

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

)	
MASTER BUILDERS)	Case No. 02-3-0010
ASSOCIATION OF PIERCE)	
COUNTY, TERRY L. BRINK,)	
EDWARD ZENKER, ASSOCIATED)	
GENERAL CONTRACTORS and)	
TACOMA-PIERCE COUNTY)	(MBA and Brink)
CHAMBER OF COMMERCE-)	
SOUTH COUNTY DIVISION,)	
)	
Petitioner,)	
)	
v.)	
)	FINAL DECISION AND ORDER
PIERCE COUNTY,)	
)	
Respondent.)	

I. CASE SYNOPSIS

Following several years of review and public participation, Pierce County adopted the Parkland-Spanaway-Midland Communities Plan and implementing zoning regulations for this unincorporated urban area within Pierce County’s UGA. Petitioners challenged numerous provisions of the Plan and zoning regulations, but focused on Plan provisions and zoning designations that allowed for residential densities of 1-3 dwelling units per acre (Residential Resource [RR] zone) and 2-4 dwelling units per acre (Single Family [SF] zone) within the area. Petitioners also objected to the introduction and adoption of a High Density Single Family [HSF] zone at the final hearing when the two Ordinances were adopted.

The Board finds that the last minute amendment adding the HSF zone fails to comply with the notice and public participation requirements of the Act. The Board also concludes that the SF Plan and zoning provisions do not provide for appropriate urban densities and do not comply with Goals 1 [urban growth] and 2 [reduce sprawl] of the Act. The County also zoned eight areas as RR arguing that these designations were necessary to preserve and protect environmentally sensitive areas that are large in scope, complex in structure and function and of high value. The Board agrees that the RR designation in three of the eight areas is appropriate

to preserve and protect the Clover Creek drainage area and does not run afoul of Goals 1 and 2. However, the RR designation in the other five areas is not justified on environmental grounds, since existing critical areas regulations provide adequate protection, and the RR designation for these areas does not comply with Goals 1 and 2. The Board invalidated these noncompliant provisions for substantially interfering with the fulfillment of Goals 1, 2 and 11.

II. Procedural History

A. General

On August 8, 2002, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**)^[1] from Master Builders Association of Pierce County, Terry L. Brink, Edward Zenker, Associated General Contractors and Tacoma-Pierce County Chamber of Commerce-South County Division (**Petitioners** or **MBA**). The matter was assigned Case No. 02-3-0010, and is hereafter referred to as *Master Builders and Brink, et al., v. Pierce County*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioners challenge Pierce County's (**Respondent** or **County**) adoption of Ordinance No. 2002-21s adopting the Parkland-Spanaway-Midland Communities Plan (**PSMCP**) and Ordinance No. 2002-22s adopting the PSMPC implementing development regulations (**IDRs**). The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA or Act**).

On August 19, 2002, the Board issued a "Notice of Hearing"; on September 12, 2002, the Board held the PHC; and on September 16, 2002, the Board issued a "Prehearing Order" (**PHO**) setting the schedule and Legal Issues for this case. Nine issues were posed for the Board to resolve.

B. THE RECORD

On September 5, 2002, the Board received "Index of Respondent Pierce County." There were no motions to supplement the record. In the PHO, the Board identified numerous Core Documents to be provided by the County. As requested, the County provided the identified Core Documents on October 7, 2002. *See also* Section II E, *infra*, Preliminary Matters.

C. Dispositive Motions

On September 27, 2002, the Board received "Pierce County's Motion to Dismiss SEPA Claims," with five attached exhibits.

On October 10, 2002, the Board received "Petitioner's Response to Motion to Dismiss SEPA Claims," with four attached exhibits.

On October 16, 2002, the Board received “Pierce County’s Reply to Petitioners’ Response to Motions to Dismiss SEPA Claims,” with four attached exhibits.

The Board did not hold a hearing on the motion.

On October 21, 2002, the Board issued its “Order on Motion to Dismiss SEPA Claims.” The Board **granted** the County’s motion, finding that Petitioners lacked SEPA standing to pursue the SEPA claim. Legal Issue 8, as set forth in the PHO, was **dismissed with prejudice**. Eight issues remained for the Board to resolve.

D. Briefing and Hearing on the Merits

On November 4, 2002, the Board received “Petitioners’ Opening Brief” (**MBA PHB**), with 16 attached exhibits.

On November 25, 2002, the Board received “Pierce County’s Prehearing Brief on Issues 1, 4 and 7, Urban Density, Affordable Housing and Innovative Techniques (Issues 1, 4, 5, 7, and portions of 2, 6 and 9)” (**Co. Response 1**), with 27 attached exhibits. On the same day the County also received “Brief of Respondent Pierce County, Regarding Issues Number Two through Nine,” with 13 attached exhibits.

Also on November 25, 2002, pursuant to a stipulation of the parties, the Board issued an Order changing the deadline for Petitioner’s Reply brief from December 2, 2002 to December 4, 2002.

On November 27, 2002, the Board received a letter from Pierce County indicating that Pierce County’s two companion briefs contained overlapping briefing of issues. Consequently, and with the consent of Petitioners, the County filed a substitute brief entitled “Brief of Respondent Pierce County, Regarding Issues Number Three and Issues Two, Seven and Nine as they Relate to Economic Development and Proportionality” (**Co. Response 2**).

On December 4, 2002, the Board received “Petitioners’ Reply Brief” (**MBA Reply**), with one attached exhibit.

On December 12, 2002, the Board issued a notice indicating that the hearing on the merits (**HOM**) would commence at 10:00 a.m. on December 16, 2002 in the Boardroom of the Metropolitan Parks District building in Tacoma.

On December 16, 2002, the Board held the HOM at the Boardroom of the Metropolitan Park District Offices on 19th Street, Tacoma, Washington. Board Member Edward G. McGuire presided, and Board Members Lois H. North and Joseph W. Tovar were also present. G. Richard

Hill and Courtney A. Kaylor appeared for Petitioners. Alison Moss appeared for Respondent Pierce County. Cheryl O’Haleck (Mills & Lessard, Inc.) provided Court reporting services. A transcript of the proceedings was requested. There were approximately twenty persons in the audience observing the proceedings. The hearing convened at 10:00 a.m. and adjourned at approximately 1:00 p.m.

On December 18, 2002, the Board received the transcript of the proceedings. (**HOM Transcript**).

E. Preliminary Matters

Prior to commencing oral argument, the parties raised several questions regarding exhibits submitted with briefing. The County questioned an “illustrative exhibit” submitted by MBA with its opening brief. The County noted that the “illustrative exhibit” submitted by MBA was not in the record. MBA questioned the “overlay maps” submitted by the County with its response brief. The County noted that the information depicted on the “overlay maps” was in the record, and available to the County; however, the overlay maps themselves had not been presented to the County Council. HOM Transcript, at 100. The parties acknowledged that neither party had made motions to supplement the record, nor offered motions to strike, with regard to these exhibits. However, each party had referenced the exhibits in their respective response and reply briefing. The parties inquired as to how the Board would treat the questioned exhibits. Additionally, the County provided the Board with a “34-page HOM handout” summarizing the County’s arguments.

The Board ruled that the questioned exhibits would be **admitted** as supplements to the record since they may be necessary or of substantial assistance to the Board in reaching its decision. The exhibits are assigned exhibit numbers, below, and are accorded the weight they merit. The Board also **admits** and assigns an exhibit number to the County’s “34-page HOM handout.” The following table notes the Board’s rulings and exhibit numbers.

Proposed Exhibit: Documents	Ruling
1. MBA illustrative exhibit (two plats previously zoned MSF, now SF).	<i>Admitted – HOM Ex. 1</i>
2. MBA illustrative exhibit (two plats previously zoned MSF, now RR).	<i>Admitted – HOM Ex. 2</i>
3. County overlay base map of PSMCP area	<i>Admitted – HOM Ex. 3</i>
4. Overlay – Fish and Wildlife Resources* ^[2]	<i>Admitted – HOM Ex. 4</i>

5. Overlay – Wetlands*	<i>Admitted – HOM Ex. 5</i>
6. Overlay – Orthophoto Wetlands	<i>Admitted – HOM Ex. 6</i>
7. Overlay – High Priority Open Space Resources*	<i>Admitted – HOM Ex. 7</i>
8. Overlay – Streams	<i>Admitted – HOM Ex. 8</i>
9. Overlay – Biodiversity Management Areas	<i>Admitted – HOM Ex. 9</i>
10. Overlay – Oak Presence*	<i>Admitted – HOM Ex. 10</i>
11. Overlay – Flood Hazard Areas	<i>Admitted – HOM Ex. 11</i>
12. County’s 34-page HOM handout	<i>Admitted – HOM Ex. 12</i>

III. presumption of validity, burden of proof and standard of review

Petitioners challenge Pierce County’s adoption of the Parkland Spanaway Midland Community Plan and the corresponding implementing development regulations, as adopted by Ordinance Nos. 2002-21s (Plan) and 2002-22s (Regulations), respectively. Pursuant to RCW 36.70A.320 (1), Pierce County’s Ordinance Nos. 2002-21s and 2002-22s are presumed valid upon adoption.

The burden is on Petitioners, MBA, 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 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).

In affirming the *Cooper Point* court, the Supreme Court recently stated:

Although we review questions of law *de novo*, we give substantial weight to the Board’s interpretation of the statute it administers. *See Redmond*, 136 Wn.2d at 46. Indeed “[I]t is well settled that deference [to the Board] is appropriate where the administrative agency’s construction of statutes is within the agency’s field of expertise . . .

Thurston County v. Western Washington Growth Management Hearings Board, Docket No. 71746-0, November 21, 2002, at 7.

iv. board jurisdiction, ABANDONED ISSUES and Prefatory note

A. Board Jurisdiction

The Board finds that the Board has subject matter jurisdiction over the challenged ordinances, pursuant to RCW 36.70A.280(1)(a); Petitioners have *GMA standing* to appear before the Board, pursuant to RCW 36.70A.280(2); and MBA’s PFR was timely filed, pursuant to RCW 36.70A.290(2).

B. ABANDONED ISSUES

The Boards Rules of Practice and Procedure provide:

A petitioner . . . shall submit a brief on each legal issue it expects a board to determine. *Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.* Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

WAC 242-02-570(1), (emphasis supplied). Additionally, the Board’s September 16, 2002 PHO stated, “Legal issues, or portions of legal issues, not briefed in the Prehearing Brief will be deemed to have been abandoned and cannot be resurrected in Reply Briefs or in oral argument at the Hearing on the Merits.” PHO, at 7. As noted in the Legal Issues discussion *infra*, the Board had determined that portions of several legal issues have been **abandoned**.

C. Prefatory Note

The Board’s Order addresses the Legal Issues in the following order:

- Public Participation – Legal Issue 3
- Urban Densities – Legal Issues 1 and 2
- Innovative Techniques – Legal Issue 4
- Affordable Housing – Legal Issue 5

- Consistency with the CPPs – Legal Issue 7
- Consistency with the Pierce County GMA Plan – Legal Issue 6

v. legal issues^[3] and discussion

A. PUBLIC PARTICIPATION [Legal Issue No. 3]

The Board’s PHO set forth Legal Issue No. 3

3. *Did the County fail to comply with the notice and public participation requirements of RCW 36.70A.035, .130 and .140 when it adopted a substitute zone (High Density Single Family (HSF) in the IDRs? [Intended to cover Second Part of Issue C, PFR, at 11.]*

Applicable Law and Discussion

The GMA requires jurisdictions to establish a public participation program that provides for “early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans.” RCW 36.70A.140. RCW 36.70A.130(2), which governs review and amendments to Plans and regulations, reiterates the Act’s requirements for public participation. Additionally, the public participation program “shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested [individuals and groups] of the proposed amendments to comprehensive plans and development regulations.” RCW 36.70A.035, (emphasis supplied). Further, if a legislative body chooses to consider a change to a plan or development regulation after the opportunity for public review and comment has passed, “an opportunity for review and comment on the proposed change shall be provided before the legislative body votes on the proposed change.” RCW 36.70A.035(2)(a), (emphasis supplied). However, RCW 36.70A.035(2)(b)(i) through (v) list exceptions, where additional opportunity for review and comment is *not required*.

MBA argues that advance public notice of the HSF proposal was required, but not provided, and that none of the exceptions (to providing additional public notice) in RCW 36.70A.035(2)(b) apply. MBA PHB, at 42-43. The County counters that the notice provided in the published title of Ordinance No. 2002-21s was adequate to satisfy the notice requirements. County Response 2, at 11. At the HOM, the County also argued that the HSF proposal fell within the exceptions

provided RCW 36.70A.035(2)(b). HOM Transcript, at 90-91.

The Board finds that, although the *concept* of reducing the scale multifamily complexes in residential areas was discussed in one of the County Council's Committees, there was no advance notice provided of the proposed HSF zone prior to its introduction at the June 11, 2002 Council meeting. HOM Transcript, at 91-94. The Board further finds that it is undisputed that: 1) the County first introduced and adopted the HSF zone proposal^[4] on June 11, 2002 (MBA PHB, at 42; Co. Response 2, at 11); 2) the County Council accepted public testimony on the HSF amendment from those in attendance at the June 11, 2002 hearing (Co. Response 2, at 11, MBA Reply, at 58); and 3) the HSF zone was adopted and included in the PSMCP, but not included or applied to the zoning text or zoning map (MBA PHB, at 11; Co. Response 1, at 42).

In light of these facts, the question for the Board is whether the general notice provided by the County was reasonably calculated to provide notice to interested parties of the proposed HSF amendment for the June 11, 2002 meeting; if not, whether the HSF proposal fits within the exceptions of RCW 36.70A.035(2)(b). The Board answers both these questions in the negative.

The County explains, "The notice [for consideration of adoption of the PSMCP] was published for a series of public meetings of the County Council, which quoted the entire title of the ordinance." Co. Response 2, at 11. The title of Ordinance 2002-21, regarding the PSMCP states, as follows:

PROPOSAL NO. 2002-21, AN ORDINANCE OF THE PIERCE COUNTY COUNCIL REPEALING CHAPTER 19B.40 OF THE PIERCE COUNTY CODE, THE PARKLAND SPANAWAY COMMUNITY COMPREHENSIVE PLAN; ADOPTING A NEW CHAPTER 19B.40 OF THE PIERCE COUNTY CODE, THE PARKLAND-SPANAWAY-MIDLAND COMMUNITIES PLAN; AMENDING THE PIERCE COUNTY COMPREHENSIVE PLAN, TITLE 19A OF THE PIERCE COUNTY CODE, TO INCORPORATE THE DESIGNATIONS AND POLICIES OF THE PARKLAND-SPANAWAY-MIDLAND COMMUNITIES PLAN; SETTING AN EFFECTIVE DATE; AND ADOPTING FINDINGS OF FACT."

Ordinance No. 2002-21s, at 1, and Co. Response 2, at 11-12.

MBA argues, "No person, reading this notice of hearing, could possibly glean from it that the HSF amendment (or, indeed, any amendment to the previously circulated draft of the Community Plan) would be considered at the Council meeting. If such a generalized notice is sufficient to satisfy RCW 36.70A.035(2)(b)(ii)^[5], then this exception swallows the rule." MBA PHB, at 57. The Board agrees. Further, the Board notes that the County points to nothing in the record that

even suggests the Council would consider amending the PSMCP at the June 11, 2002 hearing.

At the HOM, the County argued that the HSF amendment fit within the exception permitted in RCW 36.70A.035(2)(b)(i) – [Additional opportunity for public review and comment is not required if] “An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement.” To support this assertion, the County claims the HSF amendment was “covered by the EIS” and noted that, when asked at the June 11, 2002 hearing, the County’s environmental official confirmed at the hearing that the “amendment does not change the SEPA review that had been submitted.” HOM Transcript, at 94-95, HOM Ex. 12, 6/11/02 hearing minutes excerpt, between 29-30.

The Board is not persuaded that this exception applies to these circumstances, especially given that the only public notice that was provided was the title of the ordinance, which is extremely broad and general and never even suggested that amendments could or would be considered at the June 11, 2002 hearing. For these reasons, the Board concludes that the County’s adoption of the HSF amendments failed to comply with the notice and public participation requirements of the GMA.

Conclusion – Legal Issue 3

The Board concludes that the County’s adoption of the High Density Single Family (HSF) zone provisions, as an amendment to the PSMCP, at the June 11, 2002 hearing, **does not comply** with the notice and public participation requirements of RCW 36.70A.035, .130(2) and .140. If the County chooses to pursue the HSF zone for the PSMCP area on remand, it has every right to do so, so long as it complies with the requirements of RCW 36.70A.035, .130(2) and .140.

B. URBAN DENSITIES – [Legal Issue Nos. 1 and 2]

Since the briefing by the parties combined argument on Legal Issues Nos. 1 and 2, the Board will do likewise, and address them together. The Board’s PHO set forth Legal Issue Nos. 1 and 2:

1. *Did Pierce County (County) fail to be guided by RCW 36.70A.020(1), (2), (3) and (4) when it adopted Ordinance Nos. 2002-21s [the Parkland Spanaway Midland Community Plan (PSMCP)] and 2002-22s [the PSMCP implementing development regulations (IDRs)], because: a) the PSMCP goals and policies (including but not limited to the Land Use Element goal for residential character and development, at p. 27 and Standard 24.4.2.b at 45) and the PSMCP Proposed Zoning Map, Single Family (SF) and Residential Resource (RR) zoning designations, fail to provide for urban densities?; and b) the*

PSMCP and IDRs rely upon illusory high density land use designations to achieve urban densities on average within the Plan area? [Intended to cover Issue A, PFR, at 7; and First Part of Issue C, PFR, at 11.]

2. Did the County fail to be guided by RCW 36.70A.020(1), (2), (3), (4) and (6) when it adopted the PSMCP and IDRs, because the open space requirements of the PSMCP (including FS Objective 106, Principle 2 and Standards 106.2.2 and 106.7.7 at 197 and 200) and IDRs (including Pierce County Code (PCC) 18J.30.060) inhibit development of urban densities and are not related to or proportional to the impacts of development? [Intended to cover Issue B, PFR, at 10.]

Applicable Law and Discussion

In Legal Issues 1 and 2, Petitioners' allege that the PSMCP and IDRs are not guided by, and fail to comply with, the following Goals of the GMA:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low –density development.
- (3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock. [Compliance with this goal is discussed separately under Legal Issue 5, *infra*.]
- (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of land owners shall be protected from arbitrary and discriminatory actions.

RCW 36.70A.020.

Context for Urban Densities (RR and SF designations) – Goals 1 and 2:

The Parkland Spanaway Midland Community Plan area falls within Pierce County's *unincorporated UGA*. Land within an UGA, whether within city limits, or part of the unincorporated county, is *urban land*. In one of its earlier UGA cases, the Board explained the

significance of including lands within an UGA as urban lands.

[Designation of an urban growth area generally establishes certainty that:] the development of the land within it will be urban in nature; this land will ultimately be provided with adequate urban facilities and services within the planning horizon [*i.e.*, twenty years]; and the land will eventually be developed at urban densities and intensities.

Johnson, et al., v. King County (Johnson II), CPSGMHB Case No. 97-3-0002, Final Decision and Order, (July 23, 1997), at 10.

These certainties apply to all land areas within an UGA, whether the land is: an existing city; incorporated as a new city; annexed to an existing city, or it remains in the unincorporated urban area of a County. Land within a UGA, including the PSMCP area, reflects the jurisdiction's commitment and assurance that it will develop with urban uses, at urban densities and intensities, and it will ultimately be provided with urban facilities and services. The duty of a County as a local government to accommodate urban growth within its UGA is the same as the duty of a City

to accommodate urban growth within its city limits. ^[6] Therefore, any opportunity to *perpetuate* an "historic low-density residential" development pattern, in the Parkland Spanaway Midland area, ended in 1994 when the County included the area within the UGA. Consequently, the PSMCP and implementing regulations must provide for appropriate urban densities.

In reviewing the challenged documents, the Board finds: 1) The PSMCP area encompasses approximately 12, 842 acres; 2) Prior to adoption of the current challenged PSMCP, the County's GMA Plan designated 10,040 acres (78.2%) of the area as Moderate Density Single Family (**MSF**); 3) Another 114 acres (.9%) of the area was designated as High Density Residential (**HRD**); and 4) The MSF Plan designation was implemented by one zoning designation – MSF (2-6 du/acre). ^[7] See PSMCP, at 16.

Additionally, the Board finds: 5) The new, and challenged PSMCP area, still encompasses approximately 12,842 acres; 6) However, now 10,370 acres (80.8%) is designated MSF, ^[8] and 674 acres (5.2%) is designated HRD on the future land use map; 7) The total area designated for residential development has increased and the number of zoning designations implementing the MSF designation has been increased from one to three. See PSMCP, at 19. Two of these new MSF implementing zone designations are the subject of the challenge presented to the Board.

Further, the Board finds: 8) The new Residential Resource (**RR** – 1 to 3 du/acre) zone affects 3,427 acres (26.7%) of the total land area of the PSMCP; and 9) The new Single Family (**SF** – 2

to 4 du/acre) designation affects 2,263 acres (17.6%) of the total PSMCP area. *See* PSMCP, at 19; IDRs, Attachment A, at 49.

In short, the County has increased the *total land area* slated for residential development, especially increasing higher density areas and making minor additions to the moderate density areas. The permitted densities within the Plan area are generally increased.^[9] However, the permitted densities in some of the new moderate density implementing zones are lower than previously permitted. In essence, this provides the basis for the Petitioners' challenge.

To provide the further context for the Board's discussion on the "urban density" issues, it is important to note that in this case: 1) it is not disputed that the County is accommodating its allocation of the projected future population; and 2) it is not disputed that a net density of 4 dwelling units per acre is an appropriate urban density within a jurisdiction's urban area. What is disputed in this case is whether certain residential lands within the PSMCP area have been designated in the Plan, and zoned (RR and SF zoning designations), in the IDRs, to allow for appropriate urban densities. The Board now turns to the arguments of the parties. The Board begins with the challenge to Goals 1 and 2 as they relate to specific Plan provisions, the RR designation, and the SF designation and related development standards. Following this discussion, the Board addresses other aspects of the Legal Issues and arguments presented.

Goals 1 and 2 – PSMCP Provisions:

MBA challenges two statements in the PSMCP that indicate the County's desire to maintain historic low densities in the area, arguing that "a desire to preserve neighborhood character does not justify densities lower than four units per acre." MBA PHB, at 37-38 and 47-48.

Additionally, Petitioners argue, "In addition, [PSMCP Standard 24.4.2.b] (locational criteria for the SF zone is 'A desire to maintain low densities in keeping with existing neighborhoods') improperly encourages the maintenance of low density uses regardless of environmental constraints." MBA PHB, at 48.

The PSMCP states:

Residential Character and Development

The following statements comprise the goal for residential character and development in the Parkland-Spanaway-Midland Communities Plan:

- The key to health, safety, a strong sense of community, and a high quality of life in the Parkland-Spanaway-Midland region is to preserve, maintain and enhance existing residential neighborhoods, and develop and maintain new

residential neighborhoods which provide a variety of well and sensitively designed and sited housing types, densities and complementary land uses;

- The majority of the Parkland-Spanaway-Midland region should consist of medium density residential neighborhoods with recreational, commercial, professional and other services of low, moderate, and high intensity in defined locations convenient to residents;
- Residential development should be allowed to occur only when adequate public facilities and services are available and the carrying capacity of the natural environment is not exceeded;
- *The character of historically low density residential areas should be preserved, restored and maintained;*
- *Areas with historically low residential densities, significant environmental constraints, or compatibility conflicts with adjacent military installations and industrial uses should be maintained with low urban densities;* and
- Public and private facilities and services, which enhance and are compatible with the living environment of residents and are of an appropriate scale and design, may be integrated into residential neighborhoods.

PSMCP, at 25-26, (emphasis supplied to indicate “challenged” statements). The challenged standard is found in the PSMCP under the heading Locational Criteria for Zone Classifications, the Objective, and Principle that precede the Standard provide:

LU-R Objective 24. Create clear policy direction as to where various zone classifications are applied by taking into consideration existing and planned land use patterns and environmental factors and provide for density transfers from environmentally constrained lands to other on- and off-site areas.

...

Principle 4. The geographical boundaries of each residential zoning classification should be defined as described below.

Standards

...

24.4.2 The following characteristics shall be used when applying the Single Family (SF) zone classification:

- a. Established single-family residential neighborhoods with a minimum number of two-family and attached single-family dwelling units.
- b. *A desire to maintain low densities in keeping with existing neighborhoods.*

PSMCP, at 43-44, (emphasis supplied to indicate “challenged” standard).

In responding to the MBA’s challenge to the “goal statements,” the County argues “Petitioners challenge the second statement, focusing not on the references to significant environmental constraints or compatibility with military installations, but on “areas with historic low densities.” (Citation omitted). However, as shown in the policies below, that phrase is not used to guide the application of the RR land use designation and zone.” [The County then discusses policies that affect the RR zoning designation.] Co. Response 1, at 11. The Board notes that the County never returns to discuss the SF zone in the context of this “goal statement” or Standard 24.4.2. *But see* Co. Response 1, at 35-36.

The GMA clearly encourages the preservation of existing housing stock (*See* RCW 36.70A.020 (4)) and provides for ensuring the vitality and character of established residential neighborhoods (*See* RCW 36.70A.070(4)). However, as the Board stated *supra*, “any opportunity to *perpetuate* an “historic low-density residential” development pattern, in the Parkland Spanaway Midland area, ended in 1994 when the County included the area within the UGA.” It is clear that existing housing stock and neighborhoods may be maintained and preserved, however existing low-density patterns of development cannot be perpetuated. The question for the Board is - Do these challenged statements and standards “perpetuate” low-density residential development?

The two challenged “goal statements” seem to express the desire to “maintain” “historic” *existing* housing stock or neighborhoods, which is within the parameters of the GMA’s mandate; however, these statements *should not be read to provide a basis for perpetuating low-densities*, which is contrary to the direction of the GMA. The Board concludes that Petitioners have **failed to carry their burden of proof** pertaining to these goal statements. However, it is not as clear to the Board that Standard 24.4.2 is intended to simply preserve existing housing stock or neighborhoods and would not be used as justification to *perpetuate* low densities through the use of the SF zoning designation. Therefore, the Board concludes that Standard 24.4.2 does **not comply** with Goal 1 and 2.

Goals 1 and 2 - Residential Resource (RR) zone:

As noted above, it is clear that the GMA requires lands within an UGA – urban lands – to be developed with urban uses, at *appropriate urban densities* and intensities, and be provided urban facilities and services. The Board has stated, “Just as the future land use map [land use plan designations] must permit urban densities in the UGA, so too must the implementing zoning designations. Also, the duty of a city to provide for appropriate urban densities within a UGA likewise applies to a county. Counties must provide for appropriate urban densities within unincorporated UGAs.” *Forster Woods Homeowners Association v. King County*, CPSGMHB Case No. 01-3-0008c, Final Decision and Order, (Nov. 6, 2001), at 32.

It is generally accepted, and not disputed here, that 4 dwelling units per acre is an appropriate urban density. However, the Board has stated that, in certain circumstances, urban densities of less than 4 dwelling units per acre can be an appropriate urban density, and therefore comply with Goals 1 and 2. “When environmentally sensitive systems are large in scope (*e.g.*, watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre.” *Litowitz v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order, (Jul. 22, 1997), at 12. The *Litowitz* test, although originally used to assess a land use plan designation, is also the appropriate test to apply here in relation to the challenged zoning designations.

In light of this test, MBA argues:

The Community Plan and Regulations apply the RR zone, which allows only one to three dwelling units per acre, to large areas comprising a full 26.7% of the Community Plan area. (*Citing* PSMCP, at 19-20). This is precisely the sprawling, low-density development pattern prohibited by Board decisions interpreting Goals 1 and 2.

In addition, . . .this low-density development pattern is not justified by environmental considerations. While some environmental constraints exist in the Community Plan area, they are common ones that are adequately addressed by existing regulations. The record does not establish that the RR zone is necessary to protect “critical areas [that] are large in scope, with a high rank order value and are complex in structure and function. *See Litowitz, supra*, at p. 9.

Instead, the driving force behind the application of the RR zone is the desire to maintain historic low densities. *See* Community Plan, pp. 1-2 (discussing areas of historic low density development; PSMCP, p. 27 (*sic* p. 26), (“The character of historically low density residential areas should be preserved, restored and maintained.”; “Areas with historically low residential densities, significant environmental constraints, or compatibility conflicts with adjacent military installations and industrial uses should be maintained with low urban densities.” (Emphasis added.)) Yet a desire to preserve neighborhood character does not justify densities lower than four units per acre. *Benaroya I, supra*, at pp. 16-17.

MBA PHB, at 37-38.

In response, the County argues that the PSMCP and implementing regulations provide appropriate urban densities, and that the present case and the *Litowitz* case are really quite

similar. In both cases, environmentally sensitive areas provide the basis for the lower density designations. Co. Response 1, at 2 - 7.

The County documents the policy basis in its plan for when the RR zone is to be applied. (*Citing* PSMCP policies: LU-R Objectives 22-24^[10] and NE Objectives 48, 50, 52, 53 and 58.^[11]) The County contends that, based upon these policies, the RR zoning designation is appropriately applied to the following circumstances: substantial environmental constraints; identified opens spaces; connections of open space corridors; biodiversity management areas; basin planning recommendations; and inventoried flood hazard prone areas. Co. Response 1, at 10-14. The County essentially contends that these factors satisfy the *Litowitz* test.

In reply, Petitioners assert that the County misstates and applies the *Litowitz* test.

Although the County quotes the *Litowitz* standard early in its brief (citation omitted), the County subsequently opines that all that is required under *Litowitz* to justify low densities is “environmentally sensitive systems, e.g., watershed or drainage basin” (citation omitted). The County cannot simply pick the one component of the *Litowitz* standard that best fits its argument and ignore the other two components, however. *Litowitz* requires that environmentally sensitive systems must be large in scope, their structure and functions complex and their rank order value high (citation omitted). The County’s failure to address this standard head-on is a tacit admission that it is a hurdle the County cannot overcome.

MBA Reply, at 12.

The County identifies eight areas where the RR zone has been applied, and by use of a base map and overlay exhibits (HOM Exhibits 3-11) the County attempts to illustrate the basis for each RR designation.^[12] Co. Response 1, at 14-34. In reply, the MBA counters the County’s arguments for each of these eight designations. MBA Reply, at 15-41.

The County identifies the RR areas as follows:

- Area 1 – Midland/North Fork Origin
- Area 2 – 112th Street Wetland Complex
- Area 3 – North Fork Tributary
- Area 4 – Historic Clover Creek Channel RR
- Area 5 – Spanaway Lake RR
- Area 6 – Clover Creek Confluence RR
- Area 7 – Military Road East RR
- Area 8 – 14th Avenue East RR

The County concedes that its basis for the RR designation in Area 4 is questionable and would not meet the *Litowitz* standard. Co. Response 1, at 15, and HOM Transcript, at 60. Additionally, the County noted at the HOM that the northern portion of Area 7 is platted at densities greater than that allowed by the RR zone and should be removed from the RR designation. HOM Transcript, at 74. The Board agrees. The RR designations for **Area 4** and the northern portion of **Area 7**, **do not comply** with Goals 1 and 2 of the Act and will be **remanded** with direction that they be designated at appropriate urban densities.

The Board now turns to the remaining Areas to determine whether the RR designations applied comply with provisions of *Litowitz* – lower densities are used to protect environmentally sensitive systems that are large in scope (*e.g.*, watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high.

Review of the RR zoning base map (HOM Ex. 3) and the map overlays for Flood Hazard Areas (HOM Ex. 11), Wetlands (HOM Ex. 5), Fish and Wildlife Resources (HOM Ex. 4), Biodiversity Management Areas (HOM Ex. 9), and High Priority Open Space Resources (HOM Ex. 7) and consideration of the arguments presented by the parties leads the Board to the following conclusions.

First, the overlay maps demonstrate that the primary tributaries ^[13] of the Clover Creek drainage, which bisects the PSMCP area and extends westerly beyond the Plan area into McCord Air Force Base and Fort Lewis, constitute a large environmentally sensitive hydrologic system.

Second, this large environmentally sensitive system includes overlapping flood hazard areas, wetlands, critical fish and wildlife habitat areas and corridors that demonstrate that the area is complex in its structure and function.

Third, the presence of priority habitats and corridors for fish and wildlife and the identification of biodiversity management units within this complex environmentally sensitive system support the notion that the area is of high rank order and value. In other words, due to a large-scale environmentally sensitive system, that is complex in structure and function, with high order values in *portions* of the PSMCP area, lower density residential designations may be appropriate for *some* of the RR designations in the PSMCP.

Review and analysis of the overlay maps as they relate to the eight low-density areas, leads the Board to conclude that the **RR designations (1-3 du/acre)** for **Area 2** (the 112th Street Wetland Complex), **Area 5** (Spanaway Lake RR) and **Area 6** (Clover Creek Confluence RR) are appropriate urban densities and **are guided by, and comply with, Goals 1 and 2 of the Act.**

However, the Board does not reach the same conclusion for **Area 1** (Midland/North Fork Origin), **Area 3** (North Fork Tributary), **Area 7** in its entirety (Military Road East RR), and **Area 8** (14th Avenue East RR), since the overlay maps show isolated, sporadic and scattered occurrences of flooding, wetlands, or priority habitats that can be appropriately addressed through existing critical areas regulations. Therefore, the Board concludes that **the RR designations for Areas 1, 3, 7 and 8 are not appropriate urban densities and are not guided by, and do not comply with, Goals 1 and 2 of the Act.**

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Petitioners have carried their burden of proof and the County has failed to provide a valid GMA basis for the RR zoning designation in the Areas noted *supra*. Review of the materials and arguments presented leads the Board to conclude that the adoption of the RR zoning designation for the Areas noted *supra* was clearly erroneous.

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Goals 1 and 2 - Single Family (SF):

The new Single Family (SF) zoning designation permits 2-4 dwelling units per acre and applies to 2,263 acres (17.6%) of the total PSMCP area. *See* PSMCP, at 19; IDRs, Attachment A, at 49. Just as Petitioners challenged the RR designation *supra*, they also challenge the SF designation. “As discussed in the Statement of Facts, while the SF zone purports to allow densities of two to four units per acre, the bulk and other development standards of the Community Plan and regulations prevent attainment of the maximum density in many cases. . . .As with the RR zone, the low densities that will develop in the SF zone will are not justified by environmental considerations. . . . In sum, the RR and SF zones fail to provide for urban densities but instead perpetuate patterns of low-density sprawling development throughout large portions of the Community Plan area, in violation of Goals 1 and 2. MBA PHB, at 38-39.

The County responds by asserting that MBA is “in reality challenging the MSF land use designation [indicating 2-6 du/acre], which has been in place since 1994. Consequently, their appeal is untimely. Co. Response 1, at 35. Alternatively, the County argues, “Petitioners have not proved their case. Petitioners argue that the SF zone complies with the GMA only if properties are developed to the maximum density permitted in the zone [4 du/acre]. They then argue that the implementing development regulations will make this impossible in many cases.” Co. Response 1, at 36. The County then refutes two examples [HOM Exs. 1 and 2] MBA uses to support its case and offers prior examples from the record to illustrate that 4 du/acre can be achieved. Co. Response 1, at 36-40.

In reply, MBA counters, “[C]onsistency of the SF zone with this designation [MSF Plan land use designation], by which the County apparently means that the SF zone allows densities that fall somewhere within the MSF density range, does not assure that the required urban densities will

be achieved.” MBA Reply, at 43.

At the Hearing on the Merits, MBA asserted, “The driving force behind the County’s designation of the RR and SF zones was a desire to maintain historic low densities.” HOM Transcript, at 28. “The County offers no environmental justification of the SF zone. The only justification offered is the interest in maintaining historic patterns of development.” HOM Transcript, at 38-39. The County stated, “[T]he County is not arguing that this zone [SF zone] was applied to protect environmentally sensitive areas. It was applied to implement a land use designation that has been in the [County’s GMA] comprehensive plan since it was adopted in 1994. The MSF land use designation, which as petitioners commented in their opening remarks, has always allowed a density of two to six dwelling units per acre, two to six. The SF zone allows two to four. It implements the MSF [land use designation].” HOM Transcript, at 77-78.

The Board understands, and acknowledges, that the County’s MSF Plan land use designation is not presently before the Board in this challenge, nor is the County’s MSF zoning designation ^[14] for the Community Plan area. However, the SF zoning designation is squarely before the Board. Simply put, does the SF zoning designation provide for appropriate urban densities as directed by Goal 1 and 2 of the Act? Simply answered, the Board concludes that it does not.

As discussed at length *supra*, urban densities that fall below the generally accepted urban density of 4 du/acre may be appropriate when such lower densities are intended to support the protection and preservation of large, complex, high value environmentally sensitive or critical areas. As the County admits, this is not the basis for the SF zone designation. Instead, the County argues that the SF zone designation was intended to maintain consistency with, and implement, a prior Plan land use designation that permitted a range of densities [MSF from 2-6 du/acre]. Co. Response 1, at 35-40. The Board is not persuaded by the County’s reasoning.

The County makes no pretense or effort to explain the SF zone by suggesting it is necessary to protect and preserve large scale, complex and high value critical areas, as it did for the RR zone. Therefore, the foundation for any lower density designations, as permitted in the SF zone, is absolutely absent. Consequently, absent this basis and justification, the low density SF zone designation is **not guided by, and does not comply** with, Goal 1 and 2. ^[15]

However, the Board notes that a land use designation that recognizes urban residential densities ranging from 2-6 du/acre [MSF], if timely challenged, would not necessarily fail to comply with Goal 1 and 2. Such a land use designation may simply recognize that lower end densities may be permissible in limited areas, when certain environmental factors come into play [*i.e.*, *Litowitz*].

^[16] Here, the County ignores the environmental basis for lower urban densities and merely argues the SF zone is necessary to maintain consistency with a pre-existing [and unchallenged]

Plan designation. Since the SF zone designation is not justified, is not guided by, and does not comply with Goal 1 and 2, the Board rejects the County's argument that the SF zone designation is necessary to maintain consistency with, and implement, a pre-existing land use designation.

Petitioners have carried their burden of proof and the County has failed to provide a valid GMA basis for the SF zoning designation. The adoption of the SF zoning designation was clearly erroneous.

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Goal 3 - Transportation:

Issue Nos. 1 and 2 include reference to the transportation goal, RCW 36.70A.020(3), and challenges whether the County has been guided by this goal in formulating the PSMCP and IDRs. However, the only reference by MBA on this issue is contained in a footnote.

“This low density sprawling development pattern fails to encourage efficient multi-modal transportation systems in violation of GMA Goal 3.” “This footnote addresses the portion of Issue 1 relating to GMA Goal 3.” MBA PHB, footnote 15, at 39. This conclusory statement in the footnote merely references an excerpt from a comment letter from the Office of Community Development suggesting 7-8 du/acre is required to support public transit. Petitioner fails to even indicate whether public transit is available, or planned in or near the PSMCP area, nor does Petitioner acknowledge that numerous mixed use and high-density residential zones are located along Pacific Avenue and SR 512. *See* PSMCP, at 19.

As stated *supra*, conclusory statements in a footnote are not sufficient to sustain Petitioner's burden of proof in demonstrating noncompliance with provisions of the GMA. Therefore, the Board concludes that this portion of Issue 1, pertaining to compliance with RCW 36.70A.020(3), the transportation goal, is **abandoned**.

Illusory High Densities – Legal Issue 1(b):

Issue No. 1 includes a subsection b) alleging, “the PSMCP and IDRs rely upon illusory high density land use designations to achieve urban densities on average within the Plan area.” The extent of MBA's briefing on this portion of Issue 1 is found in a footnote.

In commenting upon the County's position that the GMA urban density requirements would be met, if the PSMCP achieved a net density of four dwelling units per acre and the population allocations were met, MBA noted “[T]he County's calculation of net density throughout the Community Plan area failed to take into account: (1) the new HSF zone; (2) opposition to high-density multifamily development. . .; and (3) bulk and development standards that limit the density of residential development.” . . .“(This footnote addresses Issue 1, subsection (b).)” MBA

PHB, footnote 12, at 36. The County noted that in making this assertion Petitioners ignore the fact that the minimum densities are increased in the MSF zone (from 2 to 4), the MUD zone (from 6 to 12), more land is added to the HRD land use designation and a Reserve 10 designation is eliminated. Co. Response 1, at 9-10.

Petitioners have abandoned this issue by relying on a cursory footnote. The Board therefore concludes Petitioners have **failed to carry their burden of proof** in relation to Issue 1(b).

Open Space – Legal Issue 2:

Petitioners’ argument regarding parks or opens space provisions “inhibiting urban densities,”^[17] MBA offers the following conclusory statement, “As discussed in the Statement of Facts, while the SF zone purports to allow densities of two to four units per acre, the bulk and other development standards prevent attainment of the maximum density in many case. These standards include, . . . the requirements for the provision of park areas in subdivisions (18J.30.060 Pierce County Code).” MBA PHB, at 38-39. In the statement of facts, Petitioners refer to two examples offered during the development of the Ordinances. “These examples utilized the standards then under consideration, which were slightly *different than those ultimately adopted*.” MBA PHB, at 11, (emphasis supplied). Only one of the examples mentions the open space requirements.

The County Response outlines the basis for its passive and active open space policies and requirements by referring to its County-wide Planning Policies, its GMA Plan LOS standards for parks, other Plan Policies, and its Park, Recreation and Open Space Plan. Co. Response 2, at 4-9, and attachments 2, 3 and 4.

If Petitioners have not totally abandoned this issue by offering a conclusory statement, they have certainly failed to carry their burden of proof in demonstrating how the noted provisions (Plan policies and regulations) fail to comply with the GMA by referencing an example based upon provisions other than those that were adopted. The Board concludes Petitioners have **failed to carry their burden of proof** in relation to Goals 1 and 2 in Legal Issue 2.

Goal 6 - Private Property, Legal Issue 2:

Issue No. 2 includes reference to the private property goal, RCW 36.70A.020(6), and challenges whether the County has been guided by this goal when it requires provision of parks in subdivisions. A footnote contains the entirety of MBA’s briefing on this issue, “This footnote addresses the portion of Issue 2 relating to GMA Goal 6.” MBA PHB, footnote 14, at 39.

The footnote states, “The Community Plan requires an impact fee, land dedication or fee-in-lieu of dedication for community and neighborhood parks.” MBA PHB, footnote 14, at 39. The

Board notes that each of these tools is authorized by state statute. *See* Chapters 82.02 and 58.17 RCW. The footnote suggests that there is no needs analysis done for such facilities and that park dedication requirements must be proportional to the impacts of development. MBA PHB, footnote 14, at 39. As noted *supra*, the County's CPPs, LOS standards, and Parks Plan document the need for parks – LOS standards are based upon needs analysis. Co. Response 2, at 4-9. The County has identified a need for such facilities and is clearly authorized to use the tools described. As to how the dedication requirements are applied to a specific proposal is beyond the purview of this Board.

Again, if Petitioners have not totally abandoned this issue by offering conclusory statements in a footnote, they have certainly failed to carry their burden of proof in demonstrating how the noted provisions (park dedication requirement) fail to comply with the GMA. The Board concludes Petitioners have **failed to carry their burden of proof** in relation to Goals 6 in Legal Issue 2.

Conclusions – Legal Issues 1 and 2

Regarding PSMCP Standard 24.4.2, the Board concludes that this Plan provision **does not comply** with Goal 1 and 2.

Regarding the RR Designations, the Board concludes that the RR (1-3 du/acre) zoning designations for **Area 2** (the 112th Street Wetland Complex), **Area 5** (Spanaway Lake RR) and **Area 6** (Clover Creek Confluence RR) are appropriate urban densities and **are guided by**, and **comply** with, Goals 1 and 2 of the Act.

Further, the Board concludes that RR designation for **Area 1** (Midland/North Fork Origin), **Area 3** (North Fork Tributary), **Area 4** (Historic Clover Creek Channel RR), **Area 7** in its entirety (Military Road East RR), and **Area 8** (14th Avenue East RR), can be protected by existing critical areas regulations and are not designated at appropriate urban densities. Therefore, the RR zoning designations for **Areas 1, 3, 4, 7 and 8** are not appropriate urban densities and **are not guided by**, and **do not comply** with, Goals 1 and 2 of the Act.

Regarding the SF designations, the Board concludes that the SF (2-4 du/acre) zoning designation lacks an environmental justification for the lower densities indicated, therefore, the densities permitted in the SF zoning designation are not appropriate urban densities and the SF zone designation **is not guided by**, and **does not comply** with, Goal 1 and 2 of the Act.

Regarding “illusory high densities”, the Board concludes Petitioners have **failed to carry their burden of proof** in relation to Legal Issue 1(b).

Regarding compliance with the Transportation goal, the Board concludes that this portion of

Legal Issue 1 and 2 has been **abandoned**.

Regarding compliance of the open space and parks provisions with Goals 1 and 2 in Legal Issue 2, the Board concludes Petitioners have **failed to carry their burden of proof**.

Regarding compliance with Goal 6 in Legal Issue 2, the Board concludes Petitioners have **failed to carry their burden of proof**.

C. Innovative Techniques [Legal Issue No. 4]

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

4. Did the County fail to comply with the innovative technique provisions of RCW 36.70A.090 and the Plan implementation requirements of RCW 36.70A.040(3) when it adopted the IDRs, because the PSMCP provides for innovative techniques, such as clustering and off-site transfer of development rights, but the IDRs do not? [Intended to cover Issue D, PFR, at 12.]

Applicable Law and Discussion

Legal Issue 4 alleges noncompliance with the innovative techniques provisions of RCW 36.70A.090. ^[18] Petitioners simply include a footnote in its opening brief that states, "This footnote addresses Issue 4." MBA PHB, footnote 13, at 38. MBA's entire discussion of this issue is contained in this footnote.

Conclusory statements in a footnote are not sufficient to sustain Petitioner's burden of proof in demonstrating noncompliance with provisions of the GMA. Therefore, the Board concludes that Issue 4, pertaining to compliance with RCW 36.70A.090, is **abandoned**. However, the Board observes that inclusion of innovative techniques in a Plan, while encouraged, is not mandated by RCW 36.70A.090; however, if a jurisdiction includes innovative techniques in its Plan, or subarea plan, it must likewise take steps to adopt regulations that implement those innovative techniques in order to comply with RCW 36.70A.040(3).

Conclusion – Legal Issue 4

The Board concludes that Legal Issue 4 has been **abandoned**.

D. AFFORDABLE HOUSING [Legal Issue No. 5]

The Board's PHO set forth Legal Issue No. 5

5. *Did the County fail to be guided by RCW 36.70A.020(4) when it adopted the PSMCP and IDRs, because the PSMCP and IDRs do not encourage affordable housing?* [Intended to cover Issue E, PFR, at 13.]

Applicable Law and Discussion

RCW 36.70A.020(4) provides:

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock.

Petitioners and the County correctly note that Goal 4 does not require that each and every land use designation within a jurisdiction provide for affordable housing. MBA PHB, at 43; Co. Response 1, at 51, (*Citing Lawrence Michael Investments LLC v. Town of Woodway, CPSGMHB Case No. 98-3-0012, Final Decision and Order, (Jan. 8, 1999), at 29.*)

MBA refers to analysis and testimony presented on their behalf during the PSMCP development process and states, “This analysis concluded that the *SF zone* density limitations and other development standards would raise the cost of homes in a 20-acre subdivision by more than \$42,000 per home.” MBA PHB, at 44, (emphasis supplied). In response the County notes that the analysis was not based upon the standards ultimately adopted by the County for the *SF zone*, and that the testimony also acknowledged that factors such as: the cost of extending off-site infrastructure, perceived shortage of land, housing prices of King County, cycles and interest rates have a far greater impact on housing costs than density in single plats. Co. Response 1, at 52-53, (emphasis supplied). In reply, MBA continues to assert that the *SF zoning* designation will decrease the number of permissible lots and increase the cost of housing. MBA Reply, at 61-65, (emphasis supplied).

The Board notes that the focus of argument is on the *SF zoning* designation. As determined *supra*, the Board has concluded that the *SF zoning designation* was not guided by, and does not comply with Goals 1 and 2 of the Act.

In light of this conclusion, the Board **need not address the affordability provisions of the SF zoning designation**. Consequently, Legal Issue 5 is **dismissed**. However, the Board does note that the housing affordability goal is a broad goal that applies throughout a local government’s jurisdiction. Therefore, challenges to this goal that rely upon examples of individual subdivisions (hypothetical or real) will have little weight in demonstrating whether the affordable housing goal is being thwarted throughout the jurisdiction.

Conclusion – Legal Issue 5

Since the Board has concluded that the SF zoning designation was not guided by, and does not comply with Goals 1 and 2 of the Act, the Board need not address the housing affordability assertion pertaining to the SF zone. Legal Issue 5 is **dismissed**.

E. CONSISTENCY with CPPs [Legal Issue No. 7]

The Board's PHO set forth Legal Issue No. 7

7. Did the County fail to comply with the County-wide Planning Policy (CPP) consistency requirements of RCW 36.70A.210 when it adopted the PSMCP and IDRs, because the PSMCP and IDRs do not promote development of urban densities and affordable housing as provided in PC Plan LU-R Objective 22, Principle 1; HS Objective 3 and CPP 3.6, CPP 3.6.1-3.6.5, CPP6, CPP 6.1, CPP3.6.2, CPP 6.3, CPP 2, and CPP 2.1-2.4? [Intended to cover Issue G, PFR, at 15 and citations provided in 9/16/02 submittal.]

Applicable Law and Discussion

In one of its first cases, the Board discussed the County-wide Planning Policies (**CPPs**) required by RCW 36.70A.210:

[The CPPs] are part of a hierarchy of substantive and directive policy. Direction flows first from the CPPs *to the comprehensive plans* of cities and counties, *which in turn provide substantive direction to the content of local land use regulations*, which govern the exercise of local land use powers, including, zoning, permitting and enforcement.

City of Snoqualmie and City of Issaquah v. King County, CPSGPHB Case No. 92-3-0004c, Final Decision and Order, (Mar. 1, 1993), at 17, (emphasis supplied). In this same case the Board also stated:

The CPPs provide substantive direction not to development regulations, but rather to the comprehensive plans of cities and counties. . . . *The CPPs do NOT speak directly to the implementing land use regulations* of cities and counties.

Id., at 16 (emphasis supplied).

After citing three of the noted CPPs, the only assertion offered by MBA on this issue is “The

provision of urban densities and affordable housing is a legitimate regional objective. . . .[and citing to its prior arguments regarding the RR and SF zone, continues] the Community Plan and Regulations fail to provide for urban densities over large portions of the Community Plan area or to encourage affordable housing.” MBA PHB, at 57-58.

The County recognizes that the CPPs provide substantive direction to the PSMCP, not the zoning, and contend Petitioners have offered no explanation of how any PSMCP policies are not guided by the CPPs. Co. Response 1, at 56-60. Petitioners do not respond to the County. MBA Reply, at 1-72. The Board agrees with the County. The Board concludes that MBA **failed to carry its burden of proof**. Petitioners’ challenge in Legal Issue 7 is **dismissed**.

Conclusion – Legal Issue 7

Regarding compliance with RCW 36.70A.210 and consistency with the CPPs, the Board concludes Petitioners have **failed to carry their burden of proof** on Legal Issue 7. Petitioners’ challenge in Legal Issue 7 is **dismissed**.

F. CONSISTENCY with Pierce County GMA Plan [Legal Issue No. 6]

The Board’s PHO set forth Legal Issue No. 6

6. Did the County fail to comply with the consistency requirements of RCW 36.70A.070, and RCW 36.70A.080(2) and the Plan implementation requirements of RCW 36.70A.040(3) when it adopted the PSMCP and IDRs, because the PSMCP and IDRs do not promote development of urban densities, do not promote affordable housing, do not encourage economic development, and the specific subarea goals, policies and zones are inconsistent with the County’s Comprehensive Plan (PC Plan), specifically PSMCP LU-CI Objective 5 and principles 1,2; LU-CI Objective 6 and Principles 1-3; LU-CI Objective 7 and Principle 1; LU-CI Objective 15 and Principle 1; LU-CI Objective 16, Principle 1; ED Objective 70 and Principles 2, 5 and 6; ED Objective 71, 73 and 74 and Principles 1, 2, 4-6 and 9; ED Objective 77 and Principle 5; and PC Plan ECD Objectives 1, 4 and 10; and LU-CI Objective 1, Standard 1.1.3, Principles 5, 6 and 8; LU-CI Objective 2 Standard 2.1.1, LU-CI Objective 4, Standards 4.1.3, 4.1.4 and 4.1.5; LU-CI Objective 11, Principle 2; LU-CI Objective 12, Principles 1-6; LU-CI Objective 13, Principles 1-5; LU-CI Objective 15; LU-CI Objective 19 Principles 1-3; LU-CI Objective 20, Principles 4 and 6; and LU-CI 25 Principle 1; ED Objective 69, Principle 1 Standard 69.1.1; ED Objective 70, Principle 6 Standard 70.6.2; ED Objective 72 Principles 1 and 4; ED Objective 73, Principle 1, Standards 73.1., 73.1.2, 73.1.3 Principle 2; ED Objective 77,

Principle 4, Standard 77.4.1 and ED Objective 80, Principle 1; and IDRs PCC 18A.25.020, .100, .270, .280, 18A.35.020, .130(D), (E), 130-1; 18A.75.020, 18B.80.020, 18B.070(C), (D) and (E), 18J.30.080 and .090? [Intended to cover Issue F, PFR, at 14; Issue H, PFR, at 16; and Issue I, PFR, at 17 and citations provided in 9/16/02 submittal.]

Applicable Law and Discussion

The GMA requires comprehensive plans to be internally consistent – plan provisions cannot thwart other plan provisions. RCW 36.70A.070(preamble). Subarea planning is an optional element for jurisdictions to consider, and if subarea plans are developed and adopted, they must be included in, and be consistent with, the jurisdiction’s comprehensive plan. RCW 36.70A.080 (2). A jurisdiction’s comprehensive plan, including subarea plans, must have development regulations to implement that plan, and the development regulations must be consistent with the plan. RCW 36.70A.040(3).

Petitioners allege inconsistency of over 90 Plan provisions (County Plan and PSMCP) and allege 11 different implementing regulations fail to implement the Plan. However, in briefing, arguments are only offered challenging the inconsistency of approximately 25 of these policies and implementing regulations. Pursuant to WAC 242-02-570(1), those issues not briefed are **abandoned**.

MBA organizes its Plan inconsistency challenge into three areas: urban density, affordable housing and economic development.^[19] The Board will likewise address them under those headings.

Urban Density:

MBA asserts that the two goal statements and standard (24.4.2.b) in the PSMCP (discussed *supra*) are inconsistent with another that provides, “LU-R Objective 22 – The permitted residential densities shall discourage urban sprawl throughout the plan area.” MBA PHB, at 47-48.

The Board notes that none of these goal statements, standards or objectives is noted in the statement of the issues as articulated by MBA, this alone is basis for the Board to end its inquiry of this alleged inconsistency. However, these same Plan provisions were challenged as to their compliance with Goals 1 and 2, and the Board concluded standard 24.4.2 did not comply with RCW 36.70A.020(1) and (2). Since the Board addressed them in the context of that discussion, the Board need not and will not consider them further here. Petitioners’ challenge on consistency of the urban density policies is **dismissed**.

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Affordable Housing:

MBA identifies five policies from the housing element of the County’s Comprehensive Plan and notes that the PSMCP contains a land use policy (LU Objective 21, Principle 1) to “Provide for a broad range of housing choices to meet the socio-economic needs of the community through land use regulation.” However, the basis of MBA’s inconsistency challenge on this issue is that “The Community Plan [PSMCP] does not contain a housing element.” MBA PHB, at 49-50. The County suggests that the citations noted in Legal Issue 6 refer to Multi-county Planning Policies, not Comprehensive Plan policies. Co. Response 1, at 54. In reply, MBA counter, “The policies cited by Petitioners are contained within the Housing Element of the Comprehensive Plan (County Code chapter 19.70).” MBA Reply, at 66.

The Core Document provided to the Board entitled “Comprehensive Plan for Pierce County Washington – Title 19A Policies and Maps, adopted October 16, 2001, effective April 1, 2002” contains the County’s Housing Element at Chapter 19A.70, pages 19A-100 through 19A – 104. Although polices reflecting similar intent appear within the County’s Housing Element, the policies cited and challenged by Petitioners are not within its provisions. Nonetheless, the Board understands the crux of Petitioners’ concern here to be that the PSMCP does not contain a housing element.

On the question of whether subarea plans or community plans must contain all the mandatory elements set forth in RCW 36.70A.070, the Board has stated:

[A] subarea plan for a [jurisdiction] may refine the land use, housing, utility, capital facility or transportation policies or projects affecting the subarea. However, these refinements must be consistent with the jurisdiction’s comprehensive plan and comply with the goals and requirements of the Act. *Where the subarea plan modifies only certain portions of the jurisdiction’s comprehensive plan for the subarea, the unaffected provisions of the comprehensive plan continue to apply and govern in the subarea.*

Lawrence Michael Investments LLC v. Town of Woodway, CPSGMHB Case No. 98-3-0012, Final Decision and Order, (Jan. 8, 1999), at 51, (emphasis supplied).

In short, there is no GMA requirement that subarea plans contain *all* the mandatory elements required by RCW 36.70A.070. Thus, the PSMCP is not required to contain a housing element since the goals, objectives and policies of the Housing Element in the County’s Comprehensive

Plan apply and govern in the PSMCP area. Petitioners' have **failed to carry their burden of proof**. Petitioners' challenge on consistency of the housing policies is **dismissed**.

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Economic Development:

MBA notes that: 1) "Various Community Plan goals and polices encourage economic development."; and 2) "Comprehensive Plan goals and policies also encourage economic development." MBA PHB, at 50-52, (citations omitted). However, MBA asserts,

[The PSMCP and IDRs] are inconsistent with these goals and polices because the Community Center (CC), Neighborhood Center (NC), Employment Center (EC), Mixed Use District (MUD) *designations* and the CC, Residential-Office-Civic (ROC), Moderate-High Density Residential (MHDR), NC, Community Employment (CE), Research Office (RO), Office Mixed Use District (OMU), Commercial Mixed Use District (CMU) and Mixed Use District (MU) *zones* (citation omitted) and their locations on the Propose Land Use Designations Map and Proposed Zoning Map unduly restrict commercial development, down-zone commercial properties and require development that is not economically viable.

MBA PHB, at 52, (emphasis supplied). Petitioners go on to argue, "[A] number of [PSMCP] objectives, principles and standards inhibit economic development. [MBA then refers to provisions: requiring pedestrian orientation, amenities and linkages between old an new developments, increased landscaping, restricted parking options, design standards, unified development of parcels regardless of ownership, promotion of residential development within commercial areas, and restricting nonconforming uses.] MBA continues, "[T]he regulations contain a number of provisions restricting economic development. [Petitioners identify such restrictions as the zones and their locations, limits on nonconforming uses, sign regulations, and design standards.] MBA PHB, at 52-53.

In response, the County acknowledges the importance of healthy economic plans and planning for industrial and economic activities, but states,

Petitioners' assertion of 'inconsistency' simply appears to be a conclusory argument that they are in disagreement with certain rezones in the plan. The detailed [PSMCP] includes implementing zones classifications, design standards, tree retention standards, and low impact development requirements that Pierce County contends will dramatically improve livability, the visual appearance of the plan area and its commercial districts, as well as assist in flood water retention through the use of low

impact development standards, where required, and tree retention requirements.

While a cost may be assigned to individual land use requirements, the overall product is to obtain dramatically increased livability, which will make the Community Plan area an increasingly attractive area in which to live, work, to shop, buy and sell.

Petitioners have submitted absolutely no evidence to suggest that any of the land use designations or implementing zone classifications contained in the Community Plan are economically unworkable.”

Co. Response 2, at 13-14.

In reply, MBA contends, “It is the County, not individual citizens, that should have conducted a broad fiscal analysis necessary to evaluate the Community Plan’s economic impacts.” MBA Reply, at 68. MBA also references evidence of adverse economic impacts on individual property owners provided to the County. MBA Rely, at 68, and MBA PHB, at 52. The County counters, “Declarations or oral testimony as presented by Petitioners simply state that certain implementing development regulations in the community plan will cause certain properties to be more expensive to develop. Co. Response 2, at 15.

MBA failed to identify any authority, GMA or otherwise, that requires the County to conduct a broad fiscal analysis necessary to evaluate economic impacts of a community plan. Further, the Board notes that on this consistency issue, MBA challenges *virtually all* of the nonresidential PSMCP land use designations (4 of 5 designations) and *virtually all* of the nonresidential zoning designations (12 of 13 zoning designations). *See* PSMCP, Table 4, at 19. Apparently, in MBA’s view, none of the commercial, office, mixed use, employment or other nonresidential Plan or zoning designations promotes, encourages or provides for economic development in the area. The arguments presented have not persuaded the Board that this is the case.

Additionally, the Board concurs with the County’s assessment that testimony or written materials suggesting that a few individual parcels may be more expensive to develop does not make the case that virtually all the nonresidential PSMCP land use designations and the nonresidential zoning designations “unduly restrict commercial development,” “require development that is not economically viable,” “inhibit economic development,” or “restricting economic development.” Finally, MBA has failed to persuade the Board that the requirement for design standards, landscaping, pedestrian access, *etc.*, would do otherwise than to increase the livability of the area.

MBA’s allegations are overstated and conclusory. MBA has **failed to carry its burden of proof** in demonstrating why the economic development polices in the County Plan or PSMCP are inconsistent or why the land use designations or implementing zones do not implement the plan. Petitioners’ challenge on consistency of the economic development policies is **dismissed**.

The Board commends the County for including an Economic Development Element in both its County Comprehensive Plan and the PSMCP even though there is no GMA requirement to include one at this time. [\[20\]](#)

Conclusion – Legal Issue 6

Regarding compliance with internal consistency provisions of RCW 36.70A.070 and .080(2), and the plan implementation requirements of RCW 36.70A.040(3), the Board concludes Petitioners have **failed to carry their burden of proof** on Legal Issue 6. Petitioners' challenge as stated in Legal Issue 6 is **dismissed**.

vI. Request for Invalidity

Petitioners assert that the County's actions substantially interfere with the goals of the Act and urge the Board to enter a determination of invalidity. PFR, at 20. Additionally, Legal Issue 9 from the PHO posed the following issue:

If the Board finds that the County has not complied with any of the provisions challenged above, does the County's noncompliance substantially interfere with the fulfillment of Goals 1, 2, 3, 4, 6 or 11, thereby meriting a determination of invalidity on any non-complying provision? [*Intended to cover the request for invalidity, PFR, at 20.*]

RCW 36.70A.302 provides:

- (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
 - (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
 - (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
 - (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
- (2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested

under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

In Legal Issues 1 and 2, the Board has found that the County's adoption of the SF zoning, SF plan policies and certain RR zoning designations, contained in Ordinance No. 2002-21s and 2002-22s did **not comply**, and were **not guided by** the direction provided in Goals 1 and 2 – RCW 36.70A.020(1) and (2). In Legal Issue 3, the Board has found that the County's adoption of the High Density Single Family zone in Ordinance No. 2002-21s did **not comply** with RCW 36.70A.035, .130 and .140. The question now becomes whether the continued validity of these portions of Ordinance Nos. 2002-21s and 2002-22s, during the period of **remand**, would substantially interfere with the fulfillment of the Goals of the Act, in this instance the relevant Goals are 1, 2 and 11.

The Board's review of the facts and circumstances presented in this matter, and the findings and conclusions discussed *supra*, leads the Board to conclude that the continued validity of the noncompliant Plan and zoning provisions relating to the SF and RR zoning designations will **substantially interfere** with Goals 1 and 2.

Also, the adoption of the High Density Single Family zone without regard to the requirements of RCW 36.70A.035, .130 and .140 **substantially interferes** with Goal 11. Therefore, the Board enters a **determination of invalidity** for these noncompliant provisions.

VII. ORDER

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

Pierce County's enactment of Ordinance No. 2002-21s, adopting the Parkland Spanaway Midland Community Plan (PSMCP) was **clearly erroneous** with respect to the following provisions:

- The adoption of the High Density Single Family (HSF) zone provisions, as an amendment to the PSMCP, at the June 11, 2002 hearing, **does not comply** with the notice and public participation requirements of RCW 36.70A.035, .130 (2) and .140; and
- PSMCP Standard 24.4.2, regarding the locational criteria for applying the Single Family (SF) zone **is not guided by** and **does not comply** with RCW 36.70A.020(1) and (2).

Pierce County's enactment of Ordinance No. 2002-22s, adopting the PSMCP implementing, or zoning regulations was **clearly erroneous** with respect to the following provisions:

- The Residential Resource (RR) zoning designations for Area 1 (Midland/North Fork Origin), Area 3 (North Fork Tributary), Area 4 (Historic Clover Creek Channel RR), Area 7 in its entirety (Military Road East RR), and Area 8 (14th Avenue East RR) are not appropriate urban densities and are **not guided by**, and **do not comply** with RCW 36.70A.020(1) and (2); and
- The Single Family (SF) zoning designation is not an appropriate urban density and is **not guided by**, and **does not comply** with RCW 36.70A.020(1) and (2).

In addition to finding these provisions of Ordinance Nos. 2002-21s and 2002-22s noncompliant with the noted goals and requirements of the Act, the Board has concluded these provisions substantially interfere with the fulfillment of goals 1, 2 and 11 of the GMA and enters a **determination of invalidity** for these noncompliant provisions of the PSMCP and implementing development regulations.

The Board **remands** Ordinance Nos. 2002-21s (the PSMCP) and 2002-22s (the IDRs – zoning regulations) to the County with the following directions:

1. By no later than **August 1, 2003**, the County shall take appropriate legislative action to bring the Parkland Spanaway Midland Community Plan and zoning regulations into compliance with the goals and requirements of the GMA, as interpreted and set forth in this Final Decision and Order (**FDO**).
2. By no later than **August 8, 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, as interpreted and set forth in this FDO. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on Petitioners.
3. By no later than **August 21, 2003**, the Petitioners may file with the Board an original and four copies of Comments on the County's SATC. Petitioners shall simultaneously serve a copies of their Comments on the County's SATC on the County.

4. By no later than **September 4, 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.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **10:00 a.m. September 8, 2003** at the Board's offices. With the consent of the parties, the compliance hearing may be conducted telephonically.

If the County takes legislative compliance actions prior to the August 1, 2003 deadline set forth in section 1 of this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 4th day of February 2002.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

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

APPENDIX A

Findings of Fact

1. On June 11, 2002, Pierce County enacted Ordinance No. 2002-21s adopting the Parkland Spanaway Midland Community Plan.
2. On June 11, 2002, Pierce County enacted Ordinance No. 2002-22s adopting the development (zoning) regulations implementing the Parkland Spanaway Midland Community Plan.
3. The published notice for the June 11, 2002 hearing quoted the title of Ordinance No. 2002-21. It did not mention the possible HSF amendments or indicate that any amendments could be considered. Ordinance No. 2002-21s; Co. Response 2, at 11-12.
4. The Parkland Spanaway Midland Community Plan area falls within Pierce County's *unincorporated UGA*. PSMCP, at 16 (second map following 16).
5. The PSMCP area encompasses approximately 12, 842 acres. PSMCP, at 16.
6. Prior to adoption of the current challenged PSMCP, the County's GMA Plan designated 10,040 acres (78.2%) of the area as Moderate Density Single Family (**MSF**). PSMCP, at 16.
7. Another 114 acres (.9%) of the area was designated as High Density Residential (**HRD**); and 4) The MSF Plan designation was implemented by one zoning designation – MSF (2-6 du/acre). PSMCP, at 16.
8. The new, and challenged PSMCP area still encompasses approximately 12,842 acres. PSMCP, at 19.
9. In the new PSMCP, now 10,370 acres (80.8%) is designated MSF, and 674 acres (5.2%) is designated HRD on the future land use map. PSMCP, at 19.
10. The total area designated for residential development has increased and the number of zoning designations implementing the MSF designation has been increased. PSMCP, at 19.
11. Portions of the PSMCP area fall within the Clover Creek Sub-basin. Clover Creek Basin Plan. Co. Ex. 26.
12. The Pierce County GAP Application Pilot Project covered the entire County, including the PSMCP area. The GAP study identified biodiversity management areas that included the PSMCP area. Co. Ex. 27.
13. The new Residential Resource (**RR** – 1 to 3 du/acre) zone affects 3,427 acres (26.7%) of the total land area of the PSMCP. PSMCP, at 19.
14. The eight areas zoned RR are described in the Co. Response 1, at 20-34; and Co. Ex. 2.
15. Area 1 – Midland/North Fork Origin area contains approximately 729 acres, 163 of which contain critical areas. Co. Response 1, at 20-22, and Co. Ex. 2.
16. Area 2 – 112th Street Wetland Complex area contains approximately 52 acres, 25 of which contain critical areas. Co. Response 1, at 23-24, and Co. Ex. 2.

17. Area 3 – North Fork Tributary area contains approximately 38 acres, 11 of which contain critical areas. Co. Response 1, at 24-25, and Co. Ex. 2.
18. Area 4 – Historic Clover Creek Channel area contains approximately 120 acres, 7 of which contain critical areas. Co. Response 1, at 25-26, Co. Ex. 2.
19. Area 5 – Spanaway Lake area contains approximately 1680 acres, 840 of which contain critical areas. Co. Response 1, at 27-28, Co. Ex. 2.
20. Area 6 – Clover Creek Confluence area contains approximately 694 acres, 202 of which contain critical areas. Co. Response 1, at 29-32, Co. Ex. 2.
21. Area 7 – Military Road East area contains approximately 20 acres, 9 of which contain critical areas. Co. Response 1, at 32-33, Co. Ex. 2.
22. Area 8 – 14th Avenue East area contains approximately 182 acres, 40 of which contain critical areas. Co. Response 1, at 34-34, Co. Ex. 2.
23. The new Single Family (SF – 2 to 4 du/acre) designation affects 2,263 acres (17.6%) of the total PSMCP area. PSMCP, at 19.
24. Environmental considerations were not the basis for the SF zone designations. Co. Response 1, 35-40.

[1] Copies of both challenged Ordinances, with attachments, were included in the PFR.

[2] * Indicates that a paper copy of the noted map, not a clear overlay, is included entirely, or partially, in the PSMCP, at 76, 84 (part), 86, 91 (part), and 194 (part). Those Overlays without an * are not found in the PSMCP.

[3] Nine Legal Issues were originally set forth in the PHO. Legal Issue No. 8, raising SEPA issues was **dismissed** by the Board's 10/21/02 Order. Legal Issue 9 requests Invalidity, and is dealt with in the following Section of this Order.

[4] The HSF zoning designation is “intended to provide for single-family detached and attached residential uses with all entry on the first floor, at densities ranging from 6 to 12 dwelling units per acre. PSMCP, Ordinance No. 2002-21S, exhibit B, at 21. Although the HSF zoning classification was adopted as an implementing zone for the following land use classifications in the PSMCP: Community Center (CC), Neighborhood Center (NC), High Density Residential District (HRD) and Mixed Use District (MUD), the County did not apply, or map, this designation on any of its zoning maps, nor include a description of it in Ordinance No. 2002-22S – the IDRs. In essence, the HSF zone could be used to implement any of the noted land use designations. County Response 2, at 10; MBA PHB, at 15.

[5] RCW 36.70A.035(2)(b)(ii) that if, “The proposed change is within the scope of the alternatives available for public comment” additional opportunity for public review and comment is not required.

[6] The Board described this duty in some detail in two previous cases involving cities. In a case involving the City of Woodinville, the Board held:

[T]he Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or

employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA.

Hensley v. City of Woodinville, CPSGMHB Case No. 96-3-0031, Final Decision and Order, (Feb. 25, 1997), at 9. (Footnote omitted.) In a case involving the City of Redmond, the Board held:

The GMA requirement to “ensure neighborhood vitality and character” is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, *i.e.*, in urban areas — while also requiring that such growth be accommodated in such a way as to “ensure neighborhood vitality and character.”

Benaroya v. City of Redmond, CPSGMHB Case No. 95-3-0072, Final Decision and Order, (Mar. 25, 1996), at 21.

[7] The Board notes that neither the MSF land use designation, nor the MSF implementing zone was ever challenged before the Board. The Board further notes, with favor, that *the new MSF designation in the PSMCP raises the minimum density from 2 du/acre to 4 du/acre and clearly complies with the goals and requirements of the Act*. The maximum density remains the same at 6 du/acre. PSMCP, Standard 22.3.2, at 41.

[8] The Board notes that the MSF Plan land use designation (2-6 du/acre), is in the County's GMA Plan, but is not altered by the PSMCP and is not challenged in this case. See County GMA Plan, LU-RE Objective 34.1, at 19A-39.

[9] See Co. Response 1, at 9-10.

[10] LU-R Objective 22. The permitted residential densities shall discourage urban sprawl throughout the plan area. PSMCP, at 40. LU-R Objective 23. Carefully control residential development activities in the Urban Growth Area on sites that have been identified as open space in the Comprehensive Plan Open Space/Greenbelt Map through implementation of a Residential Resource zone. PSMCP, at 42. LU-R Objective 24. Create Clear policy direction as to where various zone classifications are applied by taking into consideration existing and planned land use patterns and environmental factors and provide for density transfers from environmentally constrained lands to other on- and off-site areas. PSMCP, at 43.

[11] NE Objective 48. Implement regulatory and public education and outreach efforts that support the functions of the natural environment. PSMCP, at 98. NE Objective 50. Retain, to the maximum extent possible, and enhance existing native vegetation within the Parkland Spanaway Midland Communities Plan area. PSMCP, at 100. NE Objective 52. Integrate land use planning processes with basin planning efforts. PSMCP, at 105. NE Objective 53. Reduce flooding impacts associated with flood hazard and flood prone areas within the Parkland Spanaway Midland Communities Plan area. PSMCP, at 105. NE Objective 58. Preserve the existing fish and wildlife species contained within the plan area and the natural habitats that support these species. PSMCP, at 116.

[12] The County notes five key documents that provide the basis for the RR mapping exercise: 1) [Clover Creek] Basin Plan Recommendations – Co. Ex. 26; 2) Refined Open Space Corridors map for Board; 3) Open Space Corridors map in County GMA Plan; 4) Pierce County GAP Pilot Project [biodiversity management areas] – Co. Ex. 27; and 5) Open Space Corridors Refinement map in PSMCP. Co. Response 1, at 15-19.

[13] Spanaway Creek and the north and south fork of Clover Creek.

[14] The Board notes that the minimum density for the MSF zoning designation for the Parkland Spanaway Midland Plan area is 4 du/acre – an undisputed appropriate urban density. IDRs, Ordinance No. 2002-22s, Attachment A, Density and Dimensions Table, at 49.

[15]

Having found the SF zone designation fails to comply with the GMA, the Board need not and will not address the specific development standards and requirements that apply to the SF zone, among others.

[16]

The Board recognizes that there is no evidence provided to support or contradict this reading of the MSF designation.

[17]

This statement is made in footnote 14, MBA PHB, at 39.

[18]

RCW 36.70A.090 provides:

A comprehensive plan should provide for innovative land use management techniques, including but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights.

[19]

Only under this heading does MBA appear to argue that the zoning designations do not implement the land use designations and/or plan policies.

[20]

Pierce County is required to review and revise its comprehensive plan by December 1, 2004 to ensure that it complies with the requirements of Chapter 36.70A RCW. *See* RCW 36.70A.130(4)(a). An economic development element was added to the list of mandatory elements by the Legislature during the 2002 session. *See* RCW 36.70A.070(7), and specifically RCW 36.70A.070(9).