



On April 19, 2001, the Board received “King County’s Motion to Stay Case Schedule Pending the Filing of Other Petitions Challenging King County’s Land Use Amendments.” The purpose of the request was also to provide King County additional time to prepare a consolidated index of record for all petitions that may be filed that concern the ordinance at issue and certain related ordinances. In the Tentative Schedule issued with the Notice of Hearing, May 3, 2001 was the proposed Deadline for the Respondent’s Index.

On April 25, 2001, the Board received Robert Yerkes’ (**Yerkes**) Motion to Intervene. Robert Yerkes is the property owner of all the land within the South I-90 Amendment area being challenged by Forster Woods. Mr. Yerkes asked to intervene on the side of Respondent King County.

On April 26, 2001, the Board received “Petitioners’ Opposition to King County’s Motion to Stay Schedule.” Petitioners expressed concern that until this Board enters its Final Decision and Order, applications to develop the two parcels (the I-90A and I-90B amendments) may “vest” under the 2000 amendments, thus nullifying the effect of this Board’s review.

On April 27, 2001, the Board received “Petitioners’ Non-Opposition to Intervention of Robert Yerkes.”

On May 2, 2001, the Board received “Motion of Richard and Rosanne Zemp to Intervene” on the side of Respondent, King County. The Zemps are the property owners of all the land within the South I-90B amendment to the 2000 amendment to the King County Comprehensive Plan.

On May 3, 2001, the Board issued an Order Granting Robert Yerkes’ Motion to Intervene, Granting Richard and Rosanne Zemp’s Motion to Intervene, and Reaffirming the Schedule.

On May 9, 2001, the Board received a PFR from the City of North Bend (**Petitioner** or **North Bend**). The matter was assigned Case No. 01-3-0008. Petitioner challenges King County’s adoption of Ordinance No. 14044. Specifically, North Bend seeks the Board’s determination that two amendments to King County’s Comprehensive Plan and the King County Land Use and Zoning Maps, labeled the South I-90A and the South I-90B amendments, violate the GMA. North Bend further seeks the Board’s determination that King County failed to adhere to GMA procedural requirements for public notice and public participation prior to the adoption of Ordinance No. 14044.

On May 10, 2001, the Board received a PFR from John Nelson, Fredrick Nelson, and Nancy Bauer (**Petitioners** or **Nelson, et al.**). The matter was assigned Case No. 01-3-0009. Petitioners allege that King County’s adoption of Ordinance No. 14044 is in violation of the GMA, because it removes their property from the Urban Growth Area.

On May 11, 2001, the Board issued a second Order of Consolidation and Notice of Hearing. CPSGMHB Case Nos. 01-3-0006c, 01-3-0008, and 01-3-0009 were consolidated into one case. The consolidated case was assigned Case No. **01-3-0009c**.

On May 21, 2001, the Board conducted a prehearing conference in the conference room of the Financial Center, 1215 Fourth Avenue, Seattle. Present for the Board were Joseph W. Tovar and Lois H. North, presiding officer. Brian Norkus, the Board’s legal intern, was also in attendance. The Petitioners were represented by David S. Mann for the Forster Woods Homeowners’ Association and Friends and Neighbors of Forster Woods; James R. Schwartz for the Commissioner of Public Lands; Michael R. Kenyon for the City of North Bend; and Elaine L. Spencer for John Nelson, Frederick Nelson, and Nancy Bauer. Darren Carnell and Peter Ramels represented the Respondent, King County. Intervenor Robert Yerkes was represented by Michael P. Monroe. Intervenors Richard and Rosanne Zemp were represented by Michael Spence. Intervenors Robert Yerkes and Richard Zemp were in attendance. Procedural matters and the legal issues were reviewed. The County requested an additional three weeks for preparing the Respondent’s Brief. Appropriate adjustments were made to the Final Schedule.

On May 24, 2001, the Board issued its “Prehearing Order” (**PHO**) setting forth the schedule for this consolidated case and stating the Legal Issues to be decided by the Board.

On June 4, 2001, the Board received a Stipulated Request from John Nelson, Frederick Nelson, and Nancy Bauer, Petitioners, and the Respondent, King County, for a 90-day continuance of the schedule of Case No. 01-3-0009c so they may attempt to negotiate a settlement.

On June 6, 2001, the Board issued an Order Granting Settlement Extension to John Nelson, Frederick Nelson, Nancy Bauer, and King County and Unconsolidating This Portion of the Case, Assigning New Case No. 01-3-0009 and Reassigning New Case No. 01-3-0008c to the Remaining Portion of the Consolidated Case.

## B. MOTIONS

### 1. Forster Woods, et al. v. King County Portion of Case No. 01-3-0008c

On June 11, 2001, the Board received Intervenor Robert Yerkes' "Dispositive Motion to Partially Dismiss" in the above captioned case. The Intervenor requested the Board to dismiss Legal Issues 4, 5, and 7 as they pertain to the zoning amendments on the Yerkes property ("South I-90A").

On June 18, 2001, the Board received Petitioner "Forster Woods, et al.'s Response to Yerkes' Dispositive Motion to Partially Dismiss." Forster Woods did not object to the Yerkes Dispositive Motion to Partially Dismiss. At the same time, Forster Woods made a motion to amend the Prehearing Order to include the following legal issue:

Does King County Ordinance No. 14044 violate RCW 36.70A.040(3) and RCW 36.70A.130(1) by amending development regulations so that they are inconsistent with King County's comprehensive land use plan?

On June 18, 2001, the Board received "King County's Response to Yerkes' Motion to Partially Dismiss." King County agreed with the Yerkes Motion and joined with the Intervenor in the Motion to Partially Dismiss.

On June 19, 2001, the Board received "City of North Bend's Answer to Yerkes' Dispositive Motion to Partially Dismiss." The City requested that the Yerkes Motion be dismissed because Robert Yerkes did not serve the City of North Bend with a copy of his Motion.

On June 25, 2001, the Board received "Yerkes Reply in Its Dispositive Motion to Partially Dismiss." Mr. Yerkes repeated his request to the Board to dismiss Legal Issues 4, 5, and 7 with respect to his "South I-90A" property. Mr. Yerkes further requested the Board to deny Forster Woods' request to amend the legal issues set forth in the Board's Prehearing Order.

On June 25, 2001, the Board received "King County's Rebuttal to Forster Woods' Response to Yerkes' Motion to Partially Dismiss." King County takes no position on Forster Woods' request to amend the Prehearing Order to present an additional legal issue for resolution in this matter.

On June 26, 2001, the Board received "Forster Woods, et al.'s Reply in Support of its Motion to Amend the Prehearing Order." Forster Woods argued that in asking for an amendment to the Legal Issues set forth in the Prehearing Order, the Petitioner has shown "good cause" and that there has been no prejudice to Mr. Yerkes.

On June 28, 2001, the Board issued the following Order on Motions:

#### a. Dispositive Motion

The Board **grants** Intervenor Yerkes' Motion to Dismiss Legal Issues 4, 5, and 7 as they pertain to the zoning amendments on the Yerkes property.

#### b. Amendatory Motion

The Board **grants** Petitioner Forster Woods' Motion to Amend the Prehearing Order, dated May 24, 2001, by adding Legal Issue 8:

***Does King County Ordinance No. 14044 violate RCW 36.70A.040(3) and RCW 36.70A.130(1) by amending development regulations so that they are inconsistent with King County's comprehensive land use plan?***

**2. *The State Dept. of Natural Resources v. King County* Portion of Case No. 01-3-0008c**

On June 8, 2001, the Board received "State's Motion to Supplement." The Department of Natural Resources moved to supplement the record regarding Case No. 01-3-0006 (*Commissioner of Public Lands of the State of Washington v. Board of County Commissioners for King County*), which has been consolidated under Case No. 01-3-0008c. The State's Motion to Supplement included:

1. A Declaration by Richard Scrivner, an employee of the State Department of Natural Resources;
2. A letter by the Soos Creek Water and Sewer District, attached as Exhibit A to Mr. Scrivner's declaration;
3. Maps of the subject area, attached as Exhibit B through L of Mr. Scrivner's declaration;
4. Pictures of the drainage ditch and storm-water drainage systems along Sweeney Road and of the entrance road to Shadow Lake Elementary School, attached as Exhibit M through S to Mr. Scrivner's declaration.

On June 18, 2001, the Board received "King County's Response to State's Motion to Supplement." King County supported the State's motion in part, and opposed the motion in part. King County argued that the Board should deny supplementation of the record with the Declaration of Richard Scrivner, the letter from the Soos Creek Water and Sewer District (attached as Exhibit A), and the pictures of the subject property (Exhibits M through S). King County did not object to the admission of the maps of the subject area (Exhibits B through L). The County suggested that a better copy of the map in Exhibit D be added to the record, and the County attached a copy to its brief.

On June 22, 2001, the Board received "State's Reply Memorandum in Support of Motion to Supplement the Record." The State had no objection to the substitution of the larger map provided by the County in lieu of State's Exhibit D. The State argued that the above listed documents would enable the Board to make an accurate determination as to the County's compliance with the GMA.

On June 28, 2001, the Board issued an Order on Motions, **granting** Petitioner State Department of Natural Resources' Motion to Supplement the record with the Declaration of Richard Scrivner and Exhibits A through S. The map submitted by King County to replace Exhibit D is accepted into the record.

**C. BRIEFING AND HEARING ON THE MERITS**

**1. *Forster Woods, et al. v. King County* Portion of consolidated Case No. 01-3-0008c**

On July 12, 2001, the Board received Prehearing Briefs from Forster Woods Homeowners' Association and the City of North Bend. Exhibits were attached to both Briefs.

On August 23, 2001, the Board received King County's Prehearing Brief with 39 Exhibits.

Also on August 23, 2001, the Board received Briefs from the two Intervenors; Robert Yerkes and Richard and Rosanne Zemp. Both Briefs had attached Exhibits.

On September 6, 2001, the Board received Reply Briefs from the City of North Bend and the Forster Woods Homeowners' Association.

On Thursday, September 20, 2001, beginning at 10:00 a.m., the Board conducted the Hearing on the Merits in room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. Present for the Board were Edward G. McGuire, Joseph W. Tovar, and Lois H. North, presiding officer. Brian Norkus, the Board's Legal Intern, was also present. The Court Reporter was Robert H. Lewis. David Mann represented the Forster Woods Homeowners' Association and Michael Kenyon represented the City of North Bend. Darren Carnell and John

Briggs represented King County. Michael Spence spoke for the Intervenor Richard and Rosanne Zemp. Duana Koulouskova spoke for the Intervenor Robert Yerkes. No witnesses testified. A Transcript of the Forster Woods Proceeding was ordered (**Transcript I**).

2. The State Dept. of Natural Resources v. King County Portion of consolidated Case No. 01-3-0008c

On July 9, 2001, the Board received the Brief of the State Department of Natural Resources with attached Exhibits.

On August 23, 2001, the Board received the Brief of King County with attached Exhibits.

On September 5, 2001, the Board received the State's Reply Brief.

On Thursday, September 20, 2001, beginning at 2:00 p.m., the Board conducted the Hearing on the Merits in room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. Present for the Board were Edward G. McGuire, Joseph W. Tovar, and Lois H. North, presiding officer. Brian Norkus, the Board's Legal Intern, was also present. The Court Reporter was Robert H. Lewis. James R. Schwartz represented the State Department of Natural Resources. Peter G. Ramels represented King County. No witnesses testified.

During the course of the Hearing, the Board requested that Mr. Ramels provide the Board with certain information from King County's Geographical Information System. The Board asked for the Future Land Use and Zoning Map showing the DNR property and environs, the Urban Growth Area line, and the Maple Valley City Limits. A Transcript of the DNR proceeding was ordered (**Transcript II**).

On September 25, 2001, the Board received the requested Zoning Map from King County.

**ii. preSUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW**

Petitioner challenges King County's adoption of amendments to its Comprehensive Plan and development regulations, as adopted by Ordinance No. 14044. Pursuant to RCW 36.70A.320(1), King County's Ordinance No. 14044 is **presumed valid** upon adoption. The **burden is on Petitioner** to demonstrate that the actions taken by King 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 action taken by [King County] is **clearly erroneous** in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find King 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).

Pursuant to RCW 36.70A.3201 the Board will grant deference to King County in how it plans for growth, consistent with the goals and requirements of the GMA. However, as our State Supreme Court has stated, "Local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board*, 142 Wn.2d 543, 561 (2000) (**King County I**). Further, Division II of the Court of Appeals has stated, "Consistent with *King County[I]*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a county's plan that is not 'consistent with the requirements and goals of the GMA.'" *Cooper Point Association v. Thurston County*, No. 26425-1-II (Court of Appeals, Div. II, September 14, 2001), \_\_ Wn. App. \_\_, \_\_ (2001).

**iii. PREFATORY NOTE**

Intervenor Yerkes requested that the Board rule that Issues 4, 5, and 7 of this case were non-applicable to the Yerkes property (Amendment 23 to Ordinance No. 14044) because the Yerkes re-zone is a Development Regulation and does not fall under Comprehensive Plan provisions of the GMA. On June 28, 2001, the Board issued an Order dismissing Legal Issues 4, 5 and 7 from the Yerkes' portion of the case.

The Board will first address Legal Issues 2 and 6 as they both deal with the public participation provisions of the GMA and they apply to both the Yerkes and the Zemp properties.

The Board will next discuss Legal Issues 1, 4, 5, and 7 as they apply to the Zemp property. Forster Woods and North Bend have failed to argue Legal Issue 1 with respect to the rezone amendment of the Yerkes property. Therefore, Forster Woods and North Bend have **abandoned** Legal Issue 1 with respect to Yerkes. WAC 242-02-570(1).

The Board will then address Legal Issues 8 and 3 as they apply to the Yerkes property. Legal Issue 3 speaks to both the Yerkes and the Zemp amendments, but the Petitioners have failed to argue Legal Issue 3 with respect to the Zemp property. Therefore, the Petitioners have **abandoned** Legal Issue 3 with respect to the Zemp property.

As to Legal Issue 8, Intervenor Yerkes has requested the Board to order that North Bend has abandoned this issue. Forster Woods did argue Legal Issue 8 in its opening brief and North Bend adopted Forster Woods' arguments for Legal Issue 1, 3, 4 and 7. North Bend did not specifically call out Legal Issue 8, but Legal Issue 8 was not included in the Board's Prehearing Order. It was authorized in the Board's subsequent June 28 Order on Motions. As the City is adopting Forster Woods' existing arguments and is not seeking to bring any additional arguments before the Board, the Board does not see that there is any harm or prejudice to the parties. The Board concludes that North Bend has **not abandoned** Legal Issue 8.

Finally, the Board will address the requests of the Petitioners for a finding of Invalidity.

#### **IV. FORSTER WOODS PORTION OF THE CASE**

##### **A. Legal Issues Common to Yerkes and Zemp Amendments**

###### **Legal Issue 2**

*Does King County Ordinance No. 14044 violate RCW 36.70A.035 because King County did not provide adequate public notice and public participation in the development of the Ordinance?*

###### **Legal Issue 6**

*Does King County Ordinance No. 14044 violate RCW 36.70A.140 because King County did not provide for dissemination of proposals and alternatives to those parties, including North Bend, most affected by map amendments 23 and 24, and King County did not consider and respond to public comments on map amendments 23 and 24?*

##### **1. Applicable Law**

RCW 36.70A.035 provides:

(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 regulation. Examples of reasonable notice provisions include: (a) Posting the property for site-specific proposals; (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal; (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered; (d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and (e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

(2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative

body votes on the proposed change. (b) An additional opportunity for public review and comment is not required under (a) of this subsection if: (i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement; (ii) The proposed change is within the scope of the alternatives available for public comment; (iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect; (iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or (v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

(3) This section is prospective in effect and does not apply to a comprehensive plan, development regulation, or amendment adopted before July 27, 1997. [1999 c 315 § 708; 1997 c 429 § 9.]

RCW 36.70A.140 provides:

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 and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 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 plan or development regulations invalid if the spirit of the program and procedures is observed. [1995 c 347 § 107; 1990 1st ex.s. c 17 § 14.]

## 2. Discussion

In citing the Briefs of the parties in Case No. 01-3-0008c, the Board will use the abbreviations listed in footnote one, below. [\[1\]](#)

### a. Positions of the Parties

Petitioners allege that King County did not comply with the notice requirements of RCW 36.70A.035. The public notice regarding the first full King County Council Public Hearing on the 2000 Amendments to the Comprehensive Plan, held on November 13, 2000, stated that the Council would consider twenty-two unnamed amendments and that the Council “may consider four additional land use and/or zoning map amendments.” NBPB, at 5; Ex. L, at 701-02. The County notes that the November 13 Notice stated that “any amendment offered or discussed during the Council’s Growth Management and Unincorporated Areas Committee’s (GMUAC) review of the subject legislation may be considered for adoption by the Council on November 13, 2000, or thereafter.” CPB, at 14. Map amendments 23 (Yerkes) and 24 (Zemp) were introduced at the early August, 2000 meeting of the GMUAC for discussion and then were withdrawn by their Council-member sponsors. NBPB, at 3.

The City contends that notice was not sufficient to give the City an opportunity for meaningful input, and a similar void existed for the general public. NBPB, at 10. “The public hearing notice for the November 13 meeting was clearly defective to provide notice in the initial sense.” NBPB, at 11. The City claims that the public was never adequately informed about the County Council’s public hearing on the map amendments, and that the only opportunity for public comment on the amendments came after they had been formally withdrawn from consideration. NBPB, at 7.

The County argues that the amendments at issue arose during the County’s extensive public process of developing Comprehensive Plan amendments and that for six months proponents and opponents of the

amendments were actively involved in the process. CPB, at 10.

King County's Exhibit 25 shows that five opponents and four proponents appeared and testified at the Public Hearing on November 13, 2000. The County maintains "the active and aggressive opposition at the Council hearing confirms Petitioners had notice of the hearing." CPB, at 15.

Petitioners allege that the actions of the King County Council interfered with the "early and continuous public participation" mandated by RCW 36.70A.140. Amendments 23 and 24 to Ordinance 14044 were not part of the County Executive's proposed updating of the King County Comprehensive Plan. They first appeared at a meeting of the Council's GMUAC committee in August of 2000. After Committee discussion, the council-member sponsors of the two amendments announced that they were withdrawing the amendments.

North Bend states that "Rather than the statutorily required 'early and continuous' public participation, the public participation on these map amendments was late and sporadic. The first, and only, public notice and hearing on the amendments occurred after they had been withdrawn from consideration. Exhibit L, at 701-02. This fact serves only to dampen public participation, not encourage it." NBPB, at 12.

King County alleges that the County's public participation program for the 2000 Comprehensive Plan amendment process was lengthy (lasting almost a year) and extensive and fully complied with the requirements of the GMA. CPB, at 12. "The public was offered many different ways to comment, including by submitting written comments, by calling the Growth Management Hotline, or by sending an e-mail to the County Executive or the County Council. Ex. 9, at v. (Record, at File 133). Multiple public meetings were also held. In addition to the Council's public meetings, the record is filled with evidence of direct communications between the Council-members and staff and the public." *Id.*

North Bend claims that its officials and concerned local residents learned of the proposed amendments only through their own efforts. NBPB, at 13. "The diligence of a few selected citizens can not excuse the County's inadequate procedures." NBPB, at 3, 5.

King County contends that the sufficiency of its process is proven by the extensiveness of the Petitioners' involvement. CPB, at 12, 13. The County concedes that, while it is true that the amendments at issue were not introduced until the summer of 2000, it is equally true that this was approximately six months before final adoption. CPB, at 13. Finally, King County points out that the Board itself has recognized that the GMA merely requires local governments to afford the public a reasonable opportunity to review and comment on potential amendments. *See Burrow v. Kitsap County, Case. No. 99-3-0018, 2000 WL 1075913, at \*5 - \*6. (CPSGMHB Mar. 29, 2000).* CPB, at 11.

## **b. Analysis**

As to notice for the public hearings on November 13, 2000, the Board notes that five opponents and four proponents appeared and testified. The November 13 Notice stated that any amendment offered or discussed during the Council GMUAC's review of the subject legislation may be considered for adoption by the Council on November 13, 2000, or thereafter. The amendments at issue arose during the County's lengthy public process of developing Comprehensive Plan amendments and were debated for six months by proponents and opponents. The Board concurs that notice for the public hearing on November 13, 2001, **was adequate** and that the County **complied** with the requirements of RCW 36.70A.035.

The Board notes that the County's public participation program for the 2000 Comprehensive Plan amendment process lasted almost a year. The public was offered many different ways to comment and the record reveals a great deal of evidence of direct communications between Council-members, staff, and the public. The Board agrees that the County provided reasonable opportunity for public participation and that the County **complied** with the requirements of RCW 36.70A.140.

## **Conclusion re: Legal Issues 2 and 6**

The Board finds that the Petitioners have **failed to carry the burden** of showing that King County failed to

comply with the requirements of RCW 36.70A.035 and RCW 36.70A.140 in its provisions for public participation.

## **B. Zemp Legal Issues**

### **Legal Issue No. 1**

***Does King County Ordinance No. 14044 violate RCW 36.70A.020(8) because map amendments 23 and 24 fail to encourage conservation of productive forest land by allowing uses that are incompatible with commercial forestry?***

This issue will be discussed only in relation to the Zemp property as Forster Woods and North Bend have abandoned Legal Issue No. 1 with respect to the Yerkes property. Petitioners allege that Amendment 24 substantially interferes with the preservation of the Forest Resource lands in King County.

#### **1. Applicable Law**

RWC 36.70A.020(8) provides:

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

#### **2. Discussion**

##### **a. Positions of the Parties**

The heart of the Petitioners' argument is twofold; (1) that the GMA mandates conservation of commercial forest lands and (2) that a local government seeking to remove designated forest lands from that designation is subject to the same scrutiny and analysis that the Board has previously articulated with regard to re-designating agricultural resource lands. Citing to *Grubb v. City of Redmond (Grubb)*, CPSGMHB Case No. 00-3-0004, Final Decision and Order, August 11, 2000, Petitioners argue:

As this Board has recognized, "the GMA's provisions for the conservation of natural resource lands, . . . constitute one of the Act's most important and directive mandates." FWPB, at 11, citing *Grubb*.

Petitioner contends that to evaluate the compliance of the challenged action with Goal 8, the Board must likewise examine the interplay of Goal 8 with the requirements of RCW 36.70A.060<sup>[2]</sup> and .170.<sup>[3]</sup> Citing to *Green Valley v. King County (Green Valley)*, CPSGMHB Case No. 98-3-0008c, Final Decision and Order, July 29, 1998, Petitioners argue:

As this Board has recognized in the context of agricultural conservation:

RCW 36.70A.020(8), .060 and .170, when read together, create an agricultural conservation imperative that imposes an affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry.

FWPB, at 12, citing *Green Valley*, at 16.

Petitioner continues that "The GMA treats forest lands no different from agricultural lands. The GMA imposes also an affirmative duty on local governments to designate and conserve forest lands to assure the maintenance and enhancement of a viable forest industry." Forster Woods alleges that a decision to "de-designate"<sup>[4]</sup> forest land is subject to the same heightened scrutiny articulated by the Board in the *Grubb* case. *Id.*, at 12. Petitioner further argues that "the record does not support de-designation of the Zemp property." *Id.*, at 14.

King County's first argument is that *Grubb* does not control. Rather, the County contends that the Board has already ruled on the question of resource lands re-designation in *Johnson v. King County (Johnson)*, CPSGMHB

Case No. 97-3-0002, Final Decision and Order, July 23, 1997. The County points to the *Johnson* decision, and asserts:

The Board did not subject this redesignation to a heightened level of scrutiny, even though it involved the “de-designation” of forest land that had been designated pursuant to RCW 36.70A.170(1) and regulated pursuant to RCW 36.70A.060(1) . . . [t]he Board has already determined that the “heightened scrutiny” applied by the Board in the *Grubb* case, would not be appropriate when reviewing a redesignation of forestland. CPB, at 27.

King County also argues that only land that meets the statutory criteria set forth in RCW 36.70A.030(8) and (10) should be designated as forest land, and contends that the Zemp property does not meet the statutory criteria for designation as forest land. The County argues that the property’s adjacency to urban development to the north, and public land to the south, makes it unsuitable for long-term commercial forestry. Ex. 35 CPB, at 22 – 24. Both the County and Intervenor Zemp point to an October 20, 2000 report done by International Forestry Consultants which recounts the history and physical circumstances of the Zemp property and concludes with an opinion that:

. . . the allowance of high density residential development adjacent to forest lands greatly impacts forest land management. In the case of the Zemp property, high density residential uses area and will continue to impact the viability of the intended commercial forest use. In fact, in my opinion under current land uses, the Zemp property is no longer a commercially viable forest. Index Ex. 969.

The County argues that the intensity of adjacent and nearby land uses is not compatible with a forest land designation:

During the last commercial timber harvest of the Zemp property, the residents of Forster Woods complained when logging trucks attempted to haul loads over the street of the subdivision. Ex. 36 (Record at 5323). In addition, it was alleged that adjoining property owners have built unauthorized fences and trails on the Zemp property (Ex. 18 (Record at 970)), hunted and camped on the Zemp property, committed acts of vandalism and cut down trees for various purposes.

CPB, at 24-25.

The County also points to the Rattlesnake Mountain Scenic and Natural Conservancy Area (**RMSNCA**) and argues that this County ownership, acquired subsequent to the initial forest lands designation of the Zemp parcel, is incompatible with continued forestry use of the Zemp parcel. In addition, the County argues that its 1997 acquisition of the RMSNCA rendered the Zemp parcel “an island of forest land bordered on one side by the Rattlesnake Mountain Scenic park and on the other by high density residential parcels” and “not contiguous to any other forestlands.” CPB, at 27-29.

The County further argues that the Zemp property is better suited to residential use because it is immediately adjacent to the City of North Bend and all of the public facilities and services required for a low-density rural residential development are available to the Zemp property. *Id.*

Zemp characterizes the County’s original 1994 designation as a “discrepancy” or a “mistake.” Transcript I, at 82. Zemp argues:

The Petitioners have challenged the amendment on the theory that it is a “de-designation” of forest land rather than what it really is – a revision of the plan under RCW 36.70A.130(1) to correct an inconsistency in the original adoption of the plan . . . The action [Ordinance 14044] was the correction of a discrepancy in the 1994 Plan and was not a “de-designation” under *Grubb*. ZPB, at 6-7.

Alternatively, Zemp argues that the County’s action complied with the GMA, even under the Board’s holdings in *Grubb*. Zemp argues:

In *Grubb*, the petitioner challenged an attempt by the City of Redmond to “de-designate” agricultural land to public recreational uses . . . The Board conducted an extensive analysis of the “long-term commercial significance” of these parcels . . . [and concluded that] “. . . the Valley View and Cosmos parcels are surrounded by incompatible residential uses and (are) severed from any connection with a larger pattern of agricultural land.” Accordingly the Board concluded that this made them “untenable long-term as commercial agriculture.”

**b. Analysis**

The Board rejects the argument that the 1994 designation of the Zemp (then Weyerhaeuser) parcel as forest resource lands was a “mistake.”<sup>[5]</sup> The record supporting that prior decision is not before the Board and the time to challenge the GMA sufficiency of that designation has long since passed. Even the County, upon questioning at the hearing on the merits, did not advance the “mistake” theory. Transcript I, at 73-74.

The Board also rejects the County’s argument that the *Johnson* case controls the disposition of the forest lands re-designation issue. The *Johnson* case, as the Board viewed and answered it, was a challenge to the County’s adoption of a delayed-UGA for the City of Black Diamond; neither the parties nor the Board focused on the question of changing the resource lands designations in that area. Even assuming, *arguendo*, that *Johnson* was on point with the issue of resource lands de-designation, any precedential value of that 1997 decision was effectively superseded in 2000 by the Supreme Court’s decision in *King County II* regarding the Act’s resource lands conservation mandate.

The Board agrees with the Petitioners that the *Grubb* case, while not directly controlling, is very illuminating. Also on point is the Board’s examination of the cumulative effect of the GMA’s provisions regarding the resource goal (RCW 36.70A.020(8)), the requirement for resource lands designation (.170) and the requirement for the adoption of regulations to conserve resource lands (.060). In *Green Valley* the Board held:

... the Act’s requirements set forth at RCW 36.70A.060 and .170 [are] ... illuminated by Goal 8. **The Board holds that RCW 36.70A.020(8), .060, and .170, when read together, create an agricultural conservation imperative that imposes an affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry.** (Bold emphasis in original.)

*Green Valley*, at 16.

Upon judicial review, the *Green Valley* FDO was upheld by the Supreme Court. As did the Board, the Court read the GMA’s resource lands conservation goal (RCW 36.70A.020(8) together with .060(1) and .170 to reach essentially the same conclusion about a legislative mandate for conservation (referred to by the Board as a conservation imperative). The Court’s affirmative re-statement of the Board’s *Green Valley* holding was:

When read together, RCW 36.70A.020(8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land.

*King County v. Central Puget Sound Growth Management Hearing Board*, 138 Wn.2d 161, 979 P.2d 374 (2000) (*King County II*).

The Board agrees with Petitioners that RCW 36.70A.020(8), .060 and .170, when read together, and as illuminated by the Board’s *Green Valley* and *Grubb* decisions, and the Supreme Court’s *King County II* decision, reveal a “resource lands conservation imperative.” A review of RCW 36.70A.020(8), .170 and .060 reveals no significant difference between the importance that the Act assigns to agricultural resource lands on the one hand and forest resource lands on the other. Thus, the “resource lands conservation imperative” of the Act applies equally to forest resource lands and agricultural resource lands.

Analogous to the Board’s analysis in *Grubb*, if a forest resource lands de-designation action is challenged before this Board, such action will be subject to heightened scrutiny and a conclusive showing by the local government of changed circumstances such that the criteria, including the definition of forest lands at RCW 36.70A.030(8),<sup>[6]</sup> that resulted in the initial designation no longer apply. If such a showing cannot be made by the respondent local government, the Board will conclude that the action to de-designate the forest resource land was clearly erroneous.

**The Board holds that, when RCW 36.70A.020(8), .060, and .170 are read together, they create a forest**

**resource conservation imperative that imposes an affirmative duty on local governments to designate and conserve forest resource lands in order to assure the maintenance and enhancement of the forest resource industry. If a petitioner demonstrates that a de-designation has occurred, the respondent local government, in order to avoid a Board finding of error, must conclusively show how the circumstances have changed and why the designation criteria, including the definition at RCW 36.70A.030 (8), no longer apply.**

Having extended the de-designation analysis articulated in *Grubb* for agricultural resource lands to forest resource lands, the Board now applies the test to the facts at hand.

The Board agrees with the County that the Zemp property no longer meets the definition of “Long-term Commercial Forestry.” While the opinion expressed by the Zemp’s consultant about this particular property (Index No. 929) is instructive, it alone is not conclusive. For example, the Board does not agree with the implied assertion that mere adjacency to high-density residential will always be determinative of the long-term viability for forest lands.<sup>[7]</sup> Other factors will also come into play, including the broader *pattern* of existing and planned land use in the vicinity.

Wholly unpersuasive in this matter is the argument that the Zemp parcel is suitable for de-designation because it has easy access to residential infrastructure and has fairly recently been logged. The perimeter of virtually all forest lands in the region are adjacent to rural residential areas, some of which are at platted densities approaching that of the Forster Woods subdivision, others of which are in close proximity to urban growth areas.<sup>[8]</sup> The Act cannot be read in such a manner that would eviscerate the strong legislative mandate for conservation of forest resource lands. Similarly, the mere fact that land has been logged is irrelevant because the very nature of forest resource land is that it is harvested periodically, just as it is re-planted for subsequent harvests.

Here, the significant and conclusive “changed circumstance” that justifies de-designation of the Zemp parcel is the effect of the County’s 1997 acquisition of the Rattlesnake Mountain Scenic and Natural Conservation Area.

<sup>[9]</sup> The Board agrees with the County’s and Zemp’s assessment that this action severed the Zemp parcel from the larger pattern of private forestry uses to the south and west. Just as the Board concluded in *Grubb* that isolated parcels were no longer viable for agricultural uses because they were severed from the larger pattern of agriculture in the Sammamish Valley, here the Board concludes that the Zemp parcel is no longer viable for long-term commercial forestry primarily because it is severed from the larger pattern of forest land uses to the south.<sup>[10]</sup>

Reasonable minds can differ over how large a stand-alone “island” must be in order to remain commercially viable for long-term forestry. The Board finds it significant that in this case the County has measured the isolated 164 acre Zemp parcel against an adopted County policy<sup>[11]</sup> that calls for large blocks of forest lands. Having done so, the County concluded that the Zemp parcel was no longer viable as long-term commercial forestry. In this case, with these facts, the Board agrees that such a decision was within the County’s sound discretion.

### **Conclusion re: Legal Issue No. 1**

The Board finds that the Petitioners have **failed to carry the burden** of showing that King County Ordinance 14044 violates Goal 8 of the GMA. The County’s action to de-designate the Zemp property from the Forest Production District was supported by conclusive evidence of changed circumstances since the initial designation.

### **Legal Issues 4, 5 and 7**

Legal Issues 4, 5 and 7 all allege various kinds of inconsistency associated with the Zemp Amendment. Legal Issue 4 alleges that the Zemp amendment creates internal inconsistency within the County Plan.<sup>[12]</sup> Legal Issue 5 alleges that the Zemp amendment creates inconsistency with the North Bend Plan.<sup>[13]</sup> Legal Issue 7 alleges that

the Zemp amendment is inconsistent with King County County-wide Planning Policies (CPPs).<sup>[14]</sup>

## 1. Applicable Law

The pertinent portion of RCW 36.70A.070, regarding Mandatory Elements of Comprehensive Plans, provides as follows:

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. Emphasis added.

RCW 36.70A.100 provides:

The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues. Emphasis added.

The pertinent portion of RCW 36.70A.210, regarding CPPs, provides as follows:

(1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

## 2. Discussion

### a. Positions of the Parties

Petitioner claims that the Zemp Amendment creates an internal inconsistency between the King County Land Use Map and the King County Comprehensive Plan. FWPB, at 17. Petitioner refers to Comprehensive Plan Policy R-505, which states that forest lands shall be conserved for productive use through the use of designated forest production districts "where the principle and preferred land use will be commercial resource management activities, and by the designation of appropriate compatible uses on adjacent rural and urban lands." FWPB, at 18. Also, Policy R-107 regarding the County's priority in preservation of forestry provides that the county shall use landowner incentive programs, technical assistance, regulatory actions, and community based education to "sustain the forest plan base and forest activities." FWPB, at 17. The Petitioner has stated that the County's amendment was based "only on the desires of the landowner to develop the land more intensely" and that the affect is that "the amendment will forever take this land out of production." FWPB, at 18-19.

The County rejects the Petitioner's arguments regarding R-107, R-503, and R-505 because they relate to the County's promotion and conservation of forestlands, while the County has now determined that the property should no longer have to adhere to those standards. CPB, at 29.

King County refers to R-102, which outlines that lands that help buffer nearby natural resource lands from conflicting urban uses are properly characterized as "rural." CPB at 28. The County argues consistency with the Comprehensive Plan because the Zemp Property lies between (buffers) the Forster Woods development and the adjacent Rattlesnake Mountain Scenic Recreational Area. *Id.*

In reply, the Petitioner states that neither the County nor Zemp make any effort to explain how removing currently productive and commercially managed forest from the Forest Protection District (FPD) zoning category supports or is consistent with any of the above referenced policies. FWRB, at 7.

As to Legal Issue No. 5, the City of North Bend addresses all of the Goals and Policies of North Bend's Comprehensive plan that are listed in a through f on pages 13 through 19 of North Bend's Prehearing Brief.

The County's position is that inter-jurisdictional coordination is insured through the development of CPPs, and they act as a tool for ensuring that the various comprehensive plans are consistent. CPB, at 33, citing *King County I*, at 381. Referring to previous arguments, the County states that since the County is fully consistent with adopted CPPs, the County has satisfied the GMA provisions regarding coordinated planning among cities and the County. CPB, at 34. Additionally, the County asserts that it "engaged in specific discussions" with the City regarding the amendments, and that there is "no legal authority that the GMA's cooperation provisions require the County to abide by North Bend's stated policy preference." CPB, at 34.

As to Legal Issue No. 7, Forster Woods posits that CPP LU-2 states that resource lands shall be protected that have "long-term commercial significance for resource production," and LU-4 additionally provides that compatible land uses shall be encouraged in lands adjacent to natural resource areas "which support utilization of the resource and minimize conflicts among uses." See FWPB, at 21-22.

"Instead of protecting the natural environment, King County's de-designation allows commercial forest lands [to] be consumed by houses." FWPB, at 22. Petitioner's complaint is that the County is allowing a landowner within the Forest Protection District to harvest their property and then "virtually immediately convert the property's use to non-forest uses." FWPB, 22.

The County claims that it has acted consistently with FW-6 because over 60% of the County land is within the designated FPD and because it has properly designated the Zemp property as rural (sticking by its argument that the property does not meet the statutory criteria for forest lands in .030(8) and (10)). CPB, at 31. LU-2 only disallows urban development, but the County argues that this does not prohibit redesignation). The County argues that LU-4 does not apply because the redesignated property is not adjacent to a resource area. CPB, at 31-32.

Intervenor Zemp notes, "It is true that the property itself is physically capable of growing trees, as is most of King County, urban or rural." ZPB, at 22. Zemp looks to the International Forestry Consultants report in their written and oral testimony to the Council as proof that forestry is incompatible with high-density residential and recreational uses. ZPB, at 22-23. (Zemp refers to LU-8, LU-38 as CPPs that support the amendment.) See ZPB, at 23-24.

Petitioner's reply is that the Forster Woods subdivision was present prior to the land being designated in the FPD. FWRB, at 2. "Contrary to respondents' insistence, there is simply no evidence that this land is not productive over the long-term for commercial forestry." FWRB, at 11.

## **b. Analysis**

As to Legal Issue 4, the Board agrees with the County's argument that the Zemp property's rural characterization is consistent with King County Policy R-102 because the Zemp property lies between or buffers the Forster Woods development and the adjacent Rattlesnake Mountain Scenic Recreational Area. As to Legal Issue 5, RCW 36.70A.100 requires coordination of County and City plans where a common border is involved. The record reveals that the County and the City of North Bend did engage in discussions of the proposed amendments. However, the Board notes that there is no legal authority under the GMA's cooperative provisions that mandates that the County must abide by the City's stated policy preferences. As to Legal Issue 7, the Board notes that Forster Woods, the County, and Zemp all cite CPPs in defense of their positions. Consistency with the CPPs can be claimed by all.

### **Conclusions re: Legal Issues 4, 5 and 7**

The Board finds that the Petitioners have **failed to carry the burden** of showing that map amendment 24 makes King County's Comprehensive Plan internally inconsistent; that it is inconsistent with North Bend's

Comprehensive Plan; and that it is inconsistent with the CPPs.

## **C. Yerkes Legal Issues**

### **Legal Issue No. 8**

***Does King County Ordinance 14044 violate RCW 36.70A.040(3) and RCW 36.70A.130(1) by amending development regulations so that they are inconsistent with King County's comprehensive land use plan?***

#### **1. Applicable Law**

RCW 36.70A.040(3) provides:

Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060.

RCW 36.70A.130(1) provides:

Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Not later than September 1, 2002, and at least every five years thereafter, a county or city shall take action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure that the plan and regulations are complying with the requirements of this chapter. The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section.

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. Discussion**

##### **a. Positions of the Parties**

Petitioner Forster Woods states:

Map Amendment 23 (or the Yerkes property) did not result in a change to King County's Comprehensive Plan. Instead, it resulted in a rezone of the Yerkes property from RA-10 to RA-5. Because a rezone is an amendment of a development regulation, it must be consistent with the underlying Comprehensive Plan. *See* RCW 36.70A.040; .130 (1).

FWPB, at 23.

The Petitioner goes on to note that the GMA mandates that counties adopt development regulations to assure that lands adjacent to designated forest lands do not interfere with the continued use of the forest lands for forestry purposes. RCW 36.70A.060. In order to comply with this mandate, King County has determined that "very low residential densities adjacent to resource lands are essential to minimize land use conflicts." 2000 Comprehensive Plan, at 3-12. King County implements this policy and statutory requirement through Policy R-205. Policy R-205 provides:

A residential density of one home per ten acres shall be applied in the rural area where the predominant lot size is ten

acres or larger and: (a) the lands are adjacent or within one quarter mile of . . . the Forest Production District . . .

There is no dispute that the Yerkes' property, the subject of Map Amendment 23, is within one-quarter mile of King County's designated Forest Production District. Nor is there dispute that the predominant lot size of the Yerkes property exceeds ten acres. Because Map Amendment 23 results in rezoning the Yerkes' property from RA-10 to RA-5, the rezone is inconsistent with Plan Policy R-205.<sup>[15]</sup> FWPB, at 12-13.

King County responds that not only was Comprehensive Plan Policy R-205 in effect, but also Policy R-206. Policy R-206 of the 1994 Comprehensive Plan states:

A residential density of one home per five acres shall be used in portions of the Rural Area where the land is physically suitable for development and can be supported by rural services, and does not meet the criteria in this plan for higher or lower density designations.

CPB, at 19.

"Utilities, including power, telephone, water and some fiber-optic cable, have been extended to within 1300 feet of the Yerkes property. Ex. 7 (Record, at 12620). Accordingly, the proposed development can likely be served by rural facilities and service levels." CPB, at 21.

King County disagrees with the Petitioner as to how to define the "predominant lot size" that is stipulated in Policy R-205. While the Petitioner would use only the size of the four lots owned by Mr. Yerkes in calculating "predominant lot size," King County would use a broader sampling of lots in the general neighborhood area. "While the Forest Production District is primarily composed of large lots, the majority of the other lots in the vicinity of the Yerkes property have lot sizes less than ten acres in size." CPB, at 20.

Intervenor Yerkes adds:

Petitioners' argument that the County should only consider the lot size of the property being rezoned in determining what is 'predominant' under prior Policy R-205 is illogical. Policy R-205 was intended to make sure that land use conflicts around resource lands are minimized. See King County Comprehensive Plan excerpts at 65. The County made the appropriate interpretation: the lot sizes considered in order to determine what is 'predominant' are all of the existing lots near the FPD lands and those in the area of the properties to be rezoned.

YPB, at 4.

Yerkes further contends:

A review of just the map attached to Consent Amendment 4 (the rezone amendment) of Ordinance No. 14044 supports the County's adoption of the rezone. The predominant lot size is not ten acres. Instead, within much less than a mile of the Yerkes properties and adjacent or within a quarter mile of the FPD lands there is a wide variety of densities. In fact, the Forster Woods development, located within approximately a half mile of the Yerkes properties and previously adjacent to the FPD lands, has a density of approximately eight units per acre and land zoned up to R-48. Record Nos. 12626-12628. Further, the UGA boundary runs within less than a half mile of Yerkes' property, and is adjacent to the FPD lands to the northwest and southeast of the Yerkes properties.

YPB, at 4-5.

The Yerkes rezone attached the following as site-specific development (P-suffix) conditions:

1. All residential lots shall be clustered on an approximately 30 acre portion of the property.

2. The remainder of the parcel shall be permanently dedicated as open space and shall remain in a natural state.

YPB, at 3.

## **b. Analysis**

The Board need only look to Plan Policy R-205 to address this legal issue. Policy R-205 provides in relevant part:

A residential density of one home per ten acres shall be applied in the rural area where the predominant lot size is ten acres or larger . . . (Emphasis added).

The Board is directed by the phrase “in the rural area” in Policy R-205 to look to the predominant lot size in the Rural Area, not the urban lands within the UGA nor the resource lands within the FPD. To discern what “the rural area” is, the Board reviews Ex. 12622, a zoning map titled “South I-90 Proposed Zoning Amendment.” Shown on this exhibit are the following designations: “UR” (Urban), “F” (Forest) and “RA-10” and “RA-5” (rural ten and five acre lot sizes, respectively).

In evaluating the “Rural Area” shown on this County map, the Board notes that a County staff person has made notations of the lot sizes of the parcels, which range from “less than 5 acres” in the southeast corner of the “Rural Area” to “20 acre” and 40 acre” lots in most of the rest of the area. After a review of the information on this map, the Board concludes that the most conspicuous and prevalent lot sizes “in the rural area” are more than ten acres in size. Some five acre lots exist within this rural area, however the *predominant* lot size is more than ten acres (20 and 40 acre lots.) Therefore, the County’s rezoning of the Yerkes property to RA-5 is inconsistent with Policy R-205 and **does not comply** with RCW 36.70A.040(3) and .130(1).

### **Conclusion re: Legal Issue No. 8**

The Board concludes that the County rezoning of the Yerkes property to RA-5 (Amendment 23) is inconsistent with King County Plan Policy R-205 and therefore **does not comply** with the consistency requirements of RCW 36.70A.040(3) and .130(1).

### **Legal Issue 3**

*Does King County Ordinance No. 14044 violate RCW 36.70A.060 because map amendments 23 and 24 do not assure that the use of lands adjacent to forest resource lands shall not interfere with the continued use of such lands?*

### **Conclusion re: Legal Issue No. 3**

The Board has found the County in noncompliance with RCW 36.040(3) and .130(1), and has remanded Amendment No. 23. The Board therefore need not and does not address Legal Issue No. 3.

## **D. Invalidity Request**

Both Petitioners assert that the County’s actions substantially interfere with Goal 8 of the Act and urge the Board to enter a finding of invalidity. NBPB, at 20.

RCW 36.70A.302 provides in relevant part:

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

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

- (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
- (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

The Board concluded, *supra*, that the Petitioners have carried the burden of proof of showing that Amendment No. 23 to King County Ordinance 14044 does not comply with RCW 36.70A.040(3) and .130(1). The Board has remanded Amendment No. 23 to the County for appropriate action.

No evidence was presented to the Board indicating that development permit applications were pending on the Yerkes property. There has been no suggestion of a risk that inappropriate vesting would occur during the period of remand. The Board therefore **denies** the Petitioners' request for a finding of invalidity.

## **V. DEPARTMENT OF NATURAL RESOURCES PORTION OF THE CASE**

### **a. Preliminary Matters**

The Department of Natural Resources (**DNR**) has challenged the County's adoption of Amendment 15 (**Maple Valley North**) which is a rezoning of approximately 53 acres within the Urban Growth Area adjacent to Maple Valley. Amendment 15 changes the permitted residential density on the 53-acres site from four residential units per acre to one residential unit per acre. Approximately 22 of the acres affected by this rezone are DNR land that is administered for the common school trust. DNR raised five legal issues in its PFR, each of which is reflected in the PHO. April 11, 2001 DNR PFR (#01-3-0006), at 4; and May 24, 2001 PHO, at 9-10.

Legal Issues 3, 4 and 5, respectively, allege Amendment 15's noncompliance with: the requirements for a comprehensive plan's land use element - RCW 36.70A.070(1); the internal consistency requirements for comprehensive plans - RCW 36.70A.070(preamble); and the requirements for designating UGAs – RCW 36.70A.110(3).<sup>[16]</sup> These GMA requirements apply to comprehensive plans and UGA designations, they do not apply to development regulations – *i.e.* rezones. RCW 36.70A.040 requires planning jurisdictions to adopt development regulations that are consistent with and implement the comprehensive plan, however, DNR did not frame that legal issue, and it is not before the Board.

Just as the Board granted the Yerkes motion to dismiss certain legal issues because the County's rezoning action is not governed by the comprehensive plan provisions of the GMA, the Board will dismiss, *sua sponte*,<sup>[17]</sup> similar legal issues raised by DNR. The Board hereby, **dismisses with prejudice**, DNR's Legal Issues 3, 4 and 5, as stated in the PFR and PHO. The Board now turns to DNR's Legal Issues 1 and 2, pertaining to Amendment 15's compliance with RCW 36.70A.020(1) and (6). Since both issues involve the question of whether the County's rezone (Amendment 15) was guided by goals of the Act, the Board will consider them together.

### **B. DNR Legal Issues**

#### **Legal Issue No. 1**

*Is map amendment 15 in compliance with the GMA goal to encourage growth in urban areas when it zones the DNR parcels at less than the minimum densities recommended in the Comprehensive Plan and there are no high-function wetlands present on the DNR property? RCW 36.70A.020(1).*

#### **Legal Issue No. 2**

*Is map amendment 15 in compliance with the GMA goal to protect property rights of landowners from arbitrary and discriminatory action when it downzones the property to make it cheaper for a school district to acquire? RCW 36.70A.020(6).*

## 1. Applicable Law

RCW 36.70A.020 provides in part:

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

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

The Board has explained:

[T]o show substantive noncompliance with a planning goal, a petitioner must identify that portion of the challenged enactment that is not consistent with, or thwarts, the planning goal, and explain why the identified portion does not comply with that goal.

*Rabie v. City of Burien*, Consolidated CPSGMHB Case No. 98-3-0005c, Final Decision and Order, (Oct. 19, 1998), at 5; and *Hensley v. Snohomish County*, Consolidated CPSGMHB Case No. 00-3-0004c, Final Decision and Order, (August 15, 2001), at 25.

## 2. Discussion

In citing the Briefs of the parties in Case No. 01-3-0008c, the Board will use the abbreviations listed in footnote nineteen below. [\[18\]](#)

### a. Positions of the Parties

#### Goal 1 Urban Growth:

Petitioner alleges that Amendment 15 purports to downzone 53 acres of land in the Maple Valley Urban Growth Area (UGA) due to the presence of wetlands on parts of the 53 acres. DNR's property consists of a smaller parcel of approximately 5 acres and a larger parcel of approximately 16 acres abutting Sweeney Road. "The County wetland map indicates that no wetlands exist on the smaller parcel of DNR land. The larger DNR parcel contains only a natural drainage ditch abutting Sweeney Road. KC 845; Scrivner Decl., Sec. 3." "Since the DNR property is located within an urban growth area, is close to roads, water, and sewer, and contains only a narrow drainage ditch, it was inappropriate for the County to reduce the zoning to one unit per acre contrary to Planning Policy U-117 [\[19\]](#), which requires the County to apply densities of four or more homes per acre."

King County responds that Policy U-117 is **non-mandatory** language. "Should" in a Comprehensive Plan Policy "provides non-compulsory guidance, and establishes that the County has some discretion in making decisions." KCCP [\[20\]](#) Glossary, at G-12. KCPB, at 12. Additionally, the County alleges that Amendment 15 falls within the broad discretion vested in local governments to plan and zone under the GMA. "An urban growth area 'shall permit a range of urban densities and uses.' RCW 36.70A.110(2). The Maple Valley North Amendments simply fit within one end of the spectrum of the range of the densities and uses that may be present in the Urban Area." KCPB, at 9.

In reference to the wetlands issue, the County states "there is a presence of significant physical constraints in the form of sensitive areas on the properties subject to the amendments." KCPB, at 12. The County questions whether Mr. Scrivner (a DNR Project Manager) is qualified to provide an expert opinion as to whether there is a wetland on DNR's larger parcel of land.

The Petitioner maintains that as long as the DNR property remains within an UGA of the County, the GMA's Goal

1 mandates that the proper zoning for the property must be at an urban density level – and that is not one dwelling unit per acre. SRB, at 2-7.

## b. Analysis

It is undisputed that four dwelling units per acre constitutes compact urban growth. Over the last decade, as the GMA has evolved and been interpreted, it has generally been accepted that this density is an appropriate urban density. The County reflects this general principle in its Policy U-117 [*i.e.* U-118]. However, densities of less than four dwelling units per acre have been challenged before this Board and found to be appropriate urban densities in limited circumstances.

The Board has stated, “The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide adequate justification for residential densities under 4 du/acre within a UGA.” *Benaroya, et al., v. City of Redmond*, CPSGMHB Case No. 95-3-0072c, Finding of Compliance, (Mar 13, 1997), at 13. In amplifying this statement, the Board has indicated:

When critical areas are large in scope, with a high rank order value and are complex in structure and function, a city may use its future land use map designations to afford a higher level of critical areas protection than is available through its regulations to protect critical areas. In these limited circumstances, the resulting residential density will be deemed appropriate urban density. . . . [A]bsent the requisite environmental attributes of a critical area that is large in scope, of high rank order value and is complex in structure and function [a jurisdiction’s] future land use map density designations must permit appropriate urban densities.

*LMI/Chevron v. Town of Woodway*, CPSGMHB Case No. 98-3-0012, Final Decision and Order, (Jan. 8, 1999), at 25 –26; *See also, Litowitz, et al., v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order, (Jul. 22, 1996), at 12.

Just as the future land use map must permit appropriate urban densities in the UGA, so too must the implementing zoning designations. Also, the duty of a city to provide for appropriate urban densities within a UGA, likewise applies to a county. Counties must provide for appropriate urban densities within unincorporated UGAs.

In the present case, DNR argues that Amendment 15 is inconsistent with and thwarts Goal 1 of the Act. DNR explains that the affected area is in an UGA and has facilities and services available to support the prior urban residential density of four dwelling units per acre. Therefore, DNR asserts, the County’s rezone to one dwelling unit per acre is not guided by, thwarts and is inconsistent with Goal 1. The Board agrees.

The County’s response regarding the presence of sensitive or critical areas is not persuasive. Although it is undisputed that wetlands exist on a portion of the 53-acre parcel, the Board is not persuaded that the wetlands are large in scope, of high rank order and complex in structure and function. Absent such a showing, the County has not justified the one dwelling unit per acre zoning density for this urban growth area. Also, the County’s contention that the rezoning is appropriate because it is within the ‘range of urban densities’ the County permits, is unpersuasive. The ‘range of urban densities’ may dip below typical urban densities when environmental constraints support such an outcome. That is not the case here. The Board concludes that the County’s adoption of Amendment 15 (downzoning the Maple Valley North property) to Ordinance No. 14044 was not guided by RCW 36.70A.020(1) and was **clearly erroneous**. The Board will remand Amendment 15 to the County with direction to repeal it and redesignate the area to an appropriate urban density.

### Conclusion – Goal 1

The County’s adoption of Amendment 15 to Ordinance 14044 was not guided by RCW 36.70A.020(1) and was **clearly erroneous**.

## Goal 6 – Private Property:

The Board notes that a clearly erroneous action is not necessarily an arbitrary and discriminatory action. However, having found that Amendment 15 fails to be guided by Goal 1, and having remanded it to the County with direction to redesignate the area with an appropriate urban density, the Board need not, and will not, address Legal Issue 2.

### **Conclusion – Goal 6**

Having found that Amendment 15 fails to be guided by Goal 1, and remanding it to the County with direction to redesignate the area with an appropriate urban density, the Board need not, and will not, address Legal Issue 2.

### **Conclusions re: Legal Issues 1 and 2**

The Board concludes that the County's adoption of Amendment 15 to Ordinance No. 14044 was not guided by Goal 1 (RCW 36.70A.020(1)) and was **clearly erroneous**. Having found noncompliance on Legal Issue 1, the Board need not and will not address Legal Issue 2.

### **C. Invalidity Request**

The Petitioner asserts that the County's actions in adopting Map Amendment 15 to King County Ordinance 14044 substantially interferes with Goals of the Act and urges the Board to enter a determination of invalidity. SPB, at 12.

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.

The Board has found that King County's adoption of Map Amendment 15 to Ordinance 14044 is **noncompliant** with RCW 36.70A.020(1). Additionally, the Board will remand Amendment 15 of Ordinance No. 14044 with direction to the County to take legislative action to achieve compliance with the GMA as interpreted in this Order. The Board now turns to whether the County's action substantially interferes with fulfillment of Goal 1.

As discussed above, Goal 1 encourages compact urban development where adequate public services and facilities can be provided. This directive clearly applies within UGAs. The County's down-zoning of the Maple Valley UGA to a density that is not an appropriate urban density flies in the face of this Goal. Therefore, the Board concludes that Amendment 15 substantially interferes with the fulfillment of Goal 1 (RCW 36.70A.020(1)). As discussed in Legal Issue 1, *supra*, the Board therefore enters a **determination of invalidity** for Map Amendment 15 of Ordinance No. 14044 related to the rezoning of the Maple Valley North Amendment.

### **VI. ORDER**

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

1. Petitioners Forster Woods and North Bend have failed to carry their burden of proof as to the Zemp (Amendment #24 a/k/a South I-90B) amendment of Ordinance No. 14044. Map Amendment #24 **complies** with the requirements of the GMA.

2. King County's adoption of the Yerkes Amendment (Amendment 23) of Ordinance No. 14044 was not in compliance with RCW 36.70A.040(3) and .130(1) of the GMA. The County's action was **clearly erroneous** and **does not comply** with RCW 36.70A.020(1) of the GMA.

3. King County's adoption of the Maple Valley North (Amendment 15) amendment of Ordinance No. 14044 was not guided by and thwarts Goal 1; the County's action was **clearly erroneous** and **does not comply** with RCW 36.70A.020(1) of the GMA. Furthermore, the Board enters a **determination of invalidity** for Map Amendment 15.

4. The Board therefore **remands** Map Amendments 15 and 23 of Ordinance No. 14044 to the County with the following directions:

- By no later than **February 6, 2002**, the County shall take appropriate legislative action to repeal the downzone of Amendment 15 and redesignate the property with an appropriate urban density, pursuant to the GMA as set forth in this Order.
- By no later than **February 6, 2002**, the County shall take appropriate legislative action to repeal the upzone of Amendment 23 and redesignate the property with an appropriate rural density, pursuant to the GMA as set forth in this Order.
- By no later than **February 13, 2002**, the County shall file with the Board an original and four copies of a Statement of Actions Taken to Comply (**SATC**) with the GMA, as set forth in this FDO. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on Petitioner DNR.

Pursuant to RCW 36.70A.330(1), upon receipt of the County's SATC, the Board will schedule a Compliance Hearing and establish dates for Comments on the SATC for Petitioner and Reply by the County.

If the County takes legislative compliance actions prior to the February 6, 2002 deadline set forth in section 4 of this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 6th day of November, 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Lois H. North,  
Board Member

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Joseph W. Tovar, AICP

Note: This Order constitutes a final order as defined in WAC 242-02-832.

### **Appendix A**

#### **Findings of Fact in Forster Woods Portion of Case No. 01-3-0008c**

1. The Yerkes property is located just south of I-90 between the City of Snoqualmie and the City of North Bend; Mr. Yerkes property comprises approximately 80 acres. The property is classified Rural, not as Forest Resource Land. It abuts the Forest Production District (FPD) to the west and south, and Rural-zoned residential parcels to the north and east. Ex. 6. Prior to the passage of Ordinance 14044, the property was zoned RA-10. Ex. 7. The Yerkes amendment amended the King County zoning map by reclassifying the Yerkes property from RA-10 to RA-5. Ex. 8. CPB, Ex. 6, 7, and 8.
2. The Yerkes amendment contained the following language: “Attach the following as site-specific development (P-suffix) conditions: 1) All residential lots shall be clustered on an approximately 30 acre portion of the property adjacent to the Forster Woods development; 2) The remainder of the parcel (50 acres) shall be permanently dedicated as open space and shall remain in a natural state.” (The open space is adjacent to the FPD). CPB, Ex. 8.
3. The Zemp property is located southwest of the City of North Bend and southeast of the Rattlesnake Mountain Scenic and Natural Conservancy Area (RMSNCA). Ex. 2. The property is approximately 164 acres in size. Ex. 3 and Ex. 4. The property abuts the RMSNCA and the Forster Woods subdivision. Prior to the passage of King County Ordinance 14044, the property was designated as forestland. Ex. 5. The Zemp amendment amended the King County land use map by re-designating the Zemp property from Forestry to Rural Residential, RA-10. Ex. 5. CPB, Ex. 2, 3, 4, and 5.
4. The Zemp amendment contained the following site-specific development (P-suffix) conditions: 1) All residential lots shall be clustered on the lower (approximately 50 acres) portion of the property adjacent to the Forster Woods development; 2) A twenty-five foot native growth protection buffer shall be placed on all property boundaries adjacent to any urban development; and 3) The remainder of the parcel shall be voluntarily dedicated upon final plat approval as permanent open space and shall remain in a natural state.” CPB, Ex. 5
5. The Council adopted Ordinance No. 14044, including the Yerkes and Zemp Amendments, on February 12, 2001. CPB, Ex. 28.

### **Appendix B**

#### **Findings of Fact in DNR Portion of Case No. 01-3-0008c**

1. Map Amendment 15 covers approximately 53 acres located in the urban growth boundary for Maple Valley. Of the 53 acres, DNR administers 21.4 acres for the common school trust. The lands are managed by DNR to generate income to build schools in this state. The DNR property is undeveloped. Petition for Review, Ex. B.
2. Map Amendment 15 reduced the permissible zoning in the 53 acres from four residential units per acre to one residential unit per acre. PFR, Ex. B.
3. The 53 acres in Map Amendment 15 were designated as part of the Maple Valley Urban Growth Area in the 1994

King County Comprehensive Plan and the area was zoned for four dwelling units per acre at that time. State's PFR, Ex. B.

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[1] Forster Woods' Opening Brief (**FWPB**); City of North Bend's Prehearing Brief (**NBPB**); King County's Prehearing Brief (**CPB**); Hearing Brief of Intervenor Zemp (**ZPB**); Intervenor Yerkes' Prehearing Brief (**YPB**); Reply Brief of Forster Woods (**FWRB**); City of North Bend Reply Brief (**NBRB**).

[2] RCW 36.70A.060(1) provides in part:

Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Emphasis added.

[3] RCW 36.70A.170 (1) provides in part:

On or before September 1, 1991, each county, and each city, shall designate where appropriate: (a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products; (b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber; Emphasis added.

[4] The term "de-designated," rather than simply "re-designated" was first used by the Board in *Grubb*. Under the GMA all lands are either: (1) *urban* lands (i.e., within urban growth areas), (2) *rural* lands or (3) *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being either within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as either urban or rural. In contrast, a "**de-designation**" of lands from resource lands to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction.

The Board has previously stated:

The permanence of agricultural resource lands designations have been discussed only peripherally in prior Board and court decisions, and never settled as a matter of law. In order to answer Legal Issue No. 1 in this case, the Board must first address and resolve this threshold question – can lands that have been designated pursuant to RCW 36.70A.170(1)(a) and regulated pursuant to RCW 36.70A.060 (1) be "de-designated" and, if so, under what conditions? *Grubb*, at 8. Emphasis added.

[5] The Board notes that the original property owner did not characterize the prior resource lands designation as a "discrepancy" or a "mistake" in 1994, nor in 1995 when it sold the property with that designation intact. Nor did Intervenor characterize the prior designation as a "mistake" until after the property was logged in reliance upon that resource land designation. To advance such an argument at this time is ironic, if not disingenuous.

[6] RCW 36.70A.030(8) provides:

"Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size

and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

[7]

For example, Forster Woods' arguments are well taken that both County policy and state law serve to protect the long-term viability of forestry uses in proximity to residential uses. Transcript I, at 15.

[8]

The Board takes official notice of the Future Land Use Maps of King County, Pierce County and Snohomish County.

[9]

It is undisputed that the County acquired the RMSNCA in 1997. *See also* FWPB, Ex. A.

[10]

*See* Detail of the King County Future Land Use Map, titled "North Bend Area Comprehensive Plan Land Use 2000." Presented to the Board at the hearing on the merits on September 20, 2001, this map bears land use designations showing "Rural Residential" for the Zemp parcel and "King County Owned Open Space/ Recreation" south and west of the Zemp parcel. South and west of the "King County Owned Open Space/Recreation:" designation is a large, contiguous "Forest" designation.

[11]

Plan Policy R-519 provides:

[t]he Forest Production District is comprised of and shall remain in large blocks of contiguous forest lands where the primary land use is commercial forestry.

[12]

***Legal Issue No. 4: Does King County Ordinance No. 14044 violate RCW 36.70A.070 because map amendments 23 and 24 make King County's comprehensive plan internally inconsistent, specifically as the amendments relate to: (a) Policy R-107 regarding preservation of forest lands and forestry as a King County priority; (b) Policy R-201 regarding the use of all possible tools to limit growth in rural areas; (c) Policy R-205 regarding the achievement of a maximum residential density of one home per ten acres for lands managed for forestry; (d) Policy R-206 regarding the maximum residential density of one home per ten acres for lands located within one-quarter mile of a designated Forest Production District; (e) Policy R-503 regarding promotion and support of forestry; (f) Policy R-505 regarding designation of compatible land uses on lands adjacent to Forest Production Districts; (g) Policy R-512 regarding cooperation with other governmental entities and private parties to conserve natural resource lands; and (h) Policy R-521 regarding removal of lands from a Forest Products District only by means of a subarea planning process?***

[13]

***Legal Issue No. 5. Does King County Ordinance No. 14044 violate RCW 36.70A.100 because map amendments 23 and 24 are inconsistent with North Bend's comprehensive plan, specifically as the amendments relate to: (a) Land Use Goal 12 and Policies 12.1 and 12.5 regarding retention of productive forestlands and finding opportunities to acquire key sites that provide scenic or recreational benefits; (b) Sensitive Areas Goal 4 and Policy 4.8 regarding the protection of groundwater resources in the City's defined Potential Impact Areas by maintaining forest lands; (c) Sensitive Areas Goal 5 and Policy 5.1 regarding protection of wildlife habitat areas and protection of wildlife corridors within the City and Potential Annexation Areas; (d) Sensitive Areas Goal 6 regarding the protection of water quality and habitat from the effects of accelerated erosion and sedimentation; (e) Sensitive Areas Goal 7 regarding protection against the risks of unstable slopes and landslide hazards; and (f) Sensitive Areas Goal 9 and Policies 9.1 – 9.3 regarding protection of existing resource lands, including retention forest related land uses within the City's Potential Impact Areas?***

14

***Legal Issue No. 7. Does King County Ordinance No. 14044 violate RCW 36.70A.210 because map amendments 23 and 24 are inconsistent with King County's Countywide Planning Policies ("CPPs"), specifically as the amendments relate to: (a) CPP LU-2 protection of existing resource lands; (b) CPP LU-4 regarding encouragement of compatible land uses adjacent to natural resource areas; (c) CPP LU-9 regarding minimization of land use conflicts with lands adjacent to forestry districts; (d) CPP LU-12 regarding the maximum residential density of one home per ten acres for lands located within one-quarter mile of a designated Forest Production District; (e) CPP FW-1 regarding the procedures for adding rural lands to an urban growth area; (f) CPP FW-6 regarding reducing the consumption of land and concentrating development; and (g) CPP FW-9 regarding the continuation and expansion of forestry uses?***

[15]

During the briefing process, all parties became aware that only Comprehensive Plan Policies that were in effect at the time of consideration of the Yerkes and Zemp Amendments could be used as policies directing compliance: in other words, Policies that were part of the 1994 Comprehensive Plan. Policies in the newly adopted 2000 Plan were not in effect at that time.

[16]

Legal Issues 3, 4 and 5 provide as follows:

***Legal Issue No. 3. Is map amendment 15 in compliance with the RCW 36.70A.070(1) when it fails to designate the DNR property to accommodate urban growth at appropriate urban densities under the plan?***

**Legal Issue No. 4.** *Is map amendment 15 in compliance with RCW 36.70A.070 when the plan map is internally inconsistent with the Comprehensive Plan policy U-117 to set zoning to at least four units per acre within urban boundaries?*

**Legal Issue No. 5.** *Is map amendment 15 in compliance with RCW 36.70A.110(3) when it fails to locate growth in areas that have existing public facility and service capacities to serve such development?*

PHO, at 9-10.

[17] Although respondent King County did not specifically move to dismiss these issues, its own precedent binds the Board. *See: Hanson v. King County*, CPSGMHB Case No. 98-3-15c, Final Decision and Order, (Dec. 16, 1998), at 7-8 and 9; *MacAngus v. Snohomish County*, CPSGMHB Case No. 99-3-0017, Final Decision and Order, (Mar. 23, 2000), at 9.

[18] State Department of Natural Resources' Opening Brief (**SPB**); King County's Prehearing Brief (**KCPB**); State's Reply Brief (**SRB**).

[19] King County Policy U-117 was renumbered in the recent amendment to U-118, it provides:

King County should apply minimum density requirements to all urban residential zones of four or more homes per acre, except under limited circumstances such as: a) Presence of significant physical constraints, or b) Implementation of standards applied to a property through a property specific development condition, special district overlay, or subarea plan.

[20] King County Comprehensive Plan.