CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

DAVID AND MEREDITH KENYON AND GOLD HILL COMMUNITY CLUB, Petitioner(s), v. PIERCE COUNTY, Respondent, and DANA MEEKS AND ASSOCIATES, INC., Intervenors.	**Case No. 01-3-0001** ***(Kenyon II)*** **FINAL DECISION AND ORDER**

I. Background

On January 11, 2001, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from David and Meredith Kenyon and Gold Hill Community Club (***Kenyon)***. The matter was assigned Case No. 01-3-0001, and will be referred to hereafter as ***Kenyon II v. Pierce County***. Petitioner challenges Ordinance Nos. 2000-34S and 2000-35S (the **Ordinances**) of Pierce County (**Pierce** or the **County**), which designated Gold Hill and Eagles Lair as Master Planned Resort (**MPR**) and which amends the Pierce County Zoning Atlas to designate Gold Hill and Eagles Lair as MPR. The grounds for the challenge are noncompliance with RCW 36.70A.360(4)(d) and RCW 36.70A.362(4) of the Growth Management Act (**GMA** or the **Act**).

On February 2, 2001, the Board received Dana Meeks and Associates Inc.'s "Motion to Intervene." On February 7, 2001, the Board **granted** the Meeks Motion to Intervene on the side of Pierce County.

On February 12, 2001, the Board conducted a Prehearing Conference (**PHC**). Seven legal issues were set forth in the Prehearing Order (**PHO**).

On February 20, 2001, the Board received a "Motion to Intervene" on the side of the Petitioner by Crystal Conservation Coalition. The Board **granted** the Motion to Intervene.

The parties in this case have requested, and the Board has **granted**, five Settlement Extensions, totaling 420 days.

On April 12, 2002, the Board received a letter from the Petitioner notifying the Board that attempts at settlement in this case had failed and that the parties wished to proceed with this appeal.

On April 15, 2002, the Board issued an Order Establishing the Final Schedule.

On May 17, 2002, the Board received a Stipulation from all parties to extend the Briefing and Hearing Schedule for two weeks. The Board **granted** the request.

On June 3, 2002, the Board received "Petitioner's Brief" (**Kenyon PHB**). Intervenor Crystal Conservation Coalition did not submit a Prehearing Brief.

On June 21, 2002, the Board received another Stipulation to Adjust Briefing Schedule signed by all parties in this case. The Board **granted** the Second Order extending the due dates by two days for the remaining Briefs in this case.

The Board received "Brief of Respondent Pierce County" (**Co**. **Response**) on June 26, 2002. The Board also received "Intervenor Respondent Dana Meeks & Associates, Inc.'s Prehearing Brief" (**Meeks Response**).

On July 3, 2002, the Board received "Petitioner's Reply Brief" (**Kenyon Reply**).

On July 11, 2002, the Board conducted a Hearing on the Merits (**HOM**) beginning at 10:00 a.m. in Room 1022 of the Financial Center at 1215 4th Avenue, in Seattle. Present for the Board were Edward G. McGuire, Joseph W. Tovar, and Lois H. North, Presiding Officer. The Board's legal extern, Staci Smith, was also in attendance. James Handmacher represented the Petitioners David and Meredith Kenyon. Lloyd P. Fetterly represented the Respondent Pierce County and Margaret Y. Archer represented the Intervenor Dana Meeks and Associates, Inc. Mr. Ken Madden and Mr. Darryl Howe from the Intervenor Crystal Conservation Coalition were in attendance, but did not participate. Scott Kindle of Mills and Lessard, Seattle, provided court reporting services. The

meeting adjourned at 12:30 p.m. Subsequent to the HOM, the Board ordered a Transcript of the Hearing.

On July 19, 2002, the Board received the Transcript of the HOM (**HOM Transcript**).

II. Preliminary MatterS and prefatory note

A. Preliminary Matters

On July 22, 2002, after the HOM, the Board contacted the Intervenor on the side of the County and requested a complete copy of the Crystal Mountain Master Development Plan (**CMMDP**) dated November 1998.

On July 24, 2002, the Board received the CMMDP.

On July 29, 2002, the Board received a letter (**Letter**) from James Handmacher, attorney for the Petitioners, in regard to a request made by the Board.

Mr. Handmacher stated that "I cannot find any reference in the County's Index to indicate that the Plan was ever part of the record before the County Council. Though the Board has authority under RCW 36.70A.290(4) and WAC 242-02-540 to consider additional evidence outside the record, I send this letter to make sure the Board is aware of this fact and intended to order the introduction of new evidence." Letter, at 1.

The Board notes that the CMMDP is listed in Pierce County's Index. *See:* Record Index Vol. IV, Ex. I.A.e.3. Excerpts from the CMMDP are also attached as Exhibit 15 of the Meeks Response. Additionally, the CMMDP is referenced as a document used by Pierce County in adopting Ordinance Nos. 2000-34S and 2000-35S. *See*: Kenyon PHB Ex. 1, Findings: first 2 bullets at 9 of Ordinance 2000-34S. Further, the CMMDP was discussed in the transcript of the October 5, 1999, Pierce County Council meeting. *See*: Kenyon PHB Ex. 5.

While Exhibit 15 of the Meeks Response only presented the cover page and pages II-31 and II-32 of the CMMDP, the Board determined that review of the entire plan might assist the Board in rendering its decision. Consequently, the Board requested a copy of the complete CMMDP.

The CMMDP is listed in the County's Index, portions of the CMMDP were attached to briefs; it was referenced in the adopting Ordinance and briefing by the parties. Therefore, the CMMDP is part of the record in this proceeding and appropriately before the Board.

B. Prefatory Note

The parties in this case argue about two distinct parcels of land – Gold Hill and Eagles Lair – that fall within the boundaries of the Crystal Mountain Ski Resort. The Crystal Mountain Resort (**CMR**) is owned and operated by Boyne USA, Inc. The Crystal Mountain Resort lies within federal lands; the lands within the Resort are subject to a 40-year special use permit from the United States Forest Service.

Ordinance Nos. 2000-34S and 2000-35S, specifically Map Amendment M-8, designated the entire Crystal Mountain Resort area as a **MPR**, including the Gold Hill and Eagles Lair parcels. Petitioners challenge the inclusion of Gold Hill and Eagles Lair within the County's MPR designation. The GMA permits a county to designate MPRs pursuant to RCW 36.70A.360 and RCW 36.70A.362.

Application and interpretation of these MPR provisions of the GMA is a matter of first impression for this Board. Consequently, prior to addressing the specific legal issues posed by the Petitioners, the Board will review the application and requirements of the MPR provisions contained in RCW 36.70A.360 and .362.

III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Petitioner challenges Pierce County's adoption of GMA Plan amendments, as adopted by Ordinance Nos. 2000-34S and 2000-35S. Pursuant to RCW 36.70A.320(1), Pierce County's adoption of Ordinance Nos. 2000-34S and 2000-35S are **presumed valid** upon adoption.

The **burden is on Petitioner**, Kenyon, et al, to demonstrate that the actions taken by Pierce 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 [Pierce 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 Pierce 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 the Pierce County in how it plans for growth, consistent with the goals and requirements of the GMA. However, as our State Supreme Court has stated, "Local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board*, 142 Wn.2d 543, 561 (2000) (***King County***). 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), 108 Wn. App. 429 (2001).

IV. BOARD JURISDICTION

The Board finds that Petitioner Kenyon's PFR was timely filed, pursuant to RCW 36.70A.290(2); also Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.290(2); and, pursuant to RCW 36.70A.290(1)(a), the Board has subject matter jurisdiction over the challenged Ordinances which amend the County's GMA Comprehensive Plan and development regulations.

Petitioner alleges that this case is not about the re-designation of CMR as a MPR. Kenyon PHB, at 1. Intervenor Meeks also contends that the only MPR designation before the Board in this petition is the designation of the privately owned properties of Gold Hill and Eagles Lair. Meeks Response, at 6-7.

The Board notes that the legal issues presented in the PFR and those reflected in the PHO only speak to the Gold Hill and Eagles Lair parcels.[1] However, the Board also notes that the legal issues challenging the County's designation of the CMR as a MPR allege noncompliance with both RCW 36.70A.360 and .362.[2]

As noted *supra*, the Board's review jurisdiction clearly includes amendments to a local government's GMA comprehensive plan. It is undisputed that Ordinance Nos. 2000-34S and 2000-35S adopted several amendments to the County's GMA Plan and development regulations. Here, the specific amendment subject to challenge is Map Amendment M-8, which designates as MPR Gold Hill, Eagles Lair, CMR, and various other private properties. This amounted to a designation of a total of 4,374 acres. The Board is authorized and required to examine this as a whole. The Board's jurisdiction is limited to review of Map Amendment M-8, as adopted by Ordinance Nos. 2000-34S and 2000-35S. The Board's review is not limited by the desires or preferences of the parties to only address portions of the MPR designation.

Further, it is apparent to the Board, from the statement of the legal issues and the briefing, that the parties ignored the MPR designation for the entire area as adopted in M-8, except as it may apply to Gold Hill and Eagles Lair. It is also apparent to the Board that it is not clear to the parties whether the entire MPR was designated pursuant to RCW 36.70A.360, RCW 36.70A.362 or both. When there is confusion and a lack of analysis on such a question, it is within the Board's jurisdiction and purview to determine whether the County applied and imposed the correct legal framework for the MPR designation and not limit its analysis only to whether Gold

Hill and Eagles Lair were correctly designated MPR pursuant to the GMA. This is exactly what the Board accomplishes in this Order.

V. applicable law - RCW 36.70A.360 and/or RCW 36.70A.362

RCW 36.70A.360 provides:

> **Master planned resorts.**
>
> (1) Counties that are required or choose to plan under RCW 36.70A.040 may permit master planned resorts, which may constitute urban growth outside of urban growth areas as limited by this section. *A master planned resort means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.*
>
> (2) Capital facilities, utilities, and services, including those related to sewer, water, storm water, security, fire suppression, and emergency medical, provided on-site shall be limited to meeting the needs of the master planned resort. Such facilities, utilities, and services may be provided to a master planned resort by outside service providers, including municipalities and special purpose districts, provided that all costs associated with service extensions and capacity increases directly attributable to the master planned resort are fully borne by the resort. A master planned resort and service providers may enter into agreements for shared capital facilities and utilities, provided that such facilities and utilities serve only the master planned resort or urban growth areas.
>
> Nothing in this subsection may be construed as: Establishing an order of priority for processing applications for water right permits, for granting such permits, or for issuing certificates of water right; altering or authorizing in any manner the alteration of the place of use for a water right; or affecting or impairing in any manner whatsoever an existing water right.
>
> All waters or the use of waters shall be regulated and controlled as provided in chapters 90.03 and 90.44 RCW and not otherwise.
>
> (3) A master planned resort may include other residential uses within its boundaries,

but only if the residential uses are integrated into and support the on-site recreational nature of the resort.

(4) A master planned resort may be authorized by a county only if:

(a) The comprehensive plan specifically identifies policies to guide the development of master planned resorts;

(b) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the master planned resort, except in areas otherwise designated for urban growth under RCW 36.70A.110;

(c) The county includes a finding as a part of the approval process that the land is better suited, and has more long-term importance, for the master planned resort than for the commercial harvesting of timber or agricultural production, if located on land that otherwise would be designated as forest land or agricultural land under RCW 36.70A.170;

(d) The county ensures that the resort plan is consistent with the development regulations established for critical areas; and

(e) On-site and off-site infrastructure and service impacts are fully considered and mitigated.

Laws of 1998 c 112 § 2; 1991 sp.s. c 32 § 17, (emphasis supplied).

RCW 36.70A.362 provides:

Master planned resorts -- Existing resort may be included.

Counties that are required or choose to plan under RCW 36.70A.040 may include existing resorts as master planned resorts, which may constitute urban growth outside of urban growth areas as limited by this section. *An existing resort means a resort in existence on July 1, 1990, and developed, in whole or in part, as a significantly self-contained and integrated development that includes short-term visitor accommodations associated with a range of indoor and outdoor recreational facilities within the property boundaries in a setting of significant natural amenities.* An existing resort may include other permanent residential uses, conference facilities, and commercial activities supporting the resort, but only if these other uses are integrated into and consistent with the on-site recreational nature of the resort.

> An existing resort may be authorized by a county only if:
>
> (1) The comprehensive plan specifically identifies policies to guide the development of the existing resort;
>
> (2) The comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the existing resort, except in areas otherwise designated for urban growth under RCW 36.70A.110 and *36.70A.360(1);
>
> (3) The county includes a finding as a part of the approval process that the land is better suited, and has more long-term importance, for the existing resort than for the commercial harvesting of timber or agricultural production, if located on land that otherwise would be designated as forest land or agricultural land under RCW 36.70A.170;
>
> (4) The county finds that the resort plan is consistent with the development regulations established for critical areas; and
>
> (5) On-site and off-site infrastructure impacts are fully considered and mitigated.
>
> A county may allocate a portion of its twenty-year population projection, prepared by the office of financial management, to the master planned resort corresponding to the projected number of permanent residents within the master planned resort.

Laws of 1997 c 382 § 1, (emphasis supplied).

Both of these RCW provisions allow for urban growth outside of Urban Growth Areas (**UGAs**). However, MPRs are generally self-contained and integrated resorts focused on short term visitor accommodations that are associated with recreational activities within a setting of significant natural amenities.

An “existing MPR,” pursuant to .362, is such a resort that was in existence prior to July 1, 1990. This section of the Act governs the expansion, modification and renovation of resorts that existed in 1990. A MPR established after July 1, 1990, is not an existing resort; it is governed by RCW 36.70A.360.[3]

It is noteworthy that the provisions of RCW 36.70A.360, governing “new” MPRs (those not in

existence as of July 1990) indicates that such MPRs must be developed pursuant to a "planned unit development" (**PUD**) or equivalent local review and approval process. The flexible nature of a "planned unit development"[4] enables a superior design approach to address environmentally constrained sites or unusual development objectives. PUDs typically involve a two-step process, with a *preliminary* PUD initially submitted for local review, with major project parameters spelled out, but in a somewhat generalized, even diagrammatic way. If the preliminary PUD is approved, appropriate changes or conditions are often imposed as permit conditions. With the conditions of such preliminary approval known, the applicant may then prepare more detailed engineering and architectural drawings to submit for *final* PUD review.

Conversely, "existing resorts" are not specifically required to be subject to a PUD review and approval process. Since MPRs subject to .362 are in existence, it logically follows that its provisions apply to the expansion, modification or renovation of such existing resorts. In such situations, the extensive PUD review and analysis mandatory for a new development is not specifically required. However, the expansion, modification or renovation of an existing resort cannot occur in a vacuum.

RCW 36.70A.362(1) through (5) require a county to include certain policies to guide further development of existing resorts and also require the county to make findings that such development complies with its plan and regulations. Obviously, such findings cannot be made absent some degree of review and approval of some form of "resort plan" or resort proposal. RCW 36.70A.362(4) specifically requires the county to make findings that "the resort plan" is consistent with. . . ." Without a resort plan or scheme for the expansion or renovation of an existing resort, there is no basis for a county to make such findings and mitigate impacts.

Consequently, under either RCW 36.70A.360 or .362, the proponent of a new MPR, or a proponent for expansion, modification or renovation of an existing MPR, must bring to the table a proposed "resort plan" for the jurisdiction to review. Absent such a plan, a county cannot begin the process of designating an MPR. Without the review and approval of such a resort plan, a county cannot make the necessary findings or provide for the mitigation of impacts as is required by .362. Preparation of a "resort plan" of some scope or scale is a condition precedent to begin the MPR designation process. Likewise, designation cannot occur until the final resort plan is reviewed, and based upon that review, the county can take the necessary action to comply with the requirements of RCW 36.70A.360 or .362.

VI. DISCUSSION – CMR as a MPR

The Board proceeds from a discussion of the applicable law (RCW 36.70A.360 and RCW 36.70A.362) to determining the nature of the land designated MPR in this action and an examination of how the County proceeded in its adoption of Map Amendment M-8.

A. Is the Crystal Mountain Resort an existing resort or a new resort?

Kenyon's Reply Brief on page one states "There is no question that Crystal Mountain Resort is an existing resort for purposes of RCW 36.70A.362. That statute defines an existing resort as a resort in existence on July 1, 1990. Crystal Mountain Resort opened to the public in 1962." Kenyon PHB, at 1, Ex. 4.

The County and Intervenor Meeks also agree that Crystal Mountain Resort is an existing resort. County Response, at 5-6. Meeks Response, at 2. There has been no dispute among the parties regarding this issue.

The Board agrees that the facts support the Finding of Fact (**FOF**) that Crystal Mountain Resort is an existing resort for the purposes of RCW 36.70A.362. *See:* FOF No. 3 in App. A of this FDO.

B. Are the privately owned properties of Gold Hill and Eagles Lair part of the existing Crystal Mountain Resort for purposes of designation as an MPR?"

The base of this dispute is whether Gold Hill and Eagles Lair are part of the existing Crystal Mountain Resort.

The Petitioner contends,

> Unlike Crystal Mountain Resort, Gold Hill and Eagles lair are private properties not subject to Forest Service regulation. Meeks concedes that its property is 'essentially undeveloped.' (Meeks prehearing brief, page 9). As noted in the declaration of Dana Meeks, submitted to this Board in the 1999 appeal, as of July 1, 1990, Gold Hill was not a master-planned resort, but consisted of 22 privately-owned homes in an alpine setting surrounded by scattered forest. (Ex. C to Petitioners' Ex. 6). Thus, Meeks acknowledges that Gold Hill and Eagles lair are not an existing resort as defined in the GMA. (footnote omitted).

Kenyon PHB, at 1.

However, Meeks asserts that since its inception Gold Hill has been an integral part of CMR.

> At its inception, Gold Hill was a direct response to and intended to be an integral part of Crystal Mountain. After purchasing the property, Ward Meeks presented his vision to Pierce County and, in 1966, the County approved his plan and rezoned Gold Hill

> as Forest Recreation (**FR**). The FR designation allowed for vacation-home lots of 5000 square feet. It was this zoning effort that led to the development of the existing Gold Hill Community (sometimes referred to as Gold Hill Divisions I and II). Although the remaining 14.7 acres (sometimes referred to as Gold Hill division III) owned by Meeks & Associates is not yet developed, it was always contemplated that this remaining land would be developed consistent with the previously developed Gold Hill Community. In fact, the Crystal Mountain Sewer District reserved 8 additional water connections for this development, and it is Meeks & Associates intention to develop this property into 8 lots. (footnote omitted).

Meeks Response, at 9-10, Ex. 12.

Exhibit 13 of Intervenor's Response Brief is a letter from AHBL Civil and Structural Engineers to the Planning Committee of the Pierce County Council dated June 14, 2000.

> Access to Gold Hill is linked to the Crystal Mountain Resort. During the ski season, Gold Hill property owners rely on the 'Gold Hill chair lift', owned and operated by Crystal Mountain, for access to the community. Moreover, property owners within Gold Hill purchased preferred parking for Crystal Mountain at a discounted rate of $100 per year. For visitors, the price of parking stalls is $350 per year.
>
> Moreover, the future land use planning by Crystal Mountain associated with the preparation of its master development plan (**MDP**) and environmental impact statement (**EIS**) have included Gold Hill. In acknowledging this important condition, Sno. Engineering, the consultant preparing Crystal Mountain's MDP and EIS, emphatically stated, in a letter to the Pierce County Council dated Sept. 17th 1999, that '[w]ithout question, Gold Hill is a resort community fully integrated into Crystal Mountain's Master Development Plan.
>
> Examples of the consideration of Gold Hill within Crystal Mountains MDP and EIS is that the Water System Storage Analysis and the General Sewer and Facilities Plan within these documents included projections for Gold Hills demand for water and sewer disposal. Moreover, five of the six alternatives within the EIS include relocating the existing Gold Hill access road away from the existing road to a new shorter alignment beginning between the proposed hotel and the existing Silver Skis condominiums and adding special parking for Gold Hill cabin owners.

Meeks Response, at 10-14, Ex. 13

In a letter dated May 9, 2000, William Steele, Director of Planning for Crystal Mountain Resort,

addressed Pierce County Council members affirming Crystal Mountain's support for including the private lands in the reclassification to MPR. "In a forthcoming Draft Environmental Impact Statement (**DEIS**), extensive study and documentation exists to demonstrate Gold Hill community has been fully integrated into Crystal Mountain's resort-wide plan. Also, capacity for future development of Gold Hill has been calculated into the resort-wide plan." Meeks Response, at 11 , Ex. 11.

Based on evidence noted above, the Board concludes that Gold Hill is an integral part of the Crystal Mountain Resort.

With regard to Eagles Lair, Exhibits 8 and 9 of Meeks Response contain additional letters from William Steele, Director of Planning for Crystal Mountain Resort, expressing support for the inclusion of this private land in the area-wide map amendment as MPR.

> This land, also known as Eagleslair, is bordered on three sides by the Crystal Mountain resort and is located within the Silver Creek drainage. As part of the amendment, this land could be utilized for a resort-related use that could broaden the recreational opportunities for Crystal Mountain skiers. An example, noted by Dana Meeks at the June 2, 1999 public hearing, would be for a hut skiing facility. This would be a low-impact use that would not require planning for off-site water, sewer or power. Many ski resorts in the United States currently offer hut skiing: Aspen, Vail, Snowmass, Telluride, Jackson Hole and Sun Valley to name a few. Access to those hut facilities is by cross-country ski or snowshoe. Another potential use would be for a yurt facility. As with hut facilities, yurts do not require planning for off-site water, sewer or power.

Meeks Response, at 11-12 Ex. 8.

Kenyon's PHB briefly argues that Eagles Lair is not part of CMR. However, Kenyon's PHB, Exhibit 4, an excerpt from the Staff Report and Draft Supplemental Environmental Impact Statement for 1999 Annual Amendments Pierce County Comprehensive Plan speaks to the subject at length. The report states:

> Staff recommends denial of the Meeks proposed reclassification of the 9 acres referred to as Eagleslair from FL to MPR. This denial recommendation is based on the following factors.
>
> 1. The absence of evaluation or planning for this site in the 1998 Master Development Plan for Crystal Mountain Resort.
> 2. The inaccessibility of this property from existing or planned transportation infrastructure.

> 3. The improbable development of the site based on the landslide and erosion hazards associated with the ridge top location.
> 4. On-site and off-site infrastructure impacts have not been fully considered and mitigated for development in this location . . . .

Kenyon PHB, at 2, Ex. 4.

Meeks counters this argument with Mr. Steel's statement in Exhibit 9, "Crystal Mountain and the Gold Hills Community have had a long-term partnership, providing access, utilities, etc. Likewise, we anticipate that future opportunities related to the use of the Eagles lair parcel will result in a similar partnership, building for the long-term need for reclassification as MPR." Meeks Response, Ex. 9.

Based on the above statements, the Board finds and concludes that Eagles Lair *is not* presently an integral part of CMR. Nonetheless, due to its location there is an opportunity to include Eagles Lair in a resort plan for the future expansion of CMR.

C. What section of the GMA applies in designating the CMR as a MPR?

Based on the Board's conclusion in answering the questions posed in Sections A and B above, the Board has determined that CMR is an existing resort. Gold Hill is an integral part of the existing CMR. Eagles Lair is not part of the existing resort, nor due to its size and location would it be appropriate to be developed as an independent "new" resort. Nonetheless, Eagles Lair could be included as part of the expansion of an existing resort (i.e. CMR). Therefore, the Board concludes that RCW 36.70A.362 is the appropriate GMA provision governing the MPR designation of the CMR area.

D. What section of the GMA did Pierce County follow in designating CMR as an MPR?

The challenged Ordinances Nos. 2000-34S and No. 2000-35S make no citation to either RCW 36.70A.360 or RCW 36.70A.362. *See:* Kenyon PHB, Exhibits 1 and 2.

However, the record and indexed materials reveal that RCW 36.70A.362 (existing resorts provisions) was mentioned to the Pierce County Council on several occasions during the Council decision-making process on Map Amendment M-8.

First, Volume IV, p. 10, of the Pierce County Index lists "Application Materials" for Map Amendment M-8. Upon the Board requesting these "Application Materials" from the County Attorney, requesting that the County, "show its work," with regard to Amendment M-8, the

Board was given a copy of the "Application for Area-Wide Amendment to Pierce County Comprehensive Plan: No. M-8." Quoting directly, “General Description of Proposal: Designate Crystal Mt Resort area as Master Planned Resort based on RCW 36.70A.362. Why is the land use reclassification needed and being proposed? Crystal Mountain is an existing resort that meets requirements for Master Plan Resorts in the GMA, RCW 36.70A.362." Record Index Vol. IIIA, Ex. IV.U.8.a.

Second, the Board notes that Ordinance Nos. 2000-34S, states "Based on the description of the future improvements in the 1998 Master Development Plan, Crystal Mountain Resort will continue to conform to all of the criteria outlined for MPRs in the Growth Management Act." The language "continue to conform" clearly suggests acknowledgment of an existing resort (RCW Section 36.70A.362 of the GMA). Kenyon PHB Ex. 1.

Third, the Staff Report and Draft Supplemental Environmental Impact Statement for the 1999 Annual Amendments to the Pierce County Comprehensive Plan reads:

> Consistency with GMA, the Plan and County – Wide Planning Policies
> Master Planned Resorts are anticipated in Pierce County. This proposal would not conflict with any existing GMA, Comprehensive Plan, or County – Wide Planning Policies. It is important to note that this amendment is only appropriate because of the provision in RCW 36.70A.362 that allows existing resorts to be included in the MPR designation. The Planned Unit Development (**PUD**) section in the zoning regulations that addresses MPRs is slightly different from the provision in RCW because MPR projects are subject to Hearing Examiner review and *subsequent* consideration of the County Council.

Kenyon PHB, Ex. 4.

In addition, excerpts of the meeting of the Pierce County Council on October 5th, 1999, relative to ordinances No. 99-93s2 also display references to RCW 36.70A.362.

> Handmacher: . . . Now in order for you to designate this under your Comp Plan as MPR, you have to make certain Findings. The GMA, in RCW 36.70A.362 authorizes existing resorts to be included in the MPR designation, but you have to make specific Findings. . .
>
> Bjorgen: . . . The attorney who testified a moment ago on behalf of one or more of the property owners up there referred to an RCW section in the GMA which deals with the designation of existing resort areas as Master Planned Resorts. For the record, it's RCW 36.70A.362. . . .

Kenyon PHB, at 2, Ex. 5.

The above statements suggest that the Pierce County Council intended to enact the M-8 Amendment under the provisions of RCW 36.70A.362. This leads the Board to examine what the Pierce County Code provides for designating a MPR.

The Pierce County Comprehensive Plan, Title 19A. in the Pierce County Code (**PCC**) and Development Regulations Title 18A. PCC include specific policies to guide the development of Master Planned Resorts. PCC 19A.30.120 states, “Proposals for master planned resorts must conform to RCW 36.70A.360." Meeks Response at 21, fn 19, App. C. Pierce County Code 18A.75.080 also references RCW 36.70A.360. Meeks Response at 22, n 21, App. D.

The Board notes that the State Legislature amended the GMA, adding Section .360, in 1991. See RCW 36.70A.360. In 1997, the State Legislature amended the GMA again by adding Section .362 (existing resorts). See RCW 36.70A.362. However, the Board has been unable to identify any Pierce County County-Wide Planning Policies, Development Regulations or Comprehensive Planning Policies that reference or speak to section .362.

During the HOM, the Board asked the following question, "Well, the Act clearly distinguishes between .360 and .362, two separate sections, one for new and one for existing resorts. I don't see that the County distinguishes at all between a new master planned resort or an existing resort." Ms. Archer, attorney for the Intervenor, responded, “They don't have separate provisions. You’re correct." HOM Transcript, at 74. The County did not dispute this statement.

Although the parties argued about the application of the PUD process in designating a MPR, RCW 36.70A.362, which is used to designate an <u>existing</u> resort as MPR, **does not require a PUD**. However, it does require that the findings for consistency with the county's development regulations established for critical areas and that full consideration and mitigation for both on-site and off-site infrastructure impacts have been completed prior to making the designation. These <u>completed</u> findings and mitigations must be based on a master development plan that sets forth the details regarding future development of an existing resort. Because the findings and mitigation must be completed prior to the designation, the Master Development Plan <u>cannot be a fluid and/or an incomplete document</u>. It must be reviewed and approved by the legislative body in its final form – the same form used to <u>complete</u> the critical area findings in on-site and off-site infrastructure impacts. This Master Plan acceptance becomes the equivalent of the PUD process used in RCW 36.70A.360. It ensures all future development is in accord with the county development regulations, county-wide planning policies and the county's comprehensive plan. In addition, it guarantees that all future development of the <u>existing</u> resort will be in accord with the document received by the County. Only through formal adoption of a Master Plan can the

County Council be assured that their original intent is followed and that the county will maintain control over the development of the area. After the Master Development Plan is completed, reviewed, and formally adopted by the County legislative body, the criteria in subsections 1 through five of RCW 36.70A.362 can be met and the county legislative body can designate an existing resort as MPR.

E. Conclusions

The Board finds and concludes:

- Crystal Mountain Resort is undisputedly an existing resort by the definition in RCW 36.70A.362.
- Gold Hill is an integral part of the Crystal Mountain Resort.
- Eagles Lair is not presently an integral part of CMR. Nonetheless, due to its location there is an opportunity to include Eagles Lair in a resort plan for the future expansion of CMR.
- RCW 36.70A.362, which is used to designate an existing resort as a MPR, does not require a PUD review and approval process.
- Pierce County Code does not address RCW 36.70A.362 and therefore it does not contain the necessary resort plan review and approval process to designate an existing resort as a MPR.
- Pierce County has not reviewed and adopted a "resort plan" for CMR (*i.e.* a Master Development Plan for Crystal Mountain Resort).

Therefore, the Board concludes that Pierce County was **clearly erroneous** in its method of adopting Amendment M-8 to the Pierce County Comprehensive Plan and development regulations. Clearly, Crystal Mountain Resort falls in the category of an existing resort (established well before 1990). The Pierce County Comprehensive Plan and Development Regulations provide the procedure and guidelines for Section .360 of the GMA which deals with "new" master planned resorts, but the Pierce County Code is silent as to existing resorts. Consequently, Pierce County's adoption of Ordinance Nos. 2000-24S and 2000-35S **does not comply** with the requirements of RCW 36.70A.362.

VII. Legal Issues 1-7

A. Discussion

The Board has determined that the appropriate process for the designation of Crystal Mountain Resort as a Master Planned Resort is set forth in RCW 36.70A.362 (existing resorts) rather than in RCW 36.70A.360 (new resorts). Therefore, the Board will not address issues dealing with RCW 36.70A.360.

1. **Did Pierce County violate RCW 36.70A.360(4)(a) and RCW 36.70A.362(1) by amending its comprehensive plan to re-designate the private property contained in the former mining claims known as Gold Hill and Eagles Lair to MPR without policies specifically identified in the Comprehensive Plan to guide the development of master planned resorts?**

Regarding Legal Issue 1, the Board has determined that there are no policies in the Pierce County Code identified with RCW 36.70A.362. *See:* Section VI. D of this FDO. Therefore, the County ‘s action was **clearly erroneous** and **does not comply** with the requirements of .362.

2. **Did Pierce County violate RCW 36.70A.360(4)(d) and RCW 36.70A.362(4) by amending its comprehensive plan to re-designate the private property contained in the former mining claims known as Gold Hill and Eagles Lair to MPR without ensuring that the resort plan is consistent with the development regulations established for critical areas?**

3. **Did Pierce County violate 36.70A.360(4)(e) and RCW 36.70A.362(5) by amending its comprehensive plan to re-designate the private property contained in the former mining claims known as Gold Hill and Eagles Lair to MPR without fully considering and mitigating the onsite and offsite infrastructure impacts?**

Regarding Legal Issues 2 and 3, the Board has found that a final Master Development Plan for Crystal Mountain Resort has not been reviewed and approved by Pierce County. *See:* Section VI D of this FDO. Therefore, there is no basis, to date, for entering findings that indicate CMR would be in compliance with the critical area provisions and compliance with the on-site and off-site infrastructure impact provisions of RCW 36.70A.362(4) and (5). Therefore, the County’s action was **clearly erroneous** and **does not comply** with the requirements of .362.

4. **Did Pierce County violate RCW 36.70A.360(1) and Pierce County Code Sec. 18A.75.080 by amending its comprehensive plan to re-designate the private property contained in the former mining claims known as Gold Hill and Eagles Lair to MPR, before a planned unit development was approved for the properties?**

As to Legal Issue 4, the Board has determined that RCW 36.70A.360 does not apply to the

designation of an existing resort (CMR) as an MPR. Therefore, this issue is **dismissed**. S*ee:* Section VI D of this FDO.

5. Did Pierce County violate the consistency requirements of Chapter 36.70A, RCW by amending its comprehensive plan to re-designate the private property contained in the former mining claims known as Gold Hill and Eagles Lair to MPR, because this action is inconsistent with Pierce County Code Sec. 18A.75.080, which requires approval of a planned unit development for the properties before consideration of a comprehensive plan amendment to re-designate the properties MPR?

6. Did Pierce County violate RCW 36.70A.070 by amending its comprehensive plan to re-designate the private property contained in the former mining claims known as Gold Hill and Eagles Lair to MPR, because this action is internally inconsistent with Section 19A.20.080(B) of the Pierce County Comprehensive Plan, which requires any proposed amendment to the comprehensive plan to be consistent with the adopted implementation measures?

7. Did Pierce County violate RCW 36.70A.070 by amending its comprehensive plan to re-designate the private property contained in the former mining claims known as Gold Hill and Eagles Lair to MPR, because this action is internally inconsistent with sections 19A.30.120 and 19A.40.010(F) of the Pierce County Comprehensive Plan, which requires the on-site and off-site impacts and uses of this are mitigated through site development standards and guidelines, and site plan review is conducted through a public hearing process, before consideration of a comprehensive plan amendment to re-designate the properties to MPR?

Legal Issues 5, 6, and 7 allege violations of the consistency requirements of the GMA. The basic premise underlying each of these issues is that the designation of an MPR is required to be undertaken pursuant to the PUD review and approval process and the procedures established in Pierce County Code. *See:* PCC 18A.75.080, PCC 19A.20.080(B), PCC 19A.30.120, and PCC 19A.40.010(F). The references in the PCC only contain citations to RCW 36.70A.360. As discussed above, the Board has determined that RCW 36.70A.360 is not the proper section of the GMA to be adhered to in the designation of a MPR for CMR. The Board notes that if the County chooses to designate CMR as an MPR, it must establish review and approval procedures for designating existing resorts that comply with RCW 36.70A.362, to accomplish that result. In light of the fact that the County lacks appropriate procedures, the Board **dismisses** Legal Issues 5, 6 and 7.

B. Conclusions

Regarding Legal Issues 1, 2 and 3, the Board concludes that the County's action of adopting Ordinance Nos. 2000-34s and 2000-35S, designating the CMR area MPR was **clearly erroneous** and **does not comply** with the provisions of RCW 36.70A.362.

Regarding Legal Issues 4, 5, 6 and 7, the Board concludes that the County only has MPR procedures that reference RCW 36.70A.360, which is not applicable to the challenged action. Therefore, Legal Issues 4, 5, 6 and 7 are **dismissed**.

VIII. INVALIDITY

The Petitioners have requested that the Board make a determination of invalidity for Pierce County Ordinance Nos. 2000-34S and 2000-35S. Kenyon PHB, at 13-14.

The applicable law provides:

RCW 36.70A.302 Determination of invalidity – Vesting of development permits – Interim controls.

> (1) A board may determine that part of 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 of 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.

Petitioner alleges that continued validity of Ordinance Nos. 2000-34S and 2000-35S will substantially interfere with the fulfillment of Goals 1, 2, 10, and 12 of the GMA. Kenyon PHB, at 13-14.

The Board has determined that Pierce County's procedure in the designation of Crystal Mountain

Resort, Gold Hill and Eagles Lair as a MPR **does not comply** will the requirements of RCW 36.70A.362. Further, the Board will **remand** the Ordinances to Pierce County to take corrective action. However, the Board does not find that continued validity of the Ordinances would substantially interfere with the fulfillment of the goals of the GMA. The request for invalidity is **denied**.

IX. ORDER

Having reviewed and considered the GMA, prior Orders of the Boards, the above referenced documents, having considered the briefing and oral arguments of the parties, and having deliberated on the matter, the Board Orders:

1. The Board finds and concludes that Pierce County's adoption of Ordinance No. 2000-34S, specifically the adoption of M-8 Amendment, was **clearly erroneous** and **does not comply** with the requirements of the Growth Management Act [RCW 36.70A.362].
2. Additionally, the Board finds and concludes that Pierce County's adoption of Ordinance No. 2000-35S, specifically the adoption of Amendment M-8, was **clearly erroneous** and **does not comply** with the requirements of the GMA [RCW 36.70A.362].
3. The Board **remands** Ordinance Nos. 2000-34S and 2000-35S with direction to the County to take the necessary legislative actions to comply with the GMA (RCW 36.70A.362) as set forth and interpreted by this Final Decision and Order by no later than 4:00 p.m. on **February 13, 2003**.
4. By no later than 4:00 p.m. on **February 20, 2003**, the County shall file with the Board an original and four copies of a Statement of Actions Taken to Comply with the Final Decision and Order (the **SATC**) and shall simultaneously serve a copy on Petitioner.
5. By no later than 4:00 p.m. on **February 27**, 2003, or seven calendar days after the County submits its SATC, whichever comes first, the Petitioner may file with the Board an original and four copies of its Memorandum in the Response to the SATC, and shall simultaneously serve a copy on the County.
6. Pursuant to RCW 36.70A.330 (1), the Board gives **Notice of Compliance Hearing** in this matter to be held at **10 a.m.** on **March 6, 2003**, in room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. In the event that the County files its SATC earlier than February 20, 2003, the Board will issue an Order amending the date for the Compliance Hearing.

So ORDERED this 27th day of August 2002.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____

Edward G. McGuire, AICP
Board Member

_____

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.

Appendix A

Findings of Fact

1. RCW 36.70A.360 deals with the designation of new Master Planned Resort and was adopted by the State Legislature in 1991. *See* RCW 36.70A.360.

2. RCW 36.70A.362 deals with the designation of existing Master Planned Resorts and was adopted by the State Legislature in 1997. *See* RCW 36.70A.362.

3. RCW 36.70A.362 defines an existing resort as, "a resort in existence in 1990." Crystal Mountain Resort was open to the public in 1962. Kenyon PHB, at 1, Ex. 4. The Crystal Mountain Resort is an existing resort as defined in RCW 36.70A.362.

4. Gold Hill is an integral part of the Crystal Mountain Resort.

5. Eagles Lair is not presently an integral part of CMR. Nonetheless, due to its location there is an opportunity to include Eagles Lair in a resort plan for the future expansion of CMR.

6. RCW 36.70A.362, which is used to designate an <u>existing</u> resort as a MPR, does not require a PUD review and approval process.

7. Pierce County Code does not address RCW 36.70A.362 and therefore it does not contain the necessary resort plan review and approval process to designate an existing resort as a MPR.

8. Pierce County has not reviewed and approved a "resort plan" for CMR (i.e. Master Development Plan for Crystal Mountain Resort).

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[1] The PFR and PHO both contain the following phrase in each legal issue, "the privately owned property contained in the former mining claims known as Gold Hill and Eagles Lair". *See*: PFR, at 2-5_; and PHO, at 5-6.

[2] *See*: PFR, at 2-5; and PHO, at 5-6.

[3] The Board notes that RCW 36.70A.360 was added to the GMA in the first Legislative Session after the GMA was enacted (1991), while RCW 36.70A.362 was added in 1997. Therefore, until 1997 the provisions of RCW 36.70A.360 governed all "Master Planned Resorts".

[4] While the term is not defined in the GMA, PUD, refers to an innovative zoning technique that enables more flexible development controls than traditional zoning. *See* RCW 36.70A.090. PUD's typically permit the waiver or modification of site development; density and even use standards in order to better suit environmental considerations, site context, or other identified public benefits. *The Practice of Local Government Planning*, 2nd Edition, International City Management Association, Washington, D.C., 1998, pp. 278-280.