

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

JODY L. McVITTIE,)	
)	Case No. 00-3-0016
)	
Petitioner,)	
)	<i>(McVittie V)</i>
v.)	
)	
SNOHOMISH COUNTY,)	FINAL DECISION and ORDER
)	
Respondent.)	
_____)	

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I. Procedural Background

A. General

On September 11, 2000, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Jody L. McVittie (**Petitioner** or **McVittie**). The matter was assigned Case No. 00-3-0016, and is hereafter referred to as *McVittie v. Snohomish County* (a.k. a. *McVittie V*). Board Member Edward G. McGuire served as Presiding Officer in this matter. Petitioner alleged participation standing and indicated that governor certified standing had been requested. Petitioner challenges Snohomish County’s adoption of Emergency Ordinance Nos. 00-50 and 00-51, adopted on July 26, 2000. The general basis for the challenge is noncompliance with the public participation, amendment process and UGA requirements of the Growth Management Act (**GMA or Act**).

On September 18, 2000, the Board issued a “Notice of Hearing” in the above-captioned case. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case

On October 5, 2000, the Board conducted the PHC, in Suite 1022 of the Financial Center, 1215 Fourth Avenue in Seattle. At the PHC the parties agreed to an early briefing period for the question of participation standing. The Board’s Order regarding participation standing would be issued prior to the deadline for the governor to decide upon “governor certified standing.”

On October 9, 2000, the Board issued the “Prehearing Order” (**PHO**) that set the Legal Issues and established three separate briefing schedules: one for the question of standing; one for motions to supplement and dispositive motions; and one for the case in chief. The PHO included reference to a County-wide Planning Policy [UG-14] for Legal Issue 4 that was provided by Petitioner.

On October 20, 2000, pursuant to the extension request, the Board issued “Order Granting 30-day Settlement Extension.” The case schedule was adjusted accordingly.

On December 6, 2000, the Board issued “Notice of Change in Schedule for Dispositive Motions. The Notice **granted** the request and adjusted the briefing schedule for both parties, but retained the scheduled date for the Board’s Order on Motions.

On January 22, 2001, the Board issued a “Notice of Change of Date for the Hearing on the Merits” (**HOM**). Due to an unforeseen conflict yielding a lack of quorum for the Board on the scheduled date, the Board rescheduled the HOM for a week later – March 19, 2001.

B. standing: governor certified and participation

Governor Certified Standing:

On September 15, 2000, pursuant to WAC 242-02-255, the Board forwarded Petitioner’s PFR ^[1] to the Governor’s Office for a determination of whether Petitioner should be granted “governor certified standing,” pursuant to RCW 36.70A.280(2)(c). Per the statute, the Governor had until November 10, 2000 to decide whether Petitioner should be certified for standing.

On September 18, 2000, the Board received Petitioner’s “Request for [Governor Certified] Standing” (**Request**). The Board forwarded the Request to the Governor’s Office.

On November 13, 2000, the Board received a copy of a letter, dated November 8, 2000, from Governor Gary Locke to Ms. Jody McVittie (**Letter**). The letter indicated that the Governor had **granted** governor-certified standing to Ms. McVittie to proceed in this case.

Participation Standing:

On October 23, 2000, the Board received “Snohomish County’s Motion to Dismiss for Lack of Participation Standing,” with 11 attached Exhibits. (**Co. Motion - Standing**).

On October 31, 2000, the Board received McVittie’s “Response to Motion on Standing,” with two attached Items. (**McVittie Response - Standing**).

On November 3, 2000, the Board received “County’s Reply in Support of Motion to Dismiss for Lack of Standing and Motion to Strike Exhibits” (**Co. Reply - Standing**).

The Board did not hold a hearing on the Motion.

On November 6, 2000, the Board issued “Order Denying Dispositive Motion Re: Participation Standing.” The Order **denied** the County’s motion, and **granted** Petitioner GMA participation standing to proceed in this case. The Board also **denied** the County’s motion to strike exhibits and

argument from the McVittie Response. The Order noted that it constituted a final order as specified by RCW 36.70A.300 unless a party filed a motion for reconsideration pursuant to WAC 242-02-832.

On November 16, 2000, the Board received “Snohomish County’s Petition for Reconsideration” (**Petition**). The Petition was timely filed.

On November 21, 2000, the Board received Petitioner McVittie’s “Answer to Petition for Reconsideration” (**Answer**). The Answer was timely filed.

The Board did not hold a hearing on the Motion.

On December 4, 2000, the Board issued “Order on Motion to Reconsider.” The Board’s Order noted that the Governor’s action of granting Petitioner governor certified standing, arguably made the Petition moot. However, a majority^[2] of the Board **granted** the County’s Petition and **postponed** further consideration of the participation standing question until the Board’s Final Decision and Order (**FDO**).

C. settlement extensions

On October 17, 2000, via conference call, the parties discussed the option of requesting the assistance of a member from one of the other Growth Boards and a settlement extension following resolution of the question of Petitioner’s standing [either participation or governor certified]. Such an extension, if necessary, would extend briefing, hearing and decision dates *after* the standing questions were resolved by November 10, 2000. The PO agreed to contact the other Growth Boards to inquire into availability of members to serve as a Settlement Officer.

On October 19, 2000, the Board received a “Stipulation and Order for 30-Day Settlement Extension Commencing After Board Order on Standing,” signed by both parties. (**Extension Request**).

On October 20, 2000, pursuant to the extension request, the Board issued “Order Granting 30-day Settlement Extension” and “Notice of Settlement Officer.” The case schedule was adjusted accordingly and Board Member Judy Wall of the Eastern Washington Growth Management Hearings Board agreed to serve as Settlement Officer in this matter.

On December 5, 2000, the Board received a letter from the County asking the Board to extend the deadline for dispositive motions to allow a settlement conference to occur.

On December 6, 2000, the Board issued “Notice of Change in Schedule for Dispositive Motions.” The Notice **granted** the request and adjusted the briefing schedule for both parties, but retained the scheduled date for the Board’s Order on Motions.

Following the settlement conference, the Board received notification from the Settlement Officer that

settlement had not been reached and no further settlement conferences were to be scheduled.

D. Motions to Supplement And amend index

On October 11, 2000, the Board received “Snohomish County’s Index to the Record Re: Emergency Ordinance Nos. 00-050 and 00-051” (**Index**). The Index lists 36 items by Index Number

On December 15, 2000, the Board received “Petitioner’s Dispositive Motion on Public Participation, Motion for Expedited Review of Public Participation Issues, Motion to Supplement the Record and Request for Clarification of the Board’s Order Granting Reconsideration.” Attached to the motion were four proposed exhibits.

On January 12, 2001, the Board received “County’s Response to Petitioner’s Dispositive Motion and to Petitioner’s Motion to Supplement.”

Petitioner did not file a reply brief.

The Board did not hold a hearing on the motion

On January 22, 2001, the Board issued its “Order on Motion to Supplement the Record.” The Order admitted several exhibits and summarized the items comprising the record in this case.

On February 12, 2001, the Board received Petitioner’s “Motion to Recognize Documents as Part of the Record” (**Motion to Recognize**).

On March 2, 2001, the Board received “Snohomish County’s Prehearing Brief and Request for Official Notice,” with three attached proposed exhibits. (**Co. Request – Official Notice**).

The Motion to Recognize and County Request – Official Notice were addressed at the HOM and is reflected in this Final Decision and Order.

E. Dispositive Motions

On December 15, 2000, the Board received a letter from Petitioner McVittie requesting expedited review of the public participation issue in the above captioned case and “Petitioner’s Dispositive Motion on Public Participation, Motion for Expedited Review of Public Participation Issues, Motion to Supplement the Record and Request for Clarification of the Board’s Order Granting Reconsideration.” The request for expedited review was based upon anticipation of the Snohomish County Boundary Review Board’s (**BRB**) disposition of an annexation petition to include the area within the City of Arlington.

On December 18, 2000, the Board received a letter from Snohomish County responding to McVittie’s request for expedited review.

On December 22, 2000, the Board received “Snohomish County’s Motion to Dismiss Based on Lack of Subject Matter Jurisdiction” with three attached exhibits.

On January 4, 2001, the Board issued an “Order on Expedited Review and Clarification.” The Order **denied** the motion for expedited review and **clarified** that no portion of Petitioner’s November 1, 2000 Response Brief was stricken in the Board’s Order Granting Reconsideration.

On January 12, 2001, the Board received Petitioner McVittie’s “Response to Dispositive Motions and Request for Correction of PFR,” and Respondent’s “County’s Response to Dispositive Motion and to Petitioner’s Motion to Supplement.”

On January 16, 2001, the Board received “County’s Rebuttal in Support of Its Motion to Dismiss.” The Board did not receive a reply from Petitioner McVittie regarding Petitioner’s dispositive motion.

On January 22, 2001, the Board issued its “Order on Dispositive Motions.” The Order: 1) **denied** Petitioner’s motion requesting that the Board address and clarify the public participation provisions of the GMA in a dispositive manner; 2) **concluded** that the Board had jurisdiction to review emergency ordinances [Legal Issue 2]; 3) **granted** the County’s Motion to Dismiss Legal Issue 3, in its entirety; 4) **denied** the County’s Motion to Dismiss Legal Issue 4 (a) – in part, and Legal Issues 4 (b) and 4(c), in their entirety; and 5) **granted** Petitioner’s correction [addition of .070(preamble)] to Legal Issue 4 (a).

f. Briefing and Hearing on the Merits

On February 12, 2001 the Board received “Petitioner’s Prehearing Brief,” with 4 attached exhibits and reference to 5 exhibits previously submitted.” (**McVittie PHB**).

On March 2, 2001, the Board received “Snohomish County’s Prehearing Brief and Request for Official Notice,” with three attached proposed exhibits. (**Co. PHB**).

On March 9, 2001, the Board received “Petitioner’s Reply Brief.” (**McVittie Reply**).

On March 19, 2001, the Board held a HOM in Room A-B of the Financial Center, 1215 4th Avenue, Seattle, Washington. Board Members Edward G. McGuire, Presiding Officer, Lois H. North and Joseph W. Tovar were present for the Board. Petitioner Jody L. McVittie appeared *pro se*. Karen Jorgensen-Peters and Barbara Dykes represented Respondent Snohomish County. Courtney Flora, Corinne Hensley and Brian Norkus also attended the HOM. Robert Lewis of Robert H. Lewis & Associates, Tacoma, provided Court reporting services. The hearing convened at 10:00 a.m. and adjourned at approximately 12:15 p.m. A transcript of the HOM (**Transcript**) was ordered.

II. presumption of validity, burden of proof and standard of review

Petitioner challenges Snohomish County’s adoption of Emergency Ordinance Nos. 00-50 and 00-51,

adopted on July 26, 2000. Pursuant to RCW 36.70A.320(1), Snohomish County’s Emergency Ordinance Nos. 00-50 and 00-51 are presumed valid upon adoption. RCW 36.70A.320(1).

The burden is on Petitioner McVittie to demonstrate that the actions taken by the County 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 actions taken by Snohomish County are 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 Snohomish County’s actions 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, preliminary matters and Prefatory note

A. Board Jurisdiction

The Board finds that McVittie’s PFR was timely filed, pursuant to RCW 36.70A.290(2). Petitioner has “governor certified standing” to appear before the Board, pursuant to RCW 36.70A.280(2); additionally, the question of whether Petitioner has GMA participation standing is addressed in this FDO. The Board has subject matter jurisdiction over the challenged emergency ordinances, which amend the County’s Comprehensive Plan and development regulations, pursuant to RCW 36.70A.280 (1)(a).

B. Preliminary matters

At the HOM the Board heard argument pertaining to Petitioner’s Motion to Recognize Documents as Part of the Record and Respondent’s Request for Official Notice. The County objected to Petitioner’s motion, asserting that the items were not part of the record. Petitioner did not object to the County’s request. Transcript, at 5-8. The PO **denied** Petitioner’s motion for the following reasons: 1) the County did not agree they were part of the record; 2) the time had long passed for supplementing the record; 3) the items appeared to support Petitioner’s argument on Legal Issue 3, which was dismissed; and 4) the items were not offered as rebuttal evidence to any exhibit offered by the County. However, hearing no objection to the County’s request to take official notice, the PO **granted** the request. The table below reflects these rulings and assigns Index Numbers where appropriate.

Proposed Exhibit: Documents	Ruling
1. Letter to John W. Burkholder from Stephen L. Holt, dated 8/12/99, regarding 1998 docketing of Yarmouth-Davis-Wigan Proposal	Denied

2. Letter to Michael T. Kinney from Stephen L. Holt, dated 9/28/99, regarding Council process for considering proposed amendments.	Denied
3. Snohomish County Charter	Board takes notice – Index No. 40.
4. City of Arlington Ordinance No. 1251 annexing the subject property and zoning the property Residential Low/Moderate Density (R-LMD).	Board takes notice – Index No. 41.
5. Notice of Public Hearing on Proposal 01-002 and 01-003 for February 28, 2001.	Board takes notice – Index No. 42.
6. Notice of Continued Public Hearing on Proposal 01-002 and 01-003 for March 28, 2001	Board takes notice – Index No. 43.

C. Prefatory Note

Snohomish County adopted two emergency ordinances that are the subject of the challenge in this case. In order to maintain consistency between its plan and implementing development regulations, as required by RCW 36.70A.040, the County correctly considered these two ordinances concurrently.

[3] The first measure is Emergency Ordinance No. 00-050, which amends the County’s GMA Comprehensive Plan and Future Land Use map by enlarging the County’s UGA designation for the City of Arlington to include an additional 53.3 acres. The Arlington School District apparently has, or had, an option on the site and its intended use is for the construction of a new high school. *See*: Ord. No. 00-050, Ex. 23. The second measure is Emergency Ordinance No. 00-051 which adopts a County initiated rezone for the new 53.3 acre addition to the Arlington UGA. The zoning change is from a Rural 5 Acre designation to a Residential 9,600 designation. *See*: Ord. No. 00-051, Ex. 24. It is undisputed that Snohomish County did not provide notice or conduct a public hearing prior to, or after, the Snohomish County Council’s adoption of Emergency Ordinance Nos. 00-050 and 00-051. County PHB, at 4; and Appendix A, Findings of Fact 1-8.

In the County’s Response brief, the County argued that Petitioner’s challenge is moot. The basis for the County’s argument is that the City of Arlington annexed the area that was made part of the UGA by the two emergency ordinances (00-050 and 00-051) adopted by the County. Consequently, this question is the first issue addressed, since if the challenge is moot, the Board need not address the Legal Issues posed. However, as discussed below, the Board does proceed and reaches the merits of the case.

Regarding the merits of the PFR, the PHO set forth four Legal Issues. Issue 1 was addressed in an earlier decision by the Board, [4] but is being reconsidered in the context of this FDO. [5] Legal Issues

2 and 3 were addressed and/or dismissed in the Board's order on dispositive motions.^[6] The remaining issue – Legal Issue 4 – has three parts 4(a), 4(b) and 4(c). Petitioner McVittie *withdrew* her challenge to GMA compliance, as stated in Issue 4(b).^[7] Consequently, this FDO will first, address Legal Issue 4(a); then, reconsider Petitioner's participation standing – Legal Issue 1; and finally, address Legal Issue 4(c).

IV. LEGAL ISSUES – ANALYSIS AND DISCUSSION

A. Mootness

Positions of the Parties

For the first time, in its response brief, the County argues that Petitioner's challenge is moot.^[8] Co. PHB, at 8-10. Following the County's adoption of the emergency ordinances on July 26, 2000, the City of Arlington enacted Ordinance No. 1251 [Ex. 41], which annexed the area affected by the emergency ordinances into the City. The County urges the Board to follow the reasoning from a prior decision of this Board where the Board dismissed a challenge to the UGA for the Town of Gold Bar as moot, since the Town had annexed the area. Co. PHB, at 9-10. The County contends that to proceed to the HOM on a moot issue is a waste of judicial resources, citing: *Orwick v. Seattle*, 103 Wn.2d 249, 692 P. 2d 793 (1984), at 253-254. Co. PHB, at 10. Finally, the County argues that it is considering changes to its public participation process for emergency ordinances and the "proposed changes [Ex. 42 and 43] requiring public participation and notice for every emergency adoption or amendment will imminently address public concern regarding public participation. Additional Board effort in resolving this moot issue is simply not warranted." Co. PHB, at 10.

Petitioner notes that the Courts and this Board have recognized exceptions to the mootness doctrine for cases involving "matters of continuing and substantial public interest." (Citing: *Orwick*, at 253; Board case citations omitted). McVittie then argues "Putting aside the question of the Arlington UGA specifically, the question of the lawfulness of the County's attempt to amend its comprehensive plan and development regulations by an emergency ordinance without the opportunity for meaningful public participation is an issue that will likely recur and has extraordinary importance to the public." McVittie Reply, at 11. In other words, the public participation provided for the adoption of emergency ordinances amending a plan or a development regulation is a matter of continuing and substantial public interest. Petitioner then argues that: 1) the County's pending proposals providing public participation on emergency ordinances is inadequate since they allow after the fact public participation; 2) the County's arguments are about its general [Charter] powers to conduct its business with only as much public participation as it deems appropriate, notwithstanding the GMA; 3) a recent Board decision suggests that the Arlington annexation does not make this case moot, and 4) while the Board may not have jurisdiction to determine the lawfulness of the annexation, it can and must address the GMA issues properly before it. McVittie Reply, at 12-13.

At the HOM, the County again argued that the Arlington annexation makes this case moot. The County also asserted that the question of public participation for emergency ordinances is not a matter of continuing and substantial public concern. The County reasoned that this is because the County is presently considering changes to its own public participation process for emergency ordinances. The County also suggested that for the Board to address the public participation issue would amount to offering an advisory opinion. Transcript, at 65-66. Petitioner McVittie reiterated and stood by the arguments presented in her Reply Brief. Transcript, at 11.

Applicable Law and Discussion

The Board continues to adhere to the general rule regarding mootness; namely, a case is moot if a court can no longer provide effective relief. Likewise, the Board will make an exception to the mootness rule involving “matters of continuing and substantial interest.” *See: Orwick*, at 253. Here the primary focus of Petitioner’s challenge, and the primary focus of the County’s defense, is what degree of public participation, if any, is required by the GMA when the County adopts comprehensive plan or development regulation amendments through emergency ordinances. This issue was argued extensively in briefing and at the HOM. Public participation is one of the bedrock principles of the GMA; it is not one to be glossed over lightly. The Board finds that the public participation question(s) posed in this case are a matter of continuing and substantial interest, that if left unresolved, are likely to recur in the future.^[9] As the Court stated in *Orwick*, at 253, “After a hearing on the merits, it is a waste of judicial resources to dismiss an appeal on an issue of public importance which is likely to recur in the future.” To carry out its GMA mandated duty, the Board will proceed to address the public participation issues posed^[10] in this case.

The substance of the County’s action, amending and extending its UGA designation, thereby setting the stage for annexation by the City of Arlington, poses an additional basis for arguing mootness. The County is correct, in *Sky Valley, et al. v. Snohomish County, (Sky Valley)*, CPSGMHB Consolidated Case No. 95-3-0068c, Final Decision and Order, (Mar. 12, 1996), at 60, the Board stated, “regardless of the merits of [petitioners] substantive arguments, the Board is without authority to grant the relief requested, namely, to remove [the annexed] property from Gold Bar’s UGA.” However, the Board has recently had occasion to revisit its position on this question in the context of UGA amendments.

In *Sky Valley*, the Board reviewed the Ordinance adopting the County’s *entire* comprehensive plan, including its designation of the UGA for the *entire* County. The scope of review in *Sky Valley* distinguishes it from the present case. Here, the Ordinance challenged *only addresses the expansion of the UGA in one localized area*. It is an *amendment to the previously established UGA*. In this respect it is the same as the situation posed to the Board in *Kitsap Citizens for Rural Preservation and Suquamish Tribe v. Kitsap County, (Kitsap Citizens)*, CPSGMHB Case No. 00-3-0019c, Order on Dispositive Motions and Motions to Supplement the Record, (February 16, 2001). In *Kitsap Citizens*,

the Board acknowledged its long-standing position that it lacks jurisdiction to hear and decide annexation issues. *See: Kitsap Citizens*, at 10. But the Board declined to dismiss the challenge to the UGA amendment as moot. The Board stated:

[T]he Board and the parties recognize the interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. RCW 36.70A.110(1). The Growth Boards have jurisdiction to determine compliance with the GMA, including GMA designations. RCW 36.70A.280(1). UGA designation enables city annexation, since cities are prohibited from annexing areas beyond designated UGAs. RCW 35.13.005 and 35A.14.005. BRB [Boundary Review Board] decisions must be consistent with provisions of the GMA, including the UGA provisions. RCW 36.93.157. This system is consistent and coordinated and yields certainty in situations where UGAs have been found by the Board to comply with the Act, or where UGA designations have not been challenged. However, this system yields uncertainty where the UGA designation has been challenged, but not resolved as the annexation process proceeds. It is a situation that the Legislature has not, to date, addressed.

This uncertainty is prevalent in this case.

Kitsap Citizens, at 10-11. The UGA amendment in this case is essentially ^[11] the same as the situation posed in *Kitsap Citizens*. Snohomish County's action of amending its previous UGA designation also precipitated two courses of action. One course led to the City of Arlington's annexation of the area; the other course led to a PFR before this Board challenging the Ordinance that enabled the annexation to occur. Consequently, as in *Kitsap Citizens*, here the Board will proceed to carry out its GMA mandated duty to review the challenged actions for compliance with the goals and requirements of the Act.

The Board will first review the County's notice and public participation process for compliance with the goals and requirements of the Act. Then, if necessary, it will review whether the amendatory UGA designation complies with the goals and requirements of the Act. Based upon those determinations, the Board will address what relief, if any, is appropriate or necessary and within the Board's authority.

Conclusion

The Board **denies** the County's motion to dismiss McVittie's PFR as moot.

B. Legal Issue – No. 4(a)

The Board's PHO set forth Legal Issue No. 4(a), as follows:

Did Snohomish County’s adoption of the emergency ordinances [00—050 and 00-051] fail to comply with the public participation requirements of RCW 36.70A.020

(11), .035, .070(preamble), ^[12].130(2) and .140, because there was no public notice or hearing for the emergency ordinances?

Positions of the Parties

Petitioner argues that the County’s adoption of both emergency ordinances without any notice or public participation failed to comply with the Act’s public participation goal (RCW 36.70A.020(11)), and the notice and public participation requirements of RCW 36.70A.035 and .140. McVittie PHB, at 6-7 and 9-10. McVittie further contends that the adoption of Ordinance No. 00-050, amending the Plan, also failed to comply with the public participation requirements of RCW 36.70A.070 and .130 (2). McVittie PHB, at 7-9. The sum and substance of Petitioner’s argument is that *zero notice or opportunity for public participation* does not comply with any of the public participation provisions of the GMA.

The County asserts that the Board must interpret and apply the GMA to the County without violating or abrogating the County’s authority under its Charter. County PHB, at 12-13; Ex. 40. The County also argues that adoption of the emergency actions comply with the Act since: RCW 36.70A.020 (11), .070(preamble), .035 and .140 do not apply to emergency amendments to comprehensive plans or development regulations; RCW 36.70A.130(2) does not apply to emergency development regulation amendments; and the emergency plan amendment, considered in the context of the County’s Charter, complies with RCW 36.70A.130(2)(b). Co. PHB, at 12-21.

In reply, McVittie counters that RCW 36.70A.020(11), .035 and .140 apply to both enactments; RCW 36.70A.070, .130(2)(b) apply to Ordinance 00-050; and requiring public participation does not interfere with the County’s authority under its Charter. McVittie Reply, at 2-10.

At the HOM, both parties argued and commented on the provisions of RCW 36.70A.390. Transcript, at 28, 34, 57-58, 60-64 and 78.

Applicable Law and Discussion

Snohomish County Charter:

In essence, the County argues that the basis for its action in adopting Emergency Ordinance Nos. 00-050 and 00-051 was the Snohomish County Charter (**Charter**), not the GMA. The Charter, at §

2.120 provides, “Any proposed ordinance may be enacted as an emergency ordinance. . . All emergency ordinances shall be effective immediately.” Co. PHB, at 12. The County also suggests that the GMA provisions may conflict with the Charter and that the Charter “supercede(s) special and general laws of the state of Washington which are inconsistent with the charter and ordinances to the extent permitted by the state Constitution.” County PHB, at 13 (*citing*: Charter Art. 1 § 1.20). The County also states, “the Charter is silent with regard to public participation before or after enactment of emergency ordinances.” County PHB, at 19.

The Board’s jurisdiction is focused on determining whether a local jurisdiction’s action of adopting or amending comprehensive plans and development regulations complies with the goals and requirements of the GMA – Chapter 36.70A RCW. A PFR has been filed with the Board challenging the County’s compliance with the public participation [\[13\]](#) requirements of the Act. The Board is obliged to reach a determination on this question. If that determination yields a conflict with the County’s Charter, it is not for this Board to determine whether a general law of the state, such as the GMA, or the County Charter prevails. The Courts are the appropriate forums for addressing that question.

However, the Board notes that if the County chooses to amend its comprehensive plan or implementing development regulations and adheres to the public participation requirements of the GMA, as discussed below; it would appear that the County could adopt such ordinance as an emergency ordinance, pursuant to its Charter, [\[14\]](#) and have it become effective immediately. Therefore, no conflict would exist. However, interpreting the County’s Charter is beyond the scope of the Board’s jurisdiction. Interpreting the GMA is not. Nonetheless, the Board takes notice of the County Charter as it reviews the County’s actions for compliance with the goals and requirements of the GMA.

Public Participation Requirements of the GMA:

Overview

While the Board has examined the GMA’s various public participation requirements many times, in no prior case has the Board defined the totality of what “appropriate public participation” means for the adoption of an emergency ordinance amending a comprehensive plan. [\[15\]](#) The Board is now compelled to do so. It is first necessary to grasp the fundamentally different *nature* of plans, as opposed to regulations. Grasping this difference helps, in turn, to understand the important relationship *between* plans and regulations due to the consistency requirements of RCW 36.70A.040 and .120. By beginning with this review, as set forth in prior Board Orders, the purpose and meaning of the Act’s various public participation provisions will be illuminated.

In an early case, the Board determined that plans are not development regulations. [\[16\]](#)

Comprehensive plans do not control the issuance of permits nor directly control the use of land. Rather, comprehensive plans are directive to development regulations and capital budgeting decisions.

[17] This relationship has caused the Board to describe the decision-making regime under the GMA as a “cascading hierarchy of substantive and directive policy.” [18] The principle that the public must provide input to legislative bodies was also identified as one of the most basic precepts of the comprehensive planning process - that a variety of inputs (data, values, public opinion) must be solicited and weighed and then a decision rendered by the policy-makers. [19]

These characterizations of planning under the GMA go to the very heart of Washington’s approach to planning: (1) the central role of adopted local government *policy* in decision-making and (2) the duty of policy makers (i.e., the legislative bodies of cities and counties) to provide opportunities for *public participation* in the policy-making process. To inappropriately truncate or eliminate the public’s opportunity to participate in the making of local government policy would fly in the face of one of the Act’s most cherished planning goals [20] and separate the “bottom up” component of GMA planning from its true roots – the people.

Having underscored the primacy of policy (i.e., comprehensive plans) under GMA, and the paramount importance of public participation in that process, it is appropriate to acknowledge that implementing regulations are different in nature from comprehensive plans and sometimes will be subject to different public participation requirements. Unlike plans, development regulations control the issuance of permits and conditions imposed upon those permits, such as locally adopted building envelope, density, site and design details and service level requirements for infrastructure. Adoption of certain implementing regulations may warrant a lesser degree of public participation, and there are limited circumstances (i.e., interim/temporary controls) where public participation is appropriate **after** adoption, rather than before it. (*See*: RCW 36.70A.390). This unique exception recognizes that the “rush to the permit counter” that pre-adoption notice would precipitate would undermine the purpose of certain interim regulations. Regulations adopted under .390 are “stop-gap measures” that may be used to allow the preparation of permanent policies and regulations. Interim regulations, even in serial adoption, are not a substitute for permanent regulations and the requisite pre-adoption public participation.

While public involvement in the consideration of development regulations is required and appropriate, the GMA’s consistency requirements will limit the scope of alternatives available for consideration (i.e., to those consistent with the plan). [21] Likewise, appropriate public involvement in the review and consideration of development permit applications is circumscribed by adopted development regulations. Just as the range of choices available to local government narrows from the plan stage to the development regulations stage to the permit review stage, so too does the range of appropriate public participation (including notice). [22]

Petitioner McVittie seems to grasp the distinction between comprehensive plans and development regulations. Petitioner characterizes the GMA 20-year plan as a guiding light; it is a long-term vision for the County, not something that you need to change on an emergency basis. However, development regulations may need to be changed on an emergency, but temporary, basis to respond to unforeseen circumstances. She argues further that once you take the step of enacting temporary controls or a moratorium, the jurisdiction should proceed through the docketing process to make the regulations permanent, if necessary, and to amend the plan if necessary. Transcript, at 70. The Board agrees that this is a very reasonable approach that would be entirely consistent with the decision-making regime of the GMA.

Relevant GMA Public Participation Provisions

The GMA's provisions for public participation include both a goal and a number of requirements. The *relevant* ^[23] public participation sections of the GMA provide as follows:

RCW 36.70A.020:

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. 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:

...

(11) Citizen participation and coordination. *Encourage the involvement of citizens in the planning process* and ensure coordination between communities and jurisdictions to reconcile conflicts.

(Emphasis supplied.) This goal provides an umbrella under which all the GMA public participation requirements fit. It articulates a premium on involving citizens in the entire GMA planning process; and specifically emphasizes the importance of public participation for comprehensive plans and development regulations.

RCW 36.70A.140:

Comprehensive plans – Ensure public participation. Each county and city that is required or chooses to plan under RCW 36.70A.040 *shall establish and broadly disseminate to the public a public participation program identifying procedures*

providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings *after effective notice*, provision for open discussion, communication programs, information services, and consideration of a *response to public comments*. In enacting legislation in response to a board's decision pursuant to RCW 36.70A.300 [.302] declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use program or development regulations invalid if the spirit of the program and procedures are observed.

(Emphasis supplied.) RCW 36.70A.140 is the primary public participation requirement section of the Act. It directs local jurisdictions to provide early and continuous public participation in the development and amendment of comprehensive land use plans and implementing development regulations. Public participation is part of the development process preceding adoption, continues after adoption through the development of amendments, and again precedes adoption of amendments. This early and continuous [enhanced]^[24] public participation process applies to comprehensive plans *and* development regulations, as well as, *both* the initial development and adoption *and* amendment of such plans and development regulations.

RCW 36.70A.035:

Public participation – Notice provisions. (1) *The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulations. . . .*

(Emphasis supplied.) This 1997 amendatory section to the Act clarifies and emphasizes that effective notice is an essential and necessary part of the public participation requirements of the Act. It also applies to the entire GMA planning process.^[25] Effective notice precedes adoption. The Board has emphasized this relationship, when it stated:

It is axiomatic that without effective notice, the public does not have a reasonable opportunity to participate, therefore, the Act requires local jurisdictions' notice procedures to be 'reasonably calculated to provide notice' . . .

Rural Bainbridge Island/Andrus v. City of Bainbridge Island (Andrus), CPSGMHB Case No. 98-3-0030c, Final Decision and Order, (Mar. 31, 1999), at 6-7. *See also, Weyerhaeuser Real Estate*

Company, Land Management Division v. City of DuPont (WRECO), CPSGMHB Case No. 98-3-0035, Final Decision and Order, (May 19, 1999), at 6.

RCW 36.70A.070:

Comprehensive plans – Mandatory elements. The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. *A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.*

(Emphasis supplied.) This GMA section, which outlines the required elements for plans, emphasizes the importance of public participation in adopting and amending comprehensive plans. A plan cannot be adopted or amended without providing the opportunity for public participation. This section, which only addresses the requirements for contents of comprehensive plans, specifically emphasizes the application of .140 for adopting and amending comprehensive plans. This section of the Act does not apply to development regulations. The Board has previously stated:

[P]lans are not development regulations. . . Comprehensive plans do not control the issuance of permits nor directly control the use of land. Rather, comprehensive plans are directive to development regulations and capital budget decisions. The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. (Citations omitted.)

Vashon-Maury v. King County, CPSGMHB Case No. 95-3-0008c [Bear Creek Portion], Order Finding Partial Noncompliance and Partial Invalidity, (Nov. 3, 2000), at 9.

RCW 36.70A.130:

Comprehensive plans – Review – Amendments. (1) . . . Any amendment or revision to a comprehensive land use plan shall conform to this chapter, and any change to development regulations shall be consistent with and implement the comprehensive plan. (2)(a) Each *county and city shall establish and broadly disseminate to the public a public participation program identifying procedures whereby proposed amendments or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year except that amendments may be considered more frequently under the following circumstances:*

- (i) The initial adoption of a subarea plan;
- (ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW; and
- (iii) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or

a city budget.

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

(Emphasis supplied.) Again, the GMA mandates that jurisdictions have a public participation program that outlines the procedures for consideration and adoption of proposed plan amendments. This process *amplifies* and *refines* the broader .140 public participation process that applies to the adoption and amendment of plans and development regulations. Providing the opportunity for public participation is a condition precedent to adoption or amendment of a plan. Here, a special process for amending plans is required. The limitation on considering proposed plan amendments “no more frequently than once every year,” or annual concurrent review provision, necessitates the establishment of deadlines and schedules for filing and review of such amendments so they can be considered concurrently. Although this section provides exceptions to the annual concurrent review limitation, none of these exceptions are excused from public participation requirements. The exceptions in .130(2)(a) are still governed by the public participation requirements in .130(2)(a); and even plan amendments necessitated by Board or Court remands or emergencies, while not directly governed by .130(2)(a) or .140, may *only* be adopted *after appropriate* public participation as required by .130(2)(b). Once again, providing an opportunity for public participation is required prior to adoption of an amendment.

RCW 36.70A.390:

Moratoria, interim zoning controls – Public hearing – Limitation on length – Exceptions. *A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this subsection may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.*

(Emphasis supplied.) This section, allowing for the adoption of moratoria or interim/temporary controls, does not apply to plan amendments. It does not apply to permanent changes in development regulations or controls. It applies *only* to the adoption or amendment of temporary controls or development regulations, those measures that are adopted for an interim period – generally six-months. [\[26\]](#) This section of the Act is unique in that it permits a deviation from the norm of providing the opportunity for public participation prior to action; here a jurisdiction can act or adopt first, then provide the opportunity for public participation after adoption. [\[27\]](#) However, this post-adoption opportunity for public participation must occur within 60-days of adoption.

Review of the preceding statutory text causes the Board to draw the following conclusions about the public participation requirements of the Act:

- The public participation **goal** provisions (RCW 36.70A.020(11)) apply to the adoption of **all** plan and development regulation amendments regardless of duration or urgency.
- The public **notice** requirements (RCW 36.70A.035) apply to the adoption of **all** plan and development regulation amendments regardless of duration or urgency.
- Some degree of **public participation** (RCW 26.70A.130(2)(a) or (b)) is required **prior to** adoption of **any** plan amendment regardless of duration or urgency.
- Public participation (RCW 36.70A.140) is required **prior to** the adoption or amendment of **any** permanent development regulation.
- The **only** instance where **post adoption** public participation is allowed is when temporary or interim development regulations (RCW 36.70A.390) are adopted or amended.

The Table below graphically illustrates these conclusions and indicates which GMA public participation requirement generally applies to comprehensive plan or development regulation amendments of different duration and urgency.

GMA Requirements for Public Participation on Amendments

RCW 36.70A.	.020(11)	.140	.035	.070	.130(2)	.390
Amendment to Plans						
Permanent/non-emergency	X [28]	X [29]	X	X	X	
Permanent/emergency	X	X	X		X_b [30]	
Interim/non-emergency	X	X	X	X	X	
Interim/emergency	X	X	X		X_b	
Amendment to Regulations						

Permanent/non-emergency	X	X	X			
Permanent/emergency	X	X	X			
Interim/non-emergency	X		X			X
Interim/emergency	X		X			X

It is within this GMA public participation context that the Board’s review will proceed.

It is undisputed that Snohomish County did not provide notice or conduct a public hearing prior to, or after, the Snohomish County Council’s adoption of Emergency Ordinance Nos. 00-050 and 00-051. County PHB, at 4; and Appendix A, Findings of Fact 1-8. Emergency Ordinance No. 00-050 amends the County’s GMA Plan and Future Land Use Map (**FLUM**) by enlarging the County’s UGA designation for the City of Arlington to include an additional 53.3 acres. The UGA Plan amendment designations are not interim designations, they are permanent designations adopted by emergency ordinance. The Arlington School District has an option on the site and its intended use is for the construction of a new high school. *See*: Ord. No. 00-050, Ex. 23. Emergency Ordinance No. 00-051 adopts a County initiated rezone, from a Rural 5 Acre designation to a Residential 9,600 designation, for the new 53.3 acre addition to the Arlington UGA. The development regulation zoning amendment designation is not an interim designation, it is a permanent designation adopted by emergency ordinance. *See*: Ord. No. 00-051, Ex. 24.

Emergency Ordinance No. 00-050 [Amending the Plan and FLUM]:

Via emergency enactment, this ordinance makes permanent changes to the County GMA Plan and FLUM. There is no indication in the Ordinance that the changes are temporary or interim in nature. Ord. No. 00-050, Ex.23.

Petitioner argues that this enactment is subject to the public participation requirements of RCW 36.70A.020(11), .035, .070, .140 and .130(2) and fails to comply with each. McVittie PHB, at 6-10. The County counters that only .130(2) applies to emergency amendments to comprehensive plans and that the County has complied with this provision, when interpreted in light of its Charter. Co. PHB, at 13-21. McVittie reiterates that each section applies and has not been complied with. McVittie Reply, at 2-10.

RCW 36.70A.020(11), the public participation goal, is the umbrella over *all* the GMA’s public participation requirements; it applies to Ordinance No. 00-050. However, the Board looks first to the requirements sections of the Act to determine compliance. *See: Litowitz v. City of Federal Way (Litowitz)*, CPSGMHB Case No. 96-3-0005, Final Decision and Order, (Jul. 22, 1996), at 7; *The Children’s Alliance and Low Income Housing Institute v. City of Bellevue (Children’s II)*, CPSGMHB Case No. 96-3-0023, Final Decision and Order, (Nov. 3, 1996), at 9. Review is done in light of the goals of the Act, not in lieu of the Goals. *See: Jody L. McVittie v. Snohomish County (McVittie)*, CPSGMHB Case No. 99-3-0016c Final Decision and Order, (Feb. 9, 2000), at 22. If the Board finds noncompliance with a requirement of the Act, it returns to the goals to determine whether

substantial interference has occurred, thereby meriting a determination of invalidity.

RCW 36.70A.035, the GMA notice requirements, states, “The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice. . .of proposed amendments to comprehensive plans and development regulations. . .” This language is unambiguous; it is not limited. It applies to *all* plan amendments, permanent, temporary or interim. Procedures that are reasonably calculated to provide notice of proposed plan amendments are required; RCW 36.70A.035 applies to Emergency Ordinance No. 00-050. It is undisputed that the County provided no notice of its pending adoption of this ordinance amending its comprehensive plan. Finding of Fact 3. Consequently, the County failure to provide any notice regarding the adoption of Ordinance No. 00-050 was **clearly erroneous** and **failed to comply** with the notice requirements of RCW. 36.70A.035.

RCW 36.70A.070(preamble) explicitly provides “A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.” This section of the Act applies to Ordinance No. 00-050; however, it is merely a cross reference to the substantive requirements contained in RCW 36.70A.140. However, failure to comply with .140 also necessitates a finding of noncompliance with .070(preamble).

RCW 36.7A.140 is the original and primary public participation requirement of the GMA. This is the public participation bedrock upon which all GMA plans and development regulations in the state are built. It embodies the Act’s “enhanced” public participation process that requires *early and continuous* public participation during development and amendment of plans and development regulations. It is not limited; it clearly applies to Ordinance No. 00-050, which permanently amends the County’s Plan (UGA) and FLUM. However, its provisions have been amplified and refined when amendments to comprehensive plans are involved. RCW 36.70A.130 is the first place the Board looks when a challenge to the public participation procedures surrounding a comprehensive plan amendment is challenged. RCW 36.70A.140 provides context and a backdrop for the public participation process required by RCW 36.70A.130.

RCW 36.70A.130 does several things. It requires *any* plan amendment or revision to comply with the requirements of the GMA. *See*: .130(1). It requires the establishment and dissemination of a public participation program and procedures for the jurisdiction’s “annual” plan amendment review program. It establishes an annual review program for jurisdictions to concurrently consider comprehensive plan amendments. The governing body of the jurisdiction may not consider such amendments “more frequently than once every year.” *See*: .130(2)(a). It specifies: the adoption of *subarea plans*; the adoption or amendment to *shoreline master programs*, and *capital facility element* amendments that occur concurrently with adoption of a jurisdiction’s budget, are excepted from the annual review cycle. These actions are not constrained to the once per year concurrent consideration. *See*: .130(2)(a)(i-iii). However, the public participation requirements of the .130(2) - a refinement of .140 - must be complied with even when these “exceptions” are considered. There is no exemption from compliance with the GMA’s public participation requirements.

RCW 36.70A.130(2)(b) also authorizes two additional exceptions to the annual plan amendment review process. Plan amendments precipitated by an emergency and plan amendments required to resolve an appeal filed with a Board or a Court (**remand**) need not adhere to the once per year concurrent review, they may be considered at any time, as is necessary. However, even amendments flowing from these events may only be considered “after appropriate public participation.”^[31] The Legislature recognized that in these limited situations a jurisdiction will likely have to act quickly; thus, the full scope of the Act’s public participation requirements were narrowed.

Amendments precipitated by emergencies are clearly governed by .130(2)(b), not .140^[32] or even .130(2)(a). Within the confines of the goals and requirements of the Act, local governments have discretion to determine what “appropriate public participation” to provide before they take action on emergency plan amendments. The Board agrees with the County, that the County has some degree of discretion^[33] to determine the “proper, fitting or suitable” level of public participation. Co. PHB, at 20; Transcript, at 52. However, the Board strongly rejects the County’s contention that the word “after” in the phrase “*after* appropriate public participation” cannot be interpreted literally.^[34] The County offers no “non-literal” interpretation, but chooses instead to ignore it. Co. PHB, at 19-21. The word “after” evidences the clear and explicit Legislative intent to prohibit adoption of a plan amendment until “after” (behind in place or order, subsequent in time, later in time than, following^[35]) appropriate public participation takes place.

Additionally, to justify its absolute lack of public participation for Ordinance No. 00-050, the County contends, “The County must have the discretion to interpret the word “appropriate” to mean **zero** public participation if the County’s emergency authority under the Charter is to remain in tact.” Co. PHB, at 19-20, (emphasis supplied). This was the County’s clear error. As noted above, the County has discretion to define “appropriate”, but deciding to provide “zero” opportunity for public participation is **not** “appropriate” and an abuse of that discretion and contrary to the Act. The County’s inaction in providing no notice or opportunity for public participation before the adoption of the emergency plan amendment emasculates the GMA.

By adopting Emergency Ordinance No. 00-050, the County added 53.3 acres to the UGA with **zero** opportunity for public participation. In response to direct questioning at the HOM, the County indicated that under its interpretation, it could add 500 acres or 5000 acres to its UGA through emergency plan amendments and provide **zero** opportunity for public participation. Transcript, at 66-68.

The County’s theory is irreconcilable with the public participation requirements of the Act and renders the GMA’s public participation provisions absolutely meaningless. The County’s interpretation is contrary to the spirit of the GMA’s public participation provisions and must fail.

Given the absence of the opportunity for any public participation prior to the County’s adoption of Ordinance No. 00-050, the Board finds that the County’s action was **clearly erroneous** and **failed to comply** with the public participation requirements of RCW 36.70A.130(2)(b).

Since the County has been found noncompliant with the requirements of RCW 36.70A.035 and .130(2)(b), the Board also finds that the County **failed to be guided** by Goal 11, RCW 36.70A.020(11) – the County has not encouraged, but discouraged and preempted, the involvement of citizens in the planning process as it relates to Ordinance No. 00-050.

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Conclusion

A jurisdiction must provide notice and the opportunity for the public to participate prior to adopting any GMA plan or any amendment to that plan. The County’s failure to provide any notice regarding the adoption of Ordinance No. 00-050 was **clearly erroneous** and **failed to comply** with the notice requirements of RCW. 36.70A.035. Given the absence of any opportunity for public participation prior to the County’s adoption of Ordinance No. 00-050, the Board finds that the County’s action was **clearly erroneous** and **failed to comply** with the public participation requirements of RCW 36.70A.130(2)(b). Since the County has been found noncompliant with the requirements of RCW 36.70A.035 and .130(2)(b), the Board also finds that the County **failed to be guided** by Goal 11, RCW 36.70A.020(11) – the County has not encouraged, but discouraged and preempted, the involvement of citizens in the planning process as it relates to Ordinance No. 00-050.

Emergency Ordinance No. 00-051 [Rezoning the Area to R-9600]:

Via emergency enactment, this ordinance makes permanent changes to the County’s zoning regulations and maps. There is no indication in the Ordinance that the changes are temporary or interim in nature. Ord. No. 00-051, Ex. 24.

Petitioner argues that this enactment is subject to the public participation requirements of RCW 36.70A.020(11), .035, .140 and fails to comply with each. McVittie PHB, at 6-7 and 9-10. The County responds that these provisions do not apply to the adoption of emergency development regulations. Co. PHB, at 12-21. McVittie reiterates that each section applies and has not been complied with. McVittie Reply, at 2-10. The parties do not dispute, and the Board concurs, that the public participation requirements contained in RCW 36.70A.070(preamble) and RCW 36.70A.130(2) do not apply to amendments to development regulations. The language of the statute itself limits their application to comprehensive plans.

RCW 36.70A.020(11), the public participation goal, is the umbrella over all the GMA’s public participation requirements for comprehensive plans and development regulations; it applies to Ordinance No. 00-051. However, as noted above (*citing: Litowitz and Children’s II*), the Board looks

first to the requirements sections of the Act to determine compliance. Also, the Board's review is done in light of the goals of the Act, not in lieu of the Goals. (*Citing: McVittie*). If noncompliance is found, then the Board returns to the goals to determine whether invalidity is warranted.

As noted above, the language of RCW 36.70A.035 is unambiguous; it is not limited. It applies to *all* development regulation amendments, permanent, temporary or interim. Procedures that are reasonably calculated to provide notice of proposed development regulation amendments are required; RCW 36.70A.035 applies to Emergency Ordinance No. 00-051. It is undisputed that the County provided no notice of its pending adoption of this ordinance amending its development regulations. Finding of Fact 3. Consequently, the County failure to provide any notice regarding the adoption of Ordinance No. 00-051 was **clearly erroneous** and **failed to comply** with the notice requirements of RCW. 36.70A.035.

RCW 36.7A.140 is the public participation bedrock of the GMA, without this solid foundation the viability and durability of plans and the implementation of those plans may be suspect. As applied to permanent development regulations, RCW 36.70A.140's requirement for *early and continuous* public participation is not limited. It applies equally to the development of enduring and permanent implementing regulations and permanent revision or amendment to such regulations. Ordinance No. 00-051, adopting permanent changes to the zoning designation of the area in question, is subject to the public participation requirements of RCW 36.70A.140. The requirement to provide "early" public participation means **prior to** adoption of permanent GMA development regulations. The .140 requirements to provide the opportunity for public participation prior to action are reinforced by the existence of RCW 36.70A.390. It is noteworthy that .390 is unique in that it specifically provides a mechanism and modified (post-adoption) public participation process for adopting, in an expeditious manner, *temporary or interim* development controls – RCW 36.70A.390. However, the County, in the adoption of Ordinance No. 00-051, did not employ .390.

As with Ordinance No. 00-050, in adopting Ordinance No. 00-051, the County admits and concedes that, "No public participation was provided." Co. PHB, at 4 and Appendix A, Findings of Fact 1-8. Further, the County's contention that it need not provide for public participation when it adopts an emergency ordinance is without merit. In the present case, the County made a permanent change to its GMA development regulations; the GMA's public participation requirements are clearly in play. Compliance with RCW 36.70A.140 is required. Ignoring public participation may be permissible for the County when it is *not* amending its GMA Plan, development regulations or other GMA required document; but it is impermissible and contrary to the spirit of the Act when GMA Plans, regulations or other GMA documents are affected. Consequently, given the County's lack of any opportunity for public participation, prior to, or after ^[36] the adoption of Ordinance No. 00-051, the Board finds that the County's action was **clearly erroneous** and **failed to comply** with the public participation requirements of RCW. 36.70A.140.

Having found the County to be noncompliant with the requirements of RCW 36.70A.035 and .140,

the Board also finds that the County **failed to be guided** by RCW 36.70A.020(11) – the County has not encouraged, but discouraged and preempted, the involvement of citizens in the planning process as it relates to Ordinance No. 00-051.

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Conclusion

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A jurisdiction must provide notice and the opportunity for the public to participate prior to adopting any GMA development regulation or any amendment to that development regulation, unless an action is being taken pursuant to RCW 36.70A.390, in which case, notice and the opportunity for public participation may be provided after the GMA action is taken. The County’s failure to provide any notice regarding the adoption of Ordinance No. 00-051 was **clearly erroneous** and **failed to comply** with the notice requirements of RCW. 36.70A.035. The County’s failure to provide any public participation prior to the adoption of Ordinance No. 00-051 was **clearly erroneous** and **failed to comply** with the public participation requirements of RCW. 36.70A.140. Since the County has been found noncompliant with the requirements of RCW 36.70A.035 and .140, the Board also finds that the County **failed to be guided** by Goal 11, RCW 36.70A.020(11) – the County has not encouraged, but discouraged and preempted, the involvement of citizens in the planning process as it relates to Ordinance No. 00-051.

C. RECONSIDERATION OF Legal Issue No. 1

The Board’s PHO set forth Legal Issue No. 1, as follows:

Do the participation requirements for standing, pursuant to RCW 36.70A.280(2)(b), preclude a person from challenging a jurisdiction’s adoption of an emergency ordinance, where no notice or opportunity for public participation is provided prior to adoption of the emergency ordinance?

Reconsideration

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This question was originally briefed and addressed in the Board’s November 6, 2000 Order. It was undisputed that the County provided no notice or opportunity for public comment on the emergency ordinances *prior* to their adoption. There was also no indication in the record that the County intended to provide notice or opportunity for public comment on the emergency ordinances *after* their adoption. This led the Board to conclude:

A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, adoption of amendment of a GMA Plan or development regulation or other related GMA measure.

Order Denying Dispositive Motion Re: Participation Standing (Nov. 6, 2000), at 5.

In granting the County's petition for reconsideration, the Board stated:

[A] majority^[37] of the Board believes the GMA's public participation requirements and the GMA's provisions for participation standing arguably pose a "chicken and egg" situation that may be more definitively resolved in the context of a full review of the other public participation issues posed in this case. Consequently, the Board **grants** the County's Petition for Reconsideration.

Order on Motion to Reconsider (Dec. 4, 2000), at 2.

In essence, reconsideration was granted in order for the Board to perform a full review of the relevant GMA public participation requirements before addressing GMA participation standing. Having fully reviewed the GMA's public participation requirements, the Board now has the appropriate context to reconsider its prior decision regarding McVittie's GMA participation standing. The GMA requires a jurisdiction to provide notice and the opportunity for public participation, either prior to, or after,^[38] any GMA action – the adoption or amendment (permanent, temporary or interim) of comprehensive plans or implementing development regulations. The GMA is clear; a jurisdiction must *always* provide the *opportunity* for public participation, including notice. Petitioner is correct in that it is up to citizens to avail themselves of the opportunity provided and establish standing by participating in the process. Transcript, at 74. Failure to participate, orally or in writing, when the opportunity is provided, will not enable a citizen to establish GMA participation standing pursuant to RCW 36.70A.280(2)(b). However, a jurisdiction's failure to provide the opportunity to participate renders the GMA's participation standing provisions (RCW 36.70A.280(2)(b)) meaningless and contrary to the spirit of the Act, since those who wish to participate are not given the opportunity to do so. In light of the GMA's public participation requirements discussed in this Order, and reconsidering the Board's reasoning in its prior Order, the Board **affirms** and **modifies** its initial decision regarding GMA participation standing, to wit:

A jurisdiction must provide notice and the opportunity for the public to participate **prior to** taking a GMA action, unless an action is being taken pursuant to RCW 36.70A.390, in which case, notice and the opportunity for public participation may be provided **after** the GMA action is taken. Consequently, a jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time, either prior to, or after, adoption of amendment of a GMA Plan or development regulation or other related GMA measure.

Conclusion

A jurisdiction may not bar GMA participation standing by not providing notice or the opportunity to participate at any time, either prior to, or after, adoption of an amendment to a GMA Plan, development regulation or other related GMA document. If no notice or opportunity for public participation is provided for a GMA action, a petitioner may assert GMA participation standing pursuant to RCW 36.70.280(2)(b).^[39] In the instant case, it is undisputed that the County did not provide any notice or any opportunity for public participation; therefore, Petitioner is **granted** GMA participation standing, pursuant to RCW 36.70A.280(b).

D. Legal Issue – No. 4(c)

The Board's PHO set forth Legal Issue No. 4(c), as follows:

Did the County's adoption of the emergency ordinances fail to comply with the County-wide Planning Policy (CPP) requirements of RCW 36.70A.210 and CPP UG-14, because the adoption of the emergency ordinance was inconsistent?

Applicable Law and Discussion

In addressing Legal Issue 4(a) regarding public participation, the Board found the County to be noncompliant with the public participation goal and the requirements of the Act because the challenged ordinances were adopted without any notice or opportunity for public participation. Given the County's pervasive and egregious noncompliance with these fundamental requirements of the Act, the Board need not, and will not, address Legal Issue 4(c) regarding whether the ordinances are consistent with CPP UG-14.

Conclusion

Having found the County noncompliant with the public participation goal and requirements of the GMA, the Board need not, and will not address the substantive challenge posed in Legal Issue 4(c).

E. Invalidity

Petitioner requests that if the Board finds noncompliance with the GMA, the Board should also enter a determination of invalidity. PFR, at 2.

RCW 36.70A.302 provides:

- (1) A board may determine that part or all of a comprehensive plan or development regulation 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.

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

The Board has found that the County did not comply with the public participation goal and requirements of the Act, specifically, RCW 36.70A.020(11), .035, .130(2)(b) and .140. The noncompliant Ordinances are remanded to the County in this Order. Since the Board's finding of noncompliance relates to the inadequacy of public participation and notice, the Board's consideration of invalidity will focus on Goal 11.

Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70A.020(11). In the Board's discussion and analysis of Legal Issue 4(a), the Board determined that the County's lack of a public participation process in the adoption of the challenged Ordinances, *discouraged and preempted the involvement of citizens in the planning process*. Based upon the findings of fact contained in Appendix A and the Board's finding of noncompliance with RCW 36.70A.020(11), .035, .130(2)(b) and .140, the Board concludes that the County's lack of any notice and lack of any opportunity for public participation in the adoption of the challenged Ordinances substantially interferes with the fulfillment of Goal 11. The Board hereby enters a **determination of invalidity** for Snohomish County Emergency Ordinance Nos. 00-050 and 00-051.

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:

Snohomish County's motion to dismiss Petitioner McVittie's PFR as moot is **denied**.

Petitioner McVittie is **granted** GMA participation standing, pursuant to RCW 36.70A.280 (b).

Snohomish County's adoption of Emergency Ordinance Nos. 00-050 and 00-051 was

clearly erroneous and **does not comply** with the public participation goal and requirements of RCW 36.70A.020(11), .035, .130(2)(b) and .140, as set forth and interpreted in the Final Decision and Order (**FDO**). Further, the Board has determined that the adoption of these Ordinances was **invalid** since citizen participation was discouraged and preempted, thereby substantially interfering with the fulfillment of Goal 11.

The Board therefore, **remands** Ordinance Nos. 00-050 and 00-051 to the County with the following directions:

In order to comply with the provisions of RCW 36.70A.020(11) .035, .130(2)(b) and .140. as set forth in this FDO, the Board directs Snohomish County as follows:

(1) (a) The County shall provide effective notice, set a public hearing date and provide the opportunity for public participation regarding the Plan amendment and zoning designation proposed in the two invalidated Ordinances. *By no later than 4:00 p.m. Monday – August 6, 2001*, the County shall take appropriate legislative action to repeal, modify or readopt the subject matter addressed in the two invalid Ordinances. (b) Additionally, by no later than the same date, the County shall take appropriate legislative action to bring its notice and public participation process for the adoption of emergency ordinances *related to GMA plans, development regulations or other GMA documents*, into compliance with the goals and requirements of the GMA, as interpreted in this FDO.

(2) Within ten days of taking the legislative action(s) set forth in Paragraph (1) of this Order, the County shall file with the Board an original and four copies of a Statement of Actions to Comply (**SATC**) with the GMA, as set forth in this FDO. The County shall simultaneously serve a copy of the SATC on Petitioner McVittie.

(3) Within ten days of service of the SATC, Petitioner McVittie *may* file with the Board an original and four copies of Comments on the SATC. Petitioner shall simultaneously serve a copy of such Comments on the SATC on the County.

Pursuant to RCW 36.70A.330(1), upon receipt of the County's SATC and Comments on the SATC, if any, the Board will schedule a Compliance Hearing and, if necessary, establish a date for a County Response to Comments on the SATC.

So ORDERED this 12th day of April 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North,
Board Member

Joseph W. Tovar, AICP
Board Member
(Board Member Tovar filed a Concurring Opinion)

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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.

BOARD MEMBER TOVAR’S CONCURRING OPINION

I concur with the majority in disposing of this case in resolving Legal Issue 4(a) - finding that the County’s adoption of Ordinances 00-050 and 00-051 fails to comply with RCW 36.70A.035, .130(2) (b) and .140 and that the continued validity of these Ordinances substantially interferes with the fulfillment of RCW 36.70A.020(11). However, I believe that the controversy in Legal Issue 4(c) is a matter of significant public interest that can and should be reached. Unlike my colleagues, I would also have addressed Legal Issue 4(c) - the allegation that the County’s actions fail to comply with RCW 36.70A.210 because they are inconsistent with Snohomish County CPP UG-14. I first have some general remarks, then set forth the analysis I would have applied in answering Issue 4(c).

General Remarks

The County pointed out that it adopted UG-14 in order to address its ‘buildable lands’ duties under RCW 36.70A.215. It is commendable for the County to adopt CPPs over a year before the statutory

deadline and to acknowledge the necessity of simultaneous processing of a zoning amendment and a companion comprehensive plan amendment. However, a troubling theme permeates the County's arguments for adding 53 acres to its UGA with **zero public participation** and **zero analysis** of the context or the county's land use capacity. The theme in argument was, in effect, "we did zero because we had no legal duty to do more."

As counties look forward to the important work of meeting the land use capacity monitoring and implementation duties of RCW 36.70A.215 and .210(2)(e), they certainly must aspire to a higher degree of public participation and land use capacity analysis than zero. While it is true that individual citizens may not challenge CPPs, the Washington Supreme Court has made it clear that a valid CPP will not insulate a county's designation of a UGA from challenge for noncompliance with RCW 36.70A.110(6).^[40] Snohomish County would do well to ponder this for two reasons. First, any UGA revision will require a 'show your work' analysis in support of adoption of an ordinance pursuant to RCW 36.70A.110. Second, actions adopted pursuant to RCW 36.70A.110 are subject to the public participation requirements of RCW 36.70A.140 and the participation standing provisions of .280(2).

Analysis and Discussion

The Board's PHO set forth Legal Issue No. 4(c), as follows:

Did the County's adoption of the emergency ordinances fail to comply with the County-wide Planning Policy (CPP) requirements of RCW 36.70A.210 and CPP UG-14, because the adoption of the emergency ordinance was inconsistent?

I agree with the County that Petitioner may not challenge the substance of the adopted CPP UG-14. Only cities and the governor, not individual citizens, may appeal adoption of a CPP to the Board. RCW 36.70A.210(6). No such appeal was filed. Consequently, it is not now possible to inquire as to whether adoption of UG-14 and its focus on individual UGAs complies with the Act. However, Petitioner may challenge, and has challenged, the County's compliance with its adopted CPP UG-14.

RCW 36.70A.210 required Snohomish County to adopt CPPs. The County originally adopted the required CPPs in 1993 and has amended them several times in ensuing years. Most recently, on February 16, 2000, the County adopted Ordinance 99-121, to amend its CPPs to include a CPP to establish a review and evaluation program (buildable lands program). Ex. 29. The buildable lands program CPP includes a component for the review of urban growth areas. The UGA review procedures are embodied in CPP UG-14. Petitioner's challenge focuses on whether adoption of the challenged ordinances complied with UG-14(d)(3), which provides as follows:

Expansion of the Boundary of an Individual UGA: Expansion of the boundary of an individual UGA to include additional residential, commercial and industrial land shall not be permitted unless it complies with the Growth Management Act, and one of the

following four conditions are met:

...

(3) All of the following conditions are met for expansion of the boundary of an individual UGA to include additional residential land:

- (a) Population growth within the UGA (city plus unincorporated UGA combined) since the start of the twenty-year planning period, equals or exceeds fifty percent of the additional population capacity estimated for the UGA at the start of the planning period, as documented in the annual Snohomish County Tomorrow Growth Monitoring Report;
- (b) An updated residential land capacity analysis conducted by city and county staff for the UGA confirms the accuracy of the above finding using more recent residential capacity estimates and assumptions; and
- (c) The county and city or cities within the UGA consider reasonable measures adopted as an appendix to the Countywide Planning Policies pursuant to UG-14 (b) that could be taken to increase residential capacity inside the UGA without expanding the boundaries of the UGA.

The essence of the County's argument is that UG-14 does not apply to the adoption of the challenged ordinances. I disagree.

UG-14(d), on its face, applies to the "Expansion of the Boundary of an Individual UGA." Ordinance No. 00-050 expanded the boundary (added 53.3 acres of land) to the UGA for the City of Arlington. Ex. 23, at 7 and attached exhibits. Ordinance No. 00-051 rezoned the 53.3 acres of land from Rural 5 to Residential 9,600. Ex. 24, at 3 and attached exhibits. The County acknowledges R-9600 is a residential designation ^[41] that the County typically used for schools in the unincorporated areas. I see no language in UG-14(d), nor has the County pointed to any definition or other Plan policy, that indicates that "residential land" means anything other than what is designated on the Future Land Use Map and in the County Zoning Atlas. The County cites the concomitant agreement between the School District and property owners as justification for looking at the 53 acres in question as something other than what the County's actions designate it – residential land. The inescapable conclusion therefore must be that adding 53.3 acres of land designated for residential uses to the Arlington UGA, qualifies as residential land and falls within the purview of UG-14.

This CPP requires the County to conduct a review and evaluation to determine whether the conditions of UG-14(d)(3) have been met. Petitioner argues no UG-14 review and evaluation was done. There is no reference in the findings and conclusions of the ordinances, or evidence in the record, that any review or evaluation pursuant to UG-14 was conducted. ^[42] In my view, the County's failure to follow its own adopted UGA review and evaluation process was clearly erroneous and inconsistent with CPP UG-14, and does not comply with RCW 36.70A.210.

APPENDIX A

Findings of Fact

1. In May 2000, the Arlington School District (**District**) submitted a proposal to the Snohomish County Council (**Council**), seeking an amendment to the County Comprehensive Plan. Co. Motion, at 1.
2. The amendment proposed by the District expanded the City of Arlington's designated urban growth area (**UGA**) boundary to include property for a new high school. The District requested the County to consider the proposed amendment on an expedited basis. Co. Motion, at 2.
3. The County provided no prior public notice and hearing on its consideration of the proposed amendment. Co. Motion, at 3; and McVittie Response, at 1.
4. The Council discussed the proposed amendment at its regularly scheduled meetings on June 19, 2000 and July 10, 2000. At a July 26, 2000 public meeting/work session, the Council adopted the two emergency ordinances that accomplished the amendment to the County Plan and Zoning Atlas. Co. Motion, at 3.
5. The Petitioner was not present at the July 26, 2000 public meeting/work session where the County adopted the emergency ordinances. Co. Motion, at 3.
6. On August 2, 2000, Petitioner submitted a letter to the Council taking exception to the use of emergency procedures to expand the Arlington UGA. Ex. 35, Co. Motion, at 4; McVittie Response, at 1.
7. The County informed the public that it had adopted the emergency ordinances by publishing notices of adoption on August 3rd and 10th. Co. Motion, at 4.
8. The record does not indicate that the County intended to provide notice and opportunity for public comment on its adoption of the emergency ordinances after adoption. Ex. 18, [Affidavit of Publication – Notice of Action - Approval of Emergency Ordinance #00-050 (published August 3 and 10)], Ex. 19, [Affidavit of Publication - Notice of Action – Approval of Emergency Ordinance #00-051, (published August 3 and 10)], Exs. 20 and 21, [publication of the full text of the Emergency Ordinances (August 10)].
9. The Snohomish County Charter is silent with regard to public participation before or after enactment of emergency Ordinances. County PHB, at 19.
10. On November 13, 2000, the BRB for Snohomish County issued a Notice of Intent indicating the BRB's 45-day review period would expire on December 28, 2000. Ex. 38.
11. On January 16, 2001, the City of Arlington approved Ordinance No. 1251, annexing the area into the City and zoning the property as Residential Low/Moderate density (R-LMD). Ex.41.

APPENDIX B

GMA Requirements for Public Participation on Amendments

RCW 36.70A.	.020(11)	.140	.035	.070	.130(2)	.390
Amendment to Plans						
Permanent/non-emergency	X ^[43]	X ^[44]	X	X	X	
Permanent/emergency	X	X	X		X ^b ^[45]	
Interim/non-emergency	X	X	X	X	X	
Interim/emergency	X	X	X		X ^b	
Amendment to Regulations						
Permanent/non-emergency	X	X	X			
Permanent/emergency	X	X	X			
Interim/non-emergency	X		X			X
Interim/emergency	X		X			X

The Table above is based on the following conclusions drawn by the Board in its analysis of the public participation requirements of the Act:

- The public participation **goal** provisions (RCW 36.70A.020(11)) apply to the adoption of **all** plan and development regulation amendments regardless of duration or urgency.
- The public **notice** requirements (RCW 36.70A.035) apply to the adoption of **all** plan and development regulation amendments regardless of duration or urgency.
- Some degree of **public participation** (RCW 26.70A.130(2)(a) or (b)) is required **prior to** adoption of **any** plan amendment regardless of duration or urgency.
- Public participation (RCW 36.70A.140) is required **prior to** the adoption or amendment of **any** permanent development regulation.
- The **only** instance where **post adoption** public participation is allowed is when temporary or interim development regulations (RCW 36.70A.390) are adopted or amended.

[1] The PFR indicated that Petitioner had “contacted the governor’s office for standing certification.” PFR, at 2.

[2] Board Member North dissented, indicating she would have denied the request for reconsideration.

[3] The Board notes that some development regulation amendments merely implement existing Plan policies and do not necessitate a reciprocal amendment to the Comprehensive Plan. Here, however, the proposal required both a Plan and development regulation amendment, thereby calling for concurrent consideration of both proposed amendments to maintain consistency, as required by RCW 36.70A.040.

[4] *See*: Order Denying Dispositive Motion Re: Participation Standing, November 6, 2000.

[5] *See*: Order on Motion to Reconsider, December 4, 2000.

[6] *See*: Order on Dispositive Motions, January 22, 2001.

[7] *See*: McVittie PHB, at 10.

[8] The Board views this argument as a motion to dismiss.

[9] The Board notes that it presently has another case pending against Snohomish County on this very issue – (*Housing Partners v. Snohomish County*, CPSGMHB Case No. 99-3-0010).

[10] Public participation is one of the Legal Issues posed in Petitioner’s PFR and reflected in the Board’s 10/9/00 PHO; consequently, addressing this question would not be an advisory opinion as discouraged by RCW 36.70A.290(1).

[11] In *Kitsap Citizens* the County’s action was not accomplished via emergency ordinances, nor was compliance with the Act’s public participation requirements directly posed as a Legal Issue. [The Board notes that the hearing on the merits and the final decision and order are still pending on this matter.]

[12] .070(preamble) was added as a correction to this Legal Issue. *See*: Order on Dispositive Motions, (Jan. 22, 2001), at 6.

[13] Compliance with the consistency requirements of RCW 36.70A.210 are also still at issue in this case.

[14] The Board notes that RCW 36.70A.390 gives all GMA planning jurisdictions (whether they have a Charter or not) the authority to enact moratoria or interim/temporary development controls or regulations without prior public participation, so long as notice and the opportunity for participation is provided after taking the action.

[15] In the compliance phase of a recent case, the Board had cause to discern the question of “appropriate public participation” for adoption of a plan amendment by emergency ordinance. In answering the compliance issue narrowly, the Board specifically cautioned that its decision did not at that time “define the totality” of the Act’s requirements. *Vashon-Maury, et al., v. King County (Bear Creek Portion)* Order Finding Partial Noncompliance and Partial Invalidity, (Nov. 3, 2000), at 9.

[16] The Board has stated:

[The GMA] definition of policy refers to “principles,” “plans” or “courses of action” pursued by government. Such definitions describe the nature of . . . the comprehensive plans of cities and counties. Policy documents such as . . . comprehensive plans are not “development regulations” under the GMA. *Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order, March 1, 1993, at 12.

[17] *Vashon-Maury*, Order Finding Partial Noncompliance and Partial Invalidity, at 9.

[18] The Board has said:

[T]he decision-making regime under GMA is a cascading hierarchy of substantive and directive policy,

flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. *Aagaard, et al., v. City of Bothell*, CPSGMHB Case No. 94-3-0011, Feb. 21, 1995, at 6.

[19] *Twin Falls v. Snohomish County*, CPSGMHB Case No. 93-3-0003, Final Decision and Order, September 7, 1993, at 78.

[20] RCW 36.70A.020(11) provides: Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

[21] For example, a jurisdiction's Plan designation may indicate an area as high-density residential, with allowable densities varying between 18 and 24 dwelling units per acre. The jurisdiction may have two or three different development regulation zoning designations that could implement the Plan designation. Public participation is certainly required in deciding which of these zoning designations should be applied to the area; but public participation urging the adoption of low-density zoning designations would be beyond the scope of the alternatives available to implement the governing Plan designation.

[22] For example, in the review of a residential short subdivision where development regulations clearly proscribe lot size, grading, landscaping, road and utility standards, there is a very limited range of local discretion. Appropriate notice and public participation should acknowledge this limited range. *See also*, RCW 36.70A.020(7).

[23] Several other sections of the Act address or refer to public participation (*i.e.* RCW 36.70A.060, .210, .215 and .470); however, they are not relevant to the present inquiry involving these amendments to the comprehensive plan and development regulations of the County.

[24] *See: Association of Rural Residents v. Kitsap County (Rural Residents)*, CPSGPHB Case No. 93-3-0010, Order Granting Dispositive Motions, (Feb. 16, 1994), at 12.

[25] While the quoted language clearly addresses "proposed amendments," (3) of the section indicates "This section is prospective in effect and does not apply to a comprehensive plan, development regulation or amendment adopted before July 27, 1997." Thereby the Legislature infers that these "prospective" notice requirements apply to the initial adoption of plans and development regulations, not just amendments to such documents.

[26] However, the six-month period may be extended to a year if a work plan for studying the area is developed. RCW 36.70A.390 also allows the six-month interim period to be renewed.

[27] Moratoria and interim controls are methods by which local governments may preserve the status quo so that new plans and regulation will not be rendered moot by intervening development. Notice and public hearing is not necessary prior to enactment of a moratorium or emergency zoning measure. If such requirements were applied to interim zoning decisions, developers could frustrate effective long-term planning by obtaining vested rights to develop their property; thereby rendering the emergency plans moot. *A Short Course on Local Planning, CTED and Planning Association of Washington, Version 3, March 1997, at 3-57.*

[28] "X" means, the captioned public participation requirement applies.

[29] "X" means, generally .140 applies, but as amplified and refined by the jurisdiction's .130 annual review process.

[30] "Xb" means, the provisions of .130(2)(b), "after appropriate public participation" applies.

[31] The Board notes that RCW 36.70A.140 addresses public participation for a Board remand. In response to a finding of noncompliance and a determination of *invalidity*, the jurisdiction "shall provide for public participation that is *appropriate and effective* under the circumstances presented by the board's order." (Emphasis supplied).

[32] The Board acknowledged this in *Wallock v. City of Everett (Wallock)*, CPSGMHB Case No. 96-3-0025, Final

Decision and Order, (Dec. 3, 1996), at 12, when it stated, “The public participation requirements of RCW 36.70A.140 do not apply to plan amendments adopted in response to emergencies.”

[33] The exercise of local discretion must be consistent with the requirements and goals of the GMA. *See*: RCW 36.70A.3201.

[34] The County argued, “If the word “after” were literally applied, it would cause the GMA to supercede the County’s authority under the state constitution. The [County’s] Charter specifically provides that the opposite shall occur – that it is the Charter authority that will supercede a conflicting state statute. Charter Art. 1 § 1.20.” Co. PHB, at 19.

[35] The American Heritage Dictionary of the English Language, New College Edition, Houghton Mifflin Co, Boston etc., 1980, at 23.

[36] If the regulations had been temporary or interim in nature, RCW 36.70A.390 allows post-adoption notice and opportunity for public participation.

[37] Board Member North dissented, indicating that she would have denied the request for reconsideration. Order on Motion to Reconsider, at 3.

[38] RCW 36.70A.390, governing moratoria or interim/temporary amendments to development regulations, is the *only* section of the Act that authorizes a jurisdiction to provide the opportunity for public comment “after” adoption of the temporary measure.

[39] Petitioner McVittie asserted GMA participation standing in her PFR, at 2.

[40] *See: King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn2d 161, 176, 979 P2d 374 (1999).

[41] Co. PHB, at 22. The County chose a residential designation; instead of a non-residential, non-commercial, non-industrial zoning designation or even a designation of the area as lands useful for public purposes, as authorized by RCW 36.70A.150.

[42] Ordinance No. 00-050 indicates UG-14 does not apply. *See*: Section 1., Finding 12 and Section 2., Conclusion 3, of Ord. No. 00-050, at 5 and 6; Ex. 23. UG-14 is not mentioned in Ordinance No. 00-051. Ex. 24.

[43] “X” means, the captioned public participation requirement applies.

[44] “X” means, generally .140 applies, but as amplified and refined by the jurisdiction’s .130 annual review process.

[45] “Xb” means, the provisions of .130(2)(b), “after appropriate public participation” applies.