

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

FRIENDS OF THE LAW,)	
)	Case No. 01-3-0010
)	
Petitioners,)	
)	(FOTL VI)
v.)	
)	
KING COUNTY,)	FINAL DECISION and ORDER
)	
Respondent,)	
)	
and)	
)	
THE QUADRANT CORPORATION,)	
)	
Intervenor.)	
_____)	

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I. Procedural Background

A. General

On May 11, 2001, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Friends of the Law (**Petitioner** or **FOTL**). The matter was assigned Case No. 01-3-0010. Board Member Edward G. McGuire was the Presiding Officer for this matter. Petitioner challenges King County’s adoption of Ordinance No. 14044 (the **Ordinance**). The Ordinance amends both the County’s Comprehensive Plan and development regulations. The basis for the challenge is noncompliance with several sections of the Growth Management Act (**GMA** or **Act**).

On May 21, 2001, the Board issued a “Notice of Hearing”; on June 7, 2001, the Board held the prehearing conference; and on June 8, 2001 the Board issued a “Prehearing Order and Order Granting Intervention” (**PHO**). The PHO set the final schedule and Legal Issues for this case and granted intervenor status to the Quadrant Corporation.

B. Motions to Supplement And amend index

On June 11, 2001, the Board received “King County’s Initial Index to the Record.”

On June 20, 2001, the Board received the core documents requested in this proceeding.

On July 25, 2001, the Board received “King County’s Notice Amending Index and Motion Requesting Official Notice of Documents or Supplementation of the Record.” The Board also received “The Quadrant Corporation’s Motion to Supplement the Record.”

On August 2, 2001, the Board received “Friends of the Law’s Response to Motion to King County’s and Quadrant’s Motions to Supplement the Record and Take Official Notice.”

On August 3, 2001, the Board issued its “Order on Motions to Supplement.” The Order **granted** the motions to supplement and take official notice and summarized the items comprising the record in this case.

C. Briefing and Hearing on the Merits

On July 18, 2001, the Board received “Petitioner’s Opening Brief on the Merits,” with 11 attached exhibits (**FOTL PHB**).

On August 24, 2001, the Board received “King County’s Response Brief,” with 24 attached exhibits (**Co. Response**), [\[1\]](#) and “The Quadrant Corporation’s Response Hearing Brief” (**Quadrant Response**).

On September 5, 2001, the Board received “Petitioner’s Reply Brief on the Merits” (**FOTL Reply**).

On September 17, 2001, the Board held a hearing on the merits in Suite 1022 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. David A. Bricklin represented petitioner FOTL. Kevin Wright, Michael Sinsky and Dennis McMahon represented King County. Richard R. Wilson represented Intervenor Quadrant Corporation. Joseph Elfelt, Petitioner, also attended. Jean Ericksen of Robert H. Lewis & Associates, Tacoma, provided Court reporting services. The hearing convened at 1:00 p.m. and adjourned at approximately --- 5:00 p.m. A transcript of the hearing was ordered (**Transcript**).

On October 15, 2001, the Board received the Transcript.

II. presumption of validity, burden of proof,

standard of review and Deference

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, FOTL, 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). Further, Division II of the Court of Appeals has stated, “Consistent with *King County*, 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. board jurisdiction, Abandoned issues and Prefatory note

A. Board Jurisdiction

The Board finds that FOTL’s PFR was timely filed, pursuant to RCW 36.70A.290(2); FOTL participated in the County’s public process and has participation standing to appear before the Board, pursuant to RCW 36.70A.280(2); and pursuant to RCW 36.70A.280(1)(a), the Board has subject matter jurisdiction over the challenged ordinance (Ordinance No. 14044), which amends the County’s Comprehensive Plan and development regulations.

B. Abandoned Issues

Although 19 Legal Issues^[2] were set forth in the PHO, FOTL’s PHB only addresses six of the issues from the PHO.^[3] Pursuant to WAC 242-02-570, issues or portions of issues not briefed are deemed abandoned. Therefore, Petitioner FOTL has **abandoned** the following Legal Issues as set forth in the PHO: Urban Growth Area Issues 1g) and Transportation Issues 5-17. The

Legal Issue remaining to be resolved are Legal Issues 1a) through 1f), 2, 3, 4, 18 and 19.

C. Prefatory Note

A synopsis of the history of the controversy surrounding the urban designation of the Bear Creek properties at issue in this case is found in **Appendix A**. In short, in earlier proceedings, the Board concluded that designation of the Bear Creek island (the northern portion is referred to as Blakely Ridge, the southern portion is referred to as Redmond Ridge, and includes the area referred to as the “Panhandle”) could not be justified as a UGA pursuant to the locational criteria of RCW 36.70A.110(1), but that those portions of the Bear Creek island subject to an approved FCC permit may be designated urban. To comply with the GMA and the Board’s prior Orders, the County removed the UGA designation from the Blakely Ridge and Panhandle areas and designated these areas as “rural.” The Redmond Ridge portion of the Bear Creek island, being subject to an approved FCC permit, remained urban. The subject of the present challenge is the County’s most recent designation of the Blakely Ridge and Panhandle areas as urban.

In the present proceeding the discussion of issues is organized under three general topics: Urban Growth Area Issues, a Transportation Issue and a Definitional Issue. The Board first addresses the Urban Growth Area Issues [Legal Issues 2, 1a), 1b) & 1c), 1d), 1e) & 1f), 3 and 4], then the remaining Transportation Issue [Legal Issue 18], closing with the Definitional Issue [Legal Issue 19].

iv. applicable law and discussion

A. URBAN GROWTH AREA ISSUES

Legal Issue No. 2

The Board’s PHO set forth Legal Issue No. 2:

- Does RCW 36.70A.350(1)(g) prohibit the County from expanding the UGA adjacent to the Redmond Ridge fully contained community (FCC) to include lands previously designated rural and further prohibit the County from up-zoning such lands to urban, and if so, did expanding the UGA to include the previously designated “Rural” Blakely Ridge and Panhandle areas violate this requirement?

Applicable Law and Discussion

RCW 36.70A.350(1)(g) provides:

A county required or choosing to plan under RCW 36.70A.040 may establish a process as part of its urban growth areas, that are designated under RCW 36.70A.110, for reviewing proposals to authorize new fully contained communities located outside of the initially designated urban growth areas.

(1) A new fully contained community may be approved in a county planning under this chapter if criteria including but not limited to the following are met:

...

(g) Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas.

It is within this legal context that the Board turns to the arguments advanced by the parties.

FOTL argues:

The County has approved a fully contained community on the Redmond Ridge site. Both the Blakely Ridge and Panhandle sites are adjacent to this approved FCC. . . .

Once the County amended its comprehensive plan by designating the Blakely Ridge and Panhandle sites as rural, these areas became protected by the provision of RCW 36.70A.350(1)(g) that the County ‘ensure’ urban growth not occur on these sites.

The rural designation and rural zoning the County placed on the Blakely Ridge and Panhandle sites is no different than the rural designation and rural zoning the County placed on other land adjacent to the Redmond Ridge FCC, including the Blakely Ridge and Panhandle sites. This failure of the County is in violation of RCW 36.70A.350(1)(g).

FOTL PHB, at 18.

The County contends that this FCC provision of the GMA does not prohibit Blakely Ridge and the Panhandle from being urban. The County argues:

Blakely Ridge and the Panhandle are different from other areas surrounding [Redmond Ridge] for the fundamental reason that these sites are located within the FCC designated by King County. The other areas surrounding [Redmond Ridge] are located outside the designated FCC and are protected from being converted to an urban designation by the containment requirement of RCW 36.70A.350(1)(g). There never was any intention, however, to protect Blakely Ridge or the Panhandle from eventual urban development. To the contrary these areas have from the outset been

designated urban (with the exception of the few short months between November 2000 and February 2001) and have always been planned for urban development.

King County designated the entire Bear Creek UPD site as an FCC. While only [Redmond Ridge] has received an FCC permit, thereby creating an urban growth area as a matter of law on the [Redmond Ridge] property, the County included the entire UPD site in the FCC designation. . . . Urban development on the Blakely Ridge and Panhandle sites will be contained within the designated FCC, but there is no requirement to contain development on the [Redmond Ridge] site from spilling over onto other lands within the same designated FCC, which themselves are slated for urban development.

. . . [T]he development of Blakely Ridge and [Redmond Ridge] are inextricably intertwined. They share, for example, the same infrastructure improvements. . . .

FOTL is wrong when it suggests the approval of an FCC permit on the [Redmond Ridge] site disqualifies Blakely Ridge and the Panhandle from ever being considered for urban designation. The entire site has always been slated for urban development and the entire site is located within a designated FCC. The containment provision of RCW 36.70A.350(1)(g) does not operate to preclude the urban designation of the Blakely Ridge and Panhandle areas.

Co. Response, at 30-32.

Quadrant does not specifically engage the FCC argument presented by FOTL. Instead it merely asserts: “The November 20, 2000 rural designation was made in response to the Board’s review of actions that occurred in 1994 and 1996. It was historical – and Quadrant asserts, moot – issue in 2000. The County’s 2000 Comprehensive Plan decision was based on a planning process entirely independent of the Board’s Order on Supreme Court Remand.” Quadrant Response, at 21-22.

In reply FOTL states, “King County’s entire response to this serious infraction is to remind the Board that Blakely Ridge and the Panhandle also have an FCC designation. . . King County’s response ignores that the focus of this appeal is on the UGA designation independent of the FCC designation. . . .The issue in this appeal, however, is whether the UGA designation has validity independent of the FCC designation.” FOTL Reply, at 14.

Both FOTL and the County misread the effect of the Act’s FCC provisions on those lands adjacent to an approved FCC. FOTL’s assertion that Blakely Ridge and the Panhandle are precluded from ever developing as urban because Redmond Ridge has received an FCC permit is

incorrect. However, also incorrect is the County's assertion that nothing more needs to be done to urbanize Blakely Ridge and the Panhandle because they fall within the previously designated FCC.

[4]

It is undisputed that the County's original **delineation** of the FCC boundaries included the Redmond Ridge, Panhandle and Blakely Ridge areas. However, delineating the boundaries of an FCC is not the same as delineating the boundaries of a UGA and establishing a UGA. Once a UGA is established, the delineated area is "pre-approved" for urban development. Not so with the delineation of an FCC. A delineated FCC is *potentially* urban, but it may not be developed as such until a specific proposal for an FCC development is reviewed, pursuant to the criteria of .350, and approved. As previously explained and discussed by the Board, the FCC process is an *exception* to the UGA delineation process of RCW 36.70A.110.

In 1991, the Legislature authorized an "exception" to the UGA designation process of .110 by adding RCW 36.70.350 to the GMA. The FCC provisions of .350 do not contain explicit locational criteria like those found in .110. RCW 36.70A.350 does not require, but *authorizes counties to establish a process for reviewing proposals for FCCs*. In lieu of the specific locational criteria found in .110, .350 sets forth FCC review criteria that may be characterized as minimum performance criteria to be used during review. Counties electing to utilize the GMA's FCC provisions must adopt a process for reviewing proposals for FCCs that includes the criteria contained in .350. If proposals successfully negotiate the FCC process established by a county, an FCC may be approved for an FCC area. Pursuant to RCW 36.70A.350, by operation of law, an approved FCC proposal automatically becomes a UGA.

Unlike the "pre-approved" urban development scheme for UGAs in RCW 36.70A.110, "pre-approved" urban development does not automatically attach if a county designates an *FCC area* pursuant to .350. Authorization for urban development, and subsequent UGA delineation, occurs only *after review and approval* of a specific FCC proposal by a county.

Vashon-Maury, et al., v. King County, CPSGMHB Case 95-3-0008c [Bear Creek portion], Order on Supreme Court Remand, (Jun. 15, 2000), at 7-8. (Hereafter, **Order on Supreme Court Remand.**)

In the present case, the Board finds that Redmond Ridge, the Panhandle and Blakely Ridge have all been delineated as being within an FCC. The Order on Supreme Court Remand did not disturb the FCC delineation, nor has the County amended it. Transcript, at 78-79. However, only Redmond Ridge has successfully negotiated the County's entire FCC review process and

obtained approval of an FCC *permit*. The Board finds nothing in the record to show or even suggest that Quadrant has made application for an FCC permit for either Blakely Ridge or the Panhandle. Thus, these lands have not been subject to the FCC review process, including applicable notice and review for compliance with the requirements of RCW 36.70A.350(1). These areas therefore cannot be designated as a UGA and developed as urban, unless and until such time as they obtain approval of an FCC permit, subject to appropriate notice and review pursuant to .350(1).

The County's Plan acknowledges the significance of this review process.

King County has established a new Fully Contained Community. Two sites are designated through this plan shown on the Land Use Map as Fully Contained Community: Blakely Ridge and Redmond Ridge Urban Planned Development sites located in the Bear Creek area. Nothing in these policies shall affect the continued validity of the approved Urban Planned Development permits for either of these sites. *This FCC designation may be implemented by separate or coordinated FCC permits for the two sites.*

Core Document, Ordinance No. 14044, Attachment A, Plan Amendments, Policy U-172 [formerly U-210], at 2-21 [Plan Policy U-173, at 2-16 in the published Plan] (emphasis supplied). The Plan Policies go on to explain the criteria for FCC review.

The review and approval process for a Fully Contained Community (FCC) permit shall be the same as that for an Urban Planned Development (UPD) permit, *except the following additional criteria shall be met, pursuant to the provisions of RCW 36.70A.350*: [listing of additional criteria per .350, including .350(1)(g) – “Development regulations are established to ensure urban growth will not occur in adjacent nonurban lands.”]

Core Document, Ordinance No. 14044, Attachment A, Plan Amendments, Policy U-174 [formerly U-212], at 2-21 and 22 [Plan Policy U-175, at 2-16 and 17 in the published Plan] (emphasis supplied).

These Plan Policies are significant since they recognize the distinction between the County's UPD and FCC process and the additional GMA criteria for urbanizing in an FCC. Potential UPD urban developments may occur only within established UGAs; ^[5] potential FCC urban development may only occur within delineated FCCs after the approval of, and subject to the conditions of, an FCC permit. The Board finds that immediately prior to adoption of Ordinance No. 14044, the Blakely Ridge and Panhandle areas were not within established UGAs; they were designated rural [nonurban] as required by the GMA and per Board Order. Consequently, to

urbanize property within the delineated FCC area, review and approval pursuant to the GMA criteria (and the County's own Plan Policy) is required.

It is undisputed that the area *outside* the FCC delineation must be maintained as nonurban (i.e. designated and shown on the Future Land Use Map and zoning map as either resource lands or rural). However, the real question here is whether the land *inside* a *delineated* FCC area, but not yet reviewed and approved pursuant to .350, must also be maintained as nonurban. As detailed below, the Board answers in the affirmative.

The Board conclusion is based on the need to protect such areas from urban development until and unless an FCC permit has been reviewed and approved pursuant to the .350 FCC review process. The approval of the Redmond Ridge FCC carries with it a requirement that "urban growth will not occur in adjacent nonurban lands." RCW 36.70A.350(1)(g). Even the County acknowledged that the effect of the "containment" provisions of .350(1)(g) precludes the re-designation to urban of the rural lands adjacent and south of the Redmond Ridge FCC. *See*: Transcript, at 65-66, 77. Prior to the adoption of Ordinance No. 14044, Blakely Ridge and the Panhandle were adjacent "nonurban lands." Therefore, RCW 36.70A.350(1)(g) precludes Blakely Ridge and the Panhandle from being a UGA and being developed as urban, notwithstanding their inclusion within an FCC *delineation* or their arguably intertwined infrastructure, until such time as proposals for urban development for these sites are reviewed and an FCC permit is approved pursuant to the County's and GMA's .350 FCC review and approval process. If and when such FCC permit approval occurs, those areas subject to the FCC permit would be included as a UGA as a matter of law and only then could be developed as urban.

The County has chosen to use the FCC procedures of RCW 36.70A.350 to address the potential urbanization of this area. Having taken this road, the County cannot now also designate the Blakely Ridge and Panhandle area as a UGA pursuant to RCW 36.70A.110. To do so would ignore the additional .350 criteria and review process. There is no indication in the record or suggestion by the County that the UGA designation for Blakely Ridge or the Panhandle, as contained in Ordinance No. 14044, was undertaken pursuant to the buildable lands requirements of RCW 36.70A.215 or the UGA review requirements of RCW 36.70A.130; it was done merely as part of the County's annual plan amendment process. Consequently, the UGA designation process of RCW 36.70A.110 is not available for Blakely Ridge or the Panhandle.

The County's designation of Blakely Ridge and the Panhandle areas as UGA was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.350(1)(g). The UGA and urban designations for Blakely Ridge and the Panhandle areas shall be removed from the County's Land Use Map and the previous "rural" designations reinstated or other nonurban designation adopted. If the area is ever to be lawfully designated as a UGA and develop as urban it may only do so pursuant to the GMA's FCC requirements in RCW 36.70A.350, as reflected in the County's own policies.

Conclusion

The County's designation of Blakely Ridge and the Panhandle areas as UGA was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.350(1)(g). The UGA and urban designations for Blakely Ridge and the Panhandle areas shall be removed from the County's Land Use Map and text and the previous "rural" designations reinstated or other nonurban designation adopted.

Legal Issue No. 1a)

The Board's PHO set forth Legal Issue No. 1a):

- Does King County's (the **County**) addition of the Blakely Ridge and Panhandle site to the UGA and zoning these sites for urban growth:
 - a) fail to comply with the UGA locational criteria of RCW 36.70A.110 and with GMA goals 1 and 2?

Applicable Law and Discussion

In the Board's discussion of Legal Issue 2, *supra*, the Board concluded that if the Blakely Ridge and Panhandle areas are to be designated as a UGA and develop as urban, it shall be through compliance with the FCC review and approval process as set forth in the GMA (RCW 36.70A.350) and as reflected in the County's own policies and regulations. This process has not occurred. Therefore, the Board need not and will not address whether the County's action complied with the locational criteria of RCW 36.70A.110 [Legal Issue 1a)].

Conclusion

The Board need not and will not address whether the County's action complied with the locational criteria of RCW 36.70A.110 [Legal Issue 1a)].

Legal Issue No. 1b) and 1c)

The Board's PHO set forth Legal Issue No. 1b) and 1c):

- Does King County's (the **County**) addition of the Blakely Ridge and Panhandle site to the UGA and zoning these sites for urban growth:
 - b) conflict with the UGA locational criteria at Plan Policy U-102 (formerly U-201) thus

rendering the comprehensive plan internally inconsistent in violation of RCW 36.70A.070 (preamble)

c) conflict with the UGA locational criteria at County-wide Plan Policy (CPP) LU-26 in violation of RCW 36.70A.210?

Applicable Law and Discussion

In the Board's discussion of Legal Issue 2, *supra*, the Board concluded that if the Blakely Ridge and Panhandle areas are to be designated as a UGA and develop as urban, it shall be through compliance with the FCC review and approval process as set forth in the GMA (RCW 36.70A.350) and as reflected in the County's own policies and regulations. This process has not occurred; hence, the area is not a UGA. Therefore, the Board need not and will not address whether the County's action complied with the consistency requirements of RCW 36.70A.070 (preamble) and .210 regarding Plan Policy U-102 (formerly U-201) or CPP LU-26 [Legal Issue 1b) and 1c)].

Conclusions

The Board need not and will not address whether the County's action complied with the consistency requirements of RCW 36.70A.070(preamble) and .210 regarding Plan Policy U-102 (formerly U-201) or CPP LU-26 [Legal Issue 1b) and 1c)].

Legal Issue No. 1d)

The Board's PHO set forth Legal Issue No. 1d):

- Does King County's (the **County**) addition of the Blakely Ridge and Panhandle site to the UGA and zoning these sites for urban growth:

d) conflict with the provisions regarding rural land contained in CPP FW-1 Step 7a and Step 8, CPP LU-7 and CPP LU-23, in violation of RCW 36.70A.210?

Applicable Law and Discussion

In the Board's discussion of Legal Issue 2, *supra*, the Board concluded that if the Blakely Ridge and Panhandle areas are to be designated as a UGA and develop as urban, it shall be through compliance with the FCC review and approval process as set forth in the GMA (RCW 36.70A.350) and as reflected in the County's own policies and regulations. This process has not occurred; hence, the area is not a UGA. Therefore, the Board need not and will not address whether the County's action complied with the consistency requirements of RCW 36.70A.210

regarding CPP FW-1 Step 7a and 8, CPP LU-7 and CPP LU-23 [Legal Issue 1d)]. However, the Board does note that the *duration* of the ordered “rural” or “nonurban” designation for Blakely Ridge and the Panhandle area will ultimately be determined through the County’s implementation of the GMA’s required FCC review and approval process (RCW 36.70A.350).

Conclusion

The Board need not and will not address whether the County’s action complied with the consistency requirements of RCW 36.70A.210 regarding CPP FW-1 Step 7a and 8, CPP LU-7 and CPP LU-23 [Legal Issue 1d)].

Legal Issue No. 1e) and 1f)

The Board’s PHO set forth Legal Issue No. 1e) and 1f):

- Does King County’s (the **County**) addition of the Blakely Ridge and Panhandle site to the UGA and zoning these sites for urban growth:
 - e) violate the requirement of RCW 36.70A.110 that the UGA be based upon the OFM forecast and the County “show its work” in that regard?
 - f) result in a UGA with an unlawful amount of excess capacity in violation of RCW 36.70A.110 and GMA goals 1 and 2?

Applicable Law and Discussion

In the Board’s discussion of Legal Issue 2, *supra*, the Board concluded that if the Blakely Ridge and Panhandle areas are to be designated as a UGA and develop as urban, it shall be through compliance with the FCC review and approval process as set forth in the GMA (RCW 36.70A.350) and as reflected in the County’s own policies and regulations. This process has not occurred; hence, the area is not a UGA. Additionally, the Board has previously addressed the OFM population and FCC land capacity issues in Order on Supreme Court Remand, at 8-9 (citing to additional Board Orders on these topics). Therefore, the Board need not and will not address whether the County’s action complied with the requirements of RCW 36.70A.110 and Goals 1 and 2 regarding OFM population forecast and land capacity.

Conclusion

The Board need not and will not address whether the County’s action complied with the requirements of RCW 36.70A.110 and Goals 1 and 2 regarding the OFM population forecast and land capacity.

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Legal Issue No. 3

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

- Does each amendment to Plan Policy U-102 (formerly U-201) render the comprehensive plan inconsistent with CPP FW-1 Step 8a and CPP LU-26 in violation with RCW 36.70A.210?

Applicable Law and Discussion

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CPP LU-26 pertains to "The lands within Urban Growth Areas." In the Board's discussion of Legal Issue 2, *supra*, the Board concluded that if the Blakely Ridge and Panhandle areas are to be designated as a UGA and develop as urban, it shall be through compliance with the FCC review and approval process as set forth in the GMA (RCW 36.70A.350) and as reflected in the County's own policies and regulations. This process has not occurred; hence, the area is not a UGA. Therefore, the Board need not and will not address whether the County's action complied with the consistency requirements of RCW 36.70A.210.

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Conclusion

The Board need not and will not address whether the County's action complied with the consistency requirements of RCW 36.70A.210.

Legal Issue No. 4

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

- Does the text following Plan Policy U-171 comply with the statutory definition of "characterized by urban growth"? RCW 36.70A.030(17)

Applicable Law and Discussion

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In the Board's discussion of Legal Issue 2, *supra*, the Board concluded that if the Blakely Ridge and Panhandle areas are to be designated as a UGA and develop as urban, it shall be through compliance with the FCC review and approval process as set forth in the GMA (RCW 36.70A.350) and as reflected in the County's own policies and regulations. This process has not occurred; hence, the area is not a UGA. Therefore, the Board need not and will not address whether the County's action [amending Plan Policy U-171] complied with the statutory definition of "characterized by urban growth" RCW 36.70A.030(17).

Conclusion

The Board need not and will not address whether the County's action [amending Plan Policy U-171] complied with the statutory definition of "characterized by urban growth" RCW 36.70A.030 (17).

B. TRANSPORTATION ISSUES

Legal Issue No. 18

The Board's PHO set forth Legal Issue No. 18:

- Do RCW 36.70A.010, .020(3), .020(11), .040(7), .070(6)(a)(v) require the transportation element to assess the impact of the County's land use assumptions on the transportation systems of the City of Redmond including the ability of Avondale within city limits to accommodate the increased traffic resulting from the County's land use assumptions, and if so, does the transportation element comply with these requirements?

Applicable Law and Discussion

Numerous sections of the GMA speak to the importance of coordination among planning jurisdictions. The GMA sections noted in the statement of Legal Issue No. 18, provide, in relevant part, as follows:

It is in the public interest that citizens, communities, *local governments*, and the private sector cooperate and ***coordinate with one another in comprehensive land use planning***.

RCW 36.70A.010 (emphasis supplied). The Act's transportation goal encourages coordination:

Encourage efficient multimodal transportation systems that are based on regional priorities and ***coordinated with county and city comprehensive plans***.

RCW 36.70A.020(3) (emphasis supplied). The public participation goal of the act also addresses coordination:

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

RCW 36.70A.020(11) (emphasis supplied). In some instances, evidence of coordination efforts is required within elements of the Comprehensive Plan. Each plan must contain a transportation element, and within the transportation element, certain sub-elements are required, including:

Intergovernmental *coordination* efforts, *including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions.*

RCW 36.70A.070(6)(a)(v) (emphasis supplied).

FOTL points to these coordination requirements and argues, “Urban development of the Panhandle and Blakely Ridge parcels will generate a considerable amount of traffic, not just in King County but in the City of Redmond. (Citations omitted) The record reveals that the County has failed to consider how the urban development of Blakely Ridge and the Panhandle will impact transportation hot spots in the City of Redmond [thereby violating the noted provisions of the GMA]. FOTL PHB, at 25. FOTL asserts that the impacts of development will be most acute on Redmond’s Avondale Road. FOTL PHB, at 26. Lastly, FOTL contends that the County’s failure to assess these traffic impacts on the City of Redmond also violates the requirements of RCW 36.70A.040(7).^[6] FOTL PHB, at 27.

The County contends that its coordination with the City of Redmond is evident from review of the 1994 Plan Supplemental Environmental Impact Statement (**'94 Plan SEIS**), '94 Plan implementation, and Technical Appendix C of the 2000 Plan amendment, which also incorporates by reference the '94 Plan SEIS. Co. Response, at 36. The analysis from the '94 Plan SEIS indicates that for the Redmond area [screenline 23] 2010 travel demand exceeds capacity (LOS F). Co. Response, at 37-38, and Ex. 7. More recent and detailed traffic analysis and assessment occurs in two environmental documents done for Redmond Ridge and Blakely Ridge [Ex. 8 and 9, respectively]. Based upon these assessments, among others, King County, Redmond and the project developers entered into a settlement agreement providing for mitigation of project impacts upon Redmond. Co. Response, at 38, Ex. 10 [Settlement Agreement] and Ex. 11. Additionally, the County notes that it entered into an interlocal agreement with Redmond for the reciprocal collection of transportation impact fees. Co. Response, at 38, and Ex. 12. Finally, the County relies upon Technical Exhibit C to document that it has assessed traffic impacts upon the City of Redmond. Technical Appendix C includes comparison of 1990 and projected 2010 vehicle trips within 10 different areas within Redmond and the Redmond and Blakely Ridge sites. Co. Response, at 39, and Ex. 16 – 19.

Quadrant joins the County’s response to this issue, indicating that the Settlement Agreement and ILA indicate that not only has coordination occurred with the City, but that Redmond has “ably

and, at times aggressively, asserted its interests in securing mitigation for any impacts on roads within the City's limits." Quadrant Response, at 22.

FOTL still contends that there is no forward looking assessment of the impacts on Redmond, or other neighboring jurisdictions, contained in the County's Plan. This FOTL, asserts, violates the coordination requirements of the Act. FOTL Reply, at 22-23.

The Board is not persuaded by FOTL's arguments that the County failed to coordinate with Redmond or acted in a clearly erroneous way. The 1994 Comprehensive Plan and SEIS included a traffic assessment and recognized adverse traffic impacts on the City of Redmond – LOS F. This assessment has led to additional refined traffic impact assessments and yielded a settlement agreement and mitigation measures to address the impacts. The status of these efforts is reflected in Technical Appendix C. The Board finds no error in this process, nor has Petitioner indicated why the transportation amendments of Ordinance No. 14044 do not comply with RCW 36.70A.040(7). Petitioner FOTL has **failed to meet the burden of proof** in demonstrating that the County failed to comply with the Act's requirement to assess traffic impacts or adhere to the interjurisdictional coordination provisions of the Act, this claim is **dismissed with prejudice**.

Conclusion

Petitioner FOTL has **failed to meet the burden of proof** in demonstrating that the County failed to comply with the Act's requirement to assess traffic impacts or adhere to the interjurisdictional coordination provisions of the Act, this claim is **dismissed with prejudice**.

C. DEFINITIONAL ISSUES

Legal Issue No. 19

The Board's PHO set forth Legal Issue No. 19:

- Does the definition of the word "shall" in the comprehensive plan violate the requirement of RCW 36.70A.120 that the County must "perform its activities and make capital budget decisions in conformity with its comprehensive plan"?

Applicable Law and Discussion

RCW 36.70A.120 provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 *shall* perform its activities and make capital budget decisions in conformity with its comprehensive plan.

(Emphasis supplied). The County, in amending its Plan, modified the glossary section of the plan to read as follows (underlined language is amendatory language):

To guide King County, the use of the terms “shall,” “will,” “should,” and “may” in policies determine the level of discretion the County can exercise in making future and specific land use, budget, development regulation and other decisions. “Shall” and “will” in a policy mean that it is mandatory for the County to carry out the policy, even if a timeframe is not included. “Shall” and “will” are imperative and nondiscretionary – the County must make decisions based on what the policy says to do, subject to funding and budgetary constraints which may not allow for implementation of the policy, and subject to provisions of the annual budget. “Should” in a policy provides non-compulsory guidance, and establishes that the County has some discretion in making decisions. “May” in a policy means that it is in the County’s interest to carry out the policy, but the County has total discretion in making decisions.

Core Document, Ordinance No. 14044, Attachment A, Plan Amendments, Glossary, at G-12 [Also Glossary, at G-12 in the published Plan].

FOTL asserts that “this amendment gives the County *carte blanc* to say one thing in its Comprehensive Plan and yet do exactly the opposite merely by claiming there are budgetary constraints.” FOTL PHB, at 29.

The County responds that, “There is a logical disconnect inherent in FOTL’s argument. If, as FOTL argues, definitional changes in the Comprehensive Plan itself limit the mandatory effect of Comprehensive Plan provisions, that limitation is part of the Comprehensive Plan. The Plan’s provisions cannot, however, be inconsistent. FOTL’s complaint addresses a policy issue not a legal one. FOTL would like the Plan to read differently than it does.” County Response, at 41.

In reply, FOTL states, “[T]he reason we would like the plan to read differently is not just a matter of policy but rather a substantive requirement of the GMA [*i.e.* the language of RCW 36.70A.120].” FOTL Reply, at 24.

The Board recognizes that budgetary constraints reflect a reality in the State and the Puget Sound region. However, the amendatory language could be interpreted to relieve the County of GMA responsibilities and duties it has to address during a period of limited budgets. In some situations, the GMA forces action, not inaction, when budgetary constraints come into play. For example, the GMA *requires* the County to *take action* when funding falls short of meeting existing needs for capital facilities or transportation facilities. RCW 36.70A.070(3)(e) and RCW

36.70A.070(6)(iv)(C). Both these sections of the Act are guided by the direction of RCW 36.70A.120. The County cannot place potential caveats or limitations on these GMA requirements. The County's amendment to the word "Shall" in the Plan Glossary was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.120. The amendatory language shall be removed from the definition of "Shall" in the Glossary of the County's Comprehensive Plan.

Conclusion

The County's amendment to the word "Shall" in the Plan Glossary was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.120. The amendatory language shall be removed from the definition of "Shall" in the Glossary of the County's Comprehensive Plan.

D. INVALIDITY REQUEST

FOTL contends that the County's actions substantially interfere with the goals of the Act and urges the Board to enter a determination of invalidity. FOTL Petition for Review, at 9, FOTL PHB, at 2-9 and 30-3.

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's designation of Blakely Ridge and the Panhandle as a UGA, in Ordinance No. 14044, **does not comply** with the requirements of RCW 36.70A.350(1). Further the Board has found that the County's amendment to the Plan Glossary **does not comply** with the requirements of RCW 36.70A.120. This Order will **remand** the Ordinance for remedial action by the County. Consequently, pursuant to RCW 36.70A.302, the Board now considers whether to enter a determination of invalidity on the noncompliant actions embodied in these Ordinances.

In designating Blakely Ridge and the Panhandle as UGA, the County indicated that "urban" development would be authorized. However, the Board has determined that the Blakely Ridge and Panhandle areas must be designated for *nonurban* uses until such time as an FCC proposal, if any, is reviewed and approved pursuant to RCW 36.70A.350. Consequently, urban development within a nonurban area would substantially interfere with the fulfillment of goal 1 and 2. Goal 1 provides: Encourage development *in urban areas* where adequate public facilities and services exist or can be provided in an efficient manner. RCW 36.70A.020(1) (emphasis added). Goal 2 provides: Reduce the *inappropriate conversion of undeveloped land* into sprawling, low density development. RCW 36.70A.020(2) (emphasis added). Based upon this substantial interference with Goals 1 and 2, and for the reasons (findings and conclusions) discussed under Legal Issue 2, at 4-10, *supra*, the Board enters a **determination of invalidity** for the County's designation of Blakely Ridge and the Panhandle as UGA. The Board does not at this time find a similar interference with the Goals of the Act that would stem from the amendment to the term "Shall" in the Glossary of the Plan. However, pursuant to RCW 36.70A.330(4), the Board may revisit this question at the compliance hearing.

V. ORDER

Based upon review of the petition for review, the briefs and exhibits submitted by the parties, the Board's prior decisions, the Act, prior court decisions, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

King County's adoption of Ordinance No. 14044, as applied to the *designation of Blakely Ridge and the Panhandle as a UGA*, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.350(1), as set forth and interpreted in this Final Decision and Order. Further the Board enters a **determination of invalidity** pertaining to the UGA designation of Blakely Ridge and the Panhandle, since the County's action substantially interferes with the fulfillment of goals 1 and 2 (RCW 36.70A.020(1) and (2)).

Additionally, King County's adoption of Ordinance No. 14044, as applied to the *amendment to the definition of "shall" in the Glossary of the Comprehensive Plan*, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.120, as set forth and interpreted in this Final Decision and Order.

The Board therefore, remands, Ordinance No. 14044 to the County with the following directions:

1. The Board's determination of invalidity invalidates the County's UGA designation for Blakely Ridge and the Panhandle, *as of the date of this Order*. RCW 36.70A.302(2). By no later than **December 26, 2001**, the County shall take legislative action to formally reinstate the "rural," or adopt another "nonurban" designation for Blakely Ridge and the Panhandle. Within the delineated FCC, the Blakely Ridge and Panhandle area shall remain in a nonurban designation until such time as an FCC proposal is reviewed and an FCC permit approved pursuant to RCW 36.70A.350 and the County's own policies.

2. Also, by no later than **December 26, 2001**, the County shall take appropriate legislative action to remove the noncompliant amendatory language in the definition of "Shall" in the Glossary to the Comprehensive Plan.

3. By no later than **January 9, 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 Order. 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 FOTL and Intervenor Quadrant.

4. 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 Replies by the County and Intervenor.

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So ORDERED this 29th day of October 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

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.

Appendix A

In the Board's Order on Supreme Court Remand, the Board provided the following synopsis of the long controversy surrounding the Bear Creek island:

This case has its genesis in King County's 1994 adoption of its comprehensive plan. In its Plan, the County designated urban growth areas (**UGAs**), including the Bear Creek urban planned development UGA located between the cities of Redmond and Duvall in the north-central part of the County. The Bear Creek UGA is a freestanding "island UGA," separate from the contiguous UGA in the western portion of King County. The Bear Creek UGA is within the Bear Creek community planning area. That portion of the planning area at issue here is the area designated UGA *and* FCC (hereinafter, the "Bear Creek island"). The boundaries of the Bear Creek UGA and the Bear Creek FCC are coterminous. Within the Bear Creek island are the proposed developments of Northridge (now known as Redmond Ridge) and Blakely Ridge.

Numerous petitioners, including FOTL, appealed the UGA adoption to the Board. The Board issued a Final Decision and Order (**FDO**) and determined that the Bear Creek island UGA complied with the GMA. The Board reluctantly reached this conclusion by noting that the County-wide Planning Policies (**CPPs**) were adopted prior to the County's adoption of its UGAs and included a requirement to designate the Bear Creek island as a UGA. In addition, because the CPPs were not appealed, the policy requiring designation of the Bear Creek island as a UGA bound the County's actions. The Board was reluctant to find the Bear Creek island UGA in compliance with the GMA because the record contained a paucity of justification to create an island UGA; the record was insufficient to show that the Bear Creek island UGA satisfied the locational criteria of RCW 36.70A.110. FDO, at 37 – 41.

On reconsideration, the Board identified internal inconsistencies within the CPP directing establishment of the Bear Creek UGA. Because of this inconsistency, the Board determined that this CPP provided only general guidance and did not require the County to designate the Bear Creek UGA. The Order on Reconsideration discussed the locational criteria in the context of the CPPs and readopted the FDO's discussion of the locational criteria of RCW 36.70A.110. Order on Reconsideration, at 7 and 9-12. Ultimately the Board remanded the Bear Creek UGA to the County, stating:

The Bear Creek island UGA portion of the [comprehensive] Plan is **remanded** to the County with instructions to either: (a) delete it; or (b) adopt it as a fully contained community if it meets the requirements of RCW 36.70A.350; or (c) justify it pursuant to the requirements of RCW 36.70A.110, and the rank order requirements for including lands in the UGA as set forth in the *Bremerton v. Kitsap County* decision [95-3-0039c, Final Decision and Order (Oct. 6, 1995)], at 38-41.

Order on Reconsideration, at 16.

In response to the Order on Reconsideration, the County took three actions: (1) it sought to justify the UGA; (2) it amended its Plan and maps to designate the Bear Creek area as a Fully Contained Community (**FCC**); and (3) it sought judicial review of the Board's decision. *See Ex. 104, Justification of the Urban Designation of the Bear Creek UPD Sites*, at 1-4. At the same time as the County was responding to the Board's remand, FOTL and other parties also appealed the remand order to Superior Court.

The Superior Court reversed the Board's Order on Reconsideration and reinstated the FDO. The Court of Appeals upheld the superior court. The Supreme Court reversed the Court of Appeals, reinstated the Order on Reconsideration and remanded the case to the Board "for a determination of whether the County has adequately complied with the terms of the Board's Order on Reconsideration by justifying the Bear Creek urban designation under the terms of the GMA or by redesignating the area as an FCC." *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161, 186 (1999).

Vashon-Maury, et al., v. King County, [Bear Creek Portion], CPSGMHB Case No. 95-3-0008c, Order on Supreme Court Remand, (June 15, 2000), at 4-5.

The designation of the **entire** Bear Creek island was at issue in the remand proceeding. The Bear Creek island included two distinct master planned communities or urban planned developments. The Blakely Ridge project, located in the northern portion of the Bear Creek island; and the

Northridge or Redmond Ridge project, located on the southern portion of the Bear Creek island.

In the remand proceeding, the Board concluded that:

Regarding the locational criteria of RCW 36.70A.110(1), the Board concludes that FOTL has met its burden and the County has not justified that the Bear Creek island is “characterized by urban growth” nor has the County justified that the Bear Creek island is “adjacent to lands characterized by urban growth.” Pursuant to the Board’s Order on Reconsideration, the County has not justified its designation of the Bear Creek UPDs as a UGA by meeting the locational criteria of RCW 36.70A.110(1). Therefore, the County’s designation of the Bear Creek island as being within a UGA was clearly erroneous and does not comply with the locational requirements of RCW 36.70A.110(1). However, this conclusion does not resolve whether the County has complied with the FCC exception requirements authorized in .110(1).

Order on Supreme Court Remand, at 11-12. In short, the Board concluded that the Bear Creek island could not be justified as a UGA pursuant to the locational requirements of RCW 36.70A.110(1). Regarding whether the Bear Creek island complied with the FCC requirements of RCW 36.70A.350(1), the Board concluded:

Petitioners have not demonstrated that the County’s development regulations, including rural zoning, do not ensure urban growth will not occur in the nonurban areas adjacent to the Bear Creek island. The County’s interpretation and definition of “fully contained” is not unreasonable and provides a context for reviewing the County’s actions. Plan Policy R-104, as amended, complies with .350(1)(g), as do the other FCC Plan Policies, specifically U-212. The County’s nine requirements for the FCC project review process contained in Plan Policy U-212 (a)-(i) and the same requirements contained in the County’s development regulations at K.C.C. 21A.39.200(B)(1)-(9) mirror and amplify the nine detailed requirements for project review contained in RCW 36.70A.350(1)(a)-(i). The FCC Plan Policies and development regulations provide protection for nonurban areas adjacent to FCCs from encroachment by urban growth. Therefore, the County’s adoption of Ordinance Nos. 12170 and 12171 complies with the FCC project review process requirements of .350(1).

The locational criteria of .110 do not apply to FCC areas. The GMA does not contain any explicit locational requirements for FCCs other than those factors enumerated in .350(1), including .350(1)(g) “containment” which could affect location. The Board finds no error by the County in recognizing a statutorily created FCC “exception” to the locational criteria in its Plan Policy U-201. The Board acknowledges that the County provided adequate explanation and rationale in its Plan

supporting its decision to adopt an FCC review process and designate the Bear Creek island as an FCC.

The County's adoption of Ordinance Nos. 12170 and 12171, which designate the Bear Creek island as an FCC and establish an FCC review process, meet the GMA's FCC provisions, and comply with the requirements of RCW 36.70A.350. By enacting these Ordinances in compliance with .350, the County has activated the FCC "exception" of RCW 36.70A.110(1) for designating UGAs. Successful completion of the FCC review process will yield UGA designation.

Order on Supreme Court Remand, at 29. As stated above, the locational criteria of .110 do not apply to FCC areas. The Board also noted that the outcome of the County's FCC permit process could yield either approval or denial of an FCC permit for all or a portion of the Bear Creek island. Nonetheless, having found that the designation of the area as an UGA failed to comply with the locational criteria of RCW 36.70A.110(1), the Board directed the County to:

The Board directs King County to remove the Bear Creek island UGA designation, or portion thereof, if any, that is based upon the locational criteria of RCW 36.70A.110 (1).

Order on Supreme Court Remand, at 30. The County ultimately removed the UGA designation from those portions of the Bear Creek island that were not subject to an approved FCC permit (*i. e.* Blakely Ridge and the "Panhandle" portion of Redmond Ridge, both within the Bear Creek island) and designated these areas "rural." Consequently, the Board, after a series of compliance hearings and intervening Orders, ^[7] found the County remand action to be in compliance with the goals and requirements of the Act and the Board's Order.

^[1] The Board subsequently received a letter noting, and correcting, a typographical error that occurred in the Co. Response. *See*: August 28, 2001 letter to the Board from Michael J. Sinsky.

[2] Legal Issue No. 1 contains seven sub-issues.

[3] The Board notes that, while FOTL's PHB clearly addresses some of the Legal Issues from the PHO, those that are briefed are numbered based upon the issues noted in the PFR, not the PHO. [Legal Issue #1 from the PFR was withdrawn at the prehearing conference.] The numbering system used in this Order will correspond to the numbers used in the PHO.

[4] The Board here coins the term "delineation" rather than "designation" to recognize that the process set forth at RCW 36.70A.350 is unique in the GMA. It is a two-step process, which is very different from the "designations" done for "resource lands" pursuant to RCW 36.70A.170 or the "Future land use map designations" done pursuant to RCW 36.70A.070. The initial "designation" (or what we here call "delineation") of an FCC on the Future land use map does not create rights for urban uses. Rather, that initial "delineation" is simply the precedent to a potential second step, which is the subsequent processing and issuance of an "FCC permit." If and when such FCC permit is issued, the subject property becomes urban by operation of law and at that point is appropriately "designated" as urban.

[5] *See*: Plan Policy [U-171 in the published Plan]. The Board previously concluded, "[T]he County's designation of the Bear Creek island as being within a UGA was clearly erroneous and does not comply with the locational requirements of RCW 36.70A.110(1)." Additionally, the Board stated, "The Board directs King County to remove the Bear Creek island UGA designation, or portion thereof, if any, that is based upon the locational criteria of RCW 36.70A.110(1)." Order on Supreme Court Remand, at 12 and 30.

[6] Cities and counties planning under this chapter must amend the transportation element of the comprehensive plan to be in compliance with this chapter and chapter 47.80 RCW no later than December 31, 2000. RCW 36.70A.040 (7).

[7] *See*: Order on FOTL's Motion for Reconsideration, (Aug. 22, 2000); Denial of Request for Certificate of Appealability, (Oct. 27, 2000); Order Finding Partial Noncompliance and Partial Invalidity, (Nov. 3, 2000); Scrivener's Error Corrections to Order Finding Partial Noncompliance and Partial Invalidity, (Nov. 8, 2000); and finally, Order Rescinding Partial Invalidity and Finding Compliance, (Jan. 8, 2001).