

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

LAWRENCE MICHAEL)	Case No. 98-3-0012
INVESTMENTS, L.L.C.;)	(LMI / Chevron)
CHEVRON USA INC.; and)	FINAL DECISION and ORDER
CHEVRON LAND AND)	
DEVELOPMENT COMPANY,)	
Petitioners,)	
v.)	
TOWN OF WOODWAY,)	
Respondent.)	
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I. Procedural Background

A. General

On June 18, 1998, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Lawrence Michael Investments, L.L.C., Chevron USA, and Chevron Land and Development Company (**Petitioners** or **LMI**). The matter was assigned Case No. 98-3-0012 (hereafter referred to as LMI/Chevron). Petitioners challenge the

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Town of Woodway’s (**Woodway** or **City**) adoption of Ordinance Nos. 98-338 and 98-339 (**Ordinances**), amending Woodway’s Comprehensive Plan (**Plan**). The general ground for the challenge is noncompliance with various sections of the Growth Management Act (**GMA** or **Act**).

On June 22, 1998, the Board issued a “Notice of Hearing.”

On July 21, 1998, the Board held a Prehearing Conference.

On July 23, 1998, the Board received “Petitioner/Plaintiff’s Revised Statement of Issues.”

On July 24, 1998, the Board received a letter “Response by Town of Woodway to Petitioners’ July 23, 1998 Revised Statement of Issues.”

On July 24, 1998, the Board issued an “Order Directing LMI/Chevron to Provide Citations for Legal Issues 4, 5 and 6.”

On July 28, 1998, the Board received “Petitioner/Plaintiff’s Second Revised Statement of Issues.”

On July 29, 1998, the Board issued an “Order Granting Amicus Curiae Status and Prehearing Order.”

B. Motion for Settlement Extension

On August 5, 1998, the Board received an “Agreed Motion for Settlement Extension.”

On August 11, 1998, the Board issued an “Order Granting Settlement Extension and Amending Prehearing Order -- Final Schedule.”

C. Motion for Amicus Status

On July 13, 1998, the Board received “BIAW’s Motion for Amicus Curiae Status.”

On July 17, 1998, the Board received “Town of Woodway’s Response to BIAW’s Motion for Amicus Curiae Status.”

On July 23, 1998, the Board received “1000 Friends of Washington’s Motion to File a Brief Amicus Curiae.” The Town of Woodway did not respond to 1000 Friends’ motion.

On July 29, 1998, the Board issued an “Order Granting Amicus Curiae Status and Prehearing Order.” The Order **granted** *amicus curiae* status to BIAW and 1000 Friends. BIAW’s participation was limited to a prehearing brief on part of Legal Issue 1 (Goal 1 -- Urban Growth and Goal 4 -- Housing). 1000 Friends’ participation was limited to a prehearing brief on part of Legal Issue 1 (Goal 1 -- Urban Growth and Goal 2 -- Sprawl).

On August 7, 1998, the Board received “Association of Washington Business [AWB] Motion to File Amicus Brief.”

On August 13, 1998, the Board received a letter from Woodway’s attorney opposing the Association of Washington Business’ request for *amicus curiae* status.

On August 14, 1998, the Board issued an “Order Granting Amicus Curiae Status and Correcting Index.” The Order **granted** *amicus curiae* status to AWB. AWB’s participation was limited to a prehearing brief on Legal Issue 7 and part of Legal Issue 1 (Goal 1 -- Urban Growth and Goal 4 -- Housing).

D. Motions to Supplement And amend index

On July 20, 1998, the Board received Woodway's "Index of Documents in the Administrative Record." The Index included items noted as Index Nos. 1 through 182.

On August 5, 1998, the Board received "Petitioner/Plaintiff's Motion to Supplement the Record," "Petitioner/Plaintiff's Motion to Extend the Time to Supplement the Record" and Woodway's "Motion to Correct Index" and "First Amended Index of Documents in the Administrative Record." Thirteen proposed exhibits were appended to Petitioner's Motion to Supplement the Record. Four items were included in the Corrected Index.

On August 11, 1998, the Board issued an "Order Granting Settlement Extension and Amending Prehearing Order -- Final Schedule." The Order extended the deadline for filing motions to supplement the record from August 5, 1998 to August 19, 1998.

On August 14, 1998, the Board issued an "Order Granting Amicus Curiae Status and Correcting the Index." In this Order, the four items added to the First Amended Index by Woodway were noted by the Board. These items were noted as Index Nos. 183 through 186.

On August 19, 1998, the Board received "Petitioner/Plaintiff's Motion to Amend Index to Record and Second Motion to Supplement Record." Included in the Motion to Supplement was a request to Amend the Index. Twelve proposed exhibits were appended to Petitioners' Second Motion to Supplement the Record. No exhibits accompanied the request to Amend the Index.

On August 26, 1998, the Board received "Respondent Town of Woodway's Response to Petitioner's Motions to Supplement the Record and Motion to Amend Index to the Record."

On August 31, 1998, the Board received "Petitioner/Plaintiff's Reply on Motions to Supplement Record and Motion to Amend Index." Six proposed exhibits were appended to the Reply.

On September 1, 1998, the Board issued an "Order on Motions to Supplement the Record." The Order added Index Nos. 187 through 207 to the record.

At the October 21, 1998, Hearing on the Merits, the Presiding Officer granted Motions to Supplement requested by both Petitioners and Respondent. Three items were inadvertently omitted from the record and are hereby included in the record, as Index Nos. 208 through 210.

E. Motion to Dismiss Legal Issue 8

On August 5, 1998, the Board received "Town of Woodway's Motion to Dismiss Issue 8." (**Woodway Motion**).

On August 11, 1998, the Board issued an “Order Granting Settlement Extension and Amending Prehearing Order -- Final Schedule.” The Order extended the deadline for filing dispositive motions, from August 5, 1998 to August 19, 1998, and adjusted the briefing schedule.

On August 26, 1998, the Board received "Petitioner/Plaintiff’s Response to Woodway’s Motion to Dismiss Issue 8." (**LMI Motion Response**)

On August 31, 1998, the Board received “Town of Woodway’s Reply Regarding Motion to Dismiss Issue 8.” (**Woodway Motion Reply**)

On September 2, 1998 the Board issued an “Order on Dispositive Motion.” The Order **denied** the Town of Woodway’s Motion to Dismiss Issue 8.

F. Briefing and Hearing on the Merits

On September 21, 1998, the Board received: “Petitioners/Plaintiffs’ Prehearing Brief,” including 38 unbound exhibits (**LMI PHB**); BIAW’s Amicus Curiae Brief in Support of Petitioners,” including one exhibit (**BIAW PHB**); “1000 Friends of Washington’s Amicus Curiae Brief,” including four exhibits (**1000 Friends PHB**); and “Association of Washington Business Amicus Curiae Brief” (**AWB PHB**).

On October 13, 1998, the Board received “Town of Woodway’s Response to Plaintiff’s Prehearing Brief and Briefs of *Amicus Curiae*,” including 13 exhibits (**Woodway Response**).

On October 20, 1998, the Board received “Petitioners/Plaintiffs’ Reply Brief,” including two exhibits (**LMI Reply**).

On October 21, 1998, the Board held a hearing on the merits in Suite 1022 of The Financial Center, 1215 4th Avenue in Seattle, Washington. Board members Ed McGuire, Presiding Officer, Joseph W. Tovar and Chris Smith Towne were present for the Board. Petitioners LMI/Chevron were represented by Robert I. Heller, G. Richard Hill and Courtney A. Kaylor. The Town of Woodway was represented by David A. Bricklin and Jennifer A. Dold. Court reporting services were provided by Cynthia LaRose, RPR, of Robert H. Lewis & Associates, Tacoma. The hearing convened at 10:00 a.m. and adjourned at approximately 1:00 p.m.

II. presumption of validity, burden of proof

and standard of review

Petitioners challenge Woodway’s amendments to its comprehensive plan, as adopted by Ordinance Nos. 98-338 and 98-339. Pursuant to RCW 36.70A.320(1), Woodway’s Ordinance Nos. 98-338 and 98-339 are presumed valid upon adoption.

The burden is on Petitioners LMI/Chevron to demonstrate that the actions taken by Woodway are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless it determines that the action by [Woodway] is clearly erroneous in view of the entire record before the board and in

light of the goals and requirements of [the GMA].”For the Board to find Woodway’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).

iii. board jurisdiction and Prefatory note

A. Board Jurisdiction

Findings of Fact

The Board finds:

- 1.The PFR challenges the Town of Woodway’s Comprehensive Plan amendments’ compliance with the GMA.PFR, at 8-17.
- 2.The Petitioners allege participation standing, pursuant to RCW 36.70A.280(2)(b).PFR, at 17-18.Woodway did not challenge Petitioners’ standing.
- 3.Woodway’s Ordinance No. 98-338 was adopted by the Council May 18, 1998, and published on May 21, 1998.PFR, at 7.
- 4.Woodway’s Ordinance No. 98-339 was adopted by the Council May 18, 1998, and published on May 21, 1998.PFR, at 7.
- 5.The PFR challenging these Ordinances was filed with the Board on June 18, 1998. *Supra*, at 1.

Conclusions of Law

The Board concludes:

- 1.Pursuant to RCW 36.70A.280(1)(a), the PFR, on its face,raises issues over which the Board has subject matter jurisdiction.
- 2.Pursuant to RCW 36.70A.280(2), Petitioners LMI/Chevron have standing to bring the challenges set forth in the PFR
- 3.Pursuant to RCW 36.70A.290(2), the PFR was timely filed.

B. Prefatory Note

The PFR challenges two ordinances adopted by Woodway -- Ordinance No. 98-338 and Ordinance No. 98-339.Both ordinances amend Woodway’s Comprehensive Plan. Ordinance No. 98-338 amended Woodway’s Comprehensive Plan to include Special Study Area Criteria (**SSAC**) as a Subarea Plan (**Subarea**).The SSAC applies only to the 60.8 acres owned by Chevron U.S.A.This area is the same area affected by Ordinance No. 98-339.Ex. 179, Ordinance No. 98-338, at 1.The SSAC includes the following headings: Framework, Statement of Purpose, Criteria for Residential Development, Character, Land Use, Site Ecology, Utilities, Transportation and Public Services.Ex. 179, Ordinance No. 98-338, at 1- 5. Ordinance No. 98-339 amended three maps in the Woodway Comprehensive Plan. The same 60.8-acre area (**Plan Amendment Area**) was affected by each map amendment.

The Comprehensive Plan Map was amended to:

delete the designations of IPS and C for the Chevron property and replace them with the designation of Urban Restricted [UR]. The Chevron property should be shaded, with shading tone also added to the legend, with the words: “Pursuant to the UR designation, development is limited to compact urban growth (four units per acre) on the identified disturbed areas of the site: (1) the 10.2 acre disturbed/grassland area on Parcels K and L and (2) the 0.3 acres of disturbed deciduous-shrub area in the southwest corner of parcel J.

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Ex. 180, Ord. No. 98-339, Sec. 1(b), at 1.

The Development Potential Map was amended to:

delete the shading of the Chevron property, which indicates “undeveloped parcel.” There would be no shading of the property, thus indicating that it is to be developed pursuant to Urban Restricted. Ex. 180, Ord. No. 98-339, Sec. 1(c), at 2.

The Critical Areas Map was amended to:

shade the areas outside of the disturbed areas of the site (identified in 1(b) above), thus indicating they are permanently protected as wildlife habitat, wetlands, steep slopes, greenbelt, open space, and other natural resources on-site in their undeveloped natural state. Ex. 180, Ord. No. 98-339, Sec. 1(d), at 2.

Ordinance No. 98-339 also amended the text of the Woodway Comprehensive Plan in ten places: four goals or policies were changed; explanatory text or discussion was modified in three places; and the remaining changes were technical amendments to tables or footnotes. The challenged goals and policies, as amended, now read as follows:

Land Use Element:

Goal -- To sustain low density residential development where appropriate and provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act. Ex. 180, Ord. No. 98-339, Sec. 3(k), at 3; Ex. 20, at 19.

Policy LU-5 -- Continue to develop low density residential sites according to existing policies, ordinances, and development regulations where appropriate and provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act. New development should be compatible with the character and quality of existing developments. Ex. 180, Ord. No. 98-339, Sec. 3(l), at 3; Ex. 20, at 20.

Policy LU-8 -- Recognizing that the 60.8-acre Chevron Property presently zoned Conservation and Industrial Product Storage within the Town may become available for development other than present usage, designate the property as a Special Study area. The Town will make every effort to preserve the area as is or to retain the character of the Town.

The Special Studies described above have been completed for the Chevron property, and applications for development of that property have been reviewed in light of those studies and other considerations. As noted elsewhere in this Plan, the Conservation and Industrial Product Storage designations of the property referred to have been changed through an

Amendment to this Plan.Ex. 180, Ord. No. 98-339, Sec. 1(a), at 1; Ex. 20, at 23.

Conservation Element:

Policy C-3 -- Preserve low density residential land use where appropriate and provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act.Ex. 180, Ord. No. 98-339, Sec. 3(h), at 2; Ex. 20, at 12.

The amendments to the Plan's explanatory text or discussion now provide as follows:

Vision for Woodway:

Land Use:

- Continue the historic land use patterns of low density single family residential use where appropriate and provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act.The Vision of Woodway.Ex. 180, Ord. No. 98-339, Sec. 3(g), at 2; Ex. 20, at 4.

Land Use Element:

Land Use Inventory and Analysis:

The Town of Woodway consists of 648 acres, excluding tidelands.Existing zoning allows for single family development on one-third acre, one acre, and two-acre lots.There is no commercial development in the town and industrial use is limited to industrial products storage.One Conservation Zone protects an undeveloped watershed owned by Olympic View Water and Sewer District.There is also an Urban Restricted Comprehensive Plan designation for the 60.8 acre site owned by Chevron U.S.A. which will be zoned consistent with the purposes of that Comprehensive Plan designation.Ex. 180, Ord. No. 98-339, Sec. 3 (i), at 3; Ex. 20, at 14.

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Discussion following Policy LU-1:

Discussion Housing density will continue to range from four single family homes per acre to one single family home per two acres.To maintain this density, land use development patterns and (*sic*) are expected to change very little.Ex. 180, Ord. No. 98-339, Sec. 3(j), at 3; Ex. 20, at 19.

The remaining changes to the Woodway Plan accomplished by Ordinance No. 98-339 correct table references and footnotes to reflect the substance of the map and policy revisions noted above; therefore, they will not be reiterated here.*See* Ex. 180, Ordinance No. 98-339, Sec. 1(e) and (f), at 2; and Sec. 3(m), at 3.

Nine Legal Issues are presented for the Board to resolve.Ordinance No. 98-338 is not challenged in Legal Issue Nos. 2 or 3; however, it is included in Legal Issue Nos. 1, 4, 5, 6, 7, 8and 9.

Ordinance No. 98-339 is challenged in all nine Legal Issues.The Board will first address Legal Issue No. 8 (amendment process, p. 8), originally raised in dispositive motions; then the Board will resolve the remaining Legal Issues in the following order: No. 2 (critical areas, p. 15), No. 1 (goals, p. 21), Nos. 4, 5, 6 (all involving consistency, pp. 34, 43 and 47 respectively), No. 7

(mandatory elements, p. 50), No. 3 (open space corridors, p. 53) and No. 9 (invalidity, p. 55). Any findings of fact that should be conclusions of law, but have been improperly indicated, are deemed conclusions of law; likewise, any conclusions of law that should be findings of fact, but have been improperly indicated, are deemed to be findings of fact.

iv. legal issues

A. Legal Issue No. 8

The Board's prehearing order set forth Legal Issue No. 8:

Did the Town of Woodway fail to comply with RCW 36.70A.020(7), .130, and .470 when it adopted Ordinance Nos. 98-339 and 98-338 because Woodway failed to act in a timely and fair manner on LMI and Chevron's application for a comprehensive plan amendment?

In its PFR and briefing on Woodway's motion to dismiss Issue 8, LMI contended that the provisions of the GMA cited in Issue 8 establish a duty for Woodway to consider LMI/Chevron's application for a comprehensive plan amendment in a timely (on an annual basis) and fair manner. PFR, at 16; LMI Motion Response, at 2. Woodway asserted that the GMA provisions cited in Issue 8 do not create such a duty, nor do they provide a basis for Petitioners' claims. Woodway Motion, at 5-6; Woodway Motion Reply, at 2 and 7. The Board **denied** Woodway's Motion to Dismiss Legal Issue No. 8, deferring consideration of the matter until the hearing on the merits. The Board now addresses Legal Issue 8.

Applicable Law and Discussion

LMI reads RCW 36.70A.020(7), .470 and .130, in combination, to create a duty upon Woodway to consider plan amendments in a timely and fair manner each year. LMI's reading of these three sections of the GMA is in error. These sections, read individually or collectively, do not create the duty LMI asserts.

RCW 36.70A.020 provides, in relevant part:

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

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability. (Emphasis added.)

Goal 7 indicates that plans and development regulations shall be guided by the goal to process applications for permits in a timely and fair manner. The issue before the Board in this case is a challenge to two ordinances amending Woodway's Comprehensive Plan. Both ordinances involve proposals or "applications" for comprehensive plan amendments, not applications for permits. Goal 7 is not implicated for either Ordinance No. 98-338 or 98-339.

Petitioners challenge compliance with RCW 36.70A.470(2). RCW 36.70A.470 provides in its entirety:

(1) Project review, which shall be conducted pursuant to the provisions of chapter 36.70B

RCW, shall be used to make individual project decisions, not land use planning decisions. If, during project review, a county or city planning under RCW 36.70A.040 identifies deficiencies in plans or regulations:

- (a) The permitting process shall not be used as a comprehensive planning process;
- (b) Project review shall continue; and
- (c) The identified deficiencies shall be docketed for possible future plan or development regulation amendments.

(2) Each county and city planning under RCW 36.70A.040 shall include in its development regulations a procedure for any interested person, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest plan or development regulation amendments. The suggested amendments shall be docketed and considered on at least an annual basis, consistent with the provisions of RCW 36.70A.130.

(3) For purposes of this section, a deficiency in a comprehensive plan or development regulation refers to the absence of required or potentially desirable contents of a comprehensive plan or development regulation. It does not refer to whether a development regulation addresses a project's probable specific adverse environmental impacts which the permitting agency could mitigate in the normal project review process.

(4) For purposes of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan or development regulations in a manner that will ensure such suggested changes will be considered by the county or city and will be available for review by the public.

(Emphasis added.)

RCW 36.70A.470 was added to the GMA during the 1995 Legislative Session as one of the products of regulatory reform efforts. The legislative findings and intent for this amendment are instructive and provide, in relevant part:

The legislature finds that during project review, a county or city planning under RCW 36.70A.040 is likely to discover the need to make various improvements in comprehensive plans and development regulations. There is no current requirement or process for applicants, citizens, or agency staff to ensure that these improvements are considered in the plan review process. . . . It is the intent of the legislature in enacting RCW 36.70A.470 to establish a means by which cities and counties will docket suggested plan or development regulation amendments and ensure their consideration during the planning process.

Laws of 1995, Ch. 347 § 101.

The legislature's intent was clearly to provide for consideration of potential amendments identified or discovered during project review. **The Board holds that the docketing and consideration of suggested amendments referenced in RCW 36.70A.470 pertains to comprehensive plan or development regulation deficiencies or potential improvements identified during the project review process. These docketed suggestions must be reviewed, at least annually, and scheduled for consideration as possible future amendments during**

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the jurisdiction's next RCW 36.70A.130(2) plan amendment review process or development regulation review.

Regarding Ordinance No. 98-339, LMI's proposed plan amendment was submitted to Woodway on November 13, 1995, concurrent with LMI's petition for rezone and prior to LMI's subdivision application. The subdivision application for the Woodway Highlands project was submitted to Woodway in July of 1996. Consequently, LMI's suggested plan amendment could not have been identified, or discovered, during the project review process for either the rezone or subdivision application. Further, Petitioners do not characterize the proposed plan amendment as addressing a plan deficiency or improvement.

Likewise, Ordinance No. 98-338, which incorporated the SSAC into the Plan as a subarea plan, was not identified during project review. The staff recommended the SSAC's incorporation as a subarea plan to comply with the GMA, since the SSAC was a land use policy document that applied to a localized and discrete area of Woodway. Ex. 36, at 3.

RCW 36.70A.470 does not apply to Ordinance No. 98-338 or to LMI's application for a plan amendment, as ultimately addressed in Ordinance No. 98-339. Therefore, only RCW 36.70A.130 potentially applies to the challenged ordinances.

RCW 36.70A.130 provides, in relevant part:

(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:

(Emphasis added.)

LMI argues that Woodway must consider plan amendments annually. LMI Motion Response, at 9. LMI points to RCW 36.70A.470(2) to bolster this assertion. LMI Motion Response, at 9-10. LMI points out that it took Woodway two-and-one-half years to consider the proposed amendment, not one. LMI PHB, at 70. Woodway contends that the GMA does not require an amendment decision on LMI's proposal in the same year it was submitted, or even within a year of submittal. Woodway also claims it actively considered the proposed amendment over the two-and-one-half year period, and acted upon it in 1998. Woodway Response, at 68.

The GMA duty set forth in RCW 36.70A.130 requires Woodway to establish and disseminate a public participation program whereby proposed plan amendments are considered no more frequently than once a year. The Board recognizes that each local government has discretion in

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establishing and designing its .130 plan amendment process. Here, LMI does not contest whether Woodway has a public participation program or whether Woodway followed its plan

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amendment process. Instead, LMI argues that taking two-and-one-half years to reach the decision on its proposed amendment is not timely or fair. LMI PHB, at 70. The plain language of RCW 36.70A.130(2)(a) limits consideration of plan amendments to no more frequently than once

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every year, it does not require annual review. LMI has failed to meet its burden of proof in showing how Woodway's consideration of Ordinance Nos. 98-339 and 98-339 failed to comply with RCW 36.70A.130.

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Regarding LMI's timeliness argument, LMI has failed to show that RCW 36.70A.020(7), .470, and .130, read individually or collectively, establish a duty upon Woodway to consider specific plan amendments, such as the one proposed by LMI, on an annual basis.

Lastly, Petitioners argue that not only was Woodway's timing in processing their amendment unfair, but also that Woodway failed to act in an evenhanded manner since Mayor Drummond and Councilmember Saltonstall, who were "staunch opponents of development of the property,"

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participated in Woodway's consideration of, and decision on, Ordinance Nos. 98-338 and 98-339. LMI PHB, at 70. For this case specifically, the appearance-of-fairness question has been resolved by the Snohomish County Superior Court. The Court declared that "the Town's decision regarding whether to amend the Woodway Comprehensive Plan is legislative. Consequently, the participation of Mayor Jan Taylor Drummond and Councilmember Kent Saltonstall in the Town Council's deliberations and decision on LMI's application for an amendment to the Woodway Comprehensive Plan does not violate the appearance of fairness doctrine or plaintiff's due process rights." Ex. 206, at 3. Nonetheless, Petitioners argue that Goal 6 provides a basis for the Board to hold that the GMA establishes a higher standard of fairness that applies to legislative actions. October 21, 1998, Hearing on the Merits transcript, at 47-48. Notwithstanding LMI's urging, the Board does not find the basis for such a standard in the GMA.

Regarding LMI's fairness argument, LMI has failed to show that the GMA establishes some extraordinary standard of fairness for legislative actions above that already required by law.

Findings of Fact

The Board finds:

6. Woodway first adopted its Comprehensive Plan by adopting Resolution No. 159, on June 21, 1994. Ex. 20, at 46.
7. Woodway then adopted its Comprehensive Plan by adopting Ordinance No. 297, on August 11, 1994. Ex. 20, at 47-48.
8. Other than the amendments challenged in this action, Woodway has not amended its Comprehensive Plan since its adoption in 1994. Woodway Response, at 5.
9. LMI's proposed Plan amendment requested: a redesignation on the Comprehensive Plan Map for the 60.8 acres owned by Chevron U.S.A. that is located in the south portion of Woodway from IPS and C to SR-14.5; a change to Plan Goal LU-8 to reflect completion of the special studies; and appropriate amendments to the Plan that would limit development of the Plan Amendment Area to no more than 86 lots. Ex. 1.
10. Ordinance No. 338 amends the Plan to include Special Study Area Criteria (SSAC) as a subarea plan and new section or chapter to the 1994 Plan. Ex. 179, at 1.
11. The SSAC applies only to the 60.8-acres that is owned by Chevron U.S.A. and is at issue

here.Ex. 179, at 1.

12.Ordinance No. 98-339 made 13 amendments to the 1994 Woodway Comprehensive Plan: ten (10) text amendments --Section I, Vision of Woodway (1), Section II, Conservation Element (1) and Land Use Element (7), Section III, Implementation Strategy (1);and three map revisions, affecting the Plan Amendment Area -- Section IV, Comprehensive Plan Map, Development Potential Map and Critical Areas Map.Ex. 180, at 1-3; and *Supra*, at 6-8.

13.The Plan Amendment Area is the 60.8-acres owned by Chevron.Ex. 1.

14.The land included in the Plan Amendment Area in LMI's proposed Plan amendment is the same land as the Plan Amendment Area redesignated in Ordinance No. 98-339. Exs. 1 and 180.

15.The land included in the Subarea and the Plan Amendment Area is the same 60.8-acres owned by Chevron.Exs. 1, 179 and 180.

16.On November 13, 1995, LMI submitted its application for comprehensive plan amendment to Woodway.Ex. 1.

17.On November 13, 1995, LMI submitted its petition for rezone to Woodway.The request sought a rezone ofthe Plan Amendment Area from IPS and C to R-14.5.Ex. 2, at 1.

18.On July 18, 1996, LMI submitted its application for subdivision to Woodway.The application sought 86 lots for the "Woodway Highlands" project for the Plan Amendment Area.Ex. 3, at 1.

19.LMI's application for comprehensive plan amendment was filed with its petition for rezone and prior to the application for subdivision of the Woodway Highlands project proposal.Exs. 1, 2 and 3.

20.Petitioners did not characterize their proposed plan amendment as a response to a plan deficiency or as an improvement identified during project review.Ex. 1.

21.Woodway staff recommended incorporation of the SSAC into the Plan as a subarea plan, since it was a land use policy document that applied to a localized and discrete area of Woodway.Ordinance No. 98-338 accomplished this incorporation.Ex. 36, at 3 and Ex. 179.

22.The Woodway Planning Commission and Town Council held public hearings, considered, deliberated and acted upon the proposed plan amendments (Ordinance Nos. 98-338 and 98-339) between June, 1997 and May, 1998.LMI PHB, at 10-11, and Woodway PHB, at 14-16.

23.Woodway amended its Plan, on May 18, 1998, to change the map designation of the 60.8-acre Plan Amendment Areaand change policies and text in the Plan.(Ordinance No. 98-339). Ex. 1, 36, 180 and Woodway Response, at 68-69.

24.Woodway amended its Plan, on May 18, 1998, to incorporate the SSAC as a subarea plan for the Plan Amendment Area.(Ordinance No. 98-338)Ex. 36 and 179.

25.The Snohomish County Superior Court determined that the decision regarding whether to amend the Woodway Comprehensive Plan is a legislative decision.Ex. 206, at 3.

Conclusions of Law

The Board concludes:

4. RCW 36.70A.020(7) provides guidance for processing applications for permits.
5. Neither LMI's application for plan amendment nor Woodway's SSAC subarea plan amendment is an application for a permit, subject to Goal 7 -- Permits. Therefore, Ordinance Nos. 98-338 and 98-339 are not subject to the provisions of RCW 36.70A.020(7).
6. The docketing and consideration of suggested amendments referenced in RCW 36.70A.470 pertains to comprehensive plan or development regulation deficiencies or potential improvements identified during the project review process. These docketed suggestions must be reviewed, at least annually, and scheduled for consideration as possible future amendments during the jurisdiction's next RCW 36.70A.130(2) plan amendment review process or development regulation review.
7. Neither LMI's application for plan amendment nor Woodway's SSAC subarea plan amendment was identified during project review as a plan improvement or a response to a plan deficiency. Therefore, Ordinance Nos. 98-338 and 98-339 are not subject to the provisions of RCW 36.70A.470.
8. RCW 36.70A.130(2) does not require annual review of plan amendments.
9. LMI has failed to meet its burden of proof in showing how Woodway's consideration of Ordinance Nos. 98-339 and 98-338 failed to comply with RCW 36.70A.130.
10. LMI has failed to show that RCW 36.70A.020(7), .470, and 130, read individually or collectively, establish a duty upon Woodway to consider specific plan amendments, such as the one proposed by LMI, on an annual basis.
11. LMI has failed to show that the GMA establishes some extraordinary standard of fairness for legislative actions above that already required by law.
12. LMI has **failed to meet its burden of proof** in establishing that RCW 36.70A.020(7), .470 or .130 create duties with which the Town of Woodway has failed to comply in adopting Ordinance Nos. 98-338 and 98-339. The Board is not persuaded that on this Legal Issue, Woodway's actions were clearly erroneous.

B. Legal Issue No. 2

The Board's prehearing order set forth Legal Issue No. 2: [\[11\]](#)

Did the Town of Woodway fail to comply with RCW 36.70A.170, .172 and .050 and WAC 365-190-080 and -040 when it adopted Ordinance No. 98-339, which identified without [\[12\]](#) compensation approximately 50.5 acres of the property as a critical area which may not be developed?

Applicable Law and Discussion

RCW 36.70A.170 provides, in relevant part:

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

...

[\[13\]](#)

(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050.

RCW 36.70A.050 provides, in relevant part:

(3) The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions, but also shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of . . . critical areas under RCW 36.70A.170.

Chapter 365-190 WAC contains the Department of Community, Trade and Economic Development's (CTED) Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas (**Guidelines**). Part Three of the Guidelines includes WAC 365-190-040, which provides guidance on "Process," and WAC 365-190-080, which provides guidance on "Critical Areas."

RCW 36.70A.172 provides, in relevant part:

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

The Board's Rules of Practice and Procedure, at WAC 242-02-570(1), provide:

A petitioner, or a moving party when a motion has been filed, shall submit a brief on each legal issue it expects a board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

(See also, Prehearing Order, Section X, July 29, 1998.)

In briefing Legal Issue No. 2, LMI offered no argument regarding how Ordinance No. 98-339 fails to comply with RCW 36.70A.172. LMI PHB, at 38 - 48. Issues not briefed are abandoned. WAC 242-02-570(1).

On this Legal Issue, LMI challenges only Ordinance No. 98-339. LMI contends that when Woodway adopted Ordinance No. 98-339, it failed to comply with the GMA's substantive and procedural requirements for identifying and designating critical areas. LMI also argues that Woodway cannot ignore GMA requirements for designating critical areas. LMI PHB, at 38-48, LMI Reply, at 10-11. Woodway counters that in adopting Ordinance No. 98-339, it did not designate critical areas pursuant to RCW 36.70A.050, .170 and .172. However, it did protect environmentally sensitive areas through the Urban Restricted (**UR**) designation for the 60.8-acre Plan Amendment Area, pursuant to RCW 36.70A.130; consequently, many of Petitioners'

arguments are irrelevant. Woodway Response, at 42.

It is undisputed that the GMA requires that local governments identify, designate and protect critical areas. Nonetheless, Woodway asserts that it is entitled to protect environmentally sensitive areas through the use of *land use designations* in its Plan. *Id.* “Woodway chose to protect the environmentally sensitive areas on-site through the Comprehensive Plan amendments process (pursuant to RCW 36.70A.130) not through designating the areas on-site as “critical areas” through the provisions [of] RCW 36.70A.050, .170, .172 and WAC 365-190-080 and -040.” *Id.* Woodway offers an alternative to the requirements of the GMA for designating and protecting critical areas under the Act. However, the alternative process offered by Woodway evades the analytical rigor and scientific scrutiny required by the GMA in RCW 36.70A.050, .170 and .172. Identifying and designating critical areas pursuant to RCW 36.70A.050, .170, and .172 requires local governments to consider the Guidelines established by CTED (RCW 36.70A.050, .170), and to “include the best available science in developing policies and development regulations to protect the functions and values of critical areas.” (RCW 36.70A.172.) The results achieved through the application of these GMA requirements provide the scientific foundation to bolster and support performance standards and development regulations that protect critical areas as required by RCW 36.70A.060. This scientific and analytical process may also, in certain limited instances, provide information to justify supplementary use of land use designations on the Plan’s future land use map as an additional layer of critical areas protection. *See Litowitz v. City of Federal Way (Litowitz)*, CPSGMHB Case No. 96-3-0005, Final Decision and Order (Jul. 22, 1996). While local governments have some discretion in identifying, designating and protecting critical areas, they may not ignore the critical areas requirements of the GMA. Thus, the threshold question is whether Woodway’s adoption of Ordinance No. 98-339 identified and designated critical areas.

A review of Ordinance No. 98-339 and its supporting documentation is instructive in resolving the question of whether Woodway identified and designated critical areas through its adoption. On May 27, 1997, the Woodway Planning Commission received a Staff Report on the Woodway Highlands Applications. The report includes an evaluation of the [LMI’s] request to amend the plan, wherein critical areas (wetlands and wildlife habitats) are discussed. Ex. 36, at 8 -18. The report includes a “Habitat Quality Map” for the Plan Amendment Area. Ex. 36, Figure 2-2, at 26 (*See also*, Ex. 33, FEIS, Vol. I, Figure 2-2, at 2-25). This 1997 report stated:

The Comprehensive Plan Policy LU-8 set the stage for thorough analysis of the environmental conditions on the 60.8 [acre] parcel and of any adverse impacts that development might cause. The requirement for special studies prompted the preparation of a detailed and lengthy EIS which includes a range of alternatives and *detailed sections on critical areas and wildlife habitat . . .*

The EIS *established the location, function and value of a 2.4 acre wetland which was mapped* as a priority habitat by the Washington Department of Fish and Wildlife Habitat and Species Database.

Ex. 36, at 26-27 (emphasis added).

On May 4, 1998, Woodway's Town Council adopted its findings of fact, conclusions of law and decision on the plan amendment in question. This decision document, which includes the amendatory language contained in Ordinance No. 98-339, provides, in relevant part:

[Finding of Fact] 21. The SSAC call for preparation of special studies to evaluate wildlife habitat areas and other environmental resource areas on the Chevron Property [Plan Amendment Area]. The Draft and Final EIS for the proposal included those special studies, among others. *As a result of those special studies, important wetland and wildlife habitat areas were identified. These areas qualify as "fish and wildlife habitat conservation areas" under the State Guidelines for identification of "critical areas" subject to designation and protection under the State Growth Management Act. See WAC 365-190-080. Ex. 181, at 6 (emphasis added).*

On May 18, 1998, Woodway's Town Council adopted Ordinance No. 98-339, amending its Plan. Section 1 of Ordinance No. 98-339 provides, in relevant part:

d. The Critical Areas Map in the Comprehensive Plan shall be revised to shade the areas outside of the disturbed areas of the site (identified in 1(b) above) thus indicating that they are permanently protected as wildlife habitat, wetlands, steep slopes, greenbelt, open space, and other natural resources on-site in their undeveloped natural state.

Ex. 180, Ordinance No. 98-339, Sec. 1(d), at 2 (emphasis added).

Notwithstanding the assertions of Woodway's counsel that "Woodway did not designate critical areas," the actions of the Town Council demonstrate otherwise. The staff report indicates that critical areas were mapped and discussed in the EIS prepared in 1997. The supporting decision document adopted May 4, 1998 by the Council clearly indicates that the CTED Guidelines were considered and that the areas within the 60.8-acre Plan Amendment Area were *identified* as

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critical areas. The Council's adoption of Ordinance No. 98-339, Section 1(d), clearly directs revision of Woodway's *Critical Areas Map* to *designate* portions of the 60.8-acre Plan Amendment Area to indicate that it is to be *protected*. In adopting the May 4, 1998 decision document and Ordinance No. 98-339, Woodway identified and designated critical areas within the 60.8-acre Plan Amendment Area. Therefore, the question before the Board is whether Woodway's action complies with the procedural and substantive requirements of the GMA for identifying and designating critical areas.

LMI suggests that Woodway failed to follow the Guidelines procedures for designating critical areas. LMI PHB, at 42-45. The Guidelines discuss the "Process" for identifying and designating critical areas at WAC 365-190-040. In discussing the designation amendment process, the Guidelines suggest that: "Procedures for designation should provide a rational and predictable basis for accommodating change" WAC 365-190-040(2)(g); the public should receive "early and timely public notice of pending designations" WAC 365-190-040(2)(a); and critical area designation changes should be based on changed circumstances, errors in designation or new information on natural resource land or critical area status, WAC 365-190-040(2)(g)(i-iv). The

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special studies and EIS developed to accompany LMI's proposed plan amendment was a

rational process that evaluated a range of alternatives, thereby enhancing predictability. The studies and EIS contained new information upon which to base changes in Woodway's Critical Areas Map. Also, the public process that accompanied the special study, EIS development, and the review of the amendment provided adequate notice to LMI and the public of the pending designations. Woodway properly considered the Guidelines regarding procedures, in identifying and designating critical areas in the Plan Amendment Area.

LMI also contends that Woodway improperly identified and designated wildlife habitat conservation areas as critical areas (WAC 365-190-080). LMI PHB, at 39-42. Local governments have discretion in identifying and designating the critical areas defined in the Act. In this Board's first case, the Board stated:

The GMA's definition of "critical areas" at RCW 36.70A.030(5) is not exclusive and prescriptive: *local governments must consider, but are not bound by, that definition and the definitions used in the minimum guidelines developed by CTED. Tracy v. Mercer Island, (Tracy) CPSGPHB Case No. 92-3-0001, Final Decision and Order (Jan. 5, 1993), at 23 (emphasis added).*

Woodway's May 4, 1998 decision document is evidence that Woodway considered the

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Guidelines and exercised its local discretion in identifying and designating certain wetlands and wildlife habitats as critical areas. Woodway properly identified and designated wetland and habitat conservation areas, pursuant to the Guidelines, when it adopted Ordinance No. 98-339. LMI has failed to meet its burden of proof in showing that Woodway failed to comply with RCW 36.70A.170, .172, .050 or WAC 365-190-040 and -080 when it adopted Ordinance No. 98-339. The Board is not persuaded on this Legal Issue that Woodway's action was clearly erroneous.

Findings of Fact

The Board finds:

26. Petitioners have failed to brief Legal Issue No. 2 regarding compliance with RCW 36.70A.172. LMI PHB, at 38-48.

27. The decision document adopted by the Council on May 4, 1998 identifies lands within the 60.8-acre Plan Amendment Area as critical areas. Ex. 181, at 6.

28. Section 1(d) of Ordinance No. 98-339 designates lands within the 60.8-acre Plan Amendment Area as critical areas on the Woodway Critical Area Map. Ex. 180, at 2.

29. LMI and the public had notice of the special study, EIS development and the review of the plan amendment. Exs. 33, 36, 180 and 181.

30. Woodway considered the Guidelines in identifying and designating critical areas. Exs. 180, at 2, and 181, at 6.

Conclusions of Law

The Board concludes:

13. Pursuant to WAC 242-02-570(1), LMI has **abandoned** its challenge to Woodway's compliance with RCW 36.70A.172.

14.RCW 36.70A.050, .170, and .172 provide the analytical process and scientific foundation for identifying, designating and protecting critical areas.

15.Application of the GMA’s scientific and analytic critical areas process may, in certain limited instances, provide information to justify supplementary use of land use designations on the Plan’s future land use map as an additional layer of critical areas protection.

16.Local governments may not ignore the critical areas requirements (RCW 36.70A.050, .060, .170 and .172) of the GMA.

17.Woodway identified and designated critical areas in the 60.8-acre Plan Amendment Area when it adopted Ordinance No. 98-339.

18.Woodway properly followed the Guidelines regarding procedures in identifying and designating critical areas in the 60.8-acre Plan Amendment Area.

19.Local governments have discretion in identifying and designating critical areas.

20.Woodway properly identified and designated wetlands and wildlife habitat conservation areas as critical areas, pursuant to the Guidelines, within the 60.8-acre Plan Amendment Area, when it adopted Ordinance No. 98-339.

21.LMI has **failed to meet its burden of proof** in showing that Woodway failed to comply with RCW 36.70A.170, .172, .050 or WAC 365-190-040 and -080 when it adopted Ordinance No. 98-339.The Board is not persuaded on this Legal Issue that Woodway’s action was clearly erroneous.

C. Legal Issue No. 1

The Board’s prehearing order set forth Legal Issue No. 1:

Did the Town of Woodway fail to comply with RCW 36.70A.020(1), (2), (3), (4) and (6) when it adopted Ordinance Nos. 98-339 (Land Use Designation and Policy Amendments) and 98-338 (Special Study Area Criteria - SSAC), because these Plan amendments do not further the goals of the GMA?

Applicable Law and Discussion

A central premise of the GMA is that “uncoordinated and unplanned growth” and a lack of “common goals” presents a threat to both the economic and environmental well-being of the residents of this state. RCW 36.70A.010. ^[17] The GMA’s design addresses these deficiencies by first setting forth, in RCW 36.70A.020, thirteen ^[18] goals to “guide the development and adoption of comprehensive plans and development regulations.”These goals guide local governments in achieving coordinated and planned growth.The goals and requirements of the Act constitute a decision-making regime described as a “cascading hierarchy of substantive and directive policy, *flowing first from the planning goals to the policy documents* of counties and cities. . . [such as] comprehensive plans. . .”*Aagaard v. Bothell*, CPSGMHB Case No. 94-3-0011,

Final Decision and Order (Feb. 21, 1995), at 6 (emphasis added).

Significantly, the Act requires more than mere consideration of the planning goals. In an early case, the Board concluded that “the *substantive* element of RCW 36.70A.020 is the heart of the GMA. . . . Comprehensive plans and implementing development regulations will be held to the highest standard of compliance. . . .” *Association of Rural Residents v. Kitsap County (Rural Residents)*, CPSGMHB Case No. 93-3-0010, Final Decision and Order (Jun. 3, 1994), at 29 (original emphasis omitted, emphasis added). The Board recently affirmed the substantive effect of the planning goals first articulated in *Rural Residents*. In *Rabie, et al., v. Burién*, CPSGMHB Case No. 98-3-0005c, Final Decision and Order (Oct. 19, 1998), at 5-6, the Board stated:

Many of the GMA provisions argued by [petitioners] . . . are planning goals, RCW 36.70A.020. The GMA planning goals “guide the development and adoption of comprehensive plans and development regulations.” RCW 36.70A.020. The first prong of the mandate to “be guided by” requires *procedural* compliance. The second prong requires *substantive* compliance. First, the elected decisionmakers must consider the planning goals when adopting or amending the plan or development regulations; second, the adopted or amended plan or development regulations must substantively comply with the planning goals. See *Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010, Final Decision and Order (Jun. 3, 1994), at 23-28. Local governments must use the planning goals “to point the way for the enactment of development regulations and comprehensive plans that substantively comply with the GMA.” *Id.*, at 27. The Board will review the challenged enactments to “determine whether [they] achieve the legislature’s intended result: consistency with the planning goals of the Act.” *Id.*, at 28. In other words, to show substantive noncompliance with a planning goal, a petitioner must identify that portion of the challenged enactment that is not consistent with, or thwarts, the planning goal, and explain why the identified portion does not comply with that goal. (Emphasis in original; footnotes omitted.)

LMI’s Legal Issue No. 1, challenging compliance with certain Goals of the GMA, involves provisions of both ordinances enacted by Woodway, Ordinance Nos. 98-339 and 98-338.

Ordinance No. 98-339 amended three maps in Woodway’s Comprehensive Plan. The first map amended was the Comprehensive Plan Map. It was changed to include a new land use designation, Urban Restricted (**UR**). The UR designation applies only to the 60.8-acre Plan Amendment Area. Within the UR designation development is limited to compact urban growth (four units per acre) on 10.5 acres of the 60.8-acre Plan Amendment Area. Ex. 180, Ordinance No. 98-339, Sec. 1(b), at 1. The remaining 50.3 acres of the 60.8-acre Plan Amendment Area, is to be permanently protected in an undeveloped natural state. Ex. 180, Ordinance No. 98-339, Sec. 1(d), at 2.

The stated purpose of the UR designation is “to preserve and conserve the wildlife habitat, including wildlife corridors, open space, greenbelt areas, and other sensitive and critical natural resources on the Chevron site.” Ex. 181, at 18. Permitted development is limited to “detached

single-family residential use to the extent not inconsistent with the preservation and conservation of wildlife habitat, including wildlife corridors, open space, greenbelt areas, and other sensitive or critical areas on-site.”*Id.* Woodway concluded that allowing four du/ac on 10.5 acres of the 60.8-acre Plan Amendment Area and prohibiting all development on the remainder of the area was justified. Ex. 181, at 18. Consequently, the Board concludes that the range of densities permitted in the UR land use designation is 0-4 du/ac.

As discussed in Legal Issue No. 2, Ordinance No. 98-339 also amended Woodway’s Critical Areas Map to designate 50.3 acres of the 60.8-acre Plan Amendment Area as critical areas, permanently protecting these lands. Ex. 180, Ordinance No. 98-339, Sec. 1(d), at 2.

The final map changed by this Ordinance was Woodway’s Development Potential Map. This map was changed to indicate that the 60.8-acre Plan Amendment Area is to be developed pursuant to the UR designation. Ex. 180, Ordinance No. 98-339, Sec. 1(c), at 2.

Although Ordinance No. 98-339 also amended the text of Woodway’s Comprehensive Plan, thereby modifying several goals and policies, LMI offers no argument challenging whether these text amendments comply with Goals 1, 2, 3, 4 and 6. LMI PHB, at 18-37; LMI Reply, at 7-32. Therefore, the text amendments to the Woodway Comprehensive Plan made by Ordinance No. 98-339 are not part of LMI’s challenge and will not be discussed in this Legal Issue.

Ordinance No. 98-338 amended Woodway’s Comprehensive Plan to include Special Study Area Criteria as a Subarea plan. The SSAC applies only to the 60.8-acre Subarea owned by Chevron U.S.A. Ex. 179, Ordinance No. 98-338, at 1. This area is the same area affected by Ordinance No. 98-339, and referred to as the 60.8-acre Plan Amendment Area. The SSAC for the Subarea includes the following headings: Framework, Statement of Purpose, Criteria for Residential Development, Character, Land Use, Site Ecology, Utilities, Transportation, and Public Services. Ex. 179, Ordinance No. 98-338, at 1- 5.

Underlying this controversy is the allegation that Woodway does not comply with several of the Act’s Goals (and other requirements) because it has not designated appropriate “urban densities” in the 60.8-acre Plan Amendment Area. This allegation rests on the premise that the Act imposes a duty upon all cities, including Woodway, to designate all lands within their city limits (UGA) at appropriate urban densities and that Woodway has breached that duty.

This premise is correct because: 1) all cities are included in UGAs, RCW 36.70A.110(1); 2) the

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Town of Woodway is a city ; and 3) the Act mandates that each UGA “shall permit urban densities,” RCW 36.70A.110(2). Therefore, all cities, including Woodway, are directed by the Act to permit urban densities. To clarify, **the Board holds that the GMA requires every city to designate all lands within its jurisdiction at appropriate urban densities.**

LMI argues that Woodway failed to comply with GMA planning Goals 1 (urban growth), 2 (reduce sprawl), 3 (transportation), 4 (housing), and 6 (property rights), because Woodway,

through the application of the UR designation, has prohibited all development on approximately 80 percent of Petitioners' property and has allowed only 4 du/ac on the remainder of the property. LMI also complains that the Subarea Plan perpetuates a historic low density development pattern. The Board will review the challenged provisions of the Ordinances for compliance with each goal; however, the Board's discussion of Goal 1 and 2 is combined.

Goals 1 (Urban Growth) and 2 (Reduce Sprawl):

RCW 36.70A.020 provides in relevant part:

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

(2) Reduce Sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low density development.

Ordinance No. 98-339:

Fundamental to a city's complying with Goals 1 and 2 is that its land use element, including its future land use map, permits appropriate urban densities throughout its jurisdiction. The map designations in Ordinance No. 98-339, which permit 4 du/ac on only 10.5 acres of the area designated UR, will allow, according to LMI, the development of approximately 30 single family

[\[20\]](#) residences on the entire 60.8-acre Plan Amendment Area. LMI PHB, at 12. According to LMI, allowing only 30 homes throughout the whole of the 60.8 acres designated UR amounts to density of 1 du/2 ac and therefore fails to achieve urban densities. LMI PHB, at 12, 20-25.

Woodway argues that, since environmental considerations make 50.3 acres of the UR designation non-buildable, 4 du/ac on the 10.5 buildable acres is an appropriate urban density. Woodway Response, at 24-26.

All parties agree that a Comprehensive Plan's residential land use designation of 4 du/ac is an [\[21\]](#) appropriate urban density; also, the parties do not dispute that 1 du/2 ac is not an appropriate urban density and constitutes low density development, or sprawl, within the UGA. The Board agrees that, absent justifiable environmental reasons, permitting only 30 homes on 60.8 acres would not achieve urban densities and would constitute impermissible low-density development within the UGA, thus failing to comply with Goals 1 and 2. Therefore, the question before the Board is whether Woodway's UR Comprehensive Plan designation for the Plan Amendment Area permits appropriate urban densities consistent with Goals 1 and 2. The Board concludes that Woodway's UR land use designation does not.

In *Litowitz v. City of Federal Way*, the petitioners challenged a land use designation of 1-3 du/ac in Federal Way's comprehensive plan. *Litowitz*, at 10-12. Federal Way argued that "environmentally sensitive features" justified the plan's land use map designation for low

residential densities.*Id.*The petitioners argued that the record did not contain sufficient foundation for the City to use "environmental concerns" to depress densities across broad areas and that Federal Way disregarded the GMA mandate for compact urban densities and against sprawl in urban areas.*Id.*The Board agreed with Federal Way and determined that the plan's land use designation was an appropriate urban density because the "environmentally sensitive feature," a critical area, sought to be protected in that case was a wetlands system that was *large in scope* [22] with a *high rank order value* and *complex in structure and functions*. *Id.*

The Board affirms and restates its holding in *Litowitz*: When critical areas are large in scope, with a high rank order value and are complex in structure and function, a city may use its future land use map designations to afford a higher level of critical areas protection than is available through its regulations to protect critical areas. In these exceptional circumstances, the resulting residential density will be deemed an appropriate urban density.

Applying this test to the record in the present case does not reveal such a large, high rank order value critical area with complex structure and functions, that would justify the use of the UR land use map designation, which excludes a majority of the Plan Amendment Area from any development.

There is a 2.4-acre portion of a wetland [23] within the 60.8-acre Plan Amendment Area. The FEIS rates this wetland within the UR designation as *moderate* for water quality improvement, storm and flood water control, biological support function, and aquatic study areas, sanctuaries and refuges. Ex. 33, FEIS, Vol. I, at 2-18. This wetland rates *low* for hydrologic support to streams, and *low to moderate* for groundwater recharge and cultural and recreation values.

Id. "Overall, the functional value for Wetland A merits a MODERATE rating." *Id.* [24] (emphasis in original).

The FEIS identifies freshwater wetland priority habitat, priority snag habitat and urban natural open space priority habitat in some areas within the 60.8 acre UR designation. Ex. 33, FEIS, Vol. I, at 2-22. The FEIS states: "Development of priority habitats is considered as [*sic*] significant adverse environmental impact." Ex. 33, FEIS, Vol. I, at 2-25. A map depicting habitat quality within the UR designation shows a small area of high quality habitat (the wetland), a greater area of moderate-high quality habitat (priority snag habitat), and a larger area of moderate quality (forest and shrub) and low quality habitat (disturbed/grassland). [25] Ex. 33, FEIS, Vol. I, at Fig. 2-2.

The 60.8-acre Plan Amendment Area, designated UR, does not contain any endangered,

threatened or sensitive wildlife species or sensitive plants or high quality native plant communities. Ex. 33 FEIS, Vol. III, Appendix F, Wildlife Study, at 2-3. However, the area is thought to contain a Washington State candidate species, pileated woodpeckers, and a Washington State priority game bird species, band-tailed pigeons. Ex. 33, Vol. I, at 2-34. Although no pileated woodpecker nests were recorded in the UR designation, “it [is] likely that nesting occurs on the site.” *Id.* (reference omitted). Band-tailed pigeons have been observed on the site. *Id.*

West of the city limits, and below the area designated UR, is a railroad right-of-way that serves as a habitat corridor connecting several King and Snohomish County parks along the shores of

[26] Puget Sound. Ex. 33, FEIS, Vol. III, Wildlife Study, at 6. Uncontested testimony in the record shows that areas within the UR designation are an offshoot of this railroad right-of-way habitat corridor. Ex. 117, Conolly Testimony, at 95.

In reviewing the record, the Board finds that it does not support the proposition that 50.3 acres within the UR designation contain critical areas that are large in scope, of high rank order value and are complex in structure and functions. Also, the Board finds that the record does not support the notion that the 50.3 acres within the UR designation are a critical part of an identified and designated critical ecological system that is large in scope, of high rank order value and is complex in structure and functions. Absent these exceptional environmental attributes, the land use map density designations within the entire 60.8-acre Plan Amendment Area (UR designation) must reflect appropriate urban densities. Woodway’s decision to permit 4 du/ac on only a small portion (10.5 acres) of the 60.8-acre Plan Amendment Area (UR designation) and prohibit development on the remainder does not permit appropriate urban densities within the UR designation.

The Board concludes that the amendments to the maps in Woodway’s Comprehensive Plan, as set forth in Ordinance No. 98-339, **do not comply** with, are inconsistent with, and thwart GMA Goals 1 and 2. Specifically, the amendments to the comprehensive plan map (UR designation and [27] legend wording -- Sec. 1(b)), the development potential map (Sec. 1(c)) and the critical areas map (Sec. 1(d)) **do not comply** with Goals 1 and 2 because these map designations do not permit development at appropriate urban densities. The Board will **remand** these map designations to Woodway with direction to amend the designation for the 60.8-acre Plan Amendment Area to permit appropriate urban densities within the entire area.

Ordinance No. 98-338:

Petitioners also challenge whether Woodway’s adoption of Ordinance No. 98-338 complies with Goals 1 and 2. This amendment to Woodway’s Comprehensive Plan identifies the same 60.8 acres affected by Ordinance No. 98-339 and designates it as a Subarea within Woodway’s Plan.

Residential development within the Subarea is subject to criteria (SSAC) set forth in the Ordinance. Ex. 179, Ordinance No. 98-338. LMI asserts that Ordinance No. 98-338 is aimed at maintaining existing, low-density sprawling development patterns. LMI PHB, at 25, 30-32. Woodway counters that no language in the SSAC is inconsistent with or thwarts Goals 1 and 2. Woodway Response, at 34.

The criteria for the special study area apply only to the 60.8-acre Subarea and are for evaluating proposed uses or developments in the Subarea. Ex. 179, Ordinance No. 98-338, at 1 and 2. Under the *land use* criterion of the SSAC, the Ordinance provides:

Woodway is a residential community of low to medium density single family residential neighborhoods (one unit per two acres, one unit per one acre, and three units per acre zoning). *Any proposed uses in the Special Study Area should protect the [sic] maintain the town's residential character and the natural features of the town.* Ex. 179, at 3 (emphasis added).

To discern the nature of the residential character Woodway seeks to protect and maintain, the *character* criterion is instructive; it provides:

The character of Woodway was established by the original Woodway Park development: large, single family detached homes in a quiet, wooded natural setting. Lot sizes of two or more acres, many sited on the bluff overlooking Puget Sound, create an image of walking or driving through the woods as you proceed down the main thoroughfare. Incorporation and rezoning have reduced the average lot size, but the quiet wooded environment and preservation of open space remain unchanged and characteristic of the Town and its planning goals.

Currently the average lot size is 1.7 acres. Under existing zoning, at build-out ^[28] (all areas developed to the maximum allowed), which is unlikely to occur, the average lot size build-out would be approximately one acre. Ex. 179, at 2.

Petitioners also reference letters and statements from the minutes of planning commission meetings to support their contention that Ordinance 98-338 is aimed at perpetuating large lot, low-density sprawl. LMI PHB, at 31-32.

The Board concurs with LMI regarding Ordinance No. 98-338. The Ordinance seeks to protect and maintain the large-lot, low-density, residential character of Woodway without encouraging urban growth at appropriate urban densities or reducing the conversion of undeveloped land to low-density development. Therefore, Ordinance No. 98-338 is inconsistent with, thwarts and **does not comply** with Goal 1 and 2. The Board will **remand** Ordinance No. 98-338 to Woodway with direction to either repeal the Special Study Area Criteria (SSAC) and the Subarea or amend the

SSAC to provide for compact urban growth within the Subarea at appropriate urban densities.

Goal 3 (Transportation)

RCW 36.70A.020 provides in part:

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

LMI argues that Woodway has failed to comply with Goal 3 because the residential densities allowed within the UR designation, and the City as a whole, are not “transit supporting densities.” LMI PHB, at 33. LMI relies on the Board’s *observation* in a prior case that some planning literature suggests residential densities of at least 7 du/ac are necessary to “support transit objectives.” *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039, Final Decision and Order (October 6, 1995), at 49-50. Petitioners also cite “A Guide to Land Use and Public Transportation for Snohomish County, Washington” for the proposition that residential densities of between seven and fifteen du/ac are necessary to support local bus service, and may support rail transit. Ex. 197, at 3-5. Woodway counters that its small size and limited amount of remaining developable land preclude meaningful impact on the region’s mass transit system. Woodway Response, at 36. The Board notes that on August 5, 1996, Woodway passed Resolution 178, which “[Expressed] Support for the Regional Transit Authority.” (RTA) Ex. 191.

Goal 3 requires local governments to “[e]ncourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.” RCW 36.70A.020(3). Goal 3 does not require that each and every land use designation of a jurisdiction permit residential densities that support all modes of transportation. To show noncompliance with Goal 3, LMI must explain how Ordinance Nos. 98-338 and 98-339 are inconsistent with, or thwart, multimodal transportation systems in the context of regional priorities, and county and city comprehensive plans in the aggregate. Merely relying upon urban density designations alone, especially in light of Woodway’s express support for the RTA (a regional priority), is not enough to demonstrate noncompliance with Goal 3. **LMI has failed to meet its burden of proof** in showing that Woodway failed to comply with RCW 36,70A.020(3) when it adopted Ordinance Nos. 98-338 and 98-339. The Board is not persuaded that, regarding Goal 3, Woodway’s actions were clearly erroneous.

Goal 4 (Housing):

RCW 36.70A.020 provides in part:

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

LMI argues that Woodway has failed to comply with Goal 4 because Woodway’s “detailed and unusually lengthy review requirements [for the plan amendment] violated Goal 3 [sic] by raising

costs to such an extent that the development of affordable housing is, from a practical standpoint, infeasible.” LMI PHB, at 34. In addition, LMI argues that Ordinance Nos. 98-338 and 98-339 “ensure that nothing but single-family detached residences would be developed on the Property [29]

and that the Property would not be developed at densities that permit affordable housing.” LMI PHB, at 35. Woodway asserts that LMI’s arguments are pure conjecture, not supported by evidence in the record, since no economic data has been provided. Woodway [30]

Response, at 37. The Board notes that Woodway’s existing Plan and zoning designations do provide for a variety, albeit limited, of single-family densities within its city limits. Ex. 20, at 17 and Comprehensive Plan Map. Petitioners counter that evidence in the record and common sense support the conclusion that Woodway’s actions have increased the cost of housing to be developed on the property. LMI Reply, at 30. The Board is not persuaded by LMI’s argument. Goal 4, as relevant to LMI’s arguments, requires local governments to “[e]ncourage the availability of affordable housing to all economic segments of the population of this state” RCW 36.70A.020(4). As with Goal 3, Goal 4 does not require that each and every land use designation of a jurisdiction provide for affordable housing. To show noncompliance with Goal 4, LMI must explain how Ordinance Nos. 98-339 and 98-338 are inconsistent with, or thwart, the availability of affordable housing in Woodway. While Petitioners might have presented evidence to demonstrate non-compliance, they have not done so here.

Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, LMI’s argument must be accompanied by factual evidence. For example, LMI has not shown that the single family residences permitted by Woodway’s adopted [now noncompliant] amendments would be any less affordable than the single-family residences proposed in LMI’s original plan amendment proposal. The only evidence of housing costs presented by LMI is that according to a “Directory of Wealth” Table on page 82 of the July/August 1997 edition of Worth Magazine, the median home price within Woodway, Washington is \$650,000. LMI Reply, at 31 and Ex. 44. However, LMI has not shown how Ordinance Nos. 98-339 and 98-338 fail to encourage the availability of affordable housing. **LMI has failed to meet its burden of proof** in showing that Woodway failed to comply with RCW 36.70A.020(4) when it adopted Ordinance Nos. 98-338 and 98-339. The Board is not persuaded that, regarding Goal 4, Woodway’s actions were clearly erroneous.

Goal 6 (Property Rights)

RCW 36.70A.020 provides in part:

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

Petitioners acknowledge that the Board does not have jurisdiction over takings claims and are not asking the Board to decide whether Woodway’s actions constitute a taking. However, Petitioners do ask the Board to find that Woodway’s actions in this case are arbitrary and discriminatory, as

prohibited by Goal 6.LMI PHB, at 35.For LMI to prevail in this type of challenge, it must prove that the action taken by Woodway is both arbitrary *and* discriminatory.*Hapsmith v. City of Auburn (Hapsmith)*, CPSGMHB Case No. 95-3-0075c, Final Decision and Order (May 10, 1996), at 44.

LMI argues that adoption of Ordinance Nos. 98-339 and 98-338 was arbitrary because the ordinances act to limit development to a very small portion (10.5 acres) of the 60.8 acre property without adequate environmental justification.LMI PHB, at 36.Woodway responds that the record supports its action to preserve, in an undeveloped state, the majority of the 60.8 acres designated UR.Woodway points to the FEIS's identification of priority wildlife habitats and wetlands, and its public hearing and deliberation process, to show that its action was not arbitrary.Woodway Response, at 39.

Although the Board has found Woodway's actions clearly erroneous in the context of Goals 1 and 2, a clearly erroneous action is not necessarily an arbitrary action."Arbitrary" means to be

[\[31\]](#) determined by whim or caprice. Washington's courts have further defined "arbitrary and capricious" action to mean willful and unreasoning action taken without regard to or consideration of the facts and circumstances surrounding the action.*Kendall v. Douglas, Grant, Lincoln & Okanogan Counties Pub. Hosp. Dist. No. 6*, 118 Wash.2d 1, 14,820 P.2d 497 (1991) (footnote omitted) (quoting: *Abbenhaus v. City of Yakima*, 89 Wash.2d 855, 858, 576 P.2d 888 (1978)) *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, __ Wash.2d __, 959 P.2d 1091 (1998) Here, Woodway's record and process for adoption of Ordinance Nos. 98-339 and 98-338 indicate it considered the facts and circumstances surrounding the ordinances, and took action.Although its actions were clearly erroneous, they were not arbitrary.

LMI also asserts that Woodway's actions were discriminatory because Woodway exhibited a "cavalier, discriminatory attitude towards [Petitioners'] property rights" and application of the SSAC only to Petitioners' 60.8 acres has no rational basis.As evidence of Woodway's cavalier attitude, LMI cites to a letter sent to the Town Council by Councilmember Saltonstall, prior to his election.LMI PHB, at 37.Woodway correctly points out that the letter cited to illustrate Woodway's "cavalier attitude" was written by one Councilmember prior to his being elected to

[\[32\]](#) office. Therefore, this "one-time statement by a member of the public is not evidence of discrimination by [Woodway]."Woodway Response, at 40.Additionally, Woodway relies upon this Board's decision in *Hapsmith* to support its argument that application of the SSAC only to the 60.8 acre property is not discriminatory.Woodway Response, at 40-41.In *Hapsmith*, Auburn designated a large area owned by one property owner as a special planning area.The Board determined this was not a discriminatory action, stating "Jurisdictions are free to designate areas that are subject to additional or more detailed planning such as the 'special planning areas' technique used by Auburn.Such localized planning does not constitute discriminatory action."*Hapsmith*, at 46.Exs, 179 and 182.Likewise, Woodway's use of the Subarea Plan designation, for more localized planning, is a permissible "special planning area" technique and

authorized pursuant to RCW 36.70A.090(2).LMI has failed to show how Woodway's adoption of Ordinance Nos. 98-339 and 98-338 was discriminatory.

The Board concludes that LMI has not shown how Woodway's actions were arbitrary and discriminatory.LMI **has failed to meet its burden of proof** in showing that Woodway failed to comply with RCW 36.70A.020(6) when it adopted Ordinance Nos. 98-338 and 98-339.The Board is not persuaded that, regarding Goal 6, Woodway' actions were clearly erroneous.

Findings of Fact

The Board finds:

31.Ordinance No. 98-339 amended three maps in Woodway's Comprehensive Plan. Ex. 180, Ordinance No. 98-339, Sec 1(b), (c) and (d), at 1 and 2.

32.The Comprehensive Plan Map was amended to include a new land use designation, Urban Restricted (UR).The UR designation applies only to the 60.8-acre Plan Amendment Area. Within the UR designation, development is limited to 4 du/ac on 10.5 acres.The remaining 50.3 acres in the UR designation are to be permanently protected in their undeveloped, natural state.Ex. 180, Ordinance No. 98-339, Sec. 1(b) and (d), at 1 and 2.

33.The Critical Areas Map was amended to designate 50.3 acres of the Plan Amendment Area as critical areas.These are the lands to be permanently protected in their undeveloped, natural state.Ex. 180, Ordinance No. 98-339, Sec. 1(d), at 2.

34.The Plan's Development Potential Map was amended.This map was changed to indicate that the 60.8 acre Plan Amendment Area is to be developed pursuant to the UR designation. Ex. 180, Ordinance No. 98-339, Sec. 1(c), at 2.

35.Ordinance No. 98-338 amended Woodway's Comprehensive Plan to include a Subarea Plan.The Subarea Plan includes criteria (SSAC) that apply only to the 60.8 acres owned by Chevron U.S.A.Ex. 179, Ordinance No. 98-338, at 1.

36.Woodway is a city.Woodway Response, at 4

37.There is a portion of a 2.4-acre wetland within the 60.8 acre UR designation area; the functional value of this wetland is rated as moderate.Ex. 33, FEIS, Vol. I, at 2-18.

38.A map depicting wildlife habitat quality within the UR designation area shows only the 2.4 acre wetland area as high-quality habitat.Ex. 33, FEIS, Vol. I, at Fig. 2-2.

39.No endangered, threatened or sensitive wildlife species or sensitive plants or high quality native plant communities were found within the 60.8-acre UR designation area.Ex. 33, FEIS, Vol. III, Appendix F, Wildlife Study, at 2-3.

40.The 60.8-acre UR designation area is thought to contain a candidate wildlife species (pileated woodpeckers) and a priority game bird species (band-tailed pigeons).Ex. 33, Vol. I., at 2-34.

41.West of the UR designation is a railroad right-of-way that serves as a wildlife habitat corridor.Areas within the UR designation are an offshoot of this railroad right-of-way wildlife habitat corridor.Ex. 117, Conolly Testimony, at 95.

42.The criteria in the SSAC apply only to the 60.8 acre Subarea and are for evaluating

proposed uses or developments in the Subarea.Ex. 179, Ordinance No. 98-338, at 1 and 2.

43.Pursuant to the SSAC, proposed uses and developments to be permitted within the Subarea need to protect and maintain Woodway's residential character.Ex. 179, at 3.

44.Woodway's residential character is described as large-lot, low-density development.Ex. 179, at 2.

45.The record and the language of Ordinance No. 98-338 support the contention that Ordinance No. 98-338 perpetuates large-lot, low-density sprawl within the city limits.Ex. 179, at 2 and 3; LMI PHB, at 31-32.

Conclusions of Law

The Board concludes:

22.Pursuant to RCW 36.70A.110(1), all cities are included in UGAs.Pursuant to RCW 36.70A.110(2), each UGA must permit urban densities.Therefore, the GMA imposes a duty upon cities, including Woodway, to designate lands within their city limits (UGA) to permit urban densities.The GMA requires all cities to designate all lands within their jurisdiction at appropriate urban densities.

23.Fundamental to a city's complying with Goals 1 and 2 is that its land use element, including its future land use map, permits appropriate urban densities throughout its jurisdiction.

24.A future land use map designation for residential development that permits 4 du/ac within city limits (UGA) is an appropriate urban density.

25.A future land use map designation for residential development that permits only 1 du/2 ac within the UGA is not an appropriate urban density and constitutes sprawling low-density development.

26.When critical areas are large in scope, with a high rank order value and complex in structure and function, a city may use its future land use map designations to afford a higher level of critical areas protection than is available through its regulations to protect critical areas.In these exceptional circumstances, the resulting residential density, within the city limits (UGA), will be deemed an appropriate urban density.

27.The record does not support the proposition that 50.3 acres within the 60.8-acre UR designation includes critical areas that are large in scope, of high rank order value and are complex in structure and function.

28.The record does not support the proposition that 50.3 acres within the 60.8-acre UR designation are a critical part of an identified and designated critical ecological system that is large in scope, of high rank order value and are complex in structure and function.

29.Absent the requisite environmental attributes of a critical area that is large in scope, of high rank order value and is complex in structure and function, the future land use map density designations within the entire 60.8 acre UR designation must permit appropriate urban densities.Woodway's decision to permit 4 du/ac on only a small portion (10.5 acres) of the 60.8-acre Plan Amendment Area (UR designation), and to prohibit development on the

remainder, does not permit development at appropriate urban densities within the UR designation.

30. The amendments to the Comprehensive Plan Map (UR designation), Development Potential Map, and Critical Areas Map, in Woodway's Comprehensive Plan, as set forth in Ordinance No. 98-339, **do not comply** with, are inconsistent with and thwart GMA Goals 1 and 2 (RCW 36.70A.020(1) and (2)), because these map designations do not permit appropriate urban densities. The Board will **remand** these map designations to Woodway with direction to amend the designations for the entire 60.8 acre Plan Amendment Area to permit appropriate urban densities. Woodway's actions were clearly erroneous.

31. The SSAC and Subarea Plan seek to protect and maintain the large lot, low density, residential character of Woodway without encouraging urban growth at appropriate urban densities or reducing the conversion of undeveloped land to low density development; therefore, Ordinance No. 98-338 is inconsistent with, thwarts, and **does not comply** with Goals 1 and 2 (RCW 36.70A.020(1) and (2)). The Board will **remand** Ordinance No. 98-338 to Woodway with direction to either repeal the SSAC and the Subarea or amend the SSAC to provide for compact urban growth within the Subarea at appropriate urban densities. Woodway's actions were clearly erroneous.

32. LMI **has failed to meet its burden of proof** in showing that Woodway failed to comply with RCW 36.70A.020(3) when it adopted Ordinance Nos. 98-338 and 98-339. The Board is not persuaded that, regarding Goal 3, Woodway's actions were clearly erroneous.

33. LMI **has failed to meet its burden of proof** in showing that Woodway failed to comply with RCW 36.70A.020(4) when it adopted Ordinance Nos. 98-338 and 98-339. The Board is not persuaded that, regarding Goal 4, Woodway's actions were clearly erroneous.

34. For purposes of analyzing challenges to RCW 36.70A.020(6), a clearly erroneous action is not necessarily an arbitrary action.

35. Designating localized special planning areas does not constitute discriminatory action.

36. LMI **has failed to meet its burden of proof** in showing that Woodway failed to comply with RCW 36.70A.020(6) when it adopted Ordinance Nos. 98-338 and 98-339. The Board is not persuaded that, regarding Goal 6, Woodway's actions were clearly erroneous.

D. Legal Issue No. 4

The Board's prehearing order set forth Legal Issue No. 4:

Did the Town of Woodway fail to comply with RCW 36.70A.070(preamble) when it adopted Ordinance Nos. 98-339 and 98-338, because:

- (a) the Plan amendments of Ordinance No. 98-339, itself, are internally inconsistent;***
- (b) the Plan amendments of Ordinance Nos. 98-339 and 98-338 are inconsistent with each other; and***
- (c) the Plan amendments of Ordinance No. 98-339 are inconsistent with the following provisions of the Woodway Comprehensive Plan: Policies C12, LU1, LU2, LU4, LU8, H1 and H3; the Development Potential Map; the Comprehensive Plan Map; the Land***

Use Element, Land Use Inventory and Analysis (p. 14); the Land Use Element, Future Needs and Land Use Alternatives (pp. 17-18); Capital Facilities Element, Existing Conditions (p. 24); Housing Element, Inventory and Analysis (pp. 31-32); and the Utilities Element (p. 34)?

Applicable Law and Discussion

The preamble to RCW 36.70A.070 provides in relevant part:

The [comprehensive] plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

In interpreting this provision of the GMA, this Board has stated:

[C]onsistency means that provisions are compatible with each other – that they fit together properly. In other words, one provision may not thwart another.

West Seattle Defense Fund v. City of Seattle, CPSGMHB Case No. 94-3-0016, Final Decision and Order (Apr. 4, 1995), at 27.

The burden rests on a petitioner to identify those provisions of the challenged comprehensive plan that are uncoordinated or inconsistent.

Hensley v. Woodinville, CPSGMHB Case No. 96-3-0031, Final Decision and Order (Feb. 25, 1997), at 13.

LMI asserts that (1) Ordinance No. 98-339 is internally inconsistent, (2) Ordinance Nos. 98-339 and 98-338 are inconsistent with each other, and (3) Ordinance No. 98-339 is inconsistent with unamended plan policies.

Internal consistency of Ordinance No. 98-339

LMI argues that Plan policies amended in Ordinance No. 98-339 are inconsistent with the residential densities permitted in the UR designation. ^[33] Ordinance No. 98-339 amended four goals or policies of the Plan and the explanatory text or discussion was modified in three places. The amended goals and policies (new language is underlined, deleted language is shown as ~~strikeout~~) now read as follows:

Land Use Element:

Goal -- To sustain low density residential development where appropriate and provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act. Ex. 180, Ord. No. 98-339, Sec. 3(k), at 3; Ex. 20, at 19.

Policy LU-5 -- Continue to develop low density residential sites according to existing policies, ordinances, and development regulations where appropriate and provide for

compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act.[New development should be compatible with the character and quality

[34] of existing development.] Ex. 180, Ord. No. 98-339, Sec. 3(l), at 3; Ex. 20, at 20.

Policy LU-8 --Recognizing that the 60.8-acre Chevron Property presently zoned Conservation and Industrial Product Storage within the Town may become available for development other than present usage, designate the property as a Special Study area. The Town will make every effort to preserve the area as is or to retain the character of the Town.

The Special Studies described above have been completed for the Chevron property, and applications for development of that property have been reviewed in light of those studies and other considerations. As noted elsewhere in this Plan, the Conservation and Industrial Product Storage designations of the property referred to have been changed through an Amendment to this Plan.Ex. 180, Ord. No. 98-339, Sec. 1(a), at 1; Ex. 20, at 23.

Conservation Element:

Policy C-3 -- Preserve low density residential land use where appropriate and provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act.Ex. 180, Ord. No. 98-339, Sec. 3(h), at 2; Ex. 20, at 12.

The amendments to the Plan's explanatory text or discussion now provide as follows:

Vision for Woodway:

Land Use:

- Continue the historic land use patterns of low density single family residential use where appropriate and provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act.Ex. 180, Ord. No. 98-339, Sec. 3 (g), at 2; Ex. 20, at 4.

Land Use Element:

Land Use Inventory and Analysis:

[The Town of Woodway consists of 648 acres, excluding tidelands. Existing zoning allows for single family development on one-third acre, and two-acre lots. There is no commercial

[35] development in the town and industrial use is limited to industrial products storage.] ~~Two~~One Conservation Zones protects an ~~undeveloped land, one a 22-acre undeveloped~~ watershed owned by Olympic View Water and Sewer District, ~~the other 20.8-acre site owned by Chevron U.S.A.~~ There is also an Urban Restricted Comprehensive Plan designation for a 60.8 acre site owned by Chevron U.S.A. which will be zoned consistent with the purposes of that Comprehensive Plan designation.Ex. 180, Ord. No. 98-339, Sec. 3 (i), at 2-3; Ex. 20, at 14.

[36]

Discussion following Policy LU-1:

Discussion Housing density will continue to range from ~~three~~four single family homes per acre to one single family home per two acres.[To maintain this density, land use

[37]

development patterns and (sic) are expected to change very little.] Ex. 180, Ord. No. 98-339, Sec. 3(j), at 3; Ex. 20, at 19.

With the exception of LU-8, LMI challenges each of these amendments. Particularly, LMI attacks the Goal, LU-5, C-3 and the amended Vision of Woodway. LMI PHB, at 50. These goals, policies and text share a common theme: continue and sustain Woodway's historic low density residential development "where appropriate and provide for compact urban growth consistent with the policies of [Woodway's] plan and the goals of the Growth Management Act."

This common theme raises a threshold issue. The language of the amended goals, policies, and text is ambiguous. To continue and sustain Woodway's existing low density residential development "where appropriate" could be read to mean that Woodway intends any new residential development or redevelopment within the City to occur at existing densities, but that somehow "compact urban growth" would be permitted elsewhere in the City. Such an interpretation would not be "consistent with the goals of the Growth Management Act," specifically Goals 1 and 2. However, this same language could also be read to mean that Woodway recognizes that its existing low densities are "appropriate" only as a description of already-developed parcels within the City. Such an interpretation would recognize that while *the GMA does not compel redevelopment of existing developed parcels*, the GMA does require that the plans that govern new development or redevelopment in Woodway allow compact urban development at appropriate urban densities in order to be "consistent with the goals of the

[38]

Growth Management Act." Because of this ambiguity, the Board will **remand** the Comprehensive Plan, as amended, to Woodway to clarify that the amendatory language means that low density development is appropriate only as a description of existing development and any new development or redevelopment shall consist of compact urban growth at appropriate urban densities, consistent with goals and requirements of the GMA.

Given this interpretation, the Board now addresses the consistency of the Plan Policies amended in Ordinance No. 98-339 with the residential densities permitted in the UR designation. LMI argues that "[d]espite the new Comprehensive Plan text requiring the maintenance of historic densities only 'where appropriate' and the provision of 'compact urban growth' elsewhere, Ordinance 98-339 failed to designate the Property for compact urban development." LMI PHB, at 51. The City responds that it "has designated the portion of the property that does not contain sensitive environmental areas for quarter-acre lots [an urban density]," consistent with the amended Plan policies. Woodway PHB, at 56.

It is true that Woodway's UR designation would have permitted development at 4 du/ac for 10.5 acres of the 60.8-acre UR area. However, as discussed in Legal Issue No. 1, there is inadequate environmental justification for Woodway to permit 4 du/ac on only a small portion (10.5 acres) of the area (UR designation) and prohibit development on the remainder of 60.8-acre Plan Amendment Area. The Board determined that such a residential density designation is not an appropriate urban density that provides for compact urban growth. Further, it is not appropriate for Woodway to "continue" or "sustain" its historic low-density residential development within the 60.8-acre Plan Amendment Area. Therefore, the entire 60.8 acre area (UR designation) must provide for "compact urban growth" at appropriate urban densities. It does not. Consequently, the UR designation adopted in Ordinance No. 98-339 is **inconsistent** with the policies amended by Ordinance No. 98-339. Woodway's actions were clearly erroneous.

Consistency of Ordinance Nos. 98-339 and 98-338 with each other:

LMI argues that Ordinance Nos. 98-339 and 98-338 are inconsistent with each other. The amendments to Ordinance No. 98-339 are set out above. Ordinance 98-338 amended Woodway's Plan to add a Subarea Plan, consisting of the criteria (SSAC) governing development of the 60.8 acre Chevron property, which comprises the whole of the UR designation. LMI argues that the Plan policies amended by Ordinance No. 98-339 "require 'compact urban growth consistent with the policies of this plan and the goals of the [GMA].' [citation omitted.] Yet Ordinance 98-338 adopts [SSAC] that were developed to ensure, among other things, the maintenance of historic, low densities in the Town. [citation omitted.]" LMI PHB, at 52. Woodway responds that it "did not violate the GMA by considering factors highlighted in the SSAC, such as existing neighborhoods and the preservation of open space and greenways and protection of environmentally sensitive areas on the Chevron site." Woodway PHB, at 57.

In describing the City's character, Ordinance No. 98-338 states that "the average lot size is 1.7 acres." Ex. 179, Ordinance 98-338, at 2. The Ordinance provides that "[a]ny proposed uses in the Special Study Area should protect the [sic] maintain the town's residential character and the natural features of the town." *Id.* at 3. The Board agrees with LMI: "Ordinance 98-338 did far more than 'consider historic development patterns.' The Ordinance adopted the maintenance of an average density of 1.7 units per acre as a planning goal. See Exhibit 179, Ordinance No. 98-338, pp. 2-3." LMI Reply, at 34. The text of the SSAC, adopted as a subarea plan by Ordinance 98-338, is **inconsistent** with the policies amended by Ordinance No. 98-339, because Ordinance No. 98-338 seeks to continue and sustain the large-lot, low-density residential character of Woodway without encouraging compact urban growth as provided for in Ordinance No. 98-339. Woodway's actions were clearly erroneous.

Consistency of Ordinance No. 98-339 with unamended Woodway 1994 Plan Policies:

LMI argues that policies amended by Ordinance No. 98-339 are inconsistent with preexisting

portions of Woodway’s 1994 Comprehensive Plan.LMI PHB, at 52-54.Woodway responds that LMI’s argument “is an untimely attack on the 1994 Comprehensive Plan” and should be rejected by the Board.Woodway PHB, at 58.

Woodway’s defense is misplaced.The GMA is unequivocal:a comprehensive plan “shall be an internally consistent document.”RCW 36.70A.070.Amendments to a plan are not exempt from this requirement and must not result in an internally inconsistent plan.*See* RCW 36.70A.130(1) (“Any amendment or revision to a comprehensive land use plan shall conform to this chapter”).
The Board holds that for an internal consistency challenge, it is appropriate and necessary [\[39\]](#) to review plan amendments for consistency with preexisting plan provisions.

Specifically, LMI alleges Ordinance No. 98-339’s amended policies of “providing for compact urban growth” are inconsistent with the following preexisting 1994 Woodway Comprehensive Plan policies, text, and maps:

C12 – Preserve wooded areas and low density residential development.Ex. 20, at 12.

LU1 – Preserve the character of Woodway by maintaining existing land use categories and zoning districts. Ex. 20, at 19.

LU2 – Preserve an abundance of light and air through the continued low density residential development and absence of commercial and industrial uses. Ex. 20, at 19.

LU4 – Maintain current zoning districts and other regulations to accommodate limited population growth. Ex. 20, at 19.

H1 – Add new development in keeping with the character of existing development as demand occurs. Ex. 20, at 33.

H3 – Attempt to accommodate housing needs as they arise with sensitivity to historic character, residential density, and changes in the demographic composition. Ex. 20, at 33.

Land Use Element, Land Use Inventory and Analysis (stating that existing land use designations and zoning permit single family residential uses on lots no smaller than one-third acre and that development under existing land use designations and zoning would meet the Town of Woodway’s population allocation).Ex. 20, at 14.

Land Use Element, Future Needs and Land Use Alternatives (discussing a “likely development scenario” for the future in which no lots are smaller than one-third acre).Ex. 20, at 17-18

Capital Facilities Element, Existing Conditions (stating that the Comprehensive Sewer Plan assumed existing zoning, with no lots smaller than one-third acre).Ex. 20, at 24.

Housing Element, Inventory and Analysis (assuming the continuance of existing, low density development patterns).Ex. 20, at 31-32.

Utilities Element (assuming the continuance of existing, low density development patterns in determining that adequate utility capacity exists).Ex. 20, at 34.

Development Potential Map (showing low density development throughout the Town).Ex. 20, at 40.

Comprehensive Plan Map (showing low density development throughout the Town).Ex, 20, at 41.

LMI PHB, at 52-54.

Each of the policies, text, and maps identified by LMI in Woodway's existing Plan contemplates only low-density residential development. The policies amended by Ordinance No. 98-339 require Woodway to "provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act." Except for the amended policies, the Plan assumes a continuation of the City's historic low-density residential development; the Plan is devoid of even the possibility of the "compact urban growth" called for in the policies amended by Ordinance No. 98-339. The policies amended by Ordinance No. 98-339 to "provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act." and the preexisting 1994 Woodway Comprehensive Plan policies, text, and maps identified by LMI to "maintain" and "preserve" the existing pattern of low-density residential development are **inconsistent**. Woodway's actions were clearly erroneous.

Findings of Fact

The Board finds:

46. Ordinance No. 98-339 amended four goals or policies of the Plan and the explanatory text or discussion was modified in three places. Ex. 180, Ordinance No. 98-339, Sec. 3, at 2-3.

47. The amendatory language of Ordinance No. 98-339 is unclear; it can be subject to several interpretations. Compare: Ex. 20, at 20, with Ex. 180, Sec. 3(I); Ex. 20, at 14, with Ex. 180, Sec. 3(I); and Ex. 20, at 19, with Ex. 180, Sec. 3(j). Also, the goals and policies, as amended, can be subject to two interpretations. Compare: Ex. 180, Sec. 3(g), (h), (k) and (l).

48. The challenged goals, policies and text share a common theme: continue and sustain Woodway's historic low density residential development "where appropriate and provide for compact urban growth consistent with the policies of [Woodway's] plan and the goals of the Growth Management Act." Ex. 180, Ordinance No. 98-339, Sec. 3(g), (h), (k) and (l).

49. Woodway's amended goal, policies and text are intended to provide for "compact urban development." The Board has determined in Legal Issue No. 1 that Woodway's 60.8-acre UR designation does not provide for "compact urban growth" at appropriate urban densities.

50. In describing the character of Woodway, Ordinance No. 98-338 indicates that it is a large-lot, low-density community and that in Woodway "the average lot size is 1.7 acres." Ex. 179, Ordinance 98-338, at 2

51. Ordinance No. 98-338 provides that "[a]ny proposed uses in the Special Study Area should protect the (sic) maintain the town's residential character and the natural features of the town." Ex. 179, Ordinance No. 98-338, at 3.

52. Ordinance No. 98-338 seeks to continue the large-lot, low-density residential character of Woodway without providing for compact urban growth as set forth in Ordinance No. 98-339. Exs. 179 and 180.

53. Woodway's amended goal, policies and text, as set forth in Ordinance No. 98-339, are intended to provide for "compact urban development." Each of the preexisting policies, text, and maps in the 1994 Woodway Comprehensive Plan, identified by LMI, contemplates only low-density residential development and does not provide for compact urban growth. LMI PHB, at 52-54.

Conclusions of Law

The Board concludes:

37. The language of the amended goals, policies and text is ambiguous. Because of this ambiguity, the Board will **remand** the amendatory language "where appropriate and provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act" to Woodway with instructions to clarify that the meaning of this language is that low-density development is appropriate only as a description of existing development and any new development or redevelopment shall consist of compact urban growth consistent with the goals and requirements of the GMA.

38. Ordinance No. 98-339 is internally inconsistent, and **does not comply** with RCW 36.70A.070(preamble). The UR designation adopted in Ordinance No. 98-339 is **inconsistent** with the goals, policies and text amended by Ordinance No. 98-339. The Board will **remand** Ordinance No. 98-339 to Woodway with direction to remove the internal inconsistencies consistent with this Order, specifically Legal Issue 1, and consistent with the goals and requirements of the GMA. Woodway's actions were clearly erroneous.

39. Ordinance No. 98-338 is inconsistent with Ordinance No. 98-339, and **does not comply** with RCW 36.70A.070(preamble). The criteria (SSAC) adopted for the Subarea Plan by Ordinance No. 98-338, are **inconsistent** with the goal, policies and text amended by Ordinance No. 98-339. The Board will **remand** Ordinance No. 98-338 to Woodway with direction to either repeal the Special Study Area Criteria (SSAC) and the Subarea Plan or amend the SSAC to provide for compact urban growth within the Subarea at appropriate urban

densities. Woodway's actions were clearly erroneous.

40. RCW 36.70A.070 provides that a comprehensive plan "shall be an internally consistent document." Amendments to a plan are not exempt from this requirement and must not result in an internally inconsistent plan. RCW 36.70A.130(1).

41. For internal consistency challenges pursuant to RCW 36.70A.070(preamble), it is appropriate and necessary for the Board to review plan amendments for consistency with preexisting plan provisions.

42. Ordinance No. 98-339 and the unamended preexisting Woodway 1994 Plan Policies are inconsistent, and do not comply with RCW 36.70A.070(preamble). The goal, policies and text amended by Ordinance No. 98-339, "provide for compact urban growth consistent with the policies of this plan and the goals of the Growth Management Act." The preexisting 1994 Woodway Comprehensive Plan policies, text, and maps, identified by LMI, are to "maintain" and "preserve" the existing pattern of low-density residential development. These goals and policies are **inconsistent**. The Board will **remand** Woodway's Plan, as amended, with direction to remove the inconsistencies between the amended policies of Ordinance No. 98-339 and the existing 1994 Woodway Comprehensive Plan policies, consistent with the goals and requirements of the GMA. Woodway's actions were clearly erroneous.

E. Legal Issue No. 5

The Board's prehearing order set forth Legal Issues No. 5:

Did the Town of Woodway fail to comply with RCW 36.70A.210 when it adopted Ordinance Nos. 98-339 and 98-338, because these Plan amendments are inconsistent with:

- (a) Policies RG-1, RG-1.2, RG-1.3, RG-1.4, RG-1.5, RG-1.7, RH-4.2, RH-4.3, RH-4.5, RT-8, RT-8.17, RT-8.18, RT-8.20, and RT-8.25 of Vision 2020 (1995 update); and***
- (b) Policies UG-5, UG-8, UG-9, OD-1, OD-2, HO-2, HO-3, HO-4, HO-5, HO-7, HO-12, HO-13, HO-15, HO-16, and TR-12 of the Countywide Planning Policies for Snohomish County?***

Applicable Law and Discussion

RCW 36.70A.210(1) provides, in relevant part:

For the purposes of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required by RCW 36.70A.100.

In interpreting this provision of the GMA, this Board has stated:

The CPP "framework" of .210(1) is to ensure the consistency (required by .100) of the comprehensive plans of cities and counties that have common borders or related regional

issues. *Snoqualmie v. King County (Snoqualmie)*, CPSGPHB Case No. 93-3-0004c, Final Decision and Order (March 1, 1993), at 8.

Comprehensive plans must be consistent with county-wide planning policies. *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-008c, Final Decision and Order (October 23, 1995), at 34.

Consistency means that provisions are compatible with each other, that they fit together properly. In other words, one provision may not thwart another. Consistency can also mean more than one policy not being a roadblock for another; it can also mean that policies of a comprehensive plan, for instance, must work together in a coordinated fashion to achieve a common goal. *West Seattle Defense Fund v. City of Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (April 4, 1995), at 27.

RCW 36.70A.210(7) provides:

Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among the counties and cities within the affected counties throughout the multicounty region.

In briefing Legal Issue No. 5, LMI offered no argument regarding how Ordinance Nos. 98-339 or 98-338 failed to comply with Snohomish County CPP HO-4 or HO-16 and MPP RG-1.3. LMI PHB, at 54-63. Issues not briefed are abandoned. WAC 242-02-570(1).

The GMA requires a city's comprehensive plan to be coordinated and consistent with the comprehensive plan of the county and cities with which it has common borders or related regional issues. RCW 36.70A.100. This consistency is ensured by the framework of County-wide Planning Policies (CPPs) and Multi-county Planning Policies (MPPs), where applicable. See *Snoqualmie*, at 7-8; and RCW 36.70A.210(7). Thus, Woodway's Plan must be consistent with Snohomish County's CPPs and with the MPPs of VISION 2020.

LMI asserts that Ordinance Nos. 98-339 and 98-338 are inconsistent with numerous CPPs and MPPs. LMI PHB, at 54-63. Woodway argues that compliance with CPPs and MPPs "cannot be determined by this Board's review of Ordinances 98-338 and 98-339 which pertain to one property in Woodway." Woodway Response, at 58. Woodway relies on *Litowitz* to support its position. In *Litowitz*, in response to a housing goal challenge (RCW 36.70A.020(4)), this Board stated that it "finds nothing in the Act to suggest that either the planning goal or the housing element requirements are determinative of a specific land use outcome, as to any given parcel of property." *Litowitz*, at 19. In making this statement in *Litowitz*, the Board was not responding to a challenge to consistency with CPPs or MPPs; Woodway's reliance on *Litowitz* on this issue is misplaced. The GMA requires that comprehensive plans, as a whole, be consistent with CPPs and MPPs. Amendments to a plan cannot cause the plan to be inconsistent. **The Board holds that amendments to a comprehensive plan may not cause the comprehensive plan to be inconsistent with CPPs and MPPs.**

To determine consistency of the Plan, as amended, with the CPPs and MPPs, the Board will

examine the challenged amendments to determine if, on their face, the amendments are inconsistent with the CPPs and MPPs identified by LMI. If the challenged amendments are consistent with the identified CPPs and MPPs, LMI's challenge fails. If a challenged amendment is facially inconsistent, the Board will examine the challenged amendment in the context of the entire Plan (to the extent argued by LMI) to determine if the amendment causes the Plan to be inconsistent with the CPPs and MPPs identified by LMI.

LMI first alleges inconsistency with CPPs. Specifically, LMI argues that the densities permitted by the UR designation as adopted in Ordinance No. 98-339 (as illustrated in the three map amendments) are inconsistent with the following CPPs:

Orderly Development CPPs: OD-1 and OD-2;

Housing CPPs: HO-2, HO-3, HO-5, HO-7, HO-13, and HO-15;

Urban Growth CPPs: UG-5, UG-8, and UG-9; and

Transportation CPP: TR-12.

LMI PHB, at 56-61

The amended map designations argued by LMI are not facially inconsistent with the Housing CPPs cited by LMI. The cited Housing CPPs generally address affordable housing concerns and encourage the use of innovative land use techniques; nothing in the map amendments of Ordinance No. 98-339 or the Subarea designation of Ordinance No. 98-338 is, on its face, inconsistent with the Housing CPPs cited by LMI. LMI PHB, at 57-59; and Ex. 195, at 13-15. LMI has **failed to meet its burden of proof** in showing how Woodway's map or subarea plan designations (Ordinance Nos. 98-339 and 98-338) are inconsistent with Snohomish County's CPPs for Housing.

Also, the amended Plan provisions argued by LMI are not facially inconsistent with the Urban

Growth CPPs or the Transportation CPP. CPPs UG-5, UG-8, UG-9 ^[40] and TR-12 pertain to encouraging transit and public transportation. LMI PHB, at 59-61; and Ex. 195, at 5-6 and 27. Nothing in the map designations or Subarea Plan (Ordinances No. 98-339 and 98-338) is facially inconsistent with these CPPs. LMI has **failed to meet its burden of proof** in showing how Woodway's map amendments or Subarea designation (Ordinance Nos. 98-339 and 98-338) are inconsistent with Snohomish County's CPPs for Urban Growth or Transportation.

Likewise, CPP OD-1 requires Woodway to "[p]romote development within urban growth areas" and to "[i]dentify six year growth areas geographically within each UGA or establish policies which direct growth consistent with the land use and capital facilities element to meet state law." LMI PHB, at 56-57; and Ex. 195, at 8. LMI has **failed to meet its burden of proof** in showing how the urban density provisions of Ordinance Nos. 98-339 and 98-338 are inconsistent with the direction of CPP OD-1. However, CPP OD-2 requires Woodway's Plan to "include strategies and land use policies to achieve urban densities" LMI PHB, at 56; and Ex. 195, at 8. As argued by LMI, and previously determined by the Board, Ordinance Nos. 98-339 and 98-338 do not provide for appropriate urban densities. Therefore, the amended Plan provisions are facially inconsistent with CPP OD-2.

In examining the amendments in the context of the entire Plan, the Board concludes that the Plan, as amended by Ordinance No. 98-338, contemplates only low-density residential development; the Plan as amended by Ordinance No. 98-339's UR designation does not provide for compact urban growth at urban densities. Therefore, the Plan, as amended, does not "include strategies and land use policies to achieve urban densities." The only provisions in the Plan that contemplate

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urban densities are the goal, policy and text amendments adopted in Ordinance No. 98-339.

However, nowhere in the Plan, as amended, are there strategies and land use policies to achieve urban densities. The amendments adopted by Ordinance Nos. 98-339 and 98-338, when considered in the context of the entire Plan, as amended, are **inconsistent** with Snohomish County CPP OD-2. The Board will **remand** the Ordinances with direction to Woodway to remove the inconsistency with Snohomish County CPP OD-2.

LMI next alleges inconsistency with MPPs. Specifically, LMI argues that the densities permitted by the UR designation, map amendments, adopted in Ordinance No. 98-339 are inconsistent with the following MPPs:

Housing MPPs: RH-4, RH-4.2, RH-4.3 and RH-4.5;

Urban Growth Area MPPs: RG-1, RG-1.2, RG-1.3, RG-1.4, RG-1.5 and RG-1.7; and

Transportation MPPs: RT-8.17, RT-8.18, RT-8.20 and RT-8.25.

LMI PHB, at 61-63.

The amended Plan provisions argued by LMI are not facially inconsistent with the Housing MPPs identified by LMI. The cited Housing MPPs address affordable housing issues; nothing in the map designations or Subarea Plan (Ordinance Nos. 98-339 and 98-338) is facially inconsistent with the cited affordable housing MPPs. LMI PHB, at 62; and Ex. 193, at 32.

Also, the amended Plan provisions argued by LMI are not facially inconsistent with the Urban Growth or the Transportation MPPs. The Urban Growth and Transportation MPPs address the relationship between land use and transportation. Nothing in Ordinance Nos. 98-339 and 98-338 is facially inconsistent with these MPPs. LMI has **failed to meet its burden of proof** in showing how the amendments to Woodway's Plan, as contained in Ordinance Nos. 98-339 and 98-338, are inconsistent with these MPPs. LMI PHB, at 61-63; and Ex. 193, at 20, 21, 59 and 62.

Findings of Fact

The Board finds:

54. LMI has failed to brief Legal Issue No. 5, regarding how Ordinance Nos. 98-339 or 98-338 failed to comply with Snohomish County CPP HO-4 or HO-16; and MPP RG-1.3. LMI PHB, at 54-63.

55. The cited Housing CPPs generally address affordable housing concerns and encourage the use of innovative land use techniques. Ex. 195, at 13-15.

56. The cited Urban Growth and Transportation CPPs pertain to encouraging transit and public transportation. Ex. 195, at 5-6 and 27.

57. The cited Orderly Development CPP OD-1 addresses promoting development within the UGA. Ex. 195, at 8.

58.The cited Orderly Development CPP OD-2 requires Woodway’s Plan to include strategies and land use policies to achieve urban densities.Ex. 195,at 8-9.

59.The cited Housing MPPs generally address affordable housing concerns.Ex. 193, at 32.

60.The cited Urban Growth and Transportation MPPs generally address the relationship between land use and transportation.Ex. 193, at 20, 21, 59 and 62.

Conclusions of Law

The Board concludes:

43.Pursuant to WAC 242-02-570(1), LMI has **abandoned** its challenge to Woodway’s compliance with RCW 36.70A.210; specifically consistency with CPP HO-4 and HO-16 and MPP RG-1.3.

44.Amendments to a comprehensive plan may not cause the comprehensive plan to be inconsistent with CPPs and MPPs.

45.LMI has **failed to meet its burden of proof** in showing how Ordinance Nos. 98-339 and 98-338 are inconsistent with the cited Snohomish County’s CPPs for Housing, Urban Growth, Transportation, and Orderly Development CPP OD-1.Woodway’s actions were not clearly erroneous.

46.Ordinance Nos. 98-339 and 98-338 are facially **inconsistent** with Snohomish County CPP OD-2, since they do not provide for urban densities.In the context of Woodway’s entire Comprehensive Plan, the Plan, as amended, does not “include strategies and land use policies to achieve urban densities.”The Board will **remand** Ordinance Nos. 98-339 and 98-338 and direct Woodway to remove the inconsistency with CPP OD-2.Woodway’s action was clearly erroneous.

47.LMI has **failed to meet its burden of proof** in showing how the amendments to Woodway’s Plan, as contained in Ordinance Nos. 98-339 and 98-338, are inconsistent with the cited MPPs in Vision 2020, for Housing, Growth and Transportation.Woodway’s actions were not clearly erroneous.

F. Legal Issue No. 6

The Board’s prehearing order set forth Legal Issues No. 6:

Did the Town of Woodway fail to comply with RCW 36.70A.100 when it adopted Ordinance Nos. 98-339 and 98-338 because these Plan amendments are inconsistent with Policy PE-1.A.2, Goal LU-2, Objective LU-2.A, LU-2.A.3, Goal HO-1, Objective HO-1.B, Policy HO-1.B.1, Policy HO-1.B.2, Objective HO-1.C, Policy HO-1.C.3, Objective HO-1.D, Policy HO-1.D.1, Policy HO-1.D.2, Policy HO-1.D.3, Goal HO-3, Objective HO-3.A, Policy HO-3.A.1, Policy HO-3.A-2, Policy HO-3.A.4, Goal UT-1 and Objective UT-1. B of the Snohomish County General Policy Plan?

Applicable Law and Discussion

RCW 36.70A.100 provides:

The comprehensive plan of each . . . city. . . shall be coordinated with, and consistent with, the comprehensive plans . . . of other counties or cities with which the county or city has, in part, common borders or related regional issues.

In briefing Legal Issue No. 6, LMI offered no argument regarding how Ordinance Nos. 98-339 or 98-338 fail to be consistent with Snohomish County General Policy Plan Policies PE-1.A.2 or HO-3.A.2. Issues not briefed are abandoned. WAC 242-02-570(1).

The GMA requires Woodway's Plan to be consistent with Snohomish County's GMA Plan. RCW 36.70A.100. As was discussed in Legal Issue Nos. 4 and 5, consistency means the respective policies must work together and cannot thwart one another. The same consistency test applies in evaluating plans of adjacent jurisdictions for consistency; the Board will examine the challenged amendments to determine if, on their face, the amendments are inconsistent with the Snohomish County General Plan policies identified by LMI. If the challenged amendments are consistent with the identified Snohomish County Plan policies, LMI's challenge fails. If the challenged amendments are facially inconsistent, the Board will examine the challenged amendment in the context of the entire Plan (to the extent argued by LMI) to determine if the amendment causes the Plan to be inconsistent with the Snohomish County General Plan policies identified by LMI.

LMI argues that Ordinance Nos. 98-339 and 98-338 are inconsistent with numerous Snohomish County General Plan policies because the Ordinances "preclude urban, affordable and transit supporting residential development on the only large, undeveloped parcel remaining in the Town." LMI PHB, at 65. Woodway counters that LMI has not explained how the Ordinances are inconsistent with the various Snohomish County General Plan Policies; therefore, LMI has not met its burden of proof. Woodway Response, at 64-66. The Board is not persuaded by the arguments of LMI.

LMI asserts that the Ordinances are inconsistent with the following goals, objectives and policies of the Snohomish County General Plan:

Urban Growth in Urban Areas Policies: HO-1.D, LU-2, LU-2.A, HO-1.D.3 and HO-1.D.1;
Housing Policies: HO-1, HO-1.B, LU-2.A.3, HO-1.B.2, HO-1.B.1, HO-1.C, HO-1.D.2 and HO-1.C.3;

Permitting Policies: HO-3, HO-3.A and HO-3.A.1;

Critical Area Mapping Policies: HO-3.A.4; and

Utility Policies: UT-1 and UT-1.B.

LMI PHB, at 63-67.

The cited Urban Growth in Urban Areas policies generally speak to providing adequate land within the UGA, providing for infill and a mix of housing opportunities. Ex. 196, at HO-5 and LU-6. The housing policies address the need to provide various types of affordable housing for all economic segments of the population. Ex. 196, at HO-3, 4, 5 and LU-6. The Permitting and Utility policies encourage efficient permit processing to minimize costs and efficient provision of utility services. Ex. 196, at HO-6, 7 and UT-2 and 3. The Critical Area Mapping policy encourages the

pursuit of mapping to provide the most current information available.Ex. 196,at HO-7. Nothing in the map, text or subarea plan amendments contained in Ordinance Nos. 98-339 or 98-338 is facially inconsistent with the Snohomish County General Plan policies cited by LMI.LMI has **failed to meet its burden of proof** in showing how Woodway’s map, text or subarea plan amendments are inconsistent with the cited Snohomish County General Plan Policies.Woodway’s actions were not clearly erroneous.

Findings of Fact

The Board finds:

61.LMI has failed to brief Legal Issue No. 6 regarding how Ordinance Nos. 98-339 or 98-338 fail to be consistent with Snohomish County General Policy Plan Policies PE-1.A.2 or HO-3.A.2.LMI PHB, at 63-67.

62.The cited Urban Growth in Urban Areas policies speak to providing adequate land within the UGA, providing for infill and a mix of housing opportunities.Ex. 196,at HO-5 and LU-6.

63.The cited housing policies address the need to provide various types of affordable housing for all economic segments of the population.Ex. 196, at HO-3,4,5 and LU-6.

64.The cited Permitting and Utility policies encourage efficient permit processing to minimize costs and efficient provision of utility services.Ex. 196, at HO-6,7 and UT-2 and 3.

65.The Critical Area Mapping policy encourages the pursuit of mapping to provide the most current information available.Ex. 196, at HO-7.

Conclusions of Law

The Board concludes:

48.Pursuant to WAC 242-02-570(1), LMI has **abandoned** its challenge to Woodway’s compliance with RCW 36.70A.100, specifically consistency with Snohomish County General Plan Policies PE-1.A.2 or HO-3.A.2.

49.LMI has **failed to meet its burden of proof** in showing how Woodway’s map, text or subarea plan amendments are facially inconsistent with the cited Snohomish County General Plan Policies.Woodway’s actions were not clearly erroneous.

G. Legal Issue No. 7

The Board’s prehearing order set forth Legal Issue No. 7:

Did the Town of Woodway fail to comply with RCW 36.70A.070(1), (2) and (6) when it adopted Ordinance Nos. 98-339 and 98-338, because the Plan amendments (a) fail to designate land for development at urban densities where appropriate; (b) fail to identify sufficient land for housing, including, government assisted housing, housing for low-income families, manufactured housing, multi-family housing and group homes and foster care facilities and to make adequate provision for existing and projected needs of all economic segments of the community; and (c) fail to plan for transportation facilities,

including transit, to serve urban densities?

Applicable Law and Discussion

RCW 36.70A.070 provides, in relevant part:

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for. . . housing, commerce, industry, recreation, open spaces . . . public utilities, public facilities and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. . . .

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (c) identifies sufficient land for housing. . . and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

. . .

(6) A transportation element . . .

LMI argues that in adopting Ordinance No. 98-339, Woodway failed to comply with the mandatory requirements for the land use, housing and transportation elements. Regarding Ordinance No. 98-338, Petitioners assert noncompliance with the GMA's requirements for a housing element. LMI PHB, at 67-68. Woodway responds that Petitioners' arguments challenge the 1994 comprehensive plan, which they are not entitled to appeal in this proceeding. Woodway Response, at 67.

The cited sections of the GMA set forth the mandatory elements of a comprehensive plan and detail, to varying degrees, the required components of each element. These requirements are to be met and maintained when comprehensive plans are adopted and as various elements are amended. **The Board holds that when a plan revision amends one of the mandatory elements set forth in RCW 36.70A.070, the element, as amended, must comply with the requirements of RCW 36.70A.070.**

Ordinance No. 98-339 amends only one mandatory element of Woodway's Plan, the land use element, including the future land use map. In Legal Issue 1, the Board found that the amendments to the land use element, particularly the UR designation on the Comprehensive Plan Map accomplished by Ordinance No. 98-339, did not comply with Goal 1 and Goal 2 (RCW 36.70A.020(1) and (2)). In this context, RCW 36.70A.070(1) imposes a similar, but separate, duty to include a plan, scheme or design to designate land for urban growth at appropriate urban densities. Woodway has not done this. The Board finds that Ordinance No. 98-339's UR designation **does not comply** with RCW 36.70A.070(1) since the amended plan fails to designate the Plan Amendment Area to accommodate urban growth at appropriate urban densities. The land use element, including the Comprehensive Plan Map, will be **remanded** to Woodway with directions to comply with the requirements of RCW 36.70A.070(1).

Ordinance No. 98-338 adopts a Subarea Plan, with development criteria (SSAC) for the Subarea.

The Subarea Plan is incorporated into the Woodway Comprehensive Plan. Subarea plans are optional elements that may be included in comprehensive plans, pursuant to RCW 36.70A.080(2). However, once a city decides to adopt a subarea plan for the purpose of guiding land use decision-making, the subarea plan must be adopted as part of the comprehensive plan. Subarea plans are “subject to the goals and requirements of the Act and must be consistent with the comprehensive plan.” *West Seattle Defense Fund v. City of Seattle*, CPSGMHB Case No. 95-3-0073, Final Decision and Order (Apr. 2, 1996), at 25.

As a practical matter, the only “mandatory” component for a Subarea Plan is a map, legal description or other notation clearly depicting the boundaries of the subarea to be affected by the subarea plan. Typically, a subarea plan would refine the jurisdiction’s comprehensive plan provisions and policies for a specific geographic subarea within a jurisdiction. Thus, a subarea plan for a city may refine the land use, housing, utility, capital facility or transportation policies or projects affecting the subarea. However, these refinements must be consistent with the jurisdiction’s comprehensive plan and comply with the goals and requirements of the Act. Where the subarea plan modifies only certain portions of the jurisdiction’s comprehensive plan for the subarea, the unaffected provisions of the comprehensive plan continue to apply and govern in the subarea. **The Board holds that when a subarea plan refines one of the mandatory elements of the jurisdiction’s comprehensive plan the requirements set forth in RCW 36.70A.070 apply to that subarea plan.**

Woodway’s Subarea Plan, as adopted by Ordinance No. 98-338, includes policy direction listed under the following headings: Framework, Purpose, Criteria for Residential Development, Character, Land Use, Site Ecology, Utilities, Transportation and Public Services. Ex. 179, at 1-5. Although there is no specific heading for housing, the heading of Criteria for Residential Development implies an intention to direct housing decisions, therefore suggesting refinements to the housing element. However, the only evidence LMI points to in support of its challenge to Ordinance No. 98-338’s compliance with the housing element, are citations to the 1994

[\[42\]](#)

Woodway Comprehensive Plan, not the provisions of Ordinance No. 98-338. LMI PHB, at 68. Consequently, LMI has **failed to meet its burden of proof** in showing how Ordinance No. 98-338 failed to comply with the requirements of RCW 36.70A.070(2).

Findings of Fact

The Board finds:

66. Ordinance No. 98-339 does not amend the housing or transportation element of Woodway’s Comprehensive Plan. Ex. 180.

67. Ordinance No. 98-339 amends the land use element, particularly the UR designation on the Comprehensive Plan Map, of Woodway’s Comprehensive Plan. Ex. 180.

68. Ordinance No. 98-338 incorporates a Subarea Plan into Woodway’s Comprehensive Plan. Ex. 179.

69. Ordinance No. 98-338, by implication, refines Woodway’s housing element. Ex. 179.

70. To support its challenge to Ordinance No. 98-338’s compliance with RCW 36.70A.070(2),

LMI relied upon Woodway's existing Comprehensive Plan. LMI PHB, at 68.

Conclusions of Law

The Board concludes:

50. When a plan revision amends one of the mandatory elements set forth in RCW 36.70A.070, the element, as amended, must comply with the requirements of RCW 36.70A.070.

51. Ordinance No. 98-339 does not amend the housing or transportation element of Woodway's Comprehensive Plan. Therefore, RCW 36.70A.070(2) and (6) are not applicable to Woodway's action.

52. Ordinance No. 98-339's UR designation **does not comply** with RCW 36.70A.070(1), since the Plan, as amended, fails to designate the Plan Amendment Area to accommodate urban growth at appropriate urban densities.

53. The land use element, including the Comprehensive Plan Map (future land use map), as amended, of Woodway's Comprehensive Plan will be **remanded** to Woodway with directions to comply with the requirements of RCW 36.70A.070(1). Woodway's actions were clearly erroneous.

54. When a subarea plan refines one of the mandatory elements of the jurisdiction's comprehensive plan the requirements set forth in RCW 36.70A.070 apply to that subarea plan.

55. LMI has **failed to meet its burden of proof** in showing how Ordinance No. 98-338 failed to comply with the requirements of RCW 36.70A.070(2). The Board is not persuaded that, regarding RCW 36.70A.070(2), Woodway's actions were clearly erroneous.

H. Legal Issue No. 3

The Board's prehearing order set forth Legal Issue No. 3:

Did the Town of Woodway fail to comply with RCW 36.70A.160 when it adopted Ordinance No. 98-339, which identified without compensation approximately 50.5 acres of the property as an open space corridor which may not be developed?

Applicable Law and Discussion

RCW 36.70A.160 provides:

Each county and city . . . 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 . . . shall not restrict the use or management of lands within the corridor for agricultural or forestry purposes. Restrictions on the use or management of such lands for agriculture 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. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247

(d), 16 U.S.C. Sec. 1248 or 43 U.S.C. Sec 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources.

LMI argues that in adopting Ordinance No. 98-339, Woodway improperly identified 50.3 acres of property as an open space corridor, since the property is an offshoot of, but not part of, the north/south wildlife habitat corridor. Further, Petitioners assert that .160 cannot be used to prohibit all development of the property. LMI PHB, at 48-49. Woodway counters, citing numerous provisions of the FEIS and expert testimony, that the record supports the identification of the property as an open space corridor and therefore supports Woodway's decision to prohibit development on the property. Woodway Response, at 52-55.

RCW 36.70A.160 clearly requires Woodway to identify open space corridors within and between urban growth areas. The open space corridors identified must include lands useful for recreation, wildlife habitat, trails, and connections of designated critical areas. Here, the record, as cited by Woodway, supports Woodway's planning effort to identify the area as an open space corridor. Woodway has **complied** with RCW 36.70A.160's requirement to identify open space corridors.

[\[43\]](#)

RCW 36.70A.160 encourages the acquisition of identified open space corridors, and addresses procedures for imposing restrictions on agricultural and forestry lands in such areas, and emphasizes that “[n]othing in this section shall be interpreted to alter the authority of the . . . city, to regulate land use activities.” Thus, while .160 requires identification of open space corridors, it does not require regulating to protect open space corridors, it does not provide that mere identification is protection of an open space corridor, nor does it provide an independent source of authority for regulating land use activities within an open space corridor. Any authorized land uses, or limitation, restriction, or prohibition of land uses Woodway might choose to employ within an identified open space corridor must be grounded in separate legal authority, not RCW 36.70A.160.

Findings of Fact

The Board finds:

71. The record supports identification of the property as an open space corridor. Ex. 33, Vol. III, at 10-11, Ex. 117, at 93-95 and Ex. 180, at Section 1. d.

72. Ordinance No. 98-339 identified an open space corridor. Exs. 180 and 181, at 7 and 15.

Conclusions of Law

The Board concludes:

56. RCW 36.70A.160 requires Woodway to identify open space corridors within and between urban growth areas.

57. Woodway's adoption of Ordinance No. 98-339, that identifies an open space corridor,

complies with the requirements of RCW 36.70A.160.

58.RCW 36.70A.160 does not require regulating open space corridors or provide an independent source of authority for regulating land use activities within an identified open space corridor.

I. Legal Issue No. 9

The Board's prehearing order set forth Legal Issue No. 9:

Does the Town of Woodway's enactment of Ordinance Nos. 98-339 and 98-338, which amend its Plan, substantially interfere with the fulfillment of the goals of RCW 36.70A.020(1), (2), (3), (4) and (6), within the meaning of RCW 36.70A.302(1)(b)?

Applicable Law and Discussion

RCW 36.70A.302 provides in relevant part:

(1) A board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

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

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

Conclusion

59. The Board has found that Ordinance Nos. 98-339 and 98-338 **do not comply** with several provisions of the Growth Management Act. While Woodway's noncompliance is a serious matter, the continued validity of these enactments for the four month period of remand will not substantially interfere with the fulfillment of Goals 1, 2, 3, 4 or 6 of the Act. Consequently, at this time, the Board will not enter a determination of invalidity. However, the Board will advise the Governor of Woodway's noncompliance; if compliance is not achieved within the compliance timeframe, the Board will reconsider the question of invalidity and a recommendation for sanctions.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board Orders:

1. Woodway's Comprehensive Plan, as amended by Ordinance Nos. 98-338 and 98-339, **does**

not comply with: a) RCW 36.70A.020(1) and (2); b) RCW 36.70A.070(preamble); c) RCW 36.70A.070(1); and d) RCW 36.70A.210. With regard to these provisions of the Act, Woodway's actions were clearly erroneous.

2. In order for Woodway to achieve compliance with the Act, as set forth in this Final Decision and Order, the Board **remands** Woodway's Comprehensive Plan, as amended, to Woodway with the following directions:

- a) Regarding compliance as noted above in this Order at 1a, b, c and d, **amend** the map designations, as contained in Section 1 of Ordinance No. 98-339, to permit appropriate urban densities consistent with the goals and requirements of the GMA for the entire 60.8-acre Plan Amendment Area;
- b) Regarding compliance as noted above in this Order at 1a, b and d, **repeal** the Special Study Area Criteria (SSAC) and Subarea, as contained in Ordinance No. 98-338, **or amend** the SSAC to provide for compact urban growth within and throughout the Subarea at appropriate urban densities consistent with the goals and requirements of the GMA;
- c) Regarding compliance as noted above in this Order at 1a and b, **amend** the Comprehensive Plan, as amended, to clarify that the amendatory language, as contained in Section 3 of Ordinance No. 98-339 ("where appropriate and provide for compact urban growth consistent with the policies of this plan and goals of the Growth Management Act"), means that low density development is appropriate only as a description of existing development and any new development or redevelopment shall consist of compact urban growth at appropriate urban densities, consistent with the goals and requirements of the GMA.
- d) Regarding compliance as noted above in this Order at 1b, **remove** the inconsistencies between the amended goals, policies and text, as contained in Section 3 of Ordinance No. 98-339, and the Woodway Comprehensive Plan, consistent with the goals and requirements of the Act.

3. The Board directs the Town of Woodway to comply with the goals and requirements of the Act, as set forth in the Final Decision and Order, and as noted in this Order at items 2a, b, c and d of this Order, by no later than **May 11, 1999**. Woodway is instructed to submit to the Board a "Statement of Compliance" (SOC). The SOC shall include: 1) a description of the legislative actions taken to comply with the Act, as directed in this FDO; and 2) copies of all legislative enactments adopted to achieve compliance with the Act, as directed in this FDO. Woodway shall provide four copies of the SOC to the Board and a copy to the parties by no later than **4:00 p.m., Friday, May 21, 1999**,

So ORDERED this 8th day of January, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

[1] Although Woodway retains the name “Town” in its logo and local enactments, Woodway is a city. It became a Washington State Code City in 1986. Woodway Response, at 4. As a city, it has all the GMA duties and responsibilities assigned to cities in the Act.

[2] The 60.8-acre Chevron property, or Plan Amendment Area, consists of four separate connected parcels: Parcel I is 4.27 acres, originally designated Conservation (C) on the Comprehensive Plan Map; Parcel J is 8.46 acres, originally designated (C); Parcel K is 7.76 acres, originally designated (C); and Parcel L is 40.31 acres, originally designated Industrial Products Storage (IPS). Ex. 33, FEIS, Vol. I, at Fig. 1-2.

[3] LU-1 provides: Protect the character of Woodway by maintaining existing land use categories and zoning districts.

[4] The Board notes that RCW 36.70A.130(2) sets forth the parameters for review of plan amendments, not review of development regulations. This case involves only plan amendments.

[5] The .130 plan amendment process may include various components, such as: categories of amendments (*e.g.* map, text, UGA, capital facility element, subarea plan, shoreline element); cut-off dates for receiving proposals; submittal requirements; notice, publication and hearing procedures; the frequency with which categories of proposed plan amendments are reviewed and considered; and decision points to provide certainty as to the status and disposition of proposals.

[6] Woodway’s plan amendment procedures and process are codified at Chapter 15.04 Woodway Municipal Code.

[7] LMI’s proposed amendment was submitted in November 1995; the final decision regarding the designation of the property occurred in May 1998 (Ord. No. 98-339). Exs. 1 and 180. The Board notes that the FSEIS was not completed until May of 1997. Ex. 33.

[8] More frequent consideration of plan amendments is authorized only in certain circumstances, as set forth in RCW 36.70A.130(2)(a)(i-iii) and (b). However, these exceptions are not argued as being applicable here.

[9] The Board notes that the parties do not dispute that Woodway’s Planning Commission and Town Council held public hearings, considered, deliberated and acted on the challenged Ordinances between June, 1997 and May, 1998.

[10] Mayor Drummond did not vote. In Woodway, the mayor votes only if there is a tie vote of the Council; here, the vote was unanimous. If Councilmember Saltonstall’s vote was eliminated, the Ordinances would still have passed

four - zero.October 21, 1998, Hearing on the Merits transcript, at 93-94.

[11]

The Board notes that this Legal Issue does not involve a “failure to act” challenge.Woodway adopted a GMA critical areas interim protective policy in 1991.Ex. 192.Additionally, Woodway’s 1994 Comprehensive Plan includes a Critical Areas Map.Ex. 20.Nor does this challenge involve compliance with RCW 36.70A.060(2) which requires the protection of designated critical areas.Instead, the focus of this Legal Issue, as framed by Petitioners, is the identification and designation of critical areas through adoption of Ordinance No. 98-339.

[12]

This is the acreage figure contained in the PFR and the PHO.The actual acreage, as described in the briefing and exhibits, is 50.3 acres.

[13]

“Critical Areas” include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.RCW 36.70A.030(5).

[14]

The Board notes that LMI’s challenge under RCW 36.70A.172 regarding “best available science” was abandoned.At the hearing on the merits, Woodway suggested that it had scientific evidence in front of it when it made the challenged decisions, but since the challenge to .172 had been abandoned, Woodway had not specifically briefed the issue.October 21, 1998, Hearing on the Merits transcript, at 69.

[15]

The Board recognizes that the EIS was prepared to respond to a proposed comprehensive plan amendment, proposed rezone and proposed subdivision.Ex. 33, at FS-1.

[16]

The Board notes that the Legislature’s addition of RCW 36.70A.175 in 1995, likely constrains local discretion in identifying wetlands as critical areas.

[17]

RCW 36.70A.010 expresses the Legislatures findings and intent in enacting the GMA.It states:

The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state.It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth.

[18]

In 1995, the Legislature added RCW 36.70A.480 to the GMA.This section adds the goals and policies of the Shoreline Management Act (Chapter 90.58 RCW) as a fourteenth goal in RCW 36.70A.020.

[19]

See supra, footnote 1, at 1.

[20]

After calculating gross density for the 10.5 acres (42 units), LMI then subtracts rights-of-way and other infrastructure requirements to arrive at 30 units.Woodway does not dispute LMI’s calculation.LMI PHB, at 12, footnote 2.

[21]

Likewise, the Board has previously stated that a residential pattern at, or above, this density is clearly compact urban development.*Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order (Oct.

9, 1995), at 50.

[22]

An additional factor in *Litowitz* was the context of the Board's review. Federal Way's adoption of its entire comprehensive plan was at issue. It was not disputed that other land use map designations throughout Federal Way did accommodate urban growth and did provide for appropriate urban densities. The context was similar in *Benaroya v. Redmond*, CPSGMHB Case No. 95-3-0072, Final Decision and Order (March 25, 1996). Like Federal Way, Redmond had provided for appropriate urban densities in other land use map designations; however, in *Benaroya*, the designation of natural resource lands (agricultural lands) was the focus of the challenge, not critical areas.

[23]

The wetland continues off the site to the north and west of the Plan Amendment Area designated UR.Ex. 33, FEIS, Vol. III, Wetlands Study, at D-6. The off-site area was not designated as critical area or otherwise affected by Ordinance Nos. 98-339 or 98-338.

[24]

See also, Ex. 33, FEIS, Vol. III, Appendix C, Wetlands Study, at D-8 and D-9.

[25]

All of these habitat assessments and rankings are apparently confined to the site. None of the habitats has been acknowledged, identified or designated off-site.

[26]

Unlike the situation in *Litowitz*, wherein King County had prepared a "Hylebos Creek Basin Plan" to prevent degradation of Hylebos Creek and South Puget Sound, there is nothing in the record that indicates this habitat corridor was afforded the same degree of concern or attention by either Snohomish or King County or adjacent municipalities.

[27]

The remand will affect the development potential map to the extent that the development of the area is limited pursuant to the UR designation.

[28]

These calculations do not reflect development of the 60.8-acre subarea. *See* Ex. 20, Table 4, Footnote, at 18; and Ex. 180, Ordinance No. 98-339, Sec. 1(f).

[29]

The 60.8-acre Plan Amendment Area owned by Chevron U.S.A.

[30]

SR 14.5 (3 du/ac), FRP R-43 (1 du/ac), and FRP R-87 (1 du/2ac).

[31]

The American Heritage Dictionary of the English Language, New College Edition, Houghton Mifflin Company 1980, at 67.

[32]

See also Legal Issue No. 8.

[33]

No Plan policy describes the residential densities permitted in the UR designation. That information is provided in the notes or legend of the Comprehensive Plan Map, the Development Potential Map, and the Critical Areas Map. Also, the map designations are described in Legal Issue No. 1 and the Prefatory Note.

[34]

This sentence is contained in Policy LU-5 in the Comprehensive Plan. Ex. 20, at 20. However, the amendatory language of Ordinance No. 98-339 does not show it as existing language that remains, or indicate if it is deleted. Compare: Ex. 20, at 20 and Ex. 180, Sec. 3(1), at 3.

[35]

This language is contained in the Land Use Inventory and Analysis.Ex. 20, at 14.However, the amendatory language of Ordinance No. 98-339 does not show it as existing language that remains, or indicate if it is deleted. Compare: Ex. 20, at 14, and Ex. 180, Sec 1(i), at 2-3.

[36]

LU-1 provides: Protect the character of Woodway by maintaining existing land use categories and zoning districts.

[37]

This sentence is contained in the discussion following Policy LU-1.Ex. 20, at 14.However, the amendatory language of Ordinance No. 98-339 does not show it as existing language that remains, or indicate if it is deleted. Compare: Ex. 20. at 19, andEx. 180, Sec. 3(j), at 3.

[38]

See also, footnotes 34, 35 and 37.

[39]

The Board notes that it may not rule on Plan policies that were not amended by the challenged Ordinances; however, the Board may conclude that amended policies are inconsistent with pre-existing policies.The means by which an inconsistency is eliminated is within the local jurisdiction's discretion, subject to the requirements of the GMA.

[40]

CPP UG-9 relates to “planning for urban centers and mixed use developments.”Ex. 195, at 6.This CPP has no relevance to the challenged amendments.

[41]

See: Supra, at 7-8 or 37-38 for the complete text of these amendments.

[42]

Likewise, *amicus curiae* AWB refers to current residential zoning and lot size as not complying with RCW 36.70A.070(2), not provisions of Ordinance No. 98-338.

[43]

The Board notes that discussions occurred regarding acquisition of some or all of the property, but the discussions concluded unsuccessfully.Exs. 50, 100, 188, and LMI Reply, at 33.