

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

MACANGUS RANCHES, INC., a)	
Washington Corporation, MICHAEL)	Case No. 99-3-0017
LEUNG AND DENNIS DALEY, and)	
their respective marital communities,)	FINAL DECISION and ORDER
)	
Petitioners,)	
)	
v.)	
)	
SNOHOMISH COUNTY,)	
)	
Respondent.)	
_____)	

I. Procedural Background

On September 27, 1999, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from MacAngus Ranches, Inc., Michael Leung and Dennis Daley and their respective marital communities (collectively, **Petitioners** or **MacAngus**). MacAngus alleges that the adoption by Snohomish County (the **County**) of Ordinance No. 99-031 and Ordinance No. 99-032 does not comply with the requirements of the Growth Management Act (**GMA** or the **Act**).

On September 30, 1999, the Board received a “Notice of Appearance” from the County.

On October 27, 1999, the Board received “Snohomish County’s Index of Record.”

On October 29, 1999, the Board conducted a prehearing conference at its Seattle office. Present for the Board was Joseph W. Tovar, presiding officer. Representing MacAngus were Tayloe Washburn and Steve Jones. Representing the County was Duana Kolouskova. After a discussion of the case schedule and legal issues, the Petitioner was directed to review with the County a potential revision to one of the legal issues and to then forward it to the presiding officer by November 3. The presiding officer indicated that the prehearing order would be issued shortly thereafter.

On November 3, 1999, the Board received a letter from Mr. Washburn indicating that the parties had consulted and setting forth an agreed reformulation of Issue No. 8.5 from the Petitioners' PFR.

On November 4, 1999, the Board issued its Prehearing Order (the **PHO**) which set forth the legal issues and a schedule for the filing of motions and briefs.

On November 15, 1999, the Board received "Snohomish County's Motion to Dismiss for Lack of Standing and Subject Matter Jurisdiction" (the **County's Dispositive Motion**). On this same date, the Board received "Petitioners' Motion to Supplement the Record" (the **Petitioners' Motion to Supplement**).

On November 22, 1999, the Board received "Snohomish County's Response to Petitioners' Motion to Supplement the Record." On this same date, the Board received "Petitioners' Response to County's Dispositive Motions" (**Petitioners' Response to County's Dispositive Motions**) together with the "Declaration of Richard E. Moultrie," the "Declaration of Doug MacDonald," the "Declaration of Charles A. Wittenberg."

On November 24, 1999, in response to a joint request from the parties, the Board issued an Order Amending Final Schedule, which amended the deadliness in the PHO for the submittal of briefs and the date for the hearing on the merits.

On December 2, 1999, the Board received "Snohomish County's Reply Regarding Motion to Dismiss," and "Petitioners' Reply Memorandum on their Motion to Supplement the Record."

On December 15, 1999, the Board issued an "Order on Motions" (the **Order on Motions**) in which the Board ruled on the Petitioners' Motion to Supplement. The Order on Motions indicated that the Board would rule on the County's Dispositive Motion in the Final Decision and Order.

On January 4, 2000, the Board received "Petitioners' Prehearing Memorandum."

On February 1, 2000, the Board received "Snohomish County's Prehearing Brief."

On February 11, 2000, the Board received "Petitioners' Prehearing Reply Memorandum."

On Thursday, February 17, 2000, beginning at 1:35 p.m., the Board conducted the hearing on the merits in Suite 1022 of the Financial Center, 1215 Fourth Avenue, Seattle WA. Present for the Board were Edward G. McGuire, Lois H. North and Joseph W. Tovar, presiding officer. Also present was the Board's contract law clerk, Andrew Lane. Representing the Petitioners was J.

Taylor Washburn. Representing the County was Duana Kolouskova. As a preliminary matter, MacAngus and the County presented argument on the Petitioner's motion that the Board reconsider its prior denial of the drainage report by Higa Engineering as a supplemental exhibit. The presiding officer then orally denied the motion to reconsider. The parties subsequently presented argument on the County's Dispositive Motion and the merits of the case. Court reporting services were provided by Robert H. Lewis of Tacoma, Washington. No witnesses testified.

II. Findings of fact

1. In December 1982, the County adopted its Agricultural Preservation Plan. Under this plan, the property at issue was found to be agricultural land of primary importance.
2. In 1993, the County developed its Interim Agricultural Conservation Plan. Under this plan, the property at issue was designated Upland Commercial Farmland (UCF). In developing this plan, the County utilized the Soil Conservation Service (SCS) prime farmland list in determining soil capability.
3. The County adopted its GMA Comprehensive Plan in 1995. In adopting this plan, the County Council incorporated the 1993 Interim Agricultural Conservation Plan by reference. The Comprehensive Plan designated the property at issue UCF.
4. The Comprehensive Plan included policy "LU 7 Implementing Measures," which provided criteria for applications for deletion from or addition to designated farmland, which included a provision for landowners to request review of their land's designation. MacAngus Ranches has not requested to have their property removed from UCF designation pursuant to LU 7.
5. On July 21, 1999, the Snohomish County Council adopted Snohomish County Ordinances No. 99-031 and Snohomish County Ordinance No. 99-032 (the GMA Ordinances). The GMA Ordinances related to the creation and implementation of the Tulalip Subarea Plan by the Council. The GMA Ordinances were published on July 29, 1999 and August 5, 1999.
6. Under Ordinance 99-031, the property at issue is shown as Upland Commercial Farmland (UCF). Under Ordinance 99-032, the zoning for the property at issue is changed from RC to AG-10. The UCF designation and AG-10 zoning was based on the County's characterization of the property as land with long-term commercial significance for the commercial production of food, with soil categorized as Class III or better by the U.S. Department of Agriculture Soil Conservation Service (SCS).

III. dispositive motions

A. Standing

The County moved to dismiss all petitioners for lack of standing. GMA standing is set out at RCW 36.70A.280(2), which provides in relevant part:

A petition may be filed only by: . . . (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; . . . or (d) a person qualified pursuant to [the Administrative Procedures Act, as set out at] RCW 34.05.530.

These two means of obtaining standing are referred to as participation (or appearance) standing and APA standing. The County argued that there is no record that Petitioners participated before the County during its adoption process and that Petitioners have not established APA standing.

Where individuals who testified before a local government were members of an organization but failed to identify that they represented that organization, the organization does not have standing. *See Montlake Community Club v. City of Seattle*, CPSGMHB Case No. 99-3-0002c, Order on Dispositive Motions (Apr. 23, 1999), at 4. In the present case, three individuals provided testimony or written comments regarding the property owned by MacAngus Ranches. Each of these individuals identified themselves as representing the landowner.^[1] The question is whether this participation is sufficient to invoke standing for the landowner.

Participation on behalf of landowners is not unlike participation on behalf of organizations. Representatives of organizations must identify the organization they represent. In an early case, this Board explained: “If an organization hopes to obtain standing before this Board under the appearance standing standard, it must put the local government it is appearing before on notice that the organization has an interest in the matter.” *Friends of the Law v. King County*, CPSGPHB Case No. 94-3-0003, Order on Dispositive Motions (Apr. 22, 1994), at 17. Similarly, representatives of a landowner must put the local government on notice that the landowner has an interest in the matter. The representatives of MacAngus Ranches did just that. MacAngus Ranches has established participation standing. The County’s motion to dismiss MacAngus Ranches is **denied**.

However, Leung and Daley’s interests or participation is not revealed in the briefing or the County’s record. Although the PFR identifies Leung and Daley as property owners, it is unclear what property they own. There is no evidence that the three representatives who participated on behalf of MacAngus Ranches also represented the interests of Leung or Daley. In their response to the County’s dispositive motions, Petitioners did not claim Leung and Daley had participation standing, but only that they had APA standing. Response to Dispositive Motions, at 1 (“with

respect to MacAngus Ranches, [participation] standing can be conclusively demonstrated. With respect to the other Petitioners, they have clear APA standing”). Because the Board has determined that MacAngus Ranches has participation standing, the Board will examine APA standing only with respect to Petitioners Leung and Daley.

APA standing is set out at RCW 34.05.530, which provides:

A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:

- (1) The agency action has prejudiced or is likely to prejudice that person;
- (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
- (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

To have standing under the APA test, a petitioner must be within the zone of interests protected by the GMA and must allege an injury in fact. RCW 34.05.530(1)-(2). To satisfy the evidentiary burden to show an injury in fact, a “petitioner must show that the government action will cause him or her ‘specific and perceptible harm’ and that the injury will be ‘immediate, concrete, and specific.’” *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008, Final Decision and Order (Oct. 23, 1995), at 94-95 (citations omitted); *Buckles v. King County*, CPSGMHB Case No. 96-3-0022, Final Decision and Order (Nov. 12, 1996), at 23. If the injury is merely conjectural or hypothetical, there can be no standing. *Trepanier v. Everett*, 64 Wn. App. 380, 382 (1992). In addition, a petitioner must show that a judgment in his or her favor “would substantially eliminate or redress” that prejudice. RCW 34.05.530(3).

Assuming Leung and Daley own property designated UCF within the Tulalip subarea, their interests are within the zone of interests protected by the GMA. RCW 34.05.530(2). The question is whether they have shown that the County’s action will cause them specific and perceptible harm.

These Petitioners allege in their PFR that:

7.3 . . . they will be adversely affected and aggrieved if the GMA Ordinances go into effect, as set forth above. Continued designation of the Petitioners’ Property as Upland Commercial Farmland and zoning of the Petitioners [*sic*] Property as AG-10 will have negative impacts on Petitioners, all property owners in the 760 acres in this

zone, and adjacent property owners.

7.4 These impacts include, but are not limited to, the reduced development potential of the Petitioners' Property.

PFR, at 10. However, the harm alleged by Petitioners was not caused by the County's 1999 adoption of the Tulalip subarea plan; it was caused by the original 1995 designation of the property as UCF and the corresponding zoning. The only change to Petitioners' property was the zoning that implements the UCF designation – from RC to AG-10. At the hearing on the merits, Petitioners' counsel identified several uses that were permitted in RC zones that are prohibited in AG-10 zones, but presented no evidence that this minor change in allowed uses would “reduce[] development potential of the Petitioners' Property.”^[2]

Because the County's action did not change the land use designation of Petitioners' property and Petitioners did not show that the minor changes in allowed uses resulting from the zoning change created an injury in fact, the Board finds that Petitioners Leung and Daley do not have APA standing. The County's motion to dismiss Leung and Daley is **granted**.

B. Challenge to UCF Designation (Issues 2, 3, 6, and 7)^[3]

The County moved to dismiss all challenges to the UCF designation [Issues 2 (in part), 3, 6, and 7] as being untimely. The County argued that, since Petitioner's property was designated UCF in 1995 and the challenged amendments did not alter this UCF designation, Petitioner is time barred from challenging it now. Petitioner responded that the County's subarea planning for the area including its property amounts to a reaffirmation of the County's earlier UCF designation, making the UCF designation appealable.

“All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of [chapter 36.70A RCW] . . . must be filed within sixty days after publication by the legislative bodies of the county or city.” RCW 36.70A.290(2). Clearly, the time has passed for Petitioner to challenge the County's 1995 action designating Petitioner's property UCF. Clearly, a challenge to the 1999 adoption of a subarea plan is an action that, if timely filed, is subject to the GMA appeal procedures. However, the question here is whether the County's adoption of the subarea plan, that did not alter the designation of Petitioner's property, is a new action subject to a new sixty-day appeal period within which this Petitioner may challenge the UCF designation of his property.

Although Petitioner did not file a specific request with the County regarding re-designation of their property, Petitioner's objections to UCF designation were made known to the County during

its subarea plan review and adoption process. Petitioner's representatives testified before the County that their property did not satisfy the criteria for UCF designation. Petitioner argued that the County was wrong to designate their land UCF in 1995 and wrong to "re-designate" it UCF in 1999. In *Cole v. Pierce County*, a property owner appealed a county's refusal to adopt his proposed amendments that he alleged would "correct" the county's original land use designation of his property. CPSGMHB Case No. 96-3-0009c, Final Decision and Order (Jul. 31, 1996). The Board rejected Cole's argument, noting that the only substantive arguments raised by Cole went to the "'incorrectness,' as alleged by Cole, of the County's 1994 Comprehensive Plan, absent enactment of Cole's proposed amendment," and concluded that the Board had no jurisdiction to review the County's 1995 decision to not adopt Cole's proposal. *Cole*, at 11.

Similarly, in *Torrance v. King County*, the county declined to adopt a suggested amendment offered by a property owner and the property owner appealed. CPSGMHB Case No. 96-3-0008, Order Granting Dispositive Motion (Mar. 31, 1997). The Board agreed with the county's statement that "[n]o matter how 'clearly' petitioners believe they have shown the 1994 designation of their property as agricultural land of long term commercial significance violated the GMA, this Board does not have the jurisdiction to review that decision now." *Torrance*, at 5 (quoting King County's Dispositive Motion Reply brief).

In the present case, like in *Cole* and *Torrance*, the County designated Petitioner's property UCF in 1995. However, unlike *Cole* and *Torrance*, here Petitioner did not initiate a proposed plan amendment to correct a perceived error in the 1995 UCF designation. Here, the County initiated the review and evaluation of the Tulalip Subarea Plan area. The purpose the County's undertaking the planning process for the Tulalip Subarea was "to reconcile differences" between the Tribe's Plan and the County's Plan for the area, not revisit and reevaluate all designations within the subarea. Ex. 2, Ordinance No. 99-031 at 1; and attachment A, at 1. The UCF designation within the subarea was not among the items needing to be reconciled between the Tribe and the County. *Id.* In the end, the County's adoption of the Tulalip subarea plan did not alter the land use designation of Petitioner's property. Nonetheless, Petitioner argued "[a]doption of the Subarea Plan was a new process, generating a new decision and requiring a new evaluation of consistency." Petitioners' Response to County's Dispositive Motions, at 8. The Board agrees that the adoption of the Subarea Plan was a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to the unchanged UCF designation of Petitioner's property. The Board disagrees with Petitioner's assertion that the County's determination to maintain the existing UCF designation somehow reopens the appeal period of that unchanged designation.

In adopting the Tulalip subarea plan, the County did not change, re-adopt, or re-affirm the UCF designation; it merely maintained the existing UCF designation. Additionally, the County's action was not taken in response to a statutory requirement, such as RCW 36.70A.215, ^[4] which

may require the County to change, re-adopt, or re-affirm its comprehensive plan or development regulations. The County's motion to dismiss challenges to the UCF designation is **granted**.

Issues 2 (relating to the Plan amendment), 3, 6, and 7 are dismissed. ^[5]

C. RCW 36.70A.070's application to development regulations (Issue 2) ^[6]

The County moved to dismiss that portion of Issue 2 relating to the zoning code amendments, arguing that RCW 36.70A.070 does not apply to development regulations. In response, Petitioner agreed that claims under .070 are restricted to comprehensive plans. Therefore, the County's motion is **granted**. Reference to the zoning amendments in Issue 2 is stricken. Because that portion of Issue 2 relating to the Plan amendment has been dismissed as untimely and the remaining portion of Issue 2 has been stricken, Issue 2 is dismissed in its entirety.

D. RCW 36.70A.060(3)'s application to the County's zoning amendment (Issue 5) ^[7]

The County moved to dismiss Issue 5. However, Petitioner, in its prehearing brief, expressly abandoned Issue 5. Therefore, Issue 5 is **dismissed**.

E. RCW 36.70A.170 does not apply to the County's amendments (Issue 7) ^[8]

The County moved to dismiss Issue 7, arguing that RCW 36.70A.170 does not apply to the actions taken by the County in adopting the Tulalip subarea plan. Elsewhere in this Order, the Board dismissed Issue 7. Therefore, the Board need not, and will not, discuss this portion of the County's motion.

F. Show your work (Issue 8) ^[9]

Issue 8 is discussed below.

Iv. discussion

In addition to the dismissal of Issues 2, 3, 5, 6, and 7 as noted above, Petitioner has expressly abandoned Issue 1. Therefore Issue 1 is dismissed. The only two issues remaining are Issue 4 and Issue 8.

Issue 4: Does the adoption of the Zoning Amendment [Ordinance 99-032] fail to comply with the requirements of RCW 36.70A.120 because it constitutes an action, which fails to conform with the County Comprehensive Plan?

Petitioner argued that, since Petitioner's property did not consist of prime farmland soils,

designation as UCF did not conform to policies of the County's Plan. RCW 36.70A.120 requires the County to "perform its activities and make capital budget decisions in conformity with its comprehensive plan." The zoning amendment changed the zoning of Petitioner's property from RC to AG-10. AG-10 expressly implements the UCF land use designation. Ord. 99-032, Section 1.E. Petitioner's argument is premised on a finding that the UCF designation for their property fails to comply with the GMA. However, as explained above, Petitioner's challenge to the UCF designation is untimely and the UCF designation stands. Consequently, because the AG-10 zone, like the RC zone, is an implementing zone for UCF designations, the adoption of the zoning amendments in Ordinance 99-032 conforms with the County's comprehensive plan. Petitioner has failed to show that the AG-10 zone does not conform with, and implement, the UCF designation. Further, Petitioner has failed to show that the County's adoption of Ordinance 99-032 was clearly erroneous.

Issue 8: Did the County fail to be guided by the provisions of the GMA listed above when: (1) it failed to show its work in support of its actions in adopting the GMA Ordinances [99-031 and 99-032] and (2) in failing to investigate or respond to public testimony which raised inconsistent material facts pertinent to the GMA Ordinances?

Requirement for County to "Show its Work"

This Board first applied the "show your work" requirement to describe the explicit documentation of factors and data used in the accounting exercise that RCW 36.70A.110 requires counties to undertake in sizing UGAs. *See Association of Rural Residents, CPSGPHB Case No. 93-3-0010, FDO (1994), at 35.* The Board has expressly declined to find a "show your work" requirement in the comprehensive plan requirements of RCW 36.70A.070. *Litowitz v. City of Federal Way, CPSGMHB Case No. 96-3-0005, Final Decision and Order (Jul. 22, 1996), at 17.* Here, the Board similarly declines Petitioner's invitation to extend the "show your work" doctrine to this case.

The UGA-sizing requirements of RCW 36.70A.110 rely to a great extent on mathematical calculations (allocation of population growth, assumptions regarding number of persons per dwelling, land needs based on planned densities and market factors, etc.). Without a clear showing in the record of the mathematical calculations and assumptions, interested persons have no criteria against which to judge a county's UGA delineation. Such is not the case here. MacAngus Ranches disagrees with the land use designation of its property and wants the County to show or explain why it did not change the UCF designation. This is not required since the record clearly shows the basis for the County's UCF designation. The County's UCF designation decision was based on the County's interpretation of the SCS Prime Farmland List for Snohomish County. *See Comprehensive Plan at LU-34 ("The 1993 Interim Agricultural Conservation Plan provides the basis for the agricultural land designations in the General Policy Plan"); 1993 Interim Agricultural Conservation Plan, at 10-11.* An interested citizen, such as

MacAngus Ranches, knew the basis for the County’s decision to designate the property UCF and had the opportunity to appeal that designation when it was originally made. Consequently, the “show your work” requirement is not necessary in the context of the present dispute.

Response to Public Comments

Petitioner “do[es] not assert that the County is obligated to adopt their suggestions or agree with all of their submittals. But the County should be held to a requirement to acknowledge information that calls into serious questions [*sic*] its proposals, and to explain why it chose to go forward with those proposals in the face of that information.” Petitioners’ PHB, at 24. Notwithstanding Petitioner’s assertions to the contrary, the Board notes that the County Council’s findings of fact and conclusions were based on the entire record of the planning commission and the county council, including all testimony and exhibits. Ord. 99-031, Section 2; Ord. 99-032, Section 2.

The Board has previously addressed the argument that a local jurisdiction must respond to specific public testimony. In interpreting the GMA requirement of RCW 36.70A.140 that “counties and cities consider and respond to public comment,” the Board determined that:

Applying this definition [of “respond to”] does not mean that counties and cities must react in response to all citizen questions or comments; applying this definition means only that citizen comments and questions must be considered and, where appropriate, counties and cities must take action in response to those comments and questions. The Board holds that response may, but need not, take the form of an action, either a modification to the proposal under consideration, or an oral or written response to the comment or question.

Bremerton v. Kitsap County, CPSGMHB Case No. 95-3-0039c, Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine v. Kitsap County*, CPSGMHB Case No. 98-3-0032c (Feb. 8, 1999), at 24. Just as some *Alpine* petitioners testified before the county of alleged county errors, Petitioner here testified before the County that the County erred in designating its property UCF. Just as in *Alpine*, Petitioners assert that the County must explain why it disagreed with them. However, as the Board articulated in *Alpine*, the GMA does not require the kind of response demanded by Petitioners. The County’s action of maintaining the UCF designation as it relates to Petitioner’s property is an ample “response” that speaks for itself. Therefore, Petitioner’s claim fails.

v. order

Based upon the 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:

The Petitioners have failed to overcome the presumption of validity accorded the County's actions or persuade the Board that Snohomish County's actions were clearly erroneous.

CPSGMHB Case No. 99-3-0017, *MacAngus v. Snohomish County*, is **dismissed with prejudice**.

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So ORDERED this 24th day of March, 2000.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP
Board Member

Lois H. North
Board Member
(Board Member North files a concurring opinion below)

Edward G. McGuire, AICP
Board Member

Board Member North's Concurring Opinion

Notwithstanding the lack of an explicit GMA requirement for a local government to provide a specific response or rebuttal to disputed facts, I frankly am troubled by the County's actions, or lack of actions, in this case. I believe that when a citizen takes the effort to place into a local government's record material facts that are inconsistent with the assumptions held by that local government, that citizen deserves some response from his or her elected officials. In all other

respects, I concur with my colleagues' analysis of the Act's requirements and the outcome of this case.

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] Mr. Richard E. Moultrie wrote to the County Council and stated: "I represent approximately 200 acres located directly on the I-5 corridor. (McDonald and Bertilson properties)." Ex. 31. Douglas B. MacDonald wrote to the County Council and stated: "My family owns 208 acres of fee simple land on the northeast corner of the Tulalip Reservation. . . . We have owned this property for over 20 years." Ex. 38. Charles A. Wittenberg wrote to the Chair of the County Planning Commission and stated: "The MacDonald Living Trust owns 208 acres of fee simple land on the northeast corner of the Tulalip Reservation. . . . The MacDonald Living Trust has held this property for over 20 years. Charles Wittenberg representing the MacDonald Living Trust testified at the December 15, 1998 public hearing regarding the proposed GMA Comprehensive Plan and Tulalip Tribe Sub-area Plans." Ex. 17. All of these individuals submitted maps identifying the property at issue along with their letters.

[2] A non-exhaustive list of uses permitted in RC zones but prohibited in AG-10 zones includes: churches, country clubs, day care centers, family rehabilitation homes, group care facilities, hospitals, libraries, and schools. Ord. 99-030, Section 2 (SCC 18.32.040 Use Matrix).

[3] ***Issue 2: Do the Plan Amendment and the Zoning Amendment (collectively, the GMA Ordinances) violate RCW 36.70A.070, which requires that a comprehensive plan be internally consistent, because the continuing designation of the Petitioners' Property as Upland Commercial Farmland and rezoning of the Petitioners' Property AG-10 is inconsistent with the mandatory characteristics of prime farmland contained in the Snohomish County Comprehensive Plan (the Comprehensive Plan)?***

Issue 3: Does the adoption of the Plan Amendment fail to comply with the requirements of RCW 36.70A.080(2) because the Subarea Plan is not consistent with the Comprehensive Plan, for the reasons set forth in the prior issue?

Issue 6: Does the adoption of the Plan Amendment fail to comply with the requirements of RCW 36.70A.130(1) because this amendment fails to be consistent with or correctly implement the County Comprehensive Plan, since the Subarea Plan retains the designation of the Petitioners' Property as Upland Commercial Farmland, notwithstanding the fact that Petitioners' Property does not have the mandatory characteristics of prime farmland as required in the County Comprehensive Plan?

Issue 7: Does the adoption of the GMA Ordinances fail to comply with the requirements of RCW 36.70A.170(1) (a) because the County erroneously interpreted and applied this statutory requirement in retaining the designation of Petitioners' Property as Upland Commercial Farmland in the County plan and rezoning it AG-10, notwithstanding the fact that Petitioners' Property does not have the characteristics of prime farmland as defined in the County Comprehensive Plan and in GMA?

[4] RCW 36.70A.215 provides:

(1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its

cities, county-wide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review and evaluation program shall be to:

- (a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and
 - (b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.
- (2) The review and evaluation program shall:
- (a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;
 - (b) Provide for evaluation of the data collected under (a) of this subsection every five years as provided in subsection (3) of this section. The first evaluation shall be completed not later than September 1, 2002. The county and its cities may establish in the county-wide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;
 - (c) Provide for methods to resolve disputes among jurisdictions relating to the county-wide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and
 - (d) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.
- (3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:
- (a) Determine whether there is sufficient suitable land to accommodate the county-wide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;
 - (b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and
 - (c) Based on the actual density of development as determined under (b) of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.
- (4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the county-wide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to county-wide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.

(5)(a) Not later than July 1, 1998, the department shall prepare a list of methods used by counties and cities in carrying out the types of activities required by this section. The department shall provide this information and appropriate technical assistance to counties and cities required to or choosing to comply with the provisions of this section.

(b) By December 31, 2007, the department shall submit to the appropriate committees of the legislature a report analyzing the effectiveness of the activities described in this section in achieving the goals envisioned by the county-wide planning policies and the comprehensive plans and development regulations of the counties and cities.

(6) From funds appropriated by the legislature for this purpose, the department shall provide grants to counties, cities, and regional planning organizations required under subsection (7) of this section to conduct the review and perform the evaluation required by this section.

(7) The provisions of this section shall apply to counties, and the cities within those counties, that were greater than one hundred fifty thousand in population in 1995 as determined by office of financial management population estimates and that are located west of the crest of the Cascade mountain range. Any other county planning under RCW 36.70A.040 may carry out the review, evaluation, and amendment programs and procedures as provided in this section.

[5] Note that Petitioner may challenge the County's action changing the zoning (from RC to AG-10) for his property. See Legal Issue 4.

[6] See footnote 3, *supra*.

[7] ***Issue 5: Does the adoption of the Zoning Amendment fail to comply with the requirements of RCW 36.70A.060 (3) because the County erroneously applied its own designation criteria and because the Zoning Amendment constitutes a development regulation which fails to comply with the County Comprehensive Plan?***

[8] See footnote 3, *supra*.

[9] ***Issue 8: Did the County fail to be guided by the provisions of the GMA listed above when: (1) it failed to show its work in support of its actions in adopting the GMA Ordinances and (2) in failing to investigate or respond to public testimony which raised inconsistent material facts pertinent to the GMA Ordinances?***