



expansion of the Maltby UGA, FLUM and Plan designation and rezoning, was **clearly erroneous** and **does not comply** with the consistency requirements of RCW 36.70A.210, .070(preamble) and .120. Further, the Board enters a **determination of invalidity** on the adoption of these Ordinances, as they pertain to the Maltby UGA, FLUM and Plan designation and rezoning, since the County's action substantially interferes with the fulfillment of goal 1 (RCW 36.70A.020(1)).

Order on Remand, at 9. The Order on Remand also included a compliance schedule of less than the 180-day statutory limit, and date for a compliance hearing. *Id.*, at 9-10.

On March 28, 2003, pursuant to a request of the County, the Board issued an "Order Extending Compliance Period in Hensley IV [Maltby UGA]" (**Extension Order**). The Extension Order provided in relevant part:

The motion to extend the compliance period is **granted** as indicated below, the Board's determination of invalidity remains in place until substantial interference with the goals of the GMA is removed and compliance is achieved.

1. By no later than **June 20, 2003**, the County shall take appropriate legislative action to repeal, amend or otherwise modify the Maltby UGA, FLUM designation and rezoning, to comply with the consistency requirements of RCW 36.70A.210, .070(preamble) and .120, as interpreted in the Board's prior Orders in this matter..
2. By no later than **June 27, 2003**, the County shall file with the Board an original and four copies of a Statement of Action Taken to Comply (**SATC**) with the GMA. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on Petitioners Hensley and McVittie.
3. By no later than **July 7, 2003**, Petitioners may file with the Board an original and four copies of Comments on the County's SATC. Petitioners shall simultaneously serve copies of their Comments on the County's SATC on the County.
4. By no later than **July 10, 2003**, the County may file with the Board an original and four copies of the County's Reply to Comments. The county shall simultaneously serve a copy of such reply on Petitioners.
5. Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance**

**Hearing** in this matter for **1:30 p.m. July 17, 2003** at the Board's offices.

Extension Order, at 2-3.

On June 27, 2003, the Board received "Snohomish County's Statement of Actions to Comply" (**Snohomish SATC**), with six attachments: A) Ordinance No. 03-049; B) Ordinance No. 03-050; C) Ordinance No. 03-051; D) Ordinance No. 03-052; E) 5/28/03 Memo re: Proposed Public/Institutional Use Designation; and F) Notice of Introduction of Ordinances and Notice of Public Hearing.

On July 7, 2003, the Board received "Hensley Response to Snohomish County's Statement of Actions to Comply" (**Hensley Response**), with two attachments. Exhibit 1 is "Addendum 37 to the [FEIS] for the Snohomish County GMA Comprehensive Plan;" and Exhibit 2 includes: a June 2, 2003 letter to the County Council from Petitioner, a December 10, 2002 letter to the County Council from Petitioner, and a copy of a booklet entitled "Why Johnny Can't Walk to School."

On July 10, 2003, the Board received: 1) "Maltby Christian Assembly's Reply to Hensley Response to Snohomish County's Statement of Actions to Comply" (**MCA Reply**); and "Snohomish County's Reply to 'Hensley Response to Snohomish County's Statement of Actions to Comply'" (**Snohomish Reply**).

On July 17, 2003, the Board conducted the compliance hearing. Present for the Board was Board Member Edward G. McGuire, Presiding Officer (**PO**).<sup>[2]</sup> Petitioners McVittie and Hensley appeared *pro se* at the Board's Offices, Brent Lloyd, represented Snohomish County. Simi Jain and Lynette Meachum, Board externs, also attended the hearing. Scott Kindle of Mills and Lessard Inc. provided court reporting services. A transcript of the proceeding was ordered.

At the compliance hearing both Petitioner and Intervenor offered potential exhibits for the Board's consideration. The County objected to Petitioner's submittal and Petitioner objected to Intervenor's submittal. The PO orally accepted the submittals and indicated they would be accorded the weight they merit in the Board's deliberations. The following Table acknowledges these exhibits as admitted and assigns an Exhibit No.

<b>Proposed Exhibit: Documents</b>	<b>Ruling – Exhibit No.</b>
1. 1999 Proposal from Maltby Christian Assembly for a Plan amendment adding to the Maltby UGA and requesting a Urban Commercial designation.	<b>Admitted</b> – Compliance Hearing Supp. Ex. #1

2. 1/27/03 letter from David Anderson, OCD to Snohomish County Council Chairman Gary Nelson re: amendments to GPP LU-1.A.9. <a href="#">[3]</a>	<i>Admitted</i> – Compliance Hearing Supp. Ex. #2
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On July 23, 2003, the Board received the transcript of the compliance proceeding (**Transcript**).

## **II. DISCUSSION and ANALYSIS**

### Position of the Parties:

The County states that Board Member Tovar’s concurring opinion, [\[4\]](#) in the FDO for *Hensley IV*, “was the catalyst for the four ordinances adopted by the Council in response to the Board’s order.” County SATC, at 4. The County explains that Ordinance Nos. 03-049 and 03-051, “create a system for adopting limited institutional UGA expansions to accommodate the growing needs of rural and urban residents for public and institutional uses such as schools, parks, government facilities and, in the case now before the Board, churches and church-related facilities.” County SATC, at 4. The County continues, “Ordinance Nos. 03-050 and 03-052, use this new system to include the 13-acre Maltby Christian site within the Maltby UGA and restrict the site to church-related land uses.” County SATC, at 4. The remainder of the County’s SATC summarizes the provisions of each of the Ordinances. County SATC, at 5-11.

Finally, the County asserts, “These Ordinances allow for limited UGA expansions to accommodate non-capacity generating, institutional land uses that do not fall within the UGA expansion requirements of GPP Policy LU 1.A.9, which always applied exclusively to residential, commercial, and industrial land.” County SATC, at 11. The County maintains that adoption of these four Ordinances now bring the County into compliance with the requirements of the Act and the Board’s Order. County SATC, at 13.

Petitioner Hensley challenges the County’s characterization of the four Ordinances as allowing “limited institutional UGA expansions.” She asserts that the allowed limited institutional UGA expansions are:

[T]he largest producers of traffic during rush hours being located on the fringes of urban and in rural areas where infrastructure is lacking. These typical uses (churches and schools) are motivations for sprawl and the movement of urban residents to rural areas who wish to reduce the transportation requirements for their households. Schools and churches are the centers of communities and neighborhoods. Their urban placement is vital to sustainability of neighborhoods in urban areas and cities.

Their design in rural areas are typically smaller and sized for these smaller populations who might travel farther for these uses. In urban areas where densities are much greater, larger facilities are necessary as well as a greater intensity of local services. Placing these more urban larger uses in locations more rural, dissects and dismantles the cohesiveness of urban areas and their necessary services. It causes urban infrastructure and services to leapfrog urban areas and move to the more remote areas of the county. In essence, the schools and churches have the capacity to dictate UGA boundaries rather than buildable lands reports and evaluations by the Cities and County under RCW 36.70A.110 and RCW 36.70A.215. Instead, these exempted public/institutional uses exacerbate the suburban sprawl that the GMA was legislated to reduce.

Hensley Response, at 2.

Petitioner then takes issue with each of the Ordinances, alleging a lack of definition of terms; questions the lack of UGA expansion criteria for the P/IU designation; suggests the process could be abused to add residential units; argues that the designation is not necessary since the site is developing on a drain field pursuant to a conditional use permit; and questions the practicality of reversing a P/IU designation; and suggests the process, if any, should be quasi-judicial – not legislative (political). Hensley Response, at 2-6. Petitioner concludes that the new series of Ordinances are noncompliant with Goals 1, 2, 3, 11 and 12, exacerbate sprawl and are inconsistent with the County’s GPP. Hensley Response, at 6-11.

In reply, the County observes that the legislative process is indeed political. “Different voices were heard, some arguing in favor of greater flexibility for accommodating public and institutional uses, others against that flexibility and the uses it would encourage.” Snohomish Reply, at 3. The County also notes that Petitioner was one of the voices heard. Snohomish Reply, at 3-4.

As to Petitioner’s assertion that “schools and churches have the capacity to dictate UGA boundaries,” the County counters, “Any application of the P/IU designation, whether in connection with a UGA expansion or not, would require the adoption of an ordinance amending the FLU map. The FLU map is an element of the County’s GMA Comprehensive Plan, which means that all uses of the P/IU designation could be challenged before the Board.” Snohomish Reply, at 6.

To counter Petitioner’s claims of potential abuse of the process, the County explains, “[O]nly churches and school instructional facilities are allowed under the [residential] implementing zones for land that is added to a UGA under the P/IU designation, *unless* the P/IU designation is

changed and the UGA expansion requirements of GPP Policy LU 1.A.9 and Countywide Planning Policy UG-14 are satisfied. [Acting to change a P/IU designation without meeting these requirements would violate the GMA.]” Snohomish Reply, at 8-9.

Maltby Christian Assembly notes that there is no evidentiary support for Petitioner’s assertion that “churches and schools are motivations for sprawl and the movement of urban residents to rural areas” or that churches and schools are the “largest producers of traffic during rush hours.” MCA Reply, at 2. Further, MCA notes that the lack of definitions for ‘churches or schools’ does not violate the GMA. MCA Reply, at 3. In conclusion, MCA urges the Board to find the County’s actions in compliance with the GMA. MCA Reply, at 9.

### Discussion:

As telegraphed by Mr. Tovar’s concurring opinion, the Board concurs with the approach taken by the County in addressing the UGA expansion issue for public or institutional uses. The Board even stated in the August 15, 2001 FDO, “The Board does not disagree with the County that this church use is more appropriate in the urban area. . .” *See* Order on Remand and Reconsideration, Appendix A, at 16.

At the compliance hearing, Petitioner argued that even if the Ordinances were consistent with the provisions of Countywide Planning Policy UG-14 and GPP LU-1.A.9, they did not comply with the GMA’s requirements set forth in RCW 36.70A.110 and .215. Transcript, at 45. The crux of this argument is that the statute requires evaluation of *all uses* in assessing whether the UGA should be expanded and the County cannot eliminate schools and churches (P/IU) from this assessment.

Regarding this question, the Board notes that neither UG-14’s nor LU-1.A.9’s compliance with RCW 36.70A.100 or .215, nor amendments thereto, is before the Board in this compliance proceeding. Therefore, the Board need not and will not address them here. <sup>[5]</sup>

Accepting the general premise that public and institutional uses do have a propensity to generate growth within the local environs of such uses, it is therefore appropriate that such facilities be encouraged in *urban areas within the UGA* where adequate public facilities and services must be provided to support them. Such uses in the rural areas do have the potential to proliferate sprawl and leapfrog development. However, this is not the case here. The County has developed a process for including public and institutional uses within the UGA that is consistent with the goals and requirements of the Act. <sup>[6]</sup> The Board will enter an Order Finding Compliance and Rescind the Determination of Invalidity.

### **III. FINDINGS and CONCLUSIONS**

#### **Findings of Fact:**

1. The Board's December 19, 2002 Order on Remand and Reconsideration remanded Ordinance Nos. 00-091 and 00-094, and directed Snohomish County to take appropriate legislative action regarding the Maltby UGA designation to achieve compliance with the Act.
2. On June 17, 2003, the County adopted Ordinance Nos. 03-049, 03-050, 03-051, and 03-052, pursuant to the Board's remand.
3. On June 27, 2003, the County timely filed its SATC, with attached copies of Ordinance Nos. 03-049, 03-050, 03-051 and 03-052.
4. Comment or Response briefs and Reply briefs of the parties were all timely filed.
5. RCW 36.70A.330 requires the Board to conduct a compliance hearing. The Board conducted the compliance hearing on July 17, 2003.
6. Ordinance No. 03-049 creates the Public/Institutional Use (P/IU) land use designation for the County's Plan. The P/IU designation can be applied to land already within the UGA or land adjacent to, and being added to, the UGA. The implementing zones, for a P/IU designation being added to the UGA, are to be either, R-7,200, R-8,400 or R-9,600, and be restricted to church and school instructional facilities. Plan Policy LU 1.A.9 does not apply when the P/IU designation is concurrent with the expansion of the UGA. *See* Ordinance No. 03-049, Section 4, attached Exhibit A, at 1.
7. A 13-acre site [the Maltby site] is designated as P/IU on the County's FLUM. *See* Ordinance No. 03-049, Section 5, attached Exhibit B, at 1.
8. Ordinance No. 03-050 expands the Maltby UGA to include the 13-acre site owned by Maltby Christian Assembly. *See* Ordinance No. 03-050, Section 4 and attached Exhibits A and B.
9. Ordinance No. 03-051 amends the County's zoning code to implement the land use restrictions when the P/IU designation is used in conjunction with a UGA expansion, as set forth in Ordinance No. 03-049. *See* Ordinance No. 03-051, Section 4, at 5; Section 5, at 11-16; and Section 6, at 25.
10. Ordinance No. 03-052 adopts an area-wide rezone for the 13-acre Maltby Christian Assembly site, rezoning the site from R-5 to R-9600 and restricting the uses on the site in

accordance with the P/IU designation concurrent with a UGA expansion. See Ordinance No. 03-052, Section 4 and attached Exhibits A and B.

### Conclusions of Law:

1. Based on the Board's discussion and Findings of Fact 1-10 *supra*, the Board concludes, that Snohomish County's enactment of Ordinance Nos. 03-049, 03-050, 03-051 and 03-052 **comply** with the goals and requirements of the Growth Management Act, as set forth and interpreted in the Board's December 19, 2002 Order on Remand and Reconsideration.

## IV. INVALIDITY<sup>[7]</sup>

The Board's Order on Remand and Reconsideration provided:

Further, the Board enters a continuing **determination of invalidity** on the adoption of these Ordinances [Nos. 00-091 and 00-094], as they pertain to the Maltby UGA, FLUM and Plan designation and rezoning, since the County's action substantially interferes with the fulfillment of goal 1 (RCW 36.70A.020(1)).

Order on Remand, at 9, (emphasis in original).

Pursuant to its deliberations following the compliance hearing, the Board now finds that the County's adoption of Ordinance Nos. 03-049, 03-050, 03-051 and 03-052 removes the substantial interference with the fulfillment of Goal 1 (RCW 36.70A.020(1)), consequently, the Board hereby **rescinds** the **determination of invalidity** entered in that Order.

## V. ORDER AND FINDING OF COMPLIANCE

Based upon review of the Board's December 19, 2002, Order on Remand and Reconsideration, the County's SATC, Ordinance Nos. 03-049, 03-050, 03-051 and 03-052, the briefing provided, comments and argument offered at the compliance hearing, Findings of Fact 1-10 and the conclusion of law, *supra*, the Board finds that Snohomish County **has complied** with the goals and requirements of the GMA as set forth in the aforementioned Board Orders. The Board therefore enters a **Finding of Compliance** for Snohomish County re: the Maltby UGA portion of *Hensley v. Snohomish County (Hensley IV)*, CPSGMHB Case No. 02-3-0004c. Additionally, the **determination of invalidity** is **rescinded**.

So ORDERED this 24<sup>th</sup> day of July 2003.

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Edward G. McGuire, AICP  
Board Member

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Lois H. North  
Board Member [Board Member North files a  
separate Dissenting opinion]

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Joseph W. Tovar, AICP  
Board Member

**Dissenting Opinion of Board Member North**

I respectfully disagree with my colleagues because UGA expansions into rural areas should not be done without first conducting a buildable lands survey and evaluation. The exemption spelled out in the County's four ordinances simply allows expansion of a UGA whether or not there is any documented need for such expansion. This opens the door to the possibility of undermining the GMA's clear distinction between urban and rural lands and the necessary facilities and services to support each.

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

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[1] The case was coordinated with another Hensley case, and the Order was entitled, Order Finding Compliance in *Hensley IV* (01-3-0004c) and Final Decision and Order in *Hensley V* (02-3-0004) [Clearview], (Jun. 17, 2002).

[2] Board Members Lois H. North and Joseph W. Tovar were unavailable at the time of the compliance hearing. However, both members read the SATC, Ordinances, briefing, reviewed the Transcript of the compliance hearing and participated in the Board's deliberations in this matter. Consequently, both Ms. North and Mr. Tovar are signators to this decision and order.

[3] The Board acknowledges that the County's amendment to LU-1.A.9 is not at issue in this compliance matter.

[4] Board Member Tovar's concurrence, provides in relevant part:

Stepping back and examining the County's policy objective (i.e., to expand the UGA for a very narrow range of permitted uses) it is clear that there are several GMA-compliant alternatives available to the County to achieve this end. For example, at the hearing on the merits, I asked the County if anything prohibited it from simply amending its future land use map and comprehensive plan to create a category (e.g., "public/institutional") to correspond to the designations in the land use inventory. The response was "no." [Citation omitted] This would seem to be one, albeit not the only way in which the County could respond.

*Hensley v. Snohomish County (Hensley IV)*, CPSGMHB Consolidated Case No. 01-3-0004c, Final Decision and Order, (Aug. 15, 2001), at 38.

[5] The Board also notes that these issues may be relevant in either the *Hensley VI* or *Hensley VII* proceedings that are presently pending before the Board.

[6] At the HOM, the County conceded that the wording in its zoning regulations for footnote 89 (Ordinance No. 03-051) erroneously included the phrase "permitted or" and this typographical error would be removed. Transcript, at 19-20. Since schools and churches are only allowed as conditional uses, the erroneous phrase is inoperative. The Board does not believe that this scrivener's error merits a finding of noncompliance, given the County's acknowledgement of the error.

[7] The Board notes that the County claims that when the Board invalidated the Maltby UGA expansion and designation of the Maltby area, severability clauses within Ordinance Nos. 00-091 and 00-094 removed the invalid designations. The resulting designation for the 13-acre Maltby site was to a rural Plan designation and R-5 zoning. See Snohomish SATC, at 8-9. However, filing of the SATC is the first time that it was brought to the Board's attention.