific policy outcome, such as the decision to allow active recreation use of designated agricultural resource lands. Pro Parks’ and Little League Divisions’ PHB, at 19, 23. The GMA planning goals at issue here are Goal 9, which addresses recreational uses, and Goal 8, which addresses conservation of the County’s resource-based industries, such as agriculture. It is true that the GMA does not list the goals in any rank order (*see* RCW 36.70A.020 (preamble)); it is also true that there is no conflict between Goals 8 and 9 in the abstract, or where they are applied to different parcels of land. The conflict arises

when they are both invoked as the goal rationale for a specific land use on a single parcel. In such an instance, it is notable that, by their very choice of words, Goals 8 and 9 do not convey an equal level of guidance. Comparing the active verbs, we find that Goal 9 conveys that local governments are to *encourage* the development of recreational opportunities while Goal 8 conveys that local governments are to *maintain* and *enhance* resource-based industries. It is plain that less directive and specific language, such as *encourage*, must yield to more specific and directive language, such as *maintain* and *enhance*.

However, the outcome of this legal issue is not determined solely by this analysis of the verbs used in Goals 8 and 9. Rather, as referenced *supra*, this question is conclusively resolved by looking to the Act's requirements set forth at RCW 36.70A.060 and .170, which are, in turn, illuminated by Goal 8. **The Board holds that RCW 36.70A.020(8), .060, and .170, when read together, create an agricultural conservation imperative that imposes an affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry.**

Supporters of the County's authorization of active recreation uses on designated agricultural lands argue that RCW 36.70A.150 and .160 create a competing and equally valid duty. Upon examination of the specific text of these sections, the Board finds that the only duty they impose upon local governments is to "identify lands useful for public purposes, such as . . . recreation" (.150) and to "identify open space corridors . . . [including] lands useful for recreation" (.160). The verb "identify" in the context of these sections conveys an intent to inventory or take stock of lands that may be useful for recreational purposes. Neither .150 nor .160 create a duty to *do* anything with the inventory, such as regulate, protect, conserve, or provide parks facilities.^[12] Significantly, there is no definition of such "recreational lands" that would explicitly demarcate these lands, in contrast to the GMA's explicit definition of "agricultural lands." Unlike recreational lands, agricultural lands must be designated and conserved. Unlike agricultural lands, active recreational uses, such as sports fields, are *not* dependent upon locational factors such as soil type, proximity to urban growth, or long term commercial significance. For recreation there is no statutory duty to adopt and apply regulations to provide and conserve active recreation sites and facilities. The location-specific and directive duty of .020(8), .060 and .170, to designate and conserve agricultural lands, clearly "trumps" the non-directive guidance to "encourage . . . the development of recreational opportunities"; its non-site specific guidance to "develop parks", per .020(9); and the open space inventory requirements of .150 and .160.

Both the County and Intervenor Pro Parks argue that RCW 36.70A.177 provides the authorization for local government to allow active recreation uses within designated agricultural resource lands. *See* County PHB, at 28-30, and Pro Parks PHB, at 19-27. The Board has given careful consideration to these arguments and concluded that both the County and Intervenor

misread the law.

The Board's analysis of .177 begins with the premise that the meaning of any provision of the Act must be read in the context of the Act as a whole. *ITT Rayonier v. Dalman*, 122 Wn.2d 801, 807 (1993). As described above, the GMA's agricultural conservation imperative imposes a duty upon local governments to designate and conserve the agricultural industry. With this context in mind, the Board gleans the meaning of section .177 by examining the specific language of the three sentences of subsection (1).

Sentence #1 A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. This sentence declares that the subject of .177 is lands that have already been designated by the local government as agricultural resource lands. This definitely applies to the instant case. The GMA uses the term "innovative techniques" elsewhere (*see* RCW 36.70A.090). Although not defined by the Act, both a dictionary^[13] and general understanding of the meaning of these two words conveys "a new and different way to achieve a given result." In this context, the given result is the GMA's agricultural conservation imperative. What the first sentence of .177(1) conveys is that this section authorizes new and creative ways or methods to achieve or serve this purpose.

Sentence #2 The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. The Board rejects the argument that the use of the term "should" indicates that, if an innovative technique is employed, conservation of agricultural lands and maintenance and enhancement of the agricultural economy are merely non-binding advice. Unlike the County's plan, where the term "should" conveys a preference (Plan, at 14) such is not the case with the words of the statute. Under the GMA, the difference in meaning between "shall" and "should" is one of degree rather than of kind. *See Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004 (1993), at 14. Rather than license to ignore the Act's agricultural conservation imperative, the use of the term "should" here conveys that the *purpose* of such innovative techniques is to serve it, or at the very least, not be detrimental to it.

Sentence #3 A county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes. Again, the use of the word "should" here must be construed to have at least some degree of directive meaning. More importantly, the limitation of nonagricultural uses to lands "with poor soils" or "otherwise not suitable for agricultural purposes" is the heart of this sentence. This sentence recognizes that parcels designated as agricultural resource lands may include some areas "with poor soils" or "otherwise not suitable for agricultural purposes." This sentence is advice (however directive) to place non-agricultural improvements or activities (whether they or not they are ancillary to agricultural uses) on the portions of designated lands that are not suitable for agricultural uses. It

is also true to the Act's agricultural conservation imperative, while also allowing for some flexibility in site design, improvement, and even land use.

The list of possible techniques in subsection (2), while not inclusive, is instructive. (2)(b) specifically mentions "cluster[ing] or development on "one portion of the land." This squares with the reading the Board gives above to the third sentence of .177(1).

In summary, while RCW 36.70A.177 does create an opportunity for land use and development techniques that are new and innovative, the Board cannot read those provisions to be interpreted to allow the effective evisceration of agricultural lands conservation on a piecemeal basis. Giving a broad and permissive reading to .177 would condemn the agricultural resource industry in the Central Puget Sound region to a slow and inexorable "death by a thousand cuts." That some of those "cuts" might be for worthy causes, be they active recreation or cancer research facilities, is of no consequence when the agricultural resource is gone. This is particularly ironic in view of the fact that active recreation can clearly be located on the thousands of square miles in the Central Puget Sound region that are not designated resource lands. Furthermore, both experience and common sense indicate that conversion of agricultural resource lands to nonagricultural uses is a one-way ratchet. To suggest that designated agricultural resource lands, once given over to intensive uses demanded by an ever increasing urban population, could ever be "retrieved" is simply not credible.

The Board concludes that allowing flexibility on a site or parcel basis to enable a portion of a parcel not suitable for agricultural purposes to have a non-agricultural use is within the scope of the permissible; however, the County's amendments allow entire parcels to be given over to nonfarm and nonagricultural uses (for example, the entirety of the Kaplan parcel, not a portion of it). Therefore, the Board finds that the Amendments are not consistent with RCW 36.70A.177.

During the time that active recreation would be permitted as the primary use on these designated agricultural lands, no agricultural activities could occur. For example, as argued here, active recreation may supplant agricultural activities for more than 30 years. This is a long-term usurpation of the availability for agricultural use of designated agricultural lands. The fact that the County characterizes its contemplated (renewable) 30-year agreement with NYSA as "interim" does not diminish the significance of the long-term removal of designated agricultural land from availability for agricultural production. Respondent King County's PHB, at 11-12. The County's argument that its plans and regulations will conserve the soils misses the point entirely. The Act requires conservation not just of the soil attributes that make agricultural lands productive and potentially subject to designation, but also of the agricultural use of that land, to the end that the resource-based industry is maintained and enhanced. The County's argument that the active recreation use is "interim" and can be, in effect, evicted at a future date is wholly unpersuasive. By its very terms, all that KCC 21A.08.040.B.1.d.(6) commits the County to do (after first determining that a shortage constituting an emergency exists) is to "initiate a process."

No specific timeline or outcome is mandated by language that simply requires local government to “initiate a process.”

Conclusion

The Board concludes that the County’s land use plans and development regulations which allow parcels of designated agricultural resource lands to be used for active recreation uses and supporting facilities does not assure the conservation of those lands for the maintenance and enhancement of the agricultural industry. The Board is left with the firm and definite conviction that a mistake has been made, and therefore finds that the County’s action adopting the agricultural lands-related amendments was clearly erroneous in violation of RCW 36.70A.060(1), .170, and .177.

D. Planning Goals (Legal Issue 6) [\[14\]](#)

Petitioners allege the County violated GMA planning goals 1 (urban growth), 2 (reduce sprawl), 8 (natural resource industries), 9 (open space and recreation), and 13 (historic preservation). *See* RCW 36.70A.020.

The GMA historic preservation goal encourages the preservation of “lands, sites, and structures, that have historical or archaeological significance.” RCW 36.70A.020(13). Petitioners have not persuaded the Board that this goal is implicated by the County’s amendments. Likewise, Petitioners have not persuaded the Board that active recreational facilities, as contemplated by the County’s amendments, constitute urban growth (goal 1) or sprawl (goal 2). Consequently, the historic preservation, urban growth, and sprawl planning goals are not implicated by the County’s amendments.

The open space and recreation goal directs the County to encourage “the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.” RCW 36.70A.020(9). Petitioners have failed to persuade the Board that the County’s amendments fail to satisfy the requirements of this planning goal.

The natural resource industries goal guides the County to “[m]aintain and enhance natural resource-based industries,” such as the agricultural industry, and encourages the conservation of productive agricultural lands while discouraging incompatible uses. RCW 36.70A.020(8). As discussed above, active recreational facilities make intensive use of designated agricultural land for non-agricultural purposes such that those lands cannot have as their primary use agricultural resource industry activities. Consequently, the agricultural lands amendments are not guided by the natural resource industries planning goal, because they do not maintain and enhance the agricultural industry, they discourage the conservation of agricultural lands, and they encourage incompatible uses.

Conclusion

The Board concludes that the County has not been guided by the natural resource industries planning goal, RCW 36.70A.020(8) in adopting the agricultural lands-related amendments, and finds that the County’s action was clearly erroneous.

E. Consistency

(Legal Issues 9, 10, and 11)

1. With CPPs (Legal Issue 10) ^[15]

Because the Board is remanding the agricultural lands amendments, it is unnecessary for the Board to review the amendments for consistency with the CPPs.

2. Internal Consistency (Legal Issues 9 and 11) ^[16]

Because the Board is remanding the agricultural lands amendments, it is unnecessary for the Board to review the amendments for consistency with the Plan and development regulations.

Conclusion

The Board concludes that, since it is remanding the agricultural lands amendments, it is unnecessary for the Board to review the amendments for compliance with RCW 36.70A.210 and .070.

F. Open Space (Legal Issue 13) ^[17]

Petitioners allege the County’s amendments violate RCW 36.70A.160, which requires the County to “identify open space corridors within and between urban growth areas.” However, the lands potentially affected by the County’s amendments have not been identified as corridors pursuant to RCW 36.70A.160. This provision has no application to the challenged amendments. The County has not violated .160.

Conclusion

The Board concludes that the County has not violated RCW 36.70A.160.

G. Critical Areas (Legal Issue 14) ^[18]

Petitioner UGVPS alleges the County violated WAC 365-190-080(5) (Minimum Guidelines - Critical Areas), WAC 365-195-410 (Procedural Criteria - Critical Areas) and RCW 36.70A.060 (2). Neither the WAC guidelines nor the Procedural Criteria are binding on local governments. The Board has considered the cited criteria, as required by RCW 36.70A.320(3). *Twin Falls v. Snohomish County*, CPSGPHB Case No. 93-3-0003, Final Decision and Order (Sept. 7, 1993), at

20-21. RCW 36.70A.060(2) requires the County to adopt development regulations that protect designated critical areas. Petitioner does not argue that the County has failed to adopt critical areas development regulations. The County's amendments do not alter the critical areas development regulations. Whatever development is allowed by the challenged amendments is subject to the County's critical areas development regulations. The County's amendments per se do not violate RCW 36.70A.060(2).

Conclusion

The Board concludes that the County has not violated WAC 365-190-080(5), WAC 365-195-410, or RCW 36.70A.060(2).

H. SEPA (Legal Issue 4) [\[19\]](#)

Because the Board is remanding the agricultural lands amendments, it is unnecessary for the Board to review the amendments for compliance with SEPA.

Conclusion

The Board concludes that, since it is remanding the agricultural lands amendments, it is unnecessary for the Board to review the amendments for compliance with Chapter 43.21C RCW.

I. Invalidity (Legal Issue 5) [\[20\]](#)

The Board may determine challenged amendments invalid if the Board concludes that their continued validity would substantially interfere with the fulfillment of the goals of the Act. RCW 36.70A.302(1)(b). The Board finds that permitting active recreational facilities on designated agricultural lands makes intensive use of such designated agricultural land for non-agricultural purposes. The Board finds that allowing active recreational uses on designated agricultural lands fails to assure the conservation of designated agricultural lands for the maintenance and enhancement of the agricultural industry. The Board concludes that King County's agricultural lands amendments, as contained in Ordinance No. 12927 and Ordinance No. 12930, are not guided by, and substantially interfere with, the natural resource industries planning goal (RCW 36.70A.020(8)), because they do not maintain and enhance the agricultural industry, they discourage the conservation of agricultural lands, and they encourage incompatible uses. Therefore the Board determines that the County's agricultural lands amendments, as contained in Ordinances 12927 and 12930, are **invalid**.

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 **orders**:

1. The challenged agricultural lands amendments to King County's Comprehensive Plan (Ordinance No. 12927), and development regulations (Ordinance No. 12930), which allow active recreation on designated agricultural lands, **do not comply** with the requirements of RCW 36.70A.020(8), .060, .170 and .177, as set forth in this FDO, and are determined to be **invalid** because they substantially interfere with fulfillment of Goal 8..
2. The County's Plan and development regulations are **remanded** and the County is directed to remove the substantial interference with RCW 36.70A.020(8) and bring its Plan and development regulations into compliance with the Act by **repealing** the challenged agricultural land amendments adopted by the County in Ordinance Nos. 12927 and 12930.
3. The Board directs the County to comply with the requirements of the GMA, as set forth in this FDO, and noted in items 1 and 2 of this Order, by no later than **December 1, 1998**. The County is instructed to submit to the Board four copies of its "Statement of Actions Taken to Comply with the Board's Order," with a copy to all parties to the agricultural resource lands portion of this consolidated case, by no later than **4:00 p.m. on Tuesday, December 8, 1998**. The Board will promptly schedule a compliance hearing.

So ORDERED this 29th day of July, 1998.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

(Board Member McGuire filed a dissenting opinion as to IV.C.
(Conservation of Agricultural Lands) and IV.D. (Planning Goals))

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

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

Board Member McGuire’s Dissent as to Parts IV.C. (Conservation of Agricultural Lands) and IV.D. (Planning Goals)

I respectfully dissent from the conclusions reached by my colleagues in their analysis of the Act’s requirements for agricultural lands in this case. I agree that prior to enactment of RCW

36.70A.177^[21] in 1997, my colleagues’ analysis of the requirements of RCW 36.70A.020 (8), .060 and .170 is accurate. However, RCW 36.70A.177, by its very terms, offers relief from the strict imperative my colleagues describe.

I agree that the first sentence of .177 authorizes new and creative ways to achieve the GMA’s directive of conserving agricultural land. Agricultural lands are not conserved if they are permanently, irrevocably or irreversibly committed to uses other than agriculture. The County’s innovative zoning approach is to include active recreation (a low intensity use) as a permitted use on designated agricultural land, but allow it only in very limited circumstances.^[22] In those limited circumstances where (1) property was purchased with money earmarked for recreation and (2) the purchase occurred before APD designation, active recreation is permitted within the APD designated property. However, the zoning code contains six more limiting criteria. These criteria include: regulation of site improvements; prohibition of uses that impair the soil; protection of soil horizons, and declarations that active recreation is an interim use subordinate to agriculture use on the County’s prime agricultural soils. The code also contains a “recapture” provision. These criteria recognize and provide for the conservation of agricultural lands and soils. They also anticipate the reversion of APD lands used for active recreation lands to agricultural production. These provisions are preferable to removing an agricultural designation and losing any hope of it returning to agricultural production. These zoning code amendments do not permanently, irrevocably or irreversibly commit the County’s designated agricultural lands to active recreation. I find the County’s new and creative zoning approach consistent with the GMA’s directive of conserving agricultural lands.

Regarding the second sentence of .177; I find that since the County’s amendments apply only to certain, limited APD lands and they strictly limit soil-impacting activities, the County has not *ignored* its duty to conserve agricultural land, but has found a creative way to preserve it while accomplishing multiple GMA planning goals.

The third sentence of .177 clearly urges the placement of *nonagricultural uses* and placement of improvements and activities on designated agricultural lands that are the least suited to agriculture. However, I disagree with my colleagues that the focus of .177 is aimed at a portion of a parcel. I do not find the list of zoning techniques in .177(2) to exclude the approach taken by the County. The agricultural land designations are Countywide. There inevitably will be variation within the APD designations, some designated lands will be better or worse than others. Variation will occur within the County's inventory of APD designations. The County's approach recognizes this. Thus, I find that allowing nonagricultural uses on designated agricultural lands is not limited to portions of parcels or ownerships; it applies to the County's entire inventory of designated agricultural lands.

I **dissent** from the conclusion drawn by my colleagues, that Ordinances No. 12927 and 12930, as they relate to agricultural land amendments, do not comply with the requirements of the GMA. I find them to **comply** with the requirements of the RCW 36.70A.020(8), .060, .170 and .177. Further, I do not find that the County's amendments substantially interfere with RCW 36.70A.020(8). Therefore, I do **not** find them **invalid**.

[1] "KC(Alberg)" refers to exhibits attached to King County's Brief on Legal Issue No. 2 (Regarding the Alberg Petition).

[2] Legal Issue 2 provides:

Did the Mineral Plan Amendment No. 6 fail to comply with the requirements of RCW 36.70A.035, RCW 36.70A.130 and RCW 36.70A.140?

[3] Legal Issue 7 provides:

Did the agricultural Plan and Code Amendments fail to be guided by the goal of RCW 36.70A.020(11) and to comply with the requirements of RCW 36.70A.035, RCW 36.70A.130 and RCW 36.70A.140?

Legal Issue 17 provides:

Did the County fail to comply with Plan policies V-301, V-401, Parks and Open Space Plan PAD-118 and RCW 36.70A.035?

[4] In concluding that the County's purchase action in this case was outside the Act's requirements for GMA public participation, the Board recognizes that local government must undertake many steps, internal communications and activities prior to the development of a proposed amendment to a GMA plan or regulation, at least some of which actions are not GMA actions. The Board has not previously articulated, and does not here articulate, a standard for when such local government steps, communications and activities rise to the status of a "proposed GMA amendment" that would be subject to the requirements of RCW 36.70A.140 or other provisions of the Act.

[5] Plan Policy I-202 provides that all proposed Comprehensive Plan amendments should include the following elements:

a. A detailed statement of what is proposed to be changed and why;

- b. A statement of anticipated impacts of the change, including geographic area affected and issues presented;
- c. A demonstration of why existing Comprehensive Plan guidance should not continue in effect or why existing criteria no longer apply;
- d. A statement of how the amendment complies with the [GMA's] goals and specific requirements;
- e. A statement of how the amendment complies with the Countywide Planning Policies;
- f. A statement of how functional plans and capital improvement programs support the change; and
- g. Public review of the recommended change, necessary implementation (including area zoning if appropriate) and alternatives.

HH Ex. 33 (Index No. 7316); *see also*, Plan, at 217.

[6] Legal Issue 12 provides:

Did the County and do the Amendments fail to comply with the requirements of RCW 89.08.010?

Legal Issue 16 provides:

Is the agricultural Code Amendment “illegal” since the County cannot “deed restrict” its own property?

[7] Legal Issue 8 provides:

Did the agricultural Plan and Code Amendments fail to comply with the requirements of RCW 36.70A.170?

Legal Issue 9 provides:

Did the agricultural Plan and Code Amendments fail to comply with the requirements of RCW 36.70A.040 (3), RCW 36.70A.060(1), RCW 36.70A.070, RCW 36.70A.070(5)(c)(iii-v), and RCW 36.70A.177?

The portions of Legal Issue 9 relating to RCW 36.70A.060 and 177 are addressed in this section of this Order. The remaining provisions of this issue are addressed in the discussion of internal consistency, *infra*, at 20-21.

Legal Issue 15 provides:

Do the agricultural Plan Amendments fail to comply with WAC 365-190-020 and the requirements of RCW 36.70A.040(3)?

[8] **RL-308** (new language underlined, deleted language with strike-through; text preceding and following RL-308 omitted)

When new parks or trails are planned for areas within or adjacent to Agricultural Production Districts, King County should work with farmers to minimize impacts to farmland and agricultural operations. Active recreational facilities should shall not be located within Agricultural Production Districts, except under the following circumstances:

A. the property within the APD has been purchased with funds that were earmarked for recreation, and the purchase pre-dates designation of the APD, or

B. there is a transfer of uses between a property purchased consistent with subsection A and other properties within the same APD.

Under the limited circumstances in which active recreational facilities are allowed in the APD, activities and site improvements shall be limited in order to allow the future use of the property for agricultural purposes when the recreational use is abandoned. ~~When new parks or trails are planned for areas within or adjacent to Agricultural Production Districts, King County should work with farmers to minimize impacts to farmland and agricultural operations.~~

KCC 21A.08.040.B.1 (new language underlined)

d. Facilities in the F, A, or M zones, or in a designated Rural Farm or Forest District, shall be limited to trails and trailheads and active recreation facilities, including related accessory uses such as parking and sanitary facilities. Active recreation facilities shall be limited to those properties within the Agricultural Production District (APD) that are acquired prior to designation of the APD, using voter-approved recreation funds, state funds mandated for recreation, or King County Board of Recreation funds. Active recreation uses allowed on parcels as noted above my [sic] be transferred to other parcels within the same APD. However, active recreation from lands outside of the APD shall not be relocated to any parcel within an APD. Where such facilities are permitted within an APD, the following deed restrictions will be applied:

- (1) Active recreation uses shall be designed in a manner that visually screens adjacent agricultural uses from park users and that restricts physical trespass onto adjacent Agricultural Production District properties;
- (2) Buildings associated with recreational uses shall be limited to restroom facilities, picnic shelters and storage/maintenance facilities for equipment used on-site;
- (3) No use that permanently compacts, removes, sterilizes, pollutes or otherwise impairs the future use of the soil for raising agricultural crops shall be allowed;
- (4) Any soil surfaces temporarily disturbed through construction activities shall be restored in a manner consistent with agricultural uses, including restoration of the original soil horizon sequence, as soon as practical following such disruptions;
- (5) Access to recreational uses shall be designed to minimize the impact on the surrounding Agricultural Production District and should be limited to direct access along District boundaries whenever feasible; and
- (6) Although the recreational use of Agricultural Production District properties may be long term, such use shall be recognized as an interim use of the Production District's prime agricultural soils. As such, any acquisition funding or policy restrictions for the recreational use of the property shall be viewed as subordinate to the County's prior commitment to the preservation of prime agricultural soils and the viability of local agricultural production. Whenever the County declares through action of the King County Council a critical shortage of agricultural soils to accommodate an active soil-dependent agricultural proposal, the County shall initiate a process to relocate any recreational uses off the subject property, and to make the property available for re-establishment of agricultural activities.

[\[9\]](#) RCW 36.70A.150 provides in part:

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify lands useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. . . .

[\[10\]](#) RCW 36.70A.160 provides in part:

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or

management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. . . .

[11] The County may declare a critical shortage of agricultural soils and relocate the recreational use. When a critical shortage of agricultural soils is declared, the County's amended code requires the County to "initiate a process" to relocate the recreational activity and to make the property available for agricultural activities. KCC 21A.08.040.B.1.d.(6).

[12] The Board does not question the importance of parks facilities, either active or passive, to serve the needs of an urban population. Indeed, the Board has previously observed that the regional physical form required by the Act is "a compact urban landscape, well designed and well furnished with amenities." *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order (1995), at 28 (emphasis added). Prior Board decisions and sound public policy both suggest that "amenities," such as parks, are not "frills," but rather a necessary and essential "quality of life" component of accommodating growth. Nevertheless, there is nothing in the Act to suggest that parks and recreation needs, however important a local government may deem them to be, may supplant agricultural uses in designated resource lands. The legislature could have listed "recreation" as a mandated, rather than an optional, plan element (*See* RCW 36.70A.080(1)(c)); or it could have given specific direction in RCW 36.70A.150 and .160 to require more than just an inventory of "lands useful for parks"; or it could have explicitly listed recreation facilities as either essential public facilities (RCW 36.70A.200) or as public facilities that must be provided concurrently with new urban development (*see* RCW 36.70A.070(6) regarding required concurrency of transportation facilities). Likewise, the County could have reevaluated and altered some of its APD designations. However, neither the legislature, nor the County did any of these things.

[13] "Innovative" is a derivative of "innovate" which is defined as : to start or introduce something new: to be creative. *Webster's New Riverside University Dictionary*, 630 (1988). "Technique" is defined as: the systematic procedure by which a complex or scientific task is accomplished. *Webster's*, 1188.

[14] Legal Issue 6 provides:

Did the agricultural Plan and Code Amendments fail to be guided by the goals of RCW 36.70A.020(1), (2), (8), (9), and (13)?

[15] Legal Issue 10 provides:

Do the agricultural Plan and Code Amendments fail to comply with the requirements of RCW 36.70A.210 because they are inconsistent with King County Countywide Planning Policies including SM-101, LU-1, LU-2, LU-4, LU-5, LU-8, LU-9, LU-10, and LU-11?

[16] Legal Issue 9 is set out at footnote 7, *supra*.

Legal Issue 11 provides:

Do the agricultural Plan and Code Amendments fail to comply with the requirements of RCW 36.70A.070 [including the preamble] because they are inconsistent with provisions of the Plan, including CR-201, CR-202, F-203, F-313, F-314, F-317, I-202(preamble and (a)-(g)), R-101, RL-101, RL-102, RL-103, RL-105, RL-106, RL-107, RL-110, RL-113, Agricultural Lands Preamble to RL-300 series policies, RL-302, RL-303, RL-304, RL-305, RL-307, and RL-311?

[17] Legal Issue 13 provides:

Do the agricultural Plan Amendments fail to comply with RCW 36.70A.160?

[18] Legal Issue 14 provides:

Do the agricultural Plan Amendments violate WAC 365-190-080(5) and WAC 365-195-410, fail to be guided by the goals of RCW 36.70A.020(8), (9), and (13) and to comply with the requirements of RCW 36.70A.060(2)?

[19] Legal Issue 4 provides:

In adoption of the agricultural Plan Amendments, did the County fail to comply with the requirements of SEPA, Chapter 43.21C RCW?

[20] Legal Issue 5 provides:

Should the agricultural Plan and Code Amendments be invalidated because they substantially interfere with the fulfillment of the goals of the Act, pursuant to RCW 36.70A.302?

[21] RCW 36.70A.177 provides:

(1) A county or a city may use a variety of innovative techniques in areas designated as agricultural lands of long term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. A county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

(2) Innovative zoning techniques a county or city may consider, include but are not limited to:

- (a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land;
- (b) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agriculture or open space;
- (c) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;
- (d) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land; and
- (e) Sliding scale zoning, which allows the number of lots for single family residential purposes with a minimum lot size of one acre to increase inversely as the size of the total acreage increase.

[22] See footnote 8, *supra*, for the complete text of the County's Plan and zoning code amendments.