

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

CITY OF SHORELINE,	)	
	)	<b>Case No. 01-3-0013</b>
	)	
Petitioner,	)	<i>(Shoreline II)</i>
and	)	
	)	
CHEVRON, U.S.A., Inc.,	)	<b>FINAL DECISION AND ORDER</b>
	)	
Intervenor.	)	
v.	)	
	)	
TOWN OF WOODWAY,	)	
	)	
Respondent,	)	
and	)	
	)	
SNOHOMISH COUNTY,	)	
	)	
Intervenor.	)	
	)	

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**I. Background**

On June 1, 2001, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the City of Shoreline (**Petitioner** or **Shoreline**). The matter was assigned Case No. 01-3-0013, and is hereafter referred to as *Shoreline v. Woodway*. Petitioner challenges the Town of Woodway's (**Respondent**, the **Town** or **Woodway**) adoption of amendments to its land use, transportation and capital facilities element of its comprehensive plan. Notice of adoption of these amendments was published on April 6, 2001. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA** or **Act**).

On July 2, 2001, the Board held a prehearing conference in this matter. Also on July 2, 2001, the Board issued the Prehearing Order (the **Prehearing Order**). The Prehearing Order set forth twelve legal issues and a schedule for the submittal of motions and briefs as well as the date for

the hearing on the merits.

On July 13, 2001, the Board received “Motion by Snohomish County to Intervene as a Party” (the **County’s Motion to Intervene**).

On July 16, 2001, the Board issued “Order on Intervention” granting the County’s Motion to Intervene.

On July 18, 2001, the Board received Woodway’s “Motion to Dismiss and Memorandum in Support” and “Snohomish County’s Motion to Dismiss.” Both Motions asked the Board to dismiss Legal Issues 1 through 8 as set forth in the Prehearing Order.

On July 25, 2001, the Board received “City of Shoreline’s Response to Motions to Dismiss.”

On July 31, 2001, the Board received “Woodway’s Reply to Shoreline’s Response and Joinder in County’s Reply” and “Snohomish County’s Reply Brief Supporting Motion to Dismiss.”

On August 9, 2001, the Board issued an “Order on Motions to Dismiss” (the **Order on Motions to Dismiss**), which granted the Woodway and County Motions and dismissed Legal Issues 1 through 8.

On August 20, 2001, the Board received Shoreline’s “Motion for Reconsideration and, in the Alternative, Motion to Amend” (**Shoreline’s Motions**.)

On August 23, 2001, the Board received a “Motion to Intervene by Chevron U.S.A., Inc.” (**Chevron’s Motion to Intervene**) together with the “Declaration of Tom J. Simons in Support of Motion to Intervene by Chevron U.S.A., Inc.” and the “Declaration of G. Michael Marcy in Support of Motion to Intervene by Chevron U.S.A., Inc.” Chevron’s Motion to Intervene requested leave to intervene as to Legal Issue 11 in the Prehearing Order.

On August 23, 2001, the Board issued an “Order Expanding Time for Answers to Motion for Reconsideration, Granting Intervention to Chevron U.S.A., Inc., and Amending Briefing Schedule” (the **Order Expanding Time**).

On September 4, 2001, the Board received “Woodway’s Answer to Shoreline’s Motion to Reconsider” (the **Woodway Answer**) and “County’s Answer to Motion for Reconsideration (the **County Answer**).

On September 10, 2001, the Board issued “Order on Motion to Reconsider, Motion to Amend and Order Modifying Prehearing Order” (the **Order on Shoreline’s Motions**). In the Order on

Shoreline's Motions, the Board denied Shoreline's request to reconsider the Order on Motions to Dismiss, however, granted Shoreline's request to amend its PFR, with the addition of a new Legal Issue 13.

On September 17, 2001, the Board received "Shoreline's Opening Brief" (the **Shoreline PHB**) and "Prehearing Brief of Chevron, U.S.A. Inc." (the **Chevron PHB**).

On October 15, 2001, the Board received "Woodway's Prehearing Brief" (the **Woodway PHB**) together with Woodway's "Motion to Supplement the Record" (**Woodway's Motion to Supplement**).<sup>[1]</sup> On this same date, the Board received "Snohomish County's Prehearing Brief" (the **County PHB**).

On October 18, 2001, the Board received "County's Motion to Supplement the Record and Request for Official Notice" (the **County's Motion to Supplement**).<sup>[2]</sup>

On October 19, 2001, the Board received "Shoreline's Reply Brief" (**Shoreline's Reply**); "Reply Memorandum of Chevron U.S.A. Inc. (**Chevron's Reply**); and "Chevron U.S.A. Inc.'s Opposition to **Woodway's Motion to Supplement the Record**" (**Chevron's Memo in Opposition**). Later this same date, the Board received "Shoreline's Supplemental Reply Brief" (**Shoreline's Supplemental Reply**).

On October 22, 2001, the Board conducted the hearing on the merits in this case in Suite 1022 of the Financial Center, 1215 Fourth Avenue, Seattle, WA. Present were Board Members Edward G. McGuire, Lois H. North, and Joseph W. Tovar, presiding officer. Also present were the Board's law student interns, Heather Cowdery and Gary Watkins. Representing Shoreline was William Plauche. Representing Woodway was Scott M. Missall. Representing the County was Karen Jorgenson-Peters. Representing Chevron were Peter Eglick and Michael Witek. Oral argument was presented by the parties regarding Woodway's Motion to Supplement the Record and the County's Motion to Supplement the Record. Oral argument was then presented regarding the case in chief. During the hearing, Mr. McGuire asked if Woodway had a "strike-through" version of the plan or other documents to better identify the amendments at issue. Mr. Missall said that he would check and provide the Board with citations or documents as appropriate.

On October 23, 2001, the Board received a letter from counsel for Woodway. The letter responded to questions that the Board had posed at the hearing on the merits and provided various citations to record documents.

## **II. FINDINGS OF FACT**

1. On November 1, 1993, the Town Council of the Town of Woodway adopted Resolution No. 150 titled “A RESOLUTION to annex certain Property (primarily the Chevron Property) to the Town of Woodway.” Ex. A, PFR.
2. On August 16, 1994, the Town of Woodway adopted its GMA comprehensive plan (the **1994 Woodway Plan**) by adoption of Ordinance No. 297. Ex. C, PFR.
3. The 1994 Woodway Plan provided specifically:

The only area where Woodway would propose expanding is into property owned by Chevron USA. It abuts Woodway’s southwest boundary, overlooking steep wooded slopes that extend to the tidelands. It is zoned Rural use by the County and is designated as Industrial in the County’s Land Use Plan. The property is isolated from the County and is within the Southwest Snohomish County Urban Growth Area. Chevron operates an asphalt plant on the parcels along the water’s edge. Burlington Northern has a railroad right of way across the. The land east of the existing operations is maintained by Chevron as a buffer between it’s [sic] industrial operations and the Town of Woodway. This property is the subject of an annexation study to be conducted by the Town of Woodway. Ex. C, PFR, Woodway Comprehensive Plan, Executive Summary, page 7.

4. In July of 1995, Snohomish County adopted its GMA comprehensive plan, which shows the unincorporated Point Wells area as “Urban Growth Area” and shows a land use designation of “rural.”
5. On November 23, 1998, the City of Shoreline adopted its GMA comprehensive plan in which it designated a Potential Annexation Area (“PAA”) that includes an approximately 100-acre [Point Wells] parcel located immediately north of the northwest corner of the City in Southwest Snohomish County Urban Growth Area. *Shoreline v. Snohomish County*, CPSGMHB Case No. 00-3-0010, Order on County’s Motion to Dismiss, Order on Supplemental Evidence and Notice, Finding of Fact 4.
6. On April 6, 2001, Woodway adopted Ordinance No. 01-406, being the “Year 2000 Update to the Town of Woodway Comprehensive Plan” (the **Woodway 2001 Plan Amendment**). Document 96.
7. The Woodway 2001 Plan Amendment adopted Framework Policies for Point Wells, including LUG-12 and LUP-19 which provide as follows:

LUG-12 Continue to work with land owners, neighborhoods and appropriate

jurisdictions, including King and Snohomish Counties and the City of Shoreline, to determine the most appropriate land use plan for Point Wells that is in the best interest of the Town.

LUP-19 Point Wells is a potential annexation area (PAA) for the Town of Woodway. Establish land use control, development plan review and impact mitigation in the PAA through an interlocal agreement with Snohomish County. *Id.*

### **III. STANDARD OF REVIEW/BURDEN OF PROOF**

Pursuant to RCW 36.70A.320, comprehensive plans and development regulations, and amendments thereto, adopted pursuant to the Act, are **presumed valid** upon adoption. The **burden is on the Petitioner** to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act.

The Board “shall find compliance with the Act, unless it determines that the [City’s] action[s are] **clearly erroneous** in view of the entire record before the Board and in light of the goals and requirements of the [GMA].” RCW 36.70A.320 (3). For the Board to find the City’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 Woodway 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**). 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 . . . 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).

### **IV. MOTIONS**

As a preliminary matter at the Hearing on the Merits, the Board heard oral argument with respect to the County’s Motion to Supplement the Record and Woodway’s Motion to Supplement the Record. WAC 242-02-540 provides in relevant part:

A party by motion may request that a board allow such additional evidence as would be necessary or of substantial assistance to the board in reaching its decision and shall state its reasons.

The Presiding Officer orally ruled on these motions and the hearing on the merits. The Board now memorializes those rulings as follows:

The Woodway Motion to Supplement is **partially granted**. The Board takes official notice of “Snohomish County Council Ordinance No. 97-0003 (Woodway Exhibit C) and Town of Woodway Ordinance No. 970324 (Woodway Exhibit D). The Board concludes that these exhibits could be of substantial assistance in answering the legal questions presently before the Board. The Board **denies** the portion of Woodway’s Motion to Supplement that would have admitted the September 27, 2001 Memorandum of Bill Trimm (Woodway offered Exhibit A).

The County’s Motion to Supplement is **partially granted**. The Board takes official notice of “Snohomish County Council Amended Ordinance No. 99-120” (County Exhibit A) and the King County County-wide Planning Policies (County Exhibit B). The Board will allow the supplementation of the record with the November 24, 1997 letter from Robert J. Drewel (County Exhibit D). The Board concludes that these exhibits could be of substantial assistance in answering the legal questions presently before the Board. The Board **denies** the portion of the County’s Motion to Supplement that would have admitted the letter from Mary Lynne Myer (County offered Exhibit C).

## **V. LEGAL ISSUES**

### **A. Legal Issue 13**

*Did Woodway violate RCW 36.70A.100 and/or .210 when it adopted comprehensive plan amendments that set forth “Point Wells Framework Policies” and asserted planning authority over the Point Wells UGA as a Woodway potential annexation area (PAA), despite Shoreline’s prior, final designation of the same area as a Shoreline PAA?*

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

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.

#### **2. Discussion**

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

In its opening brief, Shoreline argues:

Woodway’s violation of RCW 36.70A.100 is fairly obvious. Both Shoreline and Woodway have designated Point Wells as a PAA because they both ultimately contemplate annexation of the area . . . Both Shoreline and Woodway are engaged in Land Use Planning efforts covering development at Point Wells . . . Shoreline’s Point Wells PAA designation was in place at the time Woodway adopted its challenged Plan amendments designating an overlapping Point Wells PAA. Woodway therefore created the overlapping Point Wells PAAs, in disregard for RCW 36.70A.100 . . .

Shoreline’s PHB, at 8-9, (citations omitted.)

Shoreline disputes Woodway’s reasoning that Woodway’s Point Wells PAA does not conflict with Shoreline’s Point Wells PAA because the former is merely an effort to “plan for Point Wells.”<sup>[3]</sup> Shoreline states that it has been specifically excluded from the Snohomish County MUGA process. It complains:

The impacts to Shoreline of Woodway’s PAA designation would be greatly reduced if Snohomish County had in place a mechanism to resolve the dispute over Point Wells, or if the County’s Plan or CPPs provided that the County was the local government responsible for assigning the Southwest County UGA to various municipalities.

Shoreline PHB, at 12.

In response, Woodway argues:

Shoreline continues to argue that because it started planning for Point Wells in 1998, that Woodway cannot do so in 2001 and beyond. The flaw in Shoreline’s argument, of course, is that its 1998 planning actions (and specifically its designation of Point Wells as a PPA[*sic*]) occurred *after Woodway had already done so five years earlier* . . . Shoreline cites no law which says Woodway’s 1993 Town Council Resolution No. 150 is not effective to designate Point Wells as Woodway’s PAA because there is no such law . . .

Woodway PHB, at 18. (Italicized emphasis in original.)

Woodway argues that its prior actions were lawful and unchallenged and create the situation wherein Shoreline, not Woodway, has the burden of conforming its comprehensive plan. The Town argues:

Because of the chronology involved, *when Woodway took its initial action regarding Point Wells in 1993, doing so was fully consistent with the plans of Snohomish County and King County. Snohomish County's subsequent 1995 designation of Point Wells as a UGA was similarly consistent with the planning actions of Woodway, King County and other surrounding jurisdictions . . .* Because of this, it truly is *Shoreline* that has the burden under RCW 36.70C.100 [sic] to conform with prior final, unchallenged, Woodway and Snohomish County GMA designations.

Woodway PHB, at 19. (Italicized emphasis in original.)

The Town also contends:

. . . Shoreline argues that even if Resolution No. 150 validly established Point Wells as a PAA, Shoreline still wins because that fact was not reflected in Woodway's comprehensive plan. That is absurd logic for three reasons. First, there is nothing that requires a PAA determination to be reflected in a comprehensive plan . . . Second, Woodway did so reflect its decision in its 1994 comprehensive plan . . . Third, Shoreline had notice during its own 1998 comprehensive plan process that Woodway had already made that determination and chose to ignore it . . .

Woodway PHB, at 20.

The County argues that: "The overlap of Woodway's and Shoreline's PAA designations and subarea planning processes may be duplicative, but they do not render the two designations inconsistent within the meaning of RCW 36.70A.100 . . ." County PHB, at 8. The County complains:

Shoreline's cries of inconsistency seem to be an attempt to secure some kind of "right" to annex Point Wells and to exclude Woodway from the bargaining table. This attempt is contrary to the spirit of interjurisdictional cooperation and contradicts the annexation statute, Chapter 35A.14 RCW, which states that Chevron, as the sole property owner in this instance, has the deciding vote.

County PHB, at 10.

The County refutes Shoreline's reliance on the *Renton*<sup>[4]</sup> and *Ruston*<sup>[5]</sup> cases, and argues:

There is no requirement in section .100 that precludes cities in neighboring Counties from identifying the same PAAs in their comprehensive plans. The overlapping

preclusion to which Shoreline refers exists only in King County CPPs, as illustrated by the case law that Shoreline cites . . . . Contrary to Shoreline’s argument, these cases are not analogous to the situation now before the Board.

*Id.*

In reply to the County’s arguments, Shoreline states:

The County turns GMA on its head by suggesting that there is no need to resolve the inconsistency between Shoreline and Woodway’s Plans until Chevron decides to annex to one of the jurisdictions. To the contrary, this Board has recognized that one of the purposes of city comprehensive plans under GMA is to determine . . . the manner in which urban services will be provided to UGAs . . . . This Board has also held that, in order to meet the consistency and coordination requirements of RCW 36.70A.100, counties, cities and special purpose districts need to know, *in advance of annexation*, what government will ultimately provide urban services to a UGA so that all governmental entities can coordinate their plans accordingly . . . .

Shoreline Reply, at 3. (Citations omitted, italicized emphasis in original.)

As to Woodway’s claim to have designated Point Wells as a Woodway PAA prior to Shoreline’s 1998 Plan, Shoreline states:

. . . . Woodway simply (and repeatedly) claims that Resolution No. 150 established a Point Wells PAA in 1993 . . . . [however] Resolution No. 150 was not adopted to designate a Point Wells PAA, but was actually an attempt by Woodway to annex Point Wells . . . . [Woodway’s response] . . . . that its 1994 comprehensive plan did in fact designate a Point Wells PAA . . . . is attempting to re-write history. . . . Woodway’s 1994 Plan simply stated that the Town would study Point Wells to determine whether the Town should designate the area as an annexation area in the future.

Shoreline Reply, at 8-9.

## **b. Analysis**

From several of the arguments advanced by the parties, and the obvious passion expressed during those arguments, it appears that the parties are excessively hopeful or fearful about the implication of the Board’s ruling in this matter. Contrary to Shoreline’s inference, this Board lacks authority to resolve a “dispute between Shoreline and Woodway regarding which of the two

municipalities should ultimately annex and provide urban services to Point Wells.” Shoreline PHB, at 1. Contrary to the County’s fears, a Board finding for Shoreline would not “transfer jurisdiction [of Point Wells] to either city” (County PHB, at 9), nor would it “import King County CPPs into Snohomish County” (County PHB, at 13).

The essence of Issue 13 is the allegation that Woodway did not comply with the requirements of RCW 36.70A.100. Absent an accompanying allegation of noncompliance with RCW

36.70A.210,<sup>[6]</sup> this is a case of first impression that is squarely and properly before the Board. The question before the Board is simply this: **Did Woodway’s plan amendment designating Point Wells as a “Woodway PAA” create an inconsistency because Shoreline’s plan previously designated Point Wells as a “Shoreline PAA,” and did Woodway thereby violate the requirements of RCW 36.70A.100?** As detailed below, the Board concludes that the answer is “yes.”

There is no dispute that both Shoreline and Woodway have designated the same area (i.e., Point Wells) with the same comprehensive plan policy designation (i.e., Potential Annexation Area). Although certain of Woodway’s Point Wells Framework Policies call for working with various parties to “determine the most appropriate land use for Point Wells” (i.e. Policy LUG-12), LUP-19 specifically identifies Point Wells as a PAA. *See* Finding of Fact 7. It is this policy that created the inconsistency with Shoreline’s prior PAA designation. What Woodway and the County characterize as a benign “overlap” is in fact an explicit conflict. It is difficult to imagine a more direct inconsistency between the plans of two adjacent cities.

In the County’s view, absent CPPs that explicit prohibit it, “duplicative” overlapping PAAs are of no consequence (County PHB, at 8). The Board disagrees. Shoreline correctly points out that a number of public agencies must make plans for current and future service delivery to the Point Wells area<sup>[7]</sup>, and must look to adopted comprehensive plans to achieve the inter-jurisdictional coordination and consistency that is one of the core aims of GMA planning.<sup>[8]</sup>

The Board rejects Woodway’s argument that either its 1993 adoption of Resolution No. 150 or the language of its 1994 Plan designated a “Potential Annexation Area.” Resolution No. 150 was not a GMA document. While the 1994 Plan was a GMA document, it simply expressed Woodway’s continuing interest in the Point Wells area, concluding with the statement that “This property is the subject of an annexation study to be conducted by the Town of Woodway.” *See* Finding of Fact 3. Significantly, neither Resolution No. 150, nor the 1994 Plan used the phrase “Potential Annexation Area” with respect to Point Wells.

While the “first in time, first in right” doctrine set forth in *Ruston*, and cited by Shoreline (Shoreline PHB, at 9) is illuminating, it is not the controlling factor in this case. Nor is the

*Renton* decision on point, because the King County CPPs are not in play. All that the Board has before it is the clear statutory language of RCW 36.70A.100 that directs that the “plans” of cities that share “common borders” . . . “**shall be consistent.**” The most logical and equitable reading of this provision is that the burden of *removing* such an inter-jurisdictional inconsistency must rest on the jurisdiction that *created* that inconsistency. In the present case, the facts support the conclusion that the Town of Woodway created the inconsistency and therefore must bear the burden of curing it.

The Board is aware that the “first in time, first in right” result may not always achieve the best public policy outcome.<sup>[9]</sup> However, “first in time, first in right” must be the result here, under the present facts and absent the sort of multi-lateral dialogue advocated by Chevron<sup>[10]</sup> or the direct regional oversight of the MUGA process by the County. If such a dialogue is to take place, it must be initiated by the parties, for the Board cannot require it.

Consequently, the Board will direct Woodway to take legislative action to repeal or revise Policy LUP-19.

### **Conclusions re: Legal Issue 13**

The Board concludes that Shoreline has carried its burden of proof showing that Woodway’s adoption of Ordinance 01-406 **failed to comply** with the requirements of RCW 36.70A.100 and that Woodway’s action was **clearly erroneous**.

### **B. Other Legal Issues**

Because the Board has determined that Woodway has failed to comply with RCW 36.70A.100, it has remanded the challenged plan amendments for further legislative action to repeal or amend. Consequently, the Board need not and does not answer the remaining legal issues in this case.<sup>[11]</sup>

## **VI. INVALIDITY**

**Legal Issue 12 - Whether Woodway’s Plan amendments substantially interfere with GMA goals RCW 36.70A.020(1), (2), (3), (4), (11) and (12)?**

### **1. Applicable Law**

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.

## 2. Discussion

### a. Positions of the Parties

Both Shoreline and Chevron assert that Woodway's actions substantially interfere with Goals 6 and 11 of the Act and urge the Board to enter a finding of invalidity. Shoreline PHB, at 5. Chevron PHB, at 15.

Woodway argues that, even if the Board finds Woodway's action noncompliant, it cannot take up the issue of invalidity because Shoreline "abandoned" legal issue 12 by failing to brief it as such. Woodway PHB, at 6.

In response, Shoreline argues that its prehearing brief did address "invalidity" by adopting Chevron's Issue 12 argument by reference. [\[12\]](#) At any rate, Shoreline points out that, notwithstanding having been labeled as Legal Issue 12 in the prehearing order, "invalidity" is the requested relief rather than a legal issue.

### b. Analysis

The Board concluded, *supra*, that the Petitioners have carried the burden of proof of showing that Woodway Ordinance 01-406 does not comply with RCW 36.70A.100. The Board has remanded the Woodway Plan amendment for appropriate action. The Board finds that, while the Board does not reach the public participation issues raised by Chevron, nor comment upon Chevron's invalidity arguments regarding same, that Shoreline has not abandoned its ability to request invalidity. The Board will address Shoreline's request for invalidity.

While both public agencies and private individuals and corporations need to be able to rely on the policy pronouncements in adopted comprehensive plans, invalidity is not the appropriate remedy

here. Invalidity is an appropriate remedy where there is risk that permits will inappropriately vest to a noncompliant enactment during the period of remand. Because Point Wells is in unincorporated Snohomish County, and the County has sole permitting authority at this time, there is no risk of inappropriate permit vesting to Woodway plans or regulations during the period of remand. The appropriate remedy in this instance is a simple remand, which the Board has done.

### **Conclusions re: Invalidity**

The Board has found Woodway's Plan Amendment designating Point Wells as a Woodway Potential Annexation Area is **noncompliant** with RCW 36.70A.100. Due to the circumstances in this case, Woodway can take no regulatory or permitting action that would create the risk of inappropriate vesting during the period of remand. Thus, a finding of invalidity is needless. Consequently, **the Board declines to enter a determination of invalidity** for Woodway's designation of Point Wells as a Woodway Potential Annexation Area.

### **VII. ORDER**

Having reviewed and considered the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

1. The Board issues the Town of Woodway a **finding of noncompliance** with RCW 36.70A.100.
2. The Board establishes **4:00 p.m. on Wednesday, February 6, 2002** as the deadline for the Town of Woodway to take appropriate legislative action, consistent with the conclusions of this Order, to repeal or revise Point Wells Framework Policy LUP-19.
3. By **Wednesday, February 13, 2002, at 4:00 p.m.**, the Town shall submit to the Board, with a copy to the other parties, an original and four copies of its Statement of Actions Taken to Comply (the **SATC**). Attached to the SATC shall be a copy of any legislative action taken in response to this Order.
4. By **Wednesday, February 27, 2002, at 4:00 p.m.**, Petitioner Shoreline and Intervenors Chevron and Snohomish County shall submit to the Board, with a copy to all opposing counsel, an original and four copies of any Response to the SATC.
5. The Board schedules a **Compliance Hearing** in this matter for **10:00 a.m. on Monday, March 11, 2002**. The Compliance Hearing will be held in Suite 1022 of the Financial Center, 1215 Fourth Avenue, in Seattle.

So ORDERED this 28th 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  
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration.

**Board Member McGuire's Dissent**

I agree with the majority's statements that: 1) the Board lacks authority to resolve the dispute between Shoreline and Woodway regarding which of the two municipalities should ultimately annex and provide urban services to Point Wells; and 2) a Board finding for Shoreline would not transfer jurisdiction to either city nor import King County CPPs into Snohomish County. *Supra*, at 9-10. [The fact is that the Point Wells property lies within unincorporated Snohomish County and is subject to the laws, and planning authority, of Snohomish County, notwithstanding the desires of either city. <sup>[13]</sup>] However, in all other aspects of the majority's analysis and conclusions regarding Legal Issue 13, I respectfully **dissent**.

Legal Issue 13 is originally stated as:

***Did Woodway violate RCW 36.70A.100 and/or .210 when it adopted comprehensive plan amendments that set forth "Point Wells Framework Policies" and asserted planning authority over the Point Wells UGA as a Woodway potential annexation area (PAA), despite Shoreline's prior, final designation of the same area as a Shoreline PAA?***

*Supra*, at 6.

After the challenge to .210 was abandoned, the question remaining becomes whether Woodway's Point Wells Framework Policies and assertion of planning authority<sup>[14]</sup> for the area fail to comply with .100?

However, the majority restates the issue as

[D]id Woodway's plan amendment designating Point Wells as a "Woodway PAA" create an inconsistency because Shoreline's plan previously designated Point Wells as a "Shoreline PAA" and did Woodway thereby violate the requirements of RCW 36.70A.100?

***Supra*, at 10.**

This construction of the issue contains three erroneous assumptions and conclusions that the Board accepts in reaching its final conclusion – that Shoreline wins and Woodway must remove an "inconsistency."

First, the majority assumes that Woodway "designated" a "PAA." The term "PAA" is a term of art that only has any GMA relevance in the context of King County County-wide Planning Policies. PAAs are a creature of King County CPPs and have no meaning or legal effect beyond King County. Woodway's reference to an area that could be potentially annexed, even if termed a "potential annexation area," is not encumbered by a term of art in King County. These magical words in King County have no magic in Snohomish County. There is no evidence to support the notion that Woodway "designated" a PAA. Designation of any area suggests at least some form of delineation on a map. There are no map designations outlining the area. However, in its Framework Policies, what Woodway did was clearly express an interest in the eventual annexation of the Point Wells area (*See*: Finding of Fact (FoF) 7, citing LUP-19 ). This expression of interest is consistent with similar expressions of intent or desire to annex the area that were made by Woodway as early as 1993 and 1994. (*See*: *Supra*, at 10-11.)

Second, the majority assumes that Shoreline has the authority to designate a PAA within Snohomish County and that that designation has legal effect. As discussed above, Shoreline's authority to designate PAAs derives from King County CPPs. King County developed the notion of PAAs to minimize the amount of unincorporated islands of County located adjacent to and between cities. The PAAs are an effort to assign, with King County's consent, portions of unincorporated King County to its various cities. While the King County CPPs authorize King County cities to designate PAAs for *unincorporated islands of King County*,<sup>[15]</sup> they do not authorize, nor could they authorize a King County city to unilaterally designate a PAA beyond

the corporate boundaries of King County.<sup>[16]</sup> Nonetheless, Shoreline, a city in King County subject to the King County CPPs, acting contrary to King County CPP, designated the *unincorporated area of Snohomish County* containing Point Wells as being its PAA in 1998. Shoreline's action has no legal effect in Snohomish County.

Third, the majority assumes that previous or prior action means something. The majority notes that the "first in time, is first in right" doctrine is illuminating but not controlling." *Supra*, at 11. However, without citing authority or Board precedent, the Board focuses on the "jurisdiction that created the inconsistency" and resolves this case based on first in time is first in right! *Supra*, at 11.

Both Shoreline and the County argued about whether this Board's decision in *Reston v. Newcastle*, CPSGMHB Case No. 97-3-0026, Final Decision and Order, (Feb. 12, 1998) was controlling in this matter. *Supra*, at 8. Both characterized it as a "first in time, is first in right" decision, but disputed its application to this case. The basis for the Board's holding in *Renton* was that a jurisdiction "should not benefit from its disregard of the law." See: *Renton*, at 10. With the result offered by the majority, Shoreline benefits from ignoring King County's law limiting the designation of PAAs by King County cities to unincorporated King County. Additionally, if the Board has adopted a first in time, first in right doctrine, its correct application would mean that Woodway would prevail here. Shoreline's expression of intent (through a 1998 PAA designation) is preceded by Woodway's expression of intent to annex in 1993 (Resolution No. 150) or its 1994 reference to its annexation intentions in its 1994 Plan.

Further, the majority's discussion of what the "inconsistency" is not persuasive. See: *Supra*, at 11. Snohomish County identifies the area as being within a UGA (FoF 7), which by definition means that it is an area that will be developed as urban and should be potentially annexed by a municipality. Shoreline certainly has indicated that the area is an area that should be annexed (FoF 5). Woodway, likewise, has indicated that the area is an area that should be annexed (FoF 1, 3 and 7). While the stated desires of the various jurisdictions have been characterized as "overlap" by the majority (*Supra*, at 10), these expressions of interest in the annexation of Point Wells are in harmony, not inconsistent. All jurisdictions involved in this dispute recognize the Point Wells area should be urban and ultimately annexed to a municipality.<sup>[17]</sup>

The notion of two or three<sup>[18]</sup> jurisdictions interested in planning for the area does not run counter to the *findings* in RCW 36.70A.010, that "It is in the public interest that . . . local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning." The common interest in the future of Point Wells provides a basis for further work that needs to be done by these jurisdictions.

Unfortunately, I believe the majority opinion does not improve the atmosphere and environment for the necessary further discussions regarding the Point Wells area. The Board's Order, finding

noncompliance and directing Woodway, on remand, to repeal or revise the Point Wells Framework Policy LUP-19, needlessly prolongs this proceeding. It also delays the time when these jurisdictions (and others, including Chevron), come together to finalize the future of what type of urban area Point Wells will become. I would have found that Shoreline had not carried its burden of proof in demonstrating Woodway's noncompliance with RCW 36.70.100.

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[1] Woodway's Motion to Supplement asked the Board to admit the following exhibits: **Exhibit A** is "Memorandum from Bill Trimm to G. Michael Marcy, Public Relations Manager, Chevron USA, dated September 27, 2001;" **Exhibit C** is "Snohomish County Council Ordinance No. 97-0003, an Ordinance to Revise a Portion of the Corporate Boundary of the Town of Woodway, passed on March 26, 1997;" and **Exhibit D** is "Town of Woodway Ordinance No. 970325, an Ordinance to Revise a Portion of the Corporate Boundary of Snohomish County to the Town of Woodway, passed on April 21, 1997 and published April 30, 1997."

[2] The County's Motion to Supplement asked the Board to admit the following exhibits: **Exhibit A** is "Snohomish County Amended Ordinance No. 99-120, passed on January 19, 2000;" **Exhibit B** is "King County County-wide Planning Policies;" **Exhibit C** is a "Letter from Mary Lynne Myer of the City of Shoreline to the Washington State Department of Ecology, dated June 17, 1996;" and **Exhibit D** is a "Letter from Robert J. Drewel, Snohomish County Executive, to Robert E. Deis, Shoreline City Manager, dated November 24, 1997."

[3] Woodway Answer, at 5.

[4] *Renton v. Newcastle*, CPSGMHB Case No. 97-3-0026, Final Decision and Order, February 12, 1998.

[5] *Ruston v. Tacoma*, 90, Wn. App. 75, 951 P.2d 805 (1998).

[6] Unlike the *Renton* case, here there is no allegation of noncompliance with RCW 36.70A.210 (Countywide Planning Policies). Because Shoreline did not address its prior .210 claim in its opening brief, the Board deems that it has **abandoned** that portion of Legal Issue 13.

[7] Shoreline cites a number of these governmental entities, including: "King County, Snohomish County, Shoreline, Woodway, Edmonds, Olympic Water and Sewer, the Shoreline Police Department and the Snohomish County Sheriff's Department . . ." Shoreline Reply, at 3.

[8] RCW 36.70A.010 provides, in relevant part:

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

[9] For example, a unilateral city PAA designation could be made with purely speculative or pre-emptive motives and without regard to a broader county context. This would potentially be just as adverse to the public interest as the "cherry-picking annexations" that preceded the GMA.

[10] At the hearing on the merits, Chevron clarified that it did not support annexation to either Woodway or

Shoreline at this time, and wished to assure that neither side would get “a leg up” in an annexation context as a result of unilateral GMA actions. Transcript, at 40-42.

[11]

Legal Issues 9, 10 and 11, with Shoreline’s allegations shown in brackets, were set forth in the PHO as follows:

**9. Whether Woodway violated RCW 36.70A.070 when it adopted the Plan amendments?** *[Woodway’s Plan, as amended, is inconsistent because the land use element is not consistent with the transportation and capital facilities element and it fails to correctly and clearly discuss access to Point Wells. The land use element discusses access to Point Wells from Heberlein Road (238<sup>th</sup>). The transportation element and capital facilities elements, however, do not discuss access to Point Wells, or the considerable obstacles to accessing Point Wells from Woodway. This lack of internal consistency violates RCW 36.70A.070. The discussion of access in the transportation element does present an accurate picture of access to Point Wells in violation of RCW 36.70A.070.]*

**10. Whether Woodway violated RCW 36.70A.120 when it adopted the Plan amendments?** *[The capital budget decisions do not include money for accessing Point Wells or providing the area with urban services in violation of RCW 36.70A.120.]*

**11. Whether Woodway violated RCW 36.70A.140, RCW 36.70A.020(11) and RCW 36.70A.035(2)(a) by failing to provide for adequate public participation on the Plan amendments?** *[Woodway made substantial changes to its proposed amendments after the close of public comments. Woodway also submitted hundreds of pages of documents into the record without providing an adequate opportunity for the public to review those and other relevant documents and submit additional responsive material into the record.]*

PHO, at 8.

[12]

“Shoreline incorporates by this reference Chevron’s briefing on the invalidity issue.” Shoreline PHB, at 18.

[13]

Snohomish County clearly has authority and responsibility to plan for this area, absent some form of interlocal agreement with either city calling for joint planning or authorizing planning within the area. There is no such ILA or other agreement in evidence in this proceeding. For either city to expend public resources and effort for non-coordinated planning of an area beyond its jurisdiction, absent such agreement, although perhaps not the wisest decision is not prohibited by the GMA.

[14]

See footnote 13, Snohomish County is the jurisdiction with authority to plan for the Point Wells area.

[15]

King County County-wide Planning Policy LU-31 provides:

In collaboration with adjacent counties and cities and King County, and in consultation with residential groups in affected areas, *each city shall designate a potential annexation area*. Each potential annexation area shall be specific to each city. Potential annexation areas shall not overlap. Within the potential annexation area the city shall adopt criteria for annexation, including conformance with County-wide Planning Policies, and a schedule for providing urban services and facilities within the potential annexation area. *This process shall ensure that **unincorporated urban islands of King County** are not created between cities and strive to eliminate existing islands between cities.*

(Emphasis added), County Ex. B, Supra, at 6.

[16]

Even if discussion, communication and collaboration occurred between Shoreline, Woodway, Snohomish and King Counties, absent some form of interlocal agreement among the parties authorizing a PAA designation, no unilateral action by Shoreline asserting authority in Snohomish County can have any legal effect.

[\[17\]](#) It is ironic that ultimately it is Chevron, the sole property owner of Point Wells, that will ultimately decide whether it chooses to be incorporated or not, and if annexed, to whom.

[\[18\]](#) As noted in footnote 13, by law, Snohomish County is responsible for planning for the area, notwithstanding Shoreline or Woodway's interests.