CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

CORINNE HENSLEY and 1000 FRIENDS OF WASHINGTON, Petitioners, v. SNOHOMISH COUNTY, Respondent, and MARK VERBARENDSE, MBA/ SCCAR, SULTAN and MARYSVILLE SCHOOL DISTRICTS, MacANGUS RANCHES INC., AND YARMUTH-DAVIS PARTNERSHIP Intervenors.	)	**Case No. 03-3-0009c** ***(Hensley VI)*** **FINAL DECISION and ORDER**

I. Background

A. Petitions for Review and Consolidation

On February 14, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Corinne R. Hensley (**Hensley**). The matter was assigned Case No. 03-3-0005, and is hereafter referred to as *Hensley v. Snohomish County*. Hensley challenges Snohomish County's (**County**) adoption of Emergency Ordinances 3-001, 3-002, and 3-005. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA** or the **Act**) and the State Environmental Policy Act (**SEPA**).

On February 27, 2003, the Board received a PFR from Windsong Neighborhood Association

(**Windsong**). The matter was assigned Case No. 03-3-0007 and is captioned *Windsong Neighborhood Association v. Snohomish County*. Windsong challenges the County's adoption of Emergency Ordinances 3-001 and 3-002. The basis for the challenge is that the Ordinances are noncompliant with several sections of the GMA. Petitioner also challenges the County's failure to act under SEPA (RCW 43.21C), as required for the Eberth and Fjarlie proposals, adopted as an annual comprehensive plan amendment and rezone.

On March 18, 2003 the Board issued an Order of Consolidation, Notice of Hearing and Order Granting Motions to Intervene, combining cases 03-3-0005 and 03-3-0007.

On March 25, 2003 the Board received a PFR from 1000 Friends of Washington **(1000 Friends**). The matter was assigned Case No. 03-3-0009 and is captioned *1000 Friends of Washington v. Snohomish County.* 1000 Friends challenges the County's adoption of Ordinances 3-001, 3-002, and 3-005. The basis for the challenge is that the Ordinances are noncompliant with various provisions of the GMA and the SEPA.

On April 3, 2003, the Board issued a Second Order of Consolidation and Order Granting Motions to Intervene, combining Case Nos. 03-3-0005, 03-3-0007 and 03-3-0009. The Order stated that the case will hereafter be known as *Hensley, et al. v. Snohomish County* (***Hensley VI***), Case No. 03-3-0009c.

On June 12, 2003, the Board issued an Order "unconsolidating" the Windsong PFR from the *Hensley VI* matter and granted a settlement extension. That case is now captioned *Windsong v. Snohomish County*, CPSGMHB Case No. 03-3-0007. Hensley and 1000 Friends are the only remaining Petitioners in the *Hensley VI* case – 03-3-0009c.

B. Intervention

On March 3, 2003, the Board received a Motion to Intervene on behalf of Mark Verbarendse.

On March 11, 2003, the Board received a Motion to Intervene from Yarmuth-Davis Partnership.

On March 18, 2003, the Board granted the two Motions to Intervene.

On March 25, 2003, the Board received a Motion from the Master Builders Association (**MBA**) and Snohomish County – Camano Association of Realtors (**SCCAR**) for Amicus Status. At the Prehearing Conference held on March 31, 2003, the attorney representing MBA and SCCAR indicated that the organization would prefer to be granted Intervenor status. The Board orally granted the motion at the Prehearing Conference.

On April 2, 2003, the Board received a Stipulation from MacAngus Ranches, Inc. and 1000 Friends of Washington requesting that the Board grant Intervenor status in this case to MacAngus Ranches, Inc., as to 1000 Friends' issues.

On April 3, 2003, the Board issued an Order granting the motions by MacAngus Ranches, Inc. and by MBA and SCCAR to intervene.

On April 18, 2003, the Board received a Joint Motion to Intervene by the Sultan School District No. 311 and the Marysville School District No. 25.

On April 29, 2003, the Board granted the Joint Motion to Intervene by the Sultan School District No. 311 and the Marysville School District No. 25.

C. Prehearing Conference and Prehearing Order

On March 31, 2003, the Board conducted the prehearing conference in the Board's offices at 900 Fourth Avenue – Suite 2470, Seattle, WA. Board Member Lois H. North presided, Board Member Edward G. McGuire also attended. Petitioner Corinne Hensley appeared *pro se*, John Zilavy, via telephone, represented Petitioner 1000 Friends. Andrew Lane and Shawn Aronow represented Respondent Snohomish County. Also in attendance for Intervenors were: Richard R. Wilson (Yarmuth-Davis Partnership), Molly Lawrence and Jay Derr (Verbarendse), Duana Koloŭsková (MBA/SCCAR) and Steven Jones (MacAngus). J. Michael Davis, property owner was also in attendance.

On April 3, 2003, the Board issued its "Second Order of Consolidation, Notice of Hearing and Order Granting Intervention" (**PHO**) setting the final schedule and Legal Issues for this case.

On April 14, 2003, pursuant to a motion from Intervenor Verbarendse, the Board issued a "Clarification of Prehearing Order" indicating that there would be no extensions of the deadlines established in the PHO for filing motions to supplement the record.

D. Motions to Supplement and Amend the Index

On March 31, 2003, the Board received "Snohomish County's Index to the Record." (**Index**).

On April 18, 2003, the Board received Intervenor MacAngus Ranches, Inc.'s Motion to Supplement the Record with seven exhibits (Exhibits A through G).

On April 21, 2003, the Board received Petitioner Hensley's Motion to Supplement the Record with numerous items.

On April 21, 2003, the Board received Petitioner Windsong's [1] Motion to Supplement the Record and Memorandum in Support with eight attached exhibits.

On April 28, 2003, the Board received Respondent Snohomish County's Response to Motions to Supplement the Record.
On May 5, 2003, the Board received Hensley's rebuttal to the County's response to the motion to supplement.

On May 5, 2003, the Board received Windsong Neighborhood Association's Reply Re Windsong's Motion to Supplement the Record.

On May 19, 2003, the Board issued its "Order on Motions." The Order admitted 31 supplemental exhibits to the record in this case.

E. Dispositive Motions

On April 18, 2003, the Board received "Snohomish County's Motion to Dismiss," with four exhibits. On the same day, the Board received "Verbarendse's Motion to Dismiss."

On April 28, 2003, the Board received: 1) "Hensley Response to Motions to Dismiss Issues;" 2) "1000 Friends Response to Snohomish County's and Verbarendse's Motions to Dismiss Hensley's Verbarendse's Issues;" "1000 Friends Response to County's Motion to Dismiss SEPA Issues for Lack of Standing," with attached "Declaration of David Ross Pitkin;" 4) "Petitioner [2] Windsong Neighborhood Association's Response to Snohomish County's Motion to Dismiss;" and 5) Intervenor "School Districts' Response to County's Motion to Dismiss."

On May 6, 2003, the Board received "Snohomish County's Reply Memorandum," and "Verbarendse's Reply to Motion to Dismiss."

In brief, Snohomish County moved to dismiss all the SEPA claims [3] raised by all Petitioners. The County also moved to dismiss Petitioner Hensley for lack of GMA participation standing related to one of the County's adopted amendments. [4] Intervenor Verbarendse joins the County in challenging Petitioner Hensley's GMA standing.

The Board did not hold a hearing on the dispositive motions.

On May 19, 2003, the Board issued its "Order on Motions." The Order **granted** the motions to dismiss all Petitioners' SEPA claims for lack of SEPA standing and **denied** the motions to dismiss Petitioner Hensley for lack of GMA standing.

F. Briefing and Hearing on the Merits

On June 13, 2003, the Board received: "1000 Friends of Washington Opening Brief" (**1000 Friends PHB**), with 14 attached exhibits; and "Hensley Prehearing Brief" (**Hensley PHB**), with 17 exhibits.

On July 21, 2003, the Board received: "Snohomish County's Response Brief" (**County Response**), with 21 exhibits; "MBA/SCCAR's Prehearing Response Brief" (**MBA Response**), with 8 exhibits; "School District's Prehearing Brief" (**School District Response**), with 18 exhibits; "Intervenor MacAngus Ranches, Inc.'s Prehearing Memorandum" (**MacAngus Response**), with 7 exhibits; "Hearing Brief of Yarmuth-Davis Partnership" (**Yarmuth Response**), with no exhibits; and "Verbarendse's Response Brief" (**Verbarendse Response**), with 8 exhibits.

On July 28, 2003, the Board issued an "Order Adjusting the Start Time for the Hearing on the Merits." This Order changed the start time for the August 7, 2003, Hearing on the Merits (**HOM**) from 10:00 a.m. to 9:00 a.m.

On July 31, 2003, the Board received: "1000 Friends of Washington Reply Brief" (**1000 Friends Reply**) and "Hensley Reply Brief" (**Hensley Reply**).

Also on July 31, 2003, Board Member Lois H. North's retirement became effective and Board Member Edward G. McGuire assumed the role as presiding officer in this matter.

On August 7, 2003, the Board held the hearing on the merits (**HOM**) in the training room adjacent to the Board's Office – Suite 2470, 900 4th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, and Joseph W. Tovar were present for the Board. Petitioner Hensley appeared *pro se* and Petitioner 1000 Friends of Washington was represented by John Zilavy. Respondent Snohomish County was represented by Andrew Lane and Shawn Aronow. Molly Lawrence represented Intervenor Verbarendse; Liz Thomas and Denise Lietz represented Intervenor Sultan and Marysville School Districts; Duana Koloŭsková and David Toyer represented Intervenor MBA/SCCAR; and Steve Jones represented Intervenor MacAngus Ranches. Intervenor Yarmuth was not represented at the HOM. Also in attendance were Simi Jain and Lynette Meachum, Board Externs; Steve Skorney and Sean Howe, Snohomish County; and Kristen Kelly of 1000 Friends of Washington (Snohomish County).

Court reporting services were provided by Yvonne Gillette of Seattle Deposition Reporters. The hearing convened at 9:00 a.m. and adjourned at approximately ---1:00 p.m. A transcript of the proceedings was ordered by the Board.

On August 8, 2003, the Board received, pursuant to a Board request at the HOM, copies of the Executive/Council Approval Forms for Ordinance Nos. 03-001, 002 and 005.

On September 2, 2003, the Board received the transcript of the HOM (**HOM Transcript**).

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

Petitioners challenge Snohomish County's adoption of UGA, Plan and Zoning amendments, as adopted by Ordinance Nos. 03-001, 03-002 and 03-005. Pursuant to RCW 36.70A.320(1), Ordinance Nos. 03-001, 03-002 and 03-005 are presumed valid upon adoption by Snohomish County.

The burden is on Petitioners, Hensley and 1000 Friends, to demonstrate that the actions taken by Snohomish 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 actions taken by County are 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 Snohomish 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 Snohomish County in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. As the State Supreme Court has stated, "Local discretion is bounded . . . by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board* (***King County***), 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). Division II of the Court of Appeals further clarified, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent with the requirements and goals of the GMA." *Cooper Point Association v. Thurston County*, No. 26425-1-II, 108 Wn. App. 429, 31 P.3d 28 (Wn.App. Div. II, 2001).

In affirming the *Cooper Point* court, the Supreme Court 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 an administrative agency's construction of statutes is within the agency's field of expertise . . .

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

iii. board jurisdiction and Prefatory note

A. Board Jurisdiction

The Board finds that Petitioners' PFRs were timely filed, pursuant to RCW 36.70A.290(2); both Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged Ordinances, pursuant to RCW 36.70A.280(1)(a).

B. Prefatory Note

Petitioner Hensley posed three Legal Issues and 1000 Friends posed five Legal Issues for the Board to resolve. Both Petitioners requested that the Board enter a Determination of Invalidity. The Board will address these issues topically in the following order:

A.) **Plan Policy LU 1.A.9 Issues** (Hensley Legal Issue No. 3 and 1000 Friends Legal Issue No. 4);

B.) **School District Rezone Issue** (1000 Friends Legal Issue No. 5);

C.) **Arlington UGA Issues** (Hensley Legal Issue 2 and 1000 Friends Legal Issue No. 1);

D.) **Agricultural Lands Issue** (1000 Friends Legal Issue No. 2); and

E.) **LAMIRD Issues** (Hensley Legal Issue No. 1 and 1000 Friends Legal Issue No.3).

Portions of Legal Issues that have been abandoned by Petitioners in briefing are noted under each Legal Issue. Following the discussion of these Legal Issues in Section IV, the Board will address the request to enter a determination of invalidity in Section V.

iv. legal issues and discussion

A. PLAN POLICY LU 1.A.9 ISSUES

The PHO set forth Petitioner Hensley Legal Issue No. 3 and 1000 Friends Legal Issue No. 4 as follows:

> *3. Ordinance 03-001 amended the comprehensive plan to include new language to the General Policy Plan for LU 1.A.9 exempting specific uses, churches and instruction schools, from review under the County's Buildable Land Criteria for UGA expansions. Did the County violate the GMA and SEPA in amending this policy to include exemptions from the UGA requirements? The RCW violations are as follows: RCW 36.70A.020(1), (2), (11) and (12), RCW 36.70A.035, RCW 36.70A.070 preamble, (1), (5) and (6), RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.120, RCW 36.70A.130, RCW 36.70A.140, RCW 36.70A.210, RCW 36.70A.215, RCW* [5]
>
> *36.70A.280, RCW 43.21C.030, RCW 43.21C.031, and RCW 43.21C.110.*
>
> *GPP: PE 1.A, PE 1.A.2, PE 1.B, PE 2.C.1, PE 3.C.2, LU 1, LU 1.A., LU 1.A.1, LU 1.A.2, LU 1.A.3, LU 1.A.10, LU 1.B.2, LU 1.C, LU 1.C.3, LU 2, LU 2.B., LU 2.C, LU 2.C.1, LU 2.C.2, LU 2.C.3, LU 3, LU 3.A.6, LU 5, LU 6, LU 6.A, LU 6.B, HO 2, HO2.A.1, TR 1.B.1, TR 1.B.2, TR 1.B.3, TR 2, TR 4, CF-8, CF-8.A, CF-9, CF-9.A, CF 9.B, CF 9.B.1, CF 9.B.2, CF 10, CF 10.A, CF 10.B, UT 2, UT 2.A, UT 2. B, UT 2.B.2, UT 3, UT 3.A, UT 3.B, UT 3.C, UT 3.C.1*
> *Current TIP, CIP and Transportation Currency Report*
> *CPP: UG-1, UG-3, UG-5, UG-7, UG-8, UG-12, UG-14, OD-1, O-2, OD-4, OD-5, OD-6, OD-11, RU-3, TR-4, TR-8, Fiscal Impact Analysis*
> *.215(1)(a) and (b), (3)(a), (b) and (c), (4)*
>
> *4. Does enactment of County Council Proposal B, amending the County GPP's policy LU 1.A.9 to exempt schools and churches from meeting Growth Management Act requirements for UGA expansion, violate RCWs 36.70A.020(1), 36.70A.020(2), 36.70A.020(12) (planning goals), 36.70A.110 (urban growth areas) and 36.70A.070 (internal consistency of the comprehensive plan) when it fails to comply with the Growth Management Act's UGA expansion requirements?*

Abandoned Issues

WAC 242-02-570(1) provides in relevant part: "Failure by . . . a party to brief an issue shall constitute abandonment of the unbriefed issue." Additionally, the Board's PHO indicated, "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, Section XIII, at 8-9.

Petitioner Hensley failed to brief the following portions of Legal Issue 3 [LU 1.A.9], regarding compliance with RCW 36.70A.035; RCW 36.70A.070(1), (5) and (6); RCW 36.70A.100; RCW 36.70A.130; RCW 36.70A.070 (preamble), as it relates to GPP PE 3.C.2, LU 2.Cl2, LU 2.C.3, LU 3.A.6, LU 6.B, HO 2, HO 2.A.1, TR 1.B.1 TR 1.B.3, CF 8.A, CF 9.B.2 and the most recent TIP, CIP and Concurrency Report; and RCW 36.70A.210, as it relates to CPP UG 7, UG 12, OD 2 and OD 4. *See* Hensley PHB, at 21-54. These portions of Legal Issue 3 are deemed **abandoned**.

Petitioner 1000 Friends failed to brief the following portions of Legal Issue 4 [LU 1.A.9], regarding compliance with: RCW 36.70A.020(1), (2) and (12). *See* 1000 Friends PHB, at 34-38. These portions of Legal Issue 1 are deemed **abandoned**.

Applicable Law

Several provisions of the GMA are intertwined as they relate to the location, sizing, review and evaluation and expansion of UGAs. RCW 36.70A.110, .215 and .210 deal directly with UGAs and their evaluation and expansion. Several GMA Goals from RCW 36.70A.020 also address where urban growth should be, or should not be, encouraged. Within this construct, the Plan itself can address UGAs and therefore, the internal consistency requirements of RCW 36.70A.070(preamble) come into play. The provisions of the Act challenged by Petitioners are set forth below.

RCW 36.70A.110 generally addresses the creation of UGAs. RCW 36.70A.110(1) deals with locational criteria for delineating boundaries of UGAs, and .110(3) pertains to locating or sequencing urban growth within UGAs. RCW 36.70A.110(2) regards sizing UGAs; it provides in relevant part:

> Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

RCW 36.70A.210 requires the County, in collaboration with its cities, to adopt county-wide

planning policies which are to be "used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter."

RCW 36.70A.070(preamble) provides: "The plan shall be an internally consistent document and all elements shall be consistent with the future land use map."

RCW 36.70A.120 requires each GMA planning jurisdiction to "perform its activities and make capital budget decisions in conformity with its comprehensive plan."

The GMA's Goals are to "guide the development of comprehensive plans and development regulations." In this case, the relevant Goals of RCW 36.70A.020 are:

> (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.
> (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
> (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing service levels below locally established minimum standards.

RCW 36.70A.140 requires GMA jurisdictions to:

> [E]stablish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

RCW 36.70A.215(1) requires the County and its cities to adopt county-wide planning policies to establish a review and evaluation program – the "buildable lands" report and review. The purpose of the review and evaluation program is to:

> (a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets,

> and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and
> (b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

The first evaluation, or "buildable lands report," was to be completed by September 1, 2002. RCW 36.70A.215(2)(b). The evaluation component, described in RCW 36.70A.215(3), is required to:

> (a) Determine whether there is *sufficient suitable land to accommodate the county-wide population projection* established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;
> (b) Determine the *actual density of housing* that has been constructed and the *actual amount of land developed for commercial and industrial uses within the urban growth area* since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) or this section; and
> (c) Based upon the actual density of development as determined under (b) of this subsection, *review the commercial, industrial and housing needs by type and density range to determine the amount of land needed for commercial, industrial and housing for the remaining portion of the twenty-year planning period* used in the most recently adopted comprehensive plan.

(Emphasis supplied).

Discussion

The Action:

This Legal Issue only involves the County's adoption of Ordinance No. 03-001 amending a policy in the County's GMA Plan. The challenged amendment to Plan Policy LU 1.A.9 provides in relevant part:

> UGA boundaries shall be re-evaluated at least every five years to determine whether or not they are capable of meeting the county's 20-year population and employment projections. This re-evaluation shall be consistent with Snohomish County's "buildable lands" review and evaluation program requirements established in Countywide Planning Policy UG-14. Expansion of the boundary of an individual

> UGA to include additional residential, commercial, and industrial land shall not be permitted unless it complies with the Growth Management Act, and one of the following four conditions are met, <u>except that these conditions do not apply to the expansion of a UGA for churches or school instructional facilities when the affected land is dedicated solely for those uses</u>: [four conditions are listed].

Ordinance No. 03-001, Section 4, Exhibit A, at 2-3; Index No. 271, (<u>underlining</u> in original, indicating amendatory language). This amendatory language adds to a County Plan Policy that governs the conditions and criteria to be applied if the County's buildable land report indicates a UGA boundary should be considered for expansion. It specifically requires compliance with the GMA and one of four additional conditions established by the County before any UGA can be expanded.

<u>Position of the Parties and Discussion of RCW 36.70A.120:</u>

Hensley asserts that there are no implementing regulations, nor capital budget decisions made, to implement this amendment. Hensley PHB, at 36. The County does not respond to this conclusory statement. County Response, at 34-42. However, the School Districts contend, "Public uses such as schools are allowed in urban and rural areas. The amendment simply gives the County and option to site a school in an urban area and to secure urban services for the school when all applicable requirements and County policies are satisfied." Additionally, the Districts note, "The County has enacted a new P/IU (Public Institutional Use) to further clarify the process for expanding UGAs for non-capacity generating uses such as those addressed in Policy LU 1.A.9." School District Response, at 22. The School Districts also state, "Of course, the County does not make capital budget decisions for schools. That is the responsibility of the school districts. Accordingly, the County budget decisions are not implicated." *Id*.

Based on the argument presented, or lack thereof, in Petitioner's PHB, the Board concludes that Petitioner has **failed to carry the burden** of demonstrating how the County's amendment to LU 1.A.9 does not comply with the requirements of RCW 36.70A.120.

<u>Position of the Parties and Discussion of RCW 36.70A.140</u>

Hensley contends that the Council created its own timeline when it initiated this amendment, circumventing the normal docketing process and timeline that applies to the public. Consequently, Hensley contends, "There is NO continuous public participation for council amendments in the Docketing process." Consequently, Petitioner asserts, the public

participation process for LU 1.A.9 was not ensured as required by RCW 36.70A.140. Hensley PHB, at 22-25.

The County argues that the County's docketing process was established pursuant to RCW 36.70.470, which is not among the issues identified in Hensley's PFR or the PHO. Therefore, the County contends, that issue is not before the Board. County Response, at 37-38. Additionally, the County asserts that there was notice of, and public hearing on, LU 1.A.9 before the planning commission, and notice of, and public hearing on, the amendment before the Council. County Response, at 39-40; citing Exs. 15, 16, 17, 99 and 271.

The Board agrees with the County that the County's compliance with RCW 36.70A.470 is not before the Board. Additionally, the Board's review of the exhibits noted by the County regarding notice and public hearing for LU 1.A.9 leads the Board to conclude that the County **complied** with the notice and public participation requirements of RCW 36.70A.140 and Goal 11 [RCW 36.70A.020(11)] when it adopted LU 1.A.9.

Position of the Parties and Discussion of RCW 36.70A.110:

The underlying premise for both Petitioners in challenging LU 1.A.9, is that this Plan Policy amendment provides an exemption from the UGA provisions of the Act. Neither Petitioner takes issue with whether the County is accommodating the OFM population projections. *See* Hensley PHB, at 36-38; and 1000 Friends PHB, at 34-39. In short, Petitioners contend that the LU 1.A.9 amendment encourages churches and schools, to seek land outside the UGAs, contrary to the Act's UGA provisions that encourage urban growth within UGAs and require an accounting process ("show your work" or "buildable lands report") as part of the UGA sizing, location and expansion process. *Id*. Additionally, Hensley contends that UGA expansions need to be coordinated with the cities where UGAs are being expanded. Hensley PHB, at 38.

The County explains that LU 1.A.9 requires any UGA expansions to comply with the Act and this Policy adds additional self-imposed conditions for UGA expansions involving commercial, industrial and residential uses. The amendment clarifies that churches and school instructional facilities need not adhere to the additional self-imposed requirements. County PHB, at 35-36. The County responds,

> [B]ecause both petitioners persist in their mistaken belief that the County has exempted churches and schools from GMA UGA requirements, the County wants to unequivocally state: **The amended language does not purport to exempt churches and schools, or any other uses from the UGA expansion requirements of the**

GMA. Also, the amendments to LU 1.A.9 have not expanded any UGA.

County PHB, at 36, (**bold** emphasis in original). The County continues, "1000 Friends argues that any UGA expansion must comply with RCW 36.70A.110. The County agrees. However, as the County's amendment of LU 1.A.9 does not expand any UGA, the provisions of RCW 36.70A.110 do not apply." *Id*., at 42.

The School Districts join the County's argument that the amendment to LU 1.A.9 does not modify any GMA goal or requirement and that there is no need to show your work in amending this policy since no UGA is expanded by the amendment. School District Response, at 17-19. Additionally, Intervenor notes that the County has discretion in how it accommodates growth. *Citing* RCW 36.70A.110(2). *Id.*, at 16-17.

In reply, Petitioners reiterate the premise and arguments offered in their prehearing briefs. In essence, that the amendments to LU 1.A.9 permit exemptions from the UGA expansion requirements of the Act. Hensley Reply, at 27-28; and 1000 Friends, at 23.

As noted *supra*, RCW 36.70A.110 establishes the framework for sizing and locating the boundaries of UGAs and locating urban growth within UGAs. Working alone, it does not address the expansion of UGAs nor provide guidance for assessing whether UGAs are being successful in accommodating population or job growth. As the County suggests, this provision may not directly apply to the concerns raised by Petitioners at this point in time. Also, the County and Intervenor correctly point out that the amendment to LU 1.A.9 does not expand any UGA. The Policy itself sets the parameters and conditions for possible UGA expansions for commercial, industrial and residential uses, but exempts churches and schools from these additional self imposed requirements. Neither the County nor the School Districts dispute that even if UGA expansions for churches and schools occur, they must comply with the goals and requirements of the Act. RCW 36.70A.215 is more directly on point regarding UGA expansions.

Regarding compliance with RCW 36.70A.110, the Board concludes that Petitioners have **failed to carry the burden** of demonstrating how the County's amendment to LU 1.A.9 does not comply with the requirements of RCW 36.70A.110.

<u>Position of the Parties and Discussion of RCW 36.70A.210 and .215</u>:

The primary focus of Petitioner Hensley's challenge regarding CPPs is that Plan Policy LU 1. A.9 is inconsistent with CPP UG-14, because UG-14 "does not include exemptions." Hensley [6] also refers to a finding that the County included in its Ordinance to illustrate the County's "faulty reasoning" that "by placing urban public/institutional uses outside the urban growth

boundary, more land is available inside the UGA for uses such as housing and employment." Hensley PHB, at 24-25; and Hensley Reply, at 20. Petitioner continues the "no exemptions authorized" line of argument when she contends that RCW 36.70A.215 "requires the County to look at [evaluate] land specifically and not segregate the land by uses." Hensley PHB, at 36.

The County responds that "As originally adopted, GPP LU 1.A.9 was identical to CPP UG-14. Hensley neglects to explain how adding this clarifying sentence to LU 1.A.9 somehow thwarts UG-14. The reason she offers no explanation is because the amendment in no way thwarts UG-14." County PHB, at 40. The County claims that Hensley's assertions are based upon the erroneous assumptions that the "County intends to exempt churches and schools from the GMA UGA requirements, or that the County's amendment actually expands a particular UGA." *Id.*, at 41.

The School Districts concur and support the County's position and contend that "The amendment to Policy LU 1.A.9 simply provides the County with the flexibility to 'encourage development patterns that use urban land more efficiently by encouraging the intensification and revitalization of existing and planned residential, commercial and industrial uses.'" School District Response, at 21.

Snohomish County's CPP UG-14 provides in relevant part:

> Expansion of the boundary of an individual UGA to include additional residential, commercial, and industrial land shall not be permitted unless it complies with the Growth Management Act, and one of the following four conditions are met: [four conditions are listed].

As noted, *supra*, LU 1.A.9 provides in relevant part:

> Expansion of the boundary of an individual UGA to include additional residential, commercial, and industrial land shall not be permitted unless it complies with the Growth Management Act, and one of the following four conditions are met, <u>except that these conditions do not apply to the expansion of a UGA for churches and school instructional facilities when the affected land is dedicated solely for those uses</u>: [four conditions are listed].

It is not disputed that CPP UG-14 was adopted in response to the direction provided in RCW 36.70A.215(1). (*See* Ordinance No. 99-121). Review of the language of RCW 36.70A.215 provides additional guidance in assessing the County's action, since this section of the GMA specifically addresses the question of UGA expansions. Clearly, counties are discouraged, but not prohibited, from expanding UGAs unless there is a need for more land demonstrated in their

buildable lands report. Both CPP UG-14 and LU 1.A.9 follow this direction, and provide that, "Expansion of a boundary of an individual UGA . . . *shall not be permitted* unless it complies with the [GMA] and one of the following four conditions are met." (Emphasis supplied.) So what does the GMA require the County evaluate in assessing and evaluating whether its UGAs are appropriately sized?

The review and evaluation mandate focuses on the following components: 1) whether there is sufficient suitable land to accommodate the county-wide population projection; 2) the actual density of *housing* that has been constructed and the actual amount of land developed for *commercial and industrial uses* within the urban growth area; and 3) evaluation of the *commercial, industrial and housing* needs by type and density range to determine the amount of land needed for *commercial, industrial and housing* for the remaining portion of the twenty-year planning period. *See* RCW 36.70A.215(2)(b), (emphasis supplied).

The review and evaluation program is designed to require the assessment of at least the three most significant consumers of urban land – residential, commercial and industrial uses. [7] These three use types provide the core of urban development and the basis for the possible expansion of UGAs. CPP UG-14 reflects the directive of .215 and goes further by including additional conditions that must be met before expansion can occur. Is the County's Plan Policy LU 1.A.9 consistent with CPP UG-14? The Board finds that it is.

Plan Policy LU 1.A.9, like CPP UG-14, reflects the importance of evaluating residential, commercial and industrial lands and development to assure that the land within UGAs is available to appropriately accommodate these critical urban uses and the associated population. Also, the *additional* four conditions for UGA expansion established in CPP UG-14 are mirrored by LU 1.A.9 and apply to land devoted to UGA expansions to accommodate *residential, commercial and industrial uses*. It is only school instructional facilities and church uses to which these additional, self-imposed County UGA expansion conditions do not apply. Petitioners point to nothing in the GMA or CPP UG-14 that prohibits the County from taking this action.

The required components of RCW 36.70A.215 and CPP UG-14 are addressed in LU 1.A.9. Likewise the additional components of CPP UG-14 are addressed in LU 1.A.9. Both .215 and CPP UG-14 are silent as to assessing the need for land for schools and churches.

The Board is not persuaded that the lack of identical language in a CPP and Plan Policy equals inconsistency. This is especially true when ***all* potential UGA expansions, regardless of the type of uses to be included, must comply with the goals and requirements of the Act**. Finally, the Board notes that, it has previously held that schools may be located in rural areas.

See Vashon-Maury v. King County (***Vashon Maury***), CPSGMHB Case No. 95-3-0008c, Final Decision and Order, (Oct. 23, 1995), at 72. Policies that encourage including institutional uses, such as schools and churches, within urban areas further the goal of compact urban development that Petitioners are so concerned about. LU 1.A.9 does not thwart UG-14. Therefore, the Board concludes that LU 1.A.9 is consistent with CPP UG-14 and **complies** with the consistency requirements of RCW 36.70.210.

The Board now turns to the question of whether LU 1.A.9 is consistent with other CPPs challenged by Petitioners. Petitioner 1000 Friends does not challenge LU 1.A.9's consistency with any other CPP. 1000 Friends PHB, at 34-37. Petitioner Hensley, however, argues that LU 1.A.9 is inconsistent with the following CPPs: UG-1j, UG-3, UG-5, UG-8, OD-1, OD-5, OD-6, [8] OD-11, RU-3, TR-4 and TR-8. Hensley PHB, at 26-34. The thrust of Petitioner's argument regarding consistency with these CPPs is that the amendment allowing expansion of UGAs for schools and churches, which are allegedly "magnets for growth," encroaches on the rural areas, causing population to locate in the rural area with the reciprocal demand for services. Hensley PHB, at 26-34.

The County responds,

> Hensley makes superficial comments with respect to eleven other CPPs. Each group of comments consists of conclusory assertions supported by one of two incorrect assumptions: either the County intends the amendment to exempt churches and schools from the GMA UGA requirements, or that the County amendment actually expands a particular UGA. The Board should not be misled. The clarifying amendment is consistent with all CPPs; just as the original language of LU 1.A.9 was consistent with all CPPs.

County Response, at 40-41.

Again, the School Districts support the County's position and also provide a chart in Appendix I of their brief responding to each of Hensley's comments on each of the eleven CPPs. School District Response, at 26. In essence, the School Districts' response suggests that Petitioner's concerns are more appropriately directed at an actual UGA expansion carried out pursuant to Plan Policy LU 1.A.9. However, this policy does not expand any UGA. *Id.*, at 26.

In reply, Petitioner reasserted the statements included in the PHB and concluded, "The very fabric of society is built around schools, churches and the sense of community. Placing the most needed societal facilities outside of neighborhoods and communities destroys the very essence of Growth Management." Hensley Reply, at 20-24, and 25.

The Board understands Petitioner's concern that the amendment to LU 1.A.9 could lead to land that is presently rural and adjacent to the UGA to be eligible for inclusion in the UGA. However the Board also understands that if such land is to be considered for inclusion in the UGA, it must be limited to, and dedicated to, those uses and comply with the requirements of the GMA. Further the inclusion of such land must comply with the requirements of the GMA.

In short, after review of Petitioner's comments on LU 1.A.9's inconsistency with the eleven noted CPPs, and the School District Response Chart, the Board concludes that Petitioner has **failed to carry the burden** of demonstrating how the County's amendment to LU 1.A.9 is inconsistent with the noted CPPs and the consistency requirements of RCW 36.70A.210 and .215.

Position of the Parties and Discussion of RCW 36.70A.070(preamble):

Petitioner Hensley challenges the consistency of LU 1.A.9 with the following existing Plan Policies: LU 2, LU 2.A, LU 2.B, PE 1.A, PE 1.A.2, PE 1.B, PE 2.C.1, LU 1, LU 1.A.1, LU 1. A.3, LU 1.A.10, LU 1.B.2.A, LU 1.C, LU 2.C, LU 2.C.1, LU 3, LU 5, LU 6, LU 6.A, TR 1.B.2, TR 2, TR 4, CF 8, CF 9, CF 9.A. CF 9B, CF 9.B.1, CF 10, CF 10.A, CF 10.B, UT 2, UT 2.A, UT 2.B, UT 2.B.2, UT 3, UT 3.A, UT 3.B, UT 3.C and UT 3.C.1. [9] Hensley PHB, at 38-49.

The County did not respond directly to Petitioner's assertions regarding internal consistency. County Response, at 35-42. However, the School District responds,

> Hensley's claims of inconsistency between Policy LU 1.A.9 and the other CPP and GPP policies revolve around an unfounded assumption that the County amended policy will somehow immediately and inevitably create sprawling development in the rural areas. Again, no specific UGA expansion is proposed. Moreover this argument is specious because the two uses in question are already allowed in the rural area.

School District Response, at 21. Additionally, the School Districts provide a table in an appendix responding to each of Hensley's comments on Plan Policies. School District Response, at 27-28.

In reply, Petitioner reasserts her contention that LU 1.A.9 does not use land more efficiently since it places large lot users outside the UGA causing pressure to expand the urban areas. Hensley Reply, at 28.

As the Board stated in discussion of the CPP provisions, the Board understands Petitioner's

position, but does not agree with her conclusions. After review of Petitioner's comments related to LU 1.A.9's inconsistency with the other numerous Plan Policies, and the School District Response Chart, the Board concludes that Petitioner has **failed to carry the burden** of demonstrating how the County's amendment to LU 1.A.9 is inconsistent with the noted existing Plan Policies and the consistency requirements of RCW 36.70A.070(preamble).

Position of the Parties and Discussion of RCW 36.70A.020(1), (2) and (12):

Petitioner Hensley argues that in adopting this Plan Policy, the County is not encouraging growth within the urban area, but encouraging sprawl in rural areas where necessary public facilities and services cannot be provide to support development at the time of occupancy. Hensley PHB, at 50-51.

The County did not directly respond to Hensley's goal challenges. County Response, at 34-42. The School Districts contend, that Hensley's goal challenges are "premised on unfounded allegations of sprawl." School District Response, at 23. The School Districts continue:

> [Petitioners'] argument is circular: "inappropriate siting" of schools can lead to sprawl, because this amendment allows the siting of schools, it will lead to sprawl. Again, this argument overlooks that: 1) schools can already be sited in rural areas; 2) the amended policy language allows the county flexibility to site a school in or near an urban area and provide urban services to it when appropriate; 3) the amended policy increases the efficiency of siting of capacity-generating uses within the UGA; and finally and perhaps most importantly, 4) this policy makes no change to any UGA and any subsequent change to a UGA boundary would be bounded by the goals and requirements of the GMA. As a result, Hensley has failed to demonstrate that the amended policy thwarts or is inconsistent with either planning goal.

School District Response, at 23. The Board concurs with the reasoning of the School Districts. Therefore the Board concludes that Plan Policy LU 1.A.9 **is guided by**, and **complies** with goals 1, 2 and 12 – RCW 36.70A.020(1), (2) and (12).

Conclusion: Plan Policy LU 1.A.9

The Board finds and concludes that Petitioners Hensley and 1000 Friends have either **failed to carry the burden** of demonstrating how the County's amendments to LU 1.A.9, as contained in Ordinance No. 03-001, do not comply with the requirements of RCW 36.70A.120, .110, .210, .215 and .070(preamble) or the County's amendment to LU 1.A.9 **complies** with RCW 36.70A.140 and was guided by RCW 36.70A.020(1), (2), (11) and (12).

B. SCHOOL DISTRICT REZONE ISSUE

The PHO set forth Petitioner 1000 Friends Legal Issue No. 5 as follows:

> *5. Does enactment of the Sultan School District Proposal, redesignating 41 acres from Rural Residential Transition-10 Acres to Rural Residential and accompanying rezone from Forest and Resource to Rural-5, violate RCWs 36.70A.020(1), 36.70A.020(2), 36.70A.020(12) (planning goals), 36.70A.150 (identification of land for schools), 36.70A.040 (development regulations must implement comprehensive plan policies), 36.70A.070 (internal consistency of the comprehensive plan), 36.70A.120 (planning activities must be in conformity with Comprehensive Plan), 36.70A.130 (amendments and revisions to development regulations shall be consistent with and implement the comprehensive plan) when the redesignation is inconsistent with policies in the comprehensive plan discouraging siting of middle schools outside urban growth areas?*

Abandoned Issues

Petitioner 1000 Friends failed to brief the following portions of Legal Issue 5 [School District Rezone], regarding compliance with: RCW 36.70A.020(2) and (12); RCW 36.70A.150; and RCW 36.70A.120. *See* 1000 Friends PHB, at 32-33. These portions of Legal Issue 1 are deemed **abandoned**. WAC 242-02-570(1) and PHO, Section XIII, at 8-9.

Applicable Law

The relevant provisions of RCW 36.70A.020(1) and .070(preamble) are set forth *supra*. RCW 36.70A.040 provides in relevant part:

> [T]he county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan. . .

RCW 36.70A.130(b) provides in relevant part:

> Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment or revision to development regulations shall be consistent with and implement the comprehensive plan.

Discussion

The Action:

This Legal Issue involves a Plan amendment [FLUM] and rezoning, as contained in Ordinance Nos. 03-001 and 03-002, respectively. The County redesignated a 41-acre undeveloped site from Rural Residential-10 (Rural Transition) to Rural Residential (1 du/5 acres basic) and rezoned the property from Forestry & Resource (F&R) to R-5. The site is located along SR 2 about one-half mile east of Gold Bar. The R-5 zoning would allow the Sultan School District to construct a middle school on the site. The site is located in the rural area outside any UGA.

Position of the Parties and Discussion:

1000 Friends argues,

> The problem is that this redesignation and rezone to allow construction of an urban middle school outside the UGA directly contradicts Snohomish County General Plan Policy CF 9.B.1 which states:
>
> > The County shall review and modify its development regulations as necessary to facilitate school siting within the urban growth areas and discourage the location of middle and high schools outside the UGAs.

1000 Friends PHB, at 32-33.

[10]

The School Districts respond that, neither the GMA, the County's Plan or this Board preclude the siting of middle schools in rural areas. School District Response, at 12. Additionally, they note that "Schools are not included in the definition of either 'urban governmental services' or 'rural governmental services' (although schools and educational services constitute 'public facilities' and 'public services'). [*See* RCW 36.70A.030(12), (13), (16) and (19)] This means that the limitation of urban governmental services in rural areas, RCW 36.70A.110(4), does not apply to schools." *Id*., at 12-13. Finally, the School Districts assert that the County has complied with Plan Policy CF 9.B.1 since the County's implementing regulations do discourage schools in rural areas because eight of its rural zoning districts preclude schools, two rural zoning designations allow for schools with a conditional use permit [applicable in this case], and only one rural zoning designation allows schools outright. School District Response, at 6 and 13-14.

In reply, 1000 Friends contends,

> [T]he fact remains that the County adopted the rezone at issue specifically at the request of the school district and specifically so the school district can apply for a

> conditional use permit to construct a school outside of the UGA. There is no way that either the County or the School District can categorize this action as doing anything but encouraging locating a school outside of a UGA. This is directly inconsistent with the policy provision.

1000 Friends Reply, at 22.

As the Board noted in *Vashon-Maury*, some schools may be located in rural areas, and the GMA's definitions recognize that schools should be located near the population they serve. The Board notes that Snohomish County Plan Objective CF 9.B, provides, "Assist school districts in siting new schools." It appears that by enacting the Plan redesignation and rezone, this is exactly what the County has done – assisted the school district in siting a new school. However, does Plan Policy CF 9.B.1 regarding "discourage the location of middle and high schools outside the UGA" *prohibit* the County's rezoning?

To find for 1000 Friends, the Board would have to conclude that discourage means prohibit, which the Board will not do. The County has an obligation to work with school districts in the siting of schools; it also has an obligation to facilitate the siting of schools within urban areas while discouraging them outside of UGAs - which the County has done. The Board concludes that the FLUM and zoning designations the County has in place does facilitate the location of schools within the UGA and appropriately discourage middle and high schools outside the UGA. The County need not prohibit schools throughout the rural area. The County already discourages schools in the rural area by limiting the number of zoning districts that permit schools. Further, the conditional use permit process provides a mechanism to ensure that any proposed school on the site is designed and configured to be compatible with the rural character or the rural area.

Conclusion: School District Rezone

The Board concludes that the County's action of redesignating the 41-acre site from Rural Residential-10 to Rural Residential and rezoning the property from Forestry & Resource to R-5 [Ordinance Nos. 03-001 and 03-002] **complies** with the requirements of RCW 36.70A.040, .130 (b), RCW 36.70A.070(preamble) and **was guided by** Goal 1 – RCW 36.70A.020(1).

C. ARLINGTON UGA IssueS

The PHO set forth Petitioner Hensley Legal Issue No. 2 and 1000 Friends Legal Issue No. 1 as follows:

> *2. Ordinance 03-001, 002 and 003 amended the comprehensive plan, zoning and Future Land Use Map to include the Mike Davis Urban Growth Area (UGA)*

expansion to the Arlington UGA. Did the County violate the GMA in the expansion of this UGA? The RCW violations are as follows: RCW 36.70A.020(1), RCW 36.70A.120, RCW 36.70A.130, RCW 36.70A.210 and RCW 36.70A.215.

GPP LU 1.A.9
CPP UG-1, UG-14, Fiscal Impact Analysis
Most current TIP, CIP and Concurrency Reports
.215(1)(b), (3)(b) and (c), (4)

1. Does adoption of the Mike Davis Proposal allowing UGA expansion of the City of Arlington fail to comply with RCWs 36.70A.020(1) and 36.70A.020(2) (planning goals requiring encouragement of urban growth in urban areas and reduction of sprawl), and 36.70A.110 (limiting UGAs expansion to land necessary to accommodate projected future growth and setting priorities for the expansion of urban growth areas)?

Abandoned Issues

Petitioner Hensley failed to brief the following portions of Legal Issue 2 [UGAs], regarding compliance with RCW 36.70A.120; RCW 36.70A.210 as it relates to CCP LU UG-1 and fiscal impact analysis; and the most recent TIP, and CIP. *See* Hensley PHB, at 12-20. These portions of Legal Issue 2 are deemed **abandoned**. WAC 242-02-570(1) and PHO, Section XIII, at 8-9.

Petitioner 1000 Friends failed to brief the following portions of Legal Issue 1 [UGAs], regarding compliance with: RCW 36.70A.020(1) and (2). *See* 1000 Friends PHB, at 3-12. These portions of Legal Issue 1 are deemed **abandoned**. WAC 242-02-570(1) and PHO, Section XIII, at 8-9.

Applicable Law

The relevant provisions of the GMA challenged in this Legal Issue are set forth *supra* for prior Legal Issues, and will not be repeated here.

Discussion

The Action:

This action involves Ordinance Nos.03-001, 03-002 and 03-005. This action added 5.8 acres to the Arlington UGA, redesignated the property from Rural Residential and Rural Urban Transition Area to Urban Low Density Residential (4-6 du/acre), and rezoned the property from Rural 5 to R-9600. The property is on the boundary of the unincorporated Arlington UGA adjacent to a 200-lot subdivision.

Position of the Parties and Discussion:

Petitioner Hensley argues that the expansion of this UGA is inconsistent with CPP UG-14, because the County has not adopted a final list of reasonable measures, [11] as required by RCW 36.70A.215(1)(b), [12] to use in evaluating UGA expansions. Petitioner notes that the Planning Commission, the Planning and Development Services Department and County Executive commented that the action was premature and it should await the 2004 comprehensive UGA review and adoption of a list of final reasonable measures. Hensley PHB, at 13-14. Hensley also argues that the County must not only identify reasonable measures, but it must adopt and implement the buildable lands review, including the final list of reasonable measures component. She contends that an interim list of reasonable measures does not meet this requirement. *Id*., at 16-17. Additionally, Petitioner argues that the present UGA expansion is not part of the 10-year UGA review and evaluation required by RCW 36.70A.130, but a piecemeal UGA expansion in response to a request by an individual property owner. Hensley PHB, at 18. Petitioner concludes that this action therefore is noncompliant with various GMA requirements and Goal 1 – RCW 36.70A.020(1). *Id*., at 19.

1000 Friends joins Petitioner Hensley in her assertion that the action does not comply with RCW 36.70A.210 and .215 (specifically CPP UG-14(b) – the reasonable measures component) and argues there is no justification in the record (no work shown) to support the UGA expansion and it therefore also violates the provisions of RCW 36.70A.110(3). [13] 1000 Friends PHB, at 4-13.

The County counters that it had a list of reasonable measures that it used in reviewing the subject UGA expansion, even though the reasonable measures were adopted, in Motion No. 03-080, two days after the challenged Ordinances were adopted. County Response, at 27. Further, the County argues, "It is irrelevant whether these [reasonable measures] are identified as 'interim' or 'final.'" *Id.*, at 28. The County acknowledges that the UGA expansion is not part of the 10-year review required by RCW 36.70A.130, but notes that .130 does not prohibit UGA expansions outside the 10-year review requirement. *Id.*, at 29.
Regarding 1000 Friends' assertion of noncompliance with RCW 36.70A.110, the County counters that the UGA expansion meets .110's locational criteria of being either "characterized by urban growth," or "adjacent to areas already characterized by urban growth." Additionally, the County notes that the Board has indicated that .110(3) pertains to where to direct urban development within UGAs. [14] *Id*., at 32-33. Finally the County argues that "more than half of the Arlington UGA's 20-year residential capacity has already been used as of 2002, only 10 years

into the 20-year plan" and an additional 18 homes in the expansion area would help Arlington "meet their duty to accommodate the 20-year population forecast for Snohomish County." *Id*., at 34.

MBA joins the County in asserting the County has complied with RCW 36.70A.110(1) since the area is adjacent to urban growth, and also reiterates that .110(3) is inapplicable to UGA expansions. Additionally, MBA concurs that .130 requires UGA review "at least every ten years." MBA Response, at 4-7 and 17-18. MBA also invites the Board to reconsider its "show your work" requirement for UGAs, since Intervenor contends it shifts the burden from petitioner and places it on the respondent, ignoring the presumption of validity. *Id*., at 7-8. Next, MBA argues "The County's expansion of the Arlington UGA is unquestionably the result of the buildable lands review and evaluation." *Id*., at 14. MBA continues,

> The Buildable Lands Report (BLR) concluded that the Arlington UGA [has] less than half its capacity remaining with half of the 20-year planning period remaining. The BLR found that under "Scenario A" the capacity used up as of 2002 was 56.8%; under "Scenario B", the capacity used up as of 2002 was 59.5%. BLR, at 39. Under either scenario, it is abundantly clear that growth is occurring in the Arlington UGA faster than planned and in excess of available capacity. Without action, the UGA will run out of residential capacity before 2012, the end of the planning period.

Id. MBA also argues that the County has a list of reasonable measures which it simply must consider, which the County did. *Id*., at 15.

1000 Friends replies that its arguments do not shift the burden to the County. Instead, 1000 Friends explains,

> Establishing the county's action as clearly erroneous necessarily requires reference to [the] record. The record may be notable, therefore, not only for what it contains, but for what it fails to include when the omissions are related to GMA compliance. . . .[A] nalyzing omissions means discussion of what a local government has not done in reference to compliance. The respondents confuse this process with "burden shifting.". . . Petitioners are arguing that the record is insufficient under both the GMA and Growth Board decisions to support/justify the expansion of the Arlington UGA.

1000 Friends Reply, at 3-4. 1000 Friends goes on to assert that the record does not support the Arlington UGA expansion. "The record contains no information, regarding whether target densities are being achieved within the existing UGA." *Id*., at 4-5. Additionally, 1000 Friends contends that 56.8% to 59.5% is nearly on target for the 20-year population forecast, and does not

support the need for expansion. *Id*.

Hensley replies that the County "mistakenly implies that the [Interim Reasonable Measures as an Appendix to the] Buildable Lands Report takes the place of adoption [reasonable measures as an Appendix] to the CPPs." Hensley Reply, at 11. Further, Petitioner argues that there is nothing in the record to show that the County used the reasonable measures in expanding the Arlington UGA. *Id.*

The Board agrees with 1000 Friends that to argue that the record does not support a jurisdiction's action, does not amount to "burden shifting." Additionally it is extremely important, in managing growth, for the public to understand the basis for legislative policy decisions and how they relate to the jurisdiction's goals and policies as articulated in its adopted plans and regulations. The burden of proof plainly lies with Petitioner.

The Board concurs with the County and MBA in that the provisions of RCW 36.70A.110(3) are applicable *within* UGAs, and do not apply to the present UGA expansion. The Board also agrees with Respondent and Intervenor that the GMA does not preclude a jurisdiction from reviewing and revising, if necessary, its UGA boundaries outside the 10-year review provisions of RCW 36.70A.130. RCW 36.70A.130(3) says, "Each county that designates urban growth areas under RCW 36.70A.110 shall review, *at least every ten years*, its designated urban growth area or areas. . ." (Emphasis supplied.)
However, the Board finds that both Petitioners have carried the burden of proof regarding the County's noncompliance with RCW 36.70A.210 (CPP UG-14) and RCW 36.70A.215. The Board therefore finds this aspect of the County's action **clearly erroneous**.

Ordinance Nos. 03-001, 03-002 and 03-005, which include the Arlington UGA expansion, were adopted on January 27, 2003. *See* the final page of each Ordinance, Exs. No. 269, 270 and 271. Motion No. 03-080, which adopts the County's Final Buildable Lands Report – including Appendix D "List of Interim Measures" and transmits it to the state, was adopted on January 29, 2003. County Ex. A-C. The County's own CPP UG-14 requires the reasonable measures to be adopted *as an Appendix to the CPPs*, which Motion No. 03-080 did not do. There is nothing in the record that the Board was directed to indicating that the County has adopted the "reasonable measures" as an Appendix to the CPPs. As the Board said in a prior Snohomish County case, "If the conditions [of UG-14(d) including (d)(3)] have not yet been fully defined, by necessity, the prohibition on UGA expansion is operative until such time as they are established an applied." *Hensley et al., v. Snohomish County* (***Hensley IV***), CPSGMHB Case No. 01-3-0004c, Final Decision and Order, (Nov. 8, 2001), at 33. Thus, the County's action is not consistent with its own CPP UG-14, and **does not comply** with RCW 36.70A.210.

Also CPP UG-14 states, "Once adopted, the County Council will use the list of reasonable

measures to evaluate all UGA boundary expansion proposals consistent with UG-14(d)." The [15] purpose of the reasonable measures is to identify mechanisms to accommodate growth without expanding UGAs. Consequently, any reasonable person would expect consideration of these measures to include, at a minimum, an indication of which reasonable measures were already adopted by the City or County and what steps, if any, were being taken to adopt additional reasonable measures to avoid expanding UGAs. This type of review and consideration is lacking. The only reference to review of reasonable measures pertains to the City of [16] Arlington's existing use of one, of a possible 25, reasonable measure - planned unit [17] development techniques - to encourage infill. Also, there is no expression of the need for additional residential land due to residential land capacity shortages. The lack of reasonable measures in the CPPs, the after-the-fact adoption of reasonable measures in the BLR and even the lack of the County's application of these measures lead the Board to conclude that the County acted prematurely. The County's action was **clearly erroneous** based upon its own policies and **does not comply** with RCW 36.70A.210 and .215.

Additionally, the Board notes that the County's Buildable Land Report's Major Findings include the following:

- The 50% threshold in countywide Planning Policy (CPP) UG-14 has been attained in Gold Bar, Monroe and Arlington.
- Due to methodological differences, under Scenario B there is less residential and employment capacity than under Scenario A.
- Under Scenario A, *there is sufficient individual and collective residential and employment land capacity within the existing UGAs to accommodate the remaining portion of the adopted 2012 population and employment growth targets*. (RCW 36.70A.215(3)(a) and (3)(c).
- Under Scenario B, *using population and employment forecasts updated as of January 2002, there is sufficient collective population and employment capacity for 2012*. However, there are two individual UGA capacity exceptions: 1) insufficient population capacity for 2012 in the Gold Bar UGA, and 2) insufficient employment capacity for 2012 in the Lake Stevens UGA.

Snohomish County Tomorrow 2002 Growth Monitoring/Buildable Lands Report, January 2003, adopted by Motion 03-080, Executive Summary, at 6; County Ex. A-C, MBA Ex. 7, (emphasis supplied). Even the County's adopted BLR does not support its action of expanding the Arlington UGA.

The Board notes that adding 5.8 acres for residential housing to the Arlington UGA, given the site constraints and its proximity to existing facilities and services is not counter to good growth management. The language of the GMA itself does not prohibit what the Board might agree is a logical or sensible solution. However, the GMA does require *local actions to be consistent with locally adopted CPPs and Plans*. The County's own CPPs and own Policies provide ways for this change to be accomplished, individually or in the context of its pending 2004 UGA review. However, given that the County chose to ignore implementing its own stated policies, processes and procedures, which the GMA requires, and the Board is compelled to find that the County is not in compliance with the noted provisions of the Act.

Conclusion: Arlington UGA

The Board concludes that the County's adoption of Ordinance Nos. 03-001, 03-002 and 03-005, relating to the Arlington UGA expansion **does not comply** with the requirements of RCW 36.70A.210 and .215.

D. AGRICULTURAL LANDS ISSUE

The PHO set forth Petitioner 1000 Friends Legal Issue No. 2 as follows:

> *2. Does adoption of the MacAngus Ranches Proposal, redesignating 216 acres from Upland Commercial Farmland to Rural Residential-10 Resource Transition, along with accompanying rezone, fail to comply with RCW's 36.70A.020(2), 36.70A.020(8) (planning goals to reduce sprawl and conserve natural resource lands), 36.70A.040 (local governments must adopt development regulations that preserve agricultural lands) 36.70A.050 (classification of agricultural lands), 36.70A.060 (conservation of agricultural lands) 36.70A.170 (designation of agricultural lands) and 36.70A.177 (agricultural zoning must preserve agricultural lands) when such redesignation fails to enhance, protect or conserve agricultural lands of long term commercial significance as required by the Growth Management Act?*

Abandoned Issues

Petitioner 1000 Friends failed to brief the following portions of Legal Issue 2 [Agricultural Lands], regarding compliance with: RCW 36.70A.020(2) and (8); RCW 36.70A.040; RCW 36.70A.050 and RCW 36.70A.177. *See* 1000 Friends PHB, at 13-27. These portions of Legal Issue 1 are deemed **abandoned**. WAC 242-02-570(1) and PHO, Section XIII, at 8-9.

Applicable Law

RCW 36.70A.050 directs the Department of Community, Trade and Economic Development to adopt guidelines to guide the classification of agricultural lands. These guidelines were adopted and are found at Chapter 365-190 WAC.

RCW 36.70A.170 provides, in relevant part:

> (1) On or before September 1, 1991, each county, and each city, shall designate where appropriate: (a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products; . . .
> (2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050.

The GMA defines *Agricultural land* as "land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, vegetable, or animal products or berries, grain, hay, straw, turf, seed, Christmas trees not subject to the tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production." RCW 36.70A.030(2). Additionally, the Act defines *Long-term commercial significance* as "the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land." RCW 36.70A.030(10).

The germane guidelines for the designation of agricultural lands, adopted by the department provide:

> (1) In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service [**SCS**] as defined in Agricultural Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture [**USDA**] into map units described in published soil surveys. These categories incorporate consideration of the growing capacity, productivity and soil composition of the land. Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:
>
> a. The availability of public facilities;
> b. Tax status;
> c. The availability of public services;
> d. Relationship or proximity to urban growth areas;
> e. Predominant parcel size;

f. Land use settlement patterns and their compatibility with agricultural practices;
g. Intensity of nearby land uses;
h. History of land development permits issued nearby;
i. Land values under alternative uses; and
j. Proximity to markets.

(2) In defining categories of agricultural lands of long-term commercial significance for agricultural production, counties and cities should consider using the classification of prime and unique farmland soils as mapped by the Soil Conservation Service. If a county or city chooses to not use these categories, the rationale for that decision must be included in its next annual report to the department of community development.

WAC 365-190-050.

In *Redmond v. Central Puget Sound Growth Management Hearings Board* (***Redmond***), 136 Wash. 2d 38 (1998), at 53, the State Supreme Court construed the statutory term "devoted to agricultural use": "We hold land is 'devoted to' agricultural use under RCW 36.70A.030 if it is an area where the *land is actually used or capable of being used* for agricultural production." (Emphasis supplied.) The Court also stated, at 53:

> [I]f land owner intent were the controlling factor, local jurisdictions would be powerless to preserve natural resource lands. Presumably in the case of agricultural land, it will always be financially more lucrative to develop such land for uses more intense than agriculture. Although some owners of agricultural land may wish to preserve it as such for personal reasons, most, . . .will seek to develop their land to maximize their return. If the designation of such land as agriculture depends on the intent of the landowner as to how he or she wishes to use it, the GMA is powerless to prevent the loss of natural resource land. All a land speculator would have to do is buy agricultural land, take it out of production, and ask the controlling jurisdiction to amend its comprehensive plan to remove the "agricultural land" designation.

Snohomish County's GMA Plan also includes criteria to identify and designate agricultural lands of long term commercial significance. The Plan provides that subject [agricultural] land shall be:

(1) prime farmland as defined by the U.S. Soil Conservation Service (SCS) and other Class III soils in the SCS capability classification;
(2) identified as devoted to agriculture by:

- Snohomish County plan designation

- Snohomish County Zoning Code Agriculture-10 acre
- Identification in the 1982 agricultural land inventory, the 1990 aerial photo interpretation, or the 1991 field identification of land devoted to agriculture;

(3) located outside the UGA;
(4) located outside a sewer service boundary; and
(5) a parcel of 10 acres or greater in Upland Commercial or Local Commercial Farmland areas.

GPP Plan Policy, LU 7 Implementation Measures, Appendix H, at H-3.

Discussion

The Action:

This action involves Ordinance Nos. 03-001 and 03-002 and the redesignation of 216 acres from Upland Commercial Farmland to Rural Residential-10 Resource Transition on the FLUM; and the rezoning of the area from Agriculture-10 Acres to Rural Resource Transition-10. The land is currently used as pasture and located within the Tulalip Tribes Reservation adjacent to and west of I-5 and south of 140th St. NE. North of the area is farm and pasture lands with some single family dwellings; east of the site, across I-5, is existing business; to the west are open pasture lands and single family dwellings; south of the site is undeveloped wooded property in tribal trust ownership. Further south, but not adjacent to the site, the Tulalip Tribes have established a 2000-acre business park that includes a casino.

Position of the Parties and Discussion:

1000 Friends argues that the property was originally identified as agricultural land and protected in 1983 in the County's Agricultural Production Plan. The agricultural designation for this area was continued in 1991 and in 1995, when the County adopted its GMA Comprehensive Plan. Until this amendment, it has been identified and designated as agricultural land – since GMA it has been designated as Upland Commercial Farmland on the FLUM and zoned Agricultural-10 Acre. 1000 Friends PHB, at 17-18.

Petitioner references USDA, SCS soils data and mapping and a County consultant's survey to support argument that the "[T]he soil data clearly establish that the [216 acres] meet the prime soils criteria from the Snohomish Comprehensive Plan. There has been no change of circumstances in the quality of the soil that might support changing the designation of the [area] from Upland Commercial Agriculture to Rural Residential. The entire parcel consists of *prime* farmland soil as determined by both the county and USDA." *Id.*, at 18-20.

1000 Friends correctly anticipates Intervenor's argument that "[I]f soil is determined by the USDA Land Capability Classification system to be *prime-when-drained*, then it is not prime when not drained. Since the parcel in question is not currently drained, then it is not prime soil." 1000 Friends PHB, at 20-21; see also MacAngus Response, at 12-17.

To counter this argument, 1000 Friends contends that Snohomish County has made a policy decision to consider only the physical characteristics of the soil and 'not human features, such as drainage, flood protection and irrigation systems. (Citations omitted).

Next, 1000 Friends argues that the State Supreme Court in *Redmond* has held that land owner intent is not determinative of whether land is agricultural land of long-term commercial significance. "While the land use on the particular parcel and the owner's intended use for the land may be considered along with other factors in the determination of whether a parcel is in an area primarily devoted to commercial agricultural production, neither current use nor land owner intent of a particular parcel is conclusive for purposes of this element of the statutory definition." (*Citing Redmond*, at 53). Applying *Redmond*, 1000 Friends concludes, "If it were [intent conclusive], any landowner could essentially override that state policy toward agricultural lands protection embodied in the GMA by refusing to irrigate or drain property that otherwise is valuable farmland in need of protection" 1000 Friends PHB, at 21.

Third, Petitioner argues the applicability of an Eastern Washington Growth Management Hearings Board case where the Eastern Board stated, "Although the designated 'irrigated agriculture' lands may not be presently used for those purposes, they most certainly are 'capable of being used for agricultural production' at some time in the future. As Petitioner points out, 'natural resource lands are protected not for the sake of their ecological role but to assure the viability of the resource-based industries that depend on them." (*Citing Grant County Association of Realtors v. Grant County*, Final Decision and Order, EWGMHB Case No. 99-1-0018, (May 23, 2000), at 6.). *Id*., at 21-22.

1000 Friends argues that not only has there been no change to the prime soils on the property, but also there have been no other significant changes to the area and environs to affect its long-term commercial significance. *Id*, at 25. Petitioner quotes from the County's DSEIS to illustrate that the "human factors" (WAC 365-190-050, and County Plan Policy LU 7) that can influence agricultural land designation do not support de-designation of the area. The DSEIS, at 3-23, 3-24, concluded:

> Based on review of the site characteristics and the GMA criteria, the proposal meets the criteria for an agricultural area of long term commercial significance. It contains prime farmland soils, is not characterized by urban growth and is adjoined by uses

> that are compatible with agricultural practices.

1000 Friends PHB, at 26. Petitioners then also site to the DSEIS to illustrate the conclusions regarding WAC 365-190-050(1)(e, f and g):

> WAC 365-190-050(1)(e). **Predominant Parcel Size**: Parcel sizes on the proposal area are greater than 10 acres. The parcel sizes in the proposal area vary from 16.71 acres to 68.90 acres. Parcels in the vicinity of the proposal range from urban densities to the east in the City of Marysville to 10 acres or more to the north, west and south of the proposal area.
>
> WAC 365-190-050(f). **Land use settlement patterns and their compatibility with agricultural practices**: Area to the north and west is zoned Agriculture 10, while area to the south is zoned Rural Residential-10 Resource Transition. These areas are generally undeveloped or developed with low intensity rural uses that are compatible with agricultural practices. To the east across Interstate 5 is the City of Marysville.
>
> WAC 365-190-050(g). **Intensity of nearby uses**: Surrounding development is generally large lot residential properties. Interstate 5 borders the property to the east.

1000 Friends PHB, at 26-27. Petitioner concludes that neither the soil nor human factors have changed to provide justification for "de-designating this valuable agricultural resource land." *Id*.

In response, the County acknowledged that the property had been identified and designated agriculture since 1982, but indicated that in 2002 it determined that the area no longer met the criteria for designation as agricultural lands. County Response, at 44-45. The County noted that "Determining if land is of long-term commercial significance requires an evaluation of many factors that relate to the practicalities of conducting an economically viable resource-based commercial enterprise." The County's evaluation of these factors indicated that the area should be de-designated, a process the Board acknowledged could occur in *Grubb v. City of Redmond* (***Grubb***), CPSGMHB Case No. 00-3-0004, Final Decision and Order, (Aug. 11, 2000). *Id*., at 48-49.

The County contends that the property "does not have long-term commercial significance for agriculture production." *Id*. The County incorporates argument offered by Intervenor MacAngus regarding the factual review of soils and focuses on whether the land is of long-term commercial significance. The County quotes a finding in Ordinance No. 03-001 finding "F" in Section 2 of Ordinance No. 03-001 which addresses the WAC and County Plan requirements for designation as agricultural land:

The County Council has considered all of the facts, testimonies and materials presented orally and in writing at the public hearing, and has reviewed the applicable law and the statements of the interested parties, including but not limited to the Implementation Measures of GPP Appendix H , LU 7, the reasoning of the Washington Supreme Court in *Redmond v. CPSGMHB*, 136 Wn. 2d 38, 959 P,2d 1091 (Wash, 1998), the statutory definition of "long-term commercial significance" at RCW 36.70A.030(10), the land compatibility classification scheme of the Soil Conservation Service, together with the 10 factors (a) through (j) of WAC 365-190-050(1), and finds Exhibit 113 [18] persuasive that the land in question is not primarily devoted to agricultural purposes and that the land in question does not have long-term commercial significance for agricultural production.

This land cannot be profitably farmed. Its current agricultural use generates less revenue than the property tax generates. Moreover, the property is heavily impacted by the pressure of the increasing urbanization around it. This property is 1-5 freeway frontage property located along the west side of I-5 between Marysville 4th St. Exit and Stimpson's Crossing (a distance of more than 5 miles) and is held in fee simple inside the Tulalip Indian Reservation. The Quilceda Village shopping center, containing a Wal-Mart, Home Depot, numerous other retail outlets, and the new Tulalip Tribal Casino now in construction lies to the immediate south of the property, and the City of Marysville lies on its immediate east and north. Surrounding property is largely residential.

Public services are provided to the site by Snohomish County, special districts, and the City of Marysville. Roads, a traffic signal, water systems, parks and recreational facilities, schools and other facilities are available in close proximity to the property. Likewise available are the public services of fire protection, law enforcement, and other governmental services. The proposed area is currently served by three county roads, 34th Ave. NE, 140th St. NE, and 128th St. NE. The infrastructure is in the process of further substantial upgrading due to the nearby Tulalip Tribe development.

The subject property is currently on the county tax rolls and is not taxed in an agricultural or open space tax exemption category. However, testimony at the hearing indicated that the alternative to this proposal is sale of the property to the Tulalip Tribe, which already has the Eastern half of the property appropriately zoned commercial in its plan. The consequences of this will be removal of the property from the tax rolls and commercial development of it by the Tribe. Hence it is not at issue whether this property will be commercially developed. To the contrary, the ultimate issue is whether this property will be developed under the Growth

> Management Act and the Snohomish County Code or will be developed commercially under the Tribal jurisdiction. If the property is developed under the law of Snohomish County, uses of the land will continue to be controlled by the County Code and the GMA, and the land will remain on the county tax roll. On the other hand, if the property is developed as tribal trust land, then the land will be exempt from County planning and land use regulation and from county property taxation.

County Response, at 50-51. *Citing* Ordinance No. 03-001, Section 2, Finding F, at 4-5; Ex. 271. The County concludes,

> The Council's findings reveal the thoughtful and deliberate consideration of the long-term commercial significance of the MacAngus Ranches property. Under the facts before the Council and the record before the Board, the County's determination that this property no longer has long-term commercial significance for agricultural production is consistent with the GMA and with CTED's and the County's designation criteria."

County Response, at 52.

Intervenor MacAngus affirms the history of the land's designation as agriculture, but devotes extensive argument to the soils component of the designation process, and concludes that the majority of property is not prime farmland, because it is not drained and therefore not devoted to [19] agricultural production. MacAngus Response, at 1-18. Additionally, Intervenor reiterates the County's rationale for why the land is not of long-term commercial significance. *Id.*, at 18-22.

In reply, 1000 Friends argues, "Whether or not [the property] has ever been drained or whether the owner should drain the property is irrelevant under the GMA and the case law to whether the agricultural designation is appropriate. . . The issue is whether application of the criteria established by GMA and OCD guidelines, as discussed at length in petitioner's opening brief, supports the decision of the county to remove the land from agricultural designation." 1000 Friends Reply, at 7-8.

Petitioner reiterates that land owner intent is not a factor in determining whether the land is capable of agricultural production. Additionally, 1000 Friends restates the findings in the DSEIS regarding "Land use settlement patterns and their compatibility with agricultural practices," and "Intensity of nearby uses" to contradict the County's findings in Ordinance No. 03-001. *Id.*, at 10-13.

There are two requirements in the designation, or de-designation, of agricultural lands. As the Board noted in *Grubb*, at 11, "The first is the requirement that the land be "devoted to" agricultural usage. The second is that the land must have "long-term commercial significance" for agriculture."

Here, Petitioner 1000 Friends has made a *prima facia* case supporting the assertion that there have been no changes to the soil condition, nor any changed circumstances that could support the County's revision of the 216 acres from agricultural lands to allow other non-agricultural related uses. 1000 Friends relies upon Board and Court case law, omissions from the record and evidence in the record (regarding soil classification systems and long-term commercial significance) to question whether the County's action is supported by the record. The County relies upon its Finding and Intervenor provides argument regarding the County's prime farmland soils conclusion.

[20]

There are five soil types found on the property that are rated in soil capability Class III or IV. [21]

Some of these soils do not have the drainage constraint argued by MacAngus. Nonetheless, the de-designation includes all 216-acres regardless of soil type. Also, the County's 1993 Interim Agricultural Conservation Plan indicates that Class II, II and IV soils were to be used for identifying prime farmlands or soils, and was incorporated into the County's GMA Plan in 1995. [22]

Additionally, the County did not alter its criteria for designating agricultural land to include *only those soils*, according to SCS soils capability criteria, *without constraints*, such as drainage limitations. Had the County done so, the necessity to "de-designate existing agricultural lands," which no longer met its designation criteria, would have likely affected far more designated agricultural land than the single 216-acre area affected by the amendment. Instead, without amending its own agricultural land soils designation criteria, the County apparently decided that a [23]

new soil constraint criterion, regarding drainage, should be applied only to this area.

The Board finds that, based upon the reasoning *supra*, the history of the property and its soil characteristics (as defined by the USDA, SCS and the County), whether drained or not, the soils found upon the property are prime agricultural soils that are "capable of being used for agricultural production." The County does not dispute that the property is currently used for agriculture. *See* Finding F, *supra*. In short, and in light of the Supreme Court's holding in *Redmond*, nothing has changed regarding the soil composition that persuades the Board that the property is not, or could not be, devoted to agriculture. However, even lands that are "devoted to

agriculture" may not have long-term commercial significance and thereby not be appropriate for designation under the GMA.

Does this land have long-term commercial significance? Again, the County relies upon its Finding F, quoted *supra*, to support its decision. It does not reconcile the record information or DSEIS information, quoted *supra*, provided by 1000 Friends. Nor does the County respond to the analysis presented in the PDS Staff Report and Recommendation for the MacAngus proposal, which states,

> Evaluation:
>
> SCC 32.07.080 requires that PDS evaluate the merits of each final docket proposal base upon the following six criteria:
>
> Criterion "a": Does the proposed amendment maintain consistency with other plan elements or development regulations? *No*
> Criterion "b": Do all applicable elements of the GMA comprehensive plan, including but not limited to the capital plan facilities plan and the transportation element, support the proposed element? *No*
> Criterion "c": Does the proposed amendment or revision more closely meet the goals, objectives and policies of the GMA comprehensive plan? *No*
> Criterion "d": Is the proposed amendment consistent with the County-wide planning policies? *No*
> Criterion "e": Does the proposed amendment comply with the requirements of the GMA? *No*
> Criterion "f": Are the assumptions underlying the applicable portions of the GMA comprehensive plan or development regulations no longer valid because new information is available which was not considered at the time the plan or regulation was adopted? *No*
>
> Discussion:
>
> Review of the proposal against the state's minimum guidelines in the [WAC] for classification of agricultural lands of long term commercial significance under the GMA is as follows:
>
> a. T**he availability of public facilities**: Public facilities are defined in WAC 365-190-030(16) [and RCW 36.70A.030(12)] as including streets, sidewalks, road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, park and recreational facilities, and schools. The proposal area is served

by 34th Ave. NE, 140th St. NE and 128th St. NE. These rights-of-way are *developed and maintained to county rural road* standards. Each contains two travel lanes and gravel shoulders. The *area is outside of a sewer service boundary*. *Storm drainage infrastructure is not provided on site*. The nearest park facilities are found in the City of Marysville. School facilities are available to serve the area.

b. **Tax status**: The area is assessed at standard county rates.

c. **The availability of public services**: Public services are defined in WAC 365-190-030(17) [and RCW 36.70A.030(13)] as including fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services. These services are provided to the site by Snohomish County, special districts or the City of Marysville.

d. **Relation or proximity to urban growth areas**: *The City of Marysville is located east of the proposal area and is separated from the area by Interstate 5.*

e. **Predominant parcel size**: *Parcel sizes on the proposal area are greater than 10 acres. The parcel sizes in the proposal area vary from 16.71 acres to 68.90 acres. Parcels in the vicinity of the proposal area range from urban densities to the east in the City of Marysville to 10 acres or more to the north, west and south of the proposal area.*

f. **Land use settlement patterns and compatibility with agricultural practices**: *Area to the north and west is zoned Agriculture 10, while area to the south is zoned Rural Residential 10 Resource Transition. These areas are generally undeveloped or developed with low-intensity rural uses that are compatible with agricultural practices.* To the east across Interstate 5 is the City of Marysville.

g. **Intensity of nearby uses**: *Surrounding development is generally large lot residential properties*. Interstate 5 borders the proposed area to the east.

h. **History of land development permits issued nearby**: *Development permit applications in the vicinity have generally been for rural low-intensity structures or improvements.*

i. **Land values under alternative uses**: *Since the proposed comprehensive plan designation and zoning classification generally allow uses similar to those currently allowed under the current zoning, land values under the proposal are likely to be comparable to existing values*.

j. **Proximity to markets**: The nearest market is the City of Marysville. Other nearby markets include the Cities of Arlington and Everett.

Base on review of the site characteristics and the GMA criteria, *the proposal area meets the criteria for an agricultural area of long-term commercial significance*. *It contains prime farmland soils, is not characterized by urban growth, and is adjoined*

by uses that are compatible with agricultural practices.

Implementation Measure LU 7 in the GPP identifies specific criteria for addition or deletion of a site as designated farmland. These criteria are reviewed for the proposal below:

1. **Prime farmland as defined by the U.S. Soil Conservation Service (SCS) and other Class III soils in the SCS capability classification**. As described in section 3.1, *the proposal contains prime farmland soils*

2. **Identified as devoted to agriculture by**:
   - **Snohomish County Plan designation**: The proposal area is currently designated as Upland Commercial Farmland by Snohomish County
   - **Snohomish County zoning code Agriculture-10 zone**: The proposal is currently zoned Agriculture-10 by Snohomish County.
   - **Identification in the 1982 agriculture land inventory, the 1990 aerial photo interpretation, or the 1991 field identification of land devoted to agriculture:** *The proposal area is identified in the 1982 agriculture land inventory as and agricultural area of primary importance. The 1990 aerial photo interpretation and 1991 field identification of land devoted to agriculture resulted in confirmation of the Upland Commercial Farmland designation in this area.*
3. **Located outside a UGA**: The proposal area is *outside of a UGA.*
4. **Located outside a sewer service boundary**: The proposal is located *outside of a sewer boundary*.
5. **A parcel of 10 acres or greater in Upland Commercial or Local Commercial Farmland Areas**: *The proposed area consists of four parcels in Upland Commercial Farmland, ranging in size from 16.71 to 68.90 acres.*

Based on the criteria of the LU 7 implementation measures, the proposal area satisfies all the mandatory criteria for agricultural designation. Therefore, it would be inconsistent with these criteria to remove agricultural designation from this area.

. . .

Findings and Conclusions:

The proposal by MacAngus Ranches, Inc. to amend the GPP's FLUM to redesignate 216 acres from Upland Commercial Farmland to Rural Residential-10 Resource Transition (1 DU/10 acres) *is not consistent with the policies under Goal LU 7 in the GPP to conserve agricultural land. The proposal site is composed of prime agricultural soils and meets all of the criteria in the GPP under Implementation*

> *Measure LU 7a for continued designation as agricultural land of long-term significance as defined by the GPP. Additionally, consideration of the state's minimum guidelines in the [WAC] indicates that the MacAngus site should continue to be classified as agricultural lands under the GMA.*
>
> [PDS recommended DENIAL of the proposal.]

Ex. 8, PDS Report and Recommendation, at 3-7, (emphasis supplied).

The County does note that "the Tulalip Tribes have zoned the eastern half of the property as commercial." County Response, at 52. However, the County does not mention that the Tulalip Tribe has designated the western half of the property, in its Plan and zoning, as "Rural Agriculture (1 DU/5-10 Acres)." See Ex. 21, Figures 2-4 and 2-5 "MacAngus Ranches Proposal." [24]

Additionally, the Board notes that the record indicates that 1) the Snohomish County Agricultural Advisory Board provided support for its recommendation that the "land remain designated as Upland Commercial Farmland and be zoned in conformance with that designation." 1000 Friends Ex. 41. Likewise the record shows that the County Executive, in a veto message regarding prior ordinances [25] that included the MacAngus proposal, and planning commission opposed this change. Ex. 191.

The County's decision, as reflected in its Finding F, seems to be based upon development occurring to the south, but not adjacent to the property; present tax status; and speculation on the area being acquired by the Tulalip Tribe. The discrepancies between the evidence in the record regarding mandatory designation criteria and the decision of the County to de-designate this area, as contained in Finding F, is plainly more than a disagreement over policy choices. Were that the case, the Board would defer to the sound discretion of the County. However, the County's Ordinance Finding draws scant, if any, support from the record. In contrast, the arguments advanced by 1000 Friends, are supported by evidence in the record. The record suggests that the land continues to meet *all* criteria for the designation of agricultural land. This is true regarding the question of prime farmland soil characteristics and whether the 216-acres are of long-term commercial significance. Contrary to the County's Ordinance Finding, the record weighs heavily toward the denial of the de-designation. The Board's review of the record and arguments presented, leads to the conclusion that this area that is devoted to agriculture and continues to be of long-term commercial significance and should not have been de-designated from the Upland Commercial Farmland designation and A-10 zoning.

The Board concludes that the County's action was **clearly erroneous**. The Board therefore concludes that the County's reclassification of the 216 acres from Upland Commercial Farmland Upland Commercial Farmland to Rural Residential-10 Resource Transition on the FLUM; and the rezoning of the area from Agriculture-10 Acres to Rural Resource Transition-10, as contained in Ordinance Nos. 03-001 and 03-002, **does not comply** with the requirements of RCW 36.70A.170.

Conclusion: Agricultural Lands

The Board finds that the County's action was **clearly erroneous** in concluding that this land no longer meets the criteria for designation as agricultural land of long-term commercial significance. The Board concludes that the County's redesignation of the 216 acres from Upland Commercial Farmland to Rural Residential-10 Resource Transitional and rezoning from A-10 to Rural Resource Transition-10 **does not comply** with the requirements of RCW 36.70A.170 and WAC 365-190-050 (pursuant to RCW 36.70A.050 and .170(b)).

E. LAMIRD Issue

The PHO set forth Petitioner Hensley Legal Issue No. 1 and 1000 Friends Legal Issue No. 3 as follows:

> *1. Ordinance 03-001 adopted a new Limited Area of More Intensive Rural Development (LAMIRD) of 9 acres in north County herein referred to as Verbarendse. This site was designated as a Type 3 LAMIRD under RCW 36.70A.070 (5). Did Snohomish County violate the GMA in the adoption of this LAMIRD? The RCWs of concern are as follows: RCW 36.70A.020(2) and (12), RCW 36.70A.070 (preamble), (5) and (6), RCW 36.70A.120, RCW 36.70A.210.*
>
> *GPP – LU 6, LU 6.A, LU 6.B, LU 6.E.4, LU 6.F, LU 6.G – LU6.G.8, TR-1, TR-1.A., TR-4, TR-4.B, TR-4.C, TR-4.D, TR-4.E, TR-5,*
> *Most recent TIP, CIP, and Concurrency Reports*
> *CPP – RU-1, RU-3, RU-5, OD-5, OD-11, TR-4, TR-8 Fiscal Impact Analysis*
>
> *3. Does enactment of the Mark Verbarendse Proposal, redesignating 9 acres from Rural Residential-5 to Rural Freeway Service/LAMIRD, and accompanying rezone, violate RCW's 36.70A.020(2) (planning goal requiring the reduction of the inappropriate conversion of undeveloped land), 36.70A.070 (criteria for establishing a LAMIRD), RCW 36.70A.110 (prohibiting urban growth outside of the urban growth area) when said redesignation fails to comply with the Growth Management Act's requirements for designating a LAMIRD?*

Abandoned Issues

Petitioner Hensley failed to brief the following portions of Legal Issue 1 [LAMIRDs], regarding compliance with: RCW 36.70A.120; RCW 36.70A.210; RCW 36.70A.070(preamble) as it relates to GPP LU 6, LU 6.A, LU 6.B, LU 6.E.4, LU 6.F, TR 1, TR 1.A, TR 4, TR 4.B, TR 4.C, TR 5; and the most recent TIP, CIP and Concurrency Reports. *See* Hensley PHB, at 2-12. These portions of Legal Issue 1 are deemed **abandoned**. WAC 242-02-570(1) and PHO, Section XIII, at 8-9.

Petitioner 1000 Friends failed to brief the following portions of Legal Issue 3 [LAMIRDs], regarding compliance with: RCW 36.70A.020(2) and RCW 36.70A.110. *See* 1000 Friends PHB, at 28-32. These portions of Legal Issue 3 are deemed **abandoned**. WAC 242-02-570(1) and PHO, Section XIII, at 8-9.

Applicable Law

The relevant goals of the GMA (RCW 36.70A.020(2) and (12)), and the internal consistency provisions of RCW 36.70A.070(preamble), are set forth *supra*.

The other significant provision of the GMA involved in this issue is RCW 36.70A.070(5)(d). RCW 36.70A.070(5)(d) provides for the establishment of Limited Areas of More Intensive Rural Development (LAMIRD), including necessary public facilities and services to serve the LAMIRD. Three types of LAMIRDs are authorized, however, only one is at issue in this matter – Type 3 LAMIRDs (*i.e.*, adopted pursuant to RCW 36.70A.070(5)(d)(iii). RCW 36.70A.070(5)(d) provides in part:

> Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:
>
> (i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;
>
> (ii) The intensification of development on lots containing, or new development of,

small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

Thus, the rural element of a County GMA Plan may allow for three general types of limited areas of more intense rural development: 1) infill residential, commercial or industrial development in an existing area; 2) intensified or new small scale recreation or tourist oriented development on existing lots; and 3) intensified or new development of isolated cottage industries or isolated small-scale business.

Discussion

The Action:

In Ordinance No. 03-001, the County created a "Type 3 LAMIRD" [pursuant to RCW 36.70A.070(5)(d)(iii)]. The action designated 9 acres at the southwest corner of I-5 and 300th St. NW from Rural Residential-5 to Rural Freeway Service on the County's FLUM. The site was not rezoned as part of the challenged action. The site is presently undeveloped. The surrounding area is designated Rural Residential-5.

Position of the Parties and Discussion of RCW 36.70A.070(5)(d):

Both Petitioners advance essentially the same argument on this issue. 1000 Friends articulates the underlying premise of the argument, "RCW 36.70A.070(5)(d) confers *grandfather* recognition on these areas [areas outside UGAs with more intense development] and allows them to change and develop in limited ways to maintain their vitality, while at the same time ensuring that they don't expand in either size or use in a way that results in pockets of urban sprawl in rural areas." 1000 Friends PHB, at 29, (emphasis in original). The essence of Petitioners' argument is that at some time, some activity or use had to have been in place on the property to qualify for designation as a LAMIRD. 1000 Friends references two different Board cases to [26] support the contention that existing uses are required. Petitioner asserts that no prior activity or use has occurred on this property, it is vacant and undeveloped. Therefore, without existing, or at least previous uses, the area cannot be a LAMIRD and the County's designation of this property was in error. Hensley PHB, at 3-7; 1000 Friends PHB, at 28-33.

The County quotes the language of .070(5)(d)(iii):

> (iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents.

County Response, at 8, (emphasis in original). The County then goes on to argue that the designation of this LAMIRD is for a "new development of … [a] small-scale business that [is] not principally designed to serve the existing and projected population and nonresidential uses, but do[es] provide job opportunities for rural residents." *Id*., at 9. As such, the LAMIRD complies with the intent and specific language of RCW 36.70A.070(5)(d)(iii). Verbarendse offers the same argument. Verbarendse Response, at 8.

Additionally, both the County and Verbarendse note that both the Western and Central Puget Sound Growth Boards have rejected Petitioners' premise regarding existing use as a prerequisite to designation of a Type 3 LAMIRD:

> The provisions of (d)(v) (existing area or existing use as of July 1, 1990) apply to all LAMIRDs whether designated under (d)(i), (ii) or (iii). Thus, for any "intensification" allowed under (d)(ii) or (d)(iii), the designated use or area must have been in existence on July 1, 1990 (or later date under the provisions of (5)(B) or (C)). This restriction does not apply to "new development" authorized under (d)(ii) or (d)(iii). . .(citing *Panesko*)

[27]

County Response, at 10; (emphasis in original) and Verbarendse Response, at 9-11. Intervenor Verbarendse also argues that the boundaries of the LAMIRD are the boundaries of the property, consequently the outer boundary requirements, if applicable, are met. Verbarendse Response, at 11.

Petitioner Hensley reasserts that if there is nothing built within the LAMIRD boundary, therefore, it does not qualify for designation. Hensley Reply, at 4. 1000 Friends suggests that the County and intervenor have "latched on to the term 'new development' as it appears in (5)(d)(iii), failed to provide analysis in context with the entire subsection (and entire GMA) and wishfully assign it a definition that justifies unlimited creation of urban density pockets on heretofore undeveloped rural lands." 1000 Friends Reply, at 14. In essence, Petitioner argues that the context within which LAMIRDs may occur is if the rural character is protected. *Id*., at 14-16.

Further, Petitioner argues that the logical outer boundary requirement only makes sense if

existing uses are a prerequisite and new development means development on a previously developed site. *Id.*, 17-18. 1000 Friends concedes that the Western Board (and by implication the CPS Board) did say that the existing use requirement does not apply to Type 2 or Type 3 LAMIRDs, but 1000 Friends "thinks this part of *Panesko* was wrongly decided. . ." *Id*., at 19. 1000 Friends then argues that the Western Board has reversed itself and applied the existing use provisions to type 3 LAMIRDs in *Dawes v. Mason County [**Dawes**]*, WWGMHB Case No. 966-2-0023c, Compliance Order, (Aug. 14, 2002).

First, the Board notes that the *Panesko* case, the *Sky Valley* case and *Hensley IV* case all dealt with LAMIRDs created pursuant to RCW 36.70A.070(5)(d)(i) – Type 1 LAMIRDs, and therefore are not directly on point. Additionally, the "GMA noncompliance" found by the Western Board in the *Dawes* case was based on the absolute lack of mapping to show where any of the LAMIRDs (Type 1 or 3) were to be located. Existing uses were not at issue in that case; therefore the *Dawes* decision is not on point.

Notwithstanding whether new development is allowed or whether existing development is a prerequisite to development, a Type 3 LAMIRD contains an additional constraint. If a Type 3 LAMIRD allows "a *new* cottage industry or *new* small-scale business" these new uses must be "*isolated*." RCW 36.70A.070(5)(d)(5)(iii).
The American Heritage Dictionary of the English Language, New College Edition, at 694, defines "isolate" as "1. To separate from a group or whole and set apart. 2. To place in quarantine. . .4. To render free from external influence; insulate." Can it be said that the County's creation of this 9-acre LAMIRD would yield isolated uses – uses set apart, or free from external influence. This particular LAMIRD is located along an interstate highway running through the most urbanized, congested and densely populated area of the state. The location [I-5 and *300th St.* NW] is far from being an isolated location where new small-scale business could be created without creating pressure for urbanization. It is hard for the Board to conceive of an isolated location along the I-5 corridor in the CPS region where a Type 3 LAMIRD would be an appropriate designation. Nonetheless, *this* 9-acre Type 3 LAMIRD is not isolated. Therefore, the Board concludes that Snohomish County's designation of this 9-acre Type 3 LAMIRD was **clearly in error**, and **does not comply** with the requirements of RCW 36.70A.070(5)(d)(iii).

<u>Position of the Parties and Discussion of RCW 36.70A.020(2)</u>:

Hensley argues that increasing the conversion of undeveloped land in the rural area, as this LAMIRD designation does, does not reduce sprawl and is contrary to Goal 2. Hensley PHB, at 8; Hensley Reply, at 7-9.

The County and Verbarendse respond that LAMIRDs are not sprawl [Goal 2]. "The Legislature explicitly approved this type of limited development in rural areas as acceptable growth within

the meaning of the GMA." County Response, at 19; *see also* Verbarendse Response, at 20.

By definition, permissible development within an appropriately designated LAMIRD is not urban growth. *See* RCW 36.70.030(17). However, as discussed *supra*, the designation of this LAMIRD does not comply with the requirements of the Act. The designation allows the inappropriate conversion of undeveloped land and encourages sprawl. The LAMIRD designation is contrary to the guidance provided by Goal 2, "Reduce the inappropriate conversion of undeveloped land into sprawling, low density development." Therefore, the Board concludes that the County's action **was not guided**, and **does not comply** with, RCW 36.70A.020(2).

Position of the Parties and Discussion of RCW 36.70A.070(preamble) and (6) and RCW 36.70A.020(12):

Having concluded that the County's LAMIRD designation does not comply with the requirements of RCW 36.70A.070(5)(d)(iii), and RCW 36.70A.020(2), the Board need not and will not address Petitioner Hensley's arguments regarding whether the LAMIRD designation complies with RCW 36.70A.070(preamble) and (6) and RCW 36.70A.020(12).

Conclusion: LAMIRD

The Board concludes that the County's designation of the 9 acre Verbarendse Type 3 LAMIRD, in Ordinance No. 03-001, **does not comply** with the requirements of RCW 36.70A.070(5)(d)(iii) and was **not guided by**, or **comply with**, RCW 36.70A.020(2).

V. REQUESTS 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. Hensley PFR, at 2-3 and 1000 Friends PFR, at 6.

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 the Board's discussion of the Arlington UGA issue [Petitioner Hensley' Legal Issue No. 2 and 1000 Friends Legal Issue No. 1] the Board found that the Arlington UGA expansion, as contained in Ordinance Nos. 03-001, 03-002 and 03-005, did not comply with the consistency requirements of RCW 36.70A.210 and requirements of RCW 36.70A.215. Also in the Board's discussion of the Agricultural Lands Issue [1000 Friends Legal Issue No. 2] the Board found that the de-designation of 216-acres of agricultural lands, as contained in Ordinance Nos. 03-001 and 03-002, did not comply with the requirements of RCW 36.70A.170. Finally, in the Board's discussion or LAMIRDs [Hensley Legal Issue 1 and 1000 Friends Legal Issue 3] the Board found that the County's creation of a Type 3 LAMIRD on 9-acres of land, as contained in Ordinance No. 03-001, did not comply with the requirements of RCW 36.70A.070(5)(d)(iii) and was not guided by RCW 36.70A.020(2). The question now becomes whether the continued validity of any of these actions, during the period of **remand**, would substantially interfere with the fulfillment of the Goals of the Act.

The Board's review of the facts and circumstances involved in the Arlington UGA issue, as discussed *supra*, lead the Board to conclude that the continued validity of the noncompliant UGA extension, Plan designation and zoning designation will **not** substantially interfere with any of the Goals of the Act. Therefore, the Board **declines** the request to enter a Determination of Invalidity for these noncompliant provisions of Ordinance Nos. 03-001, 03-002 and 03-005.

However, the Board's review of the arguments and record involved in the 216-acre Agricultural Land de-designation, as discussed *supra*, lead the Board to conclude that the continued validity of the noncompliant Plan and zoning designations will substantially interfere with Goal 8 – "Maintain and enhance natural resource based industries, including productive timber, agriculture, and fisheries industries. Encouraging the conservation of productive forest lands and productive agricultural lands and discourage incompatible uses." RCW 36.70A.020(8). Therefore, the Board enters a **Determination of Invalidity** for these noncompliant provisions of Ordinance Nos. 03-001 and 03-002.

Additionally, the Board's review of the arguments and law regarding the Type 3 LAMIRD designation, as discussed *supra*, lead the Board to conclude that the continued validity of the noncompliant Plan designation will substantially interfere with Goal 2 – "Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development." RCW 36.70A.020(2). Therefore, the Board enters a **Determination of Invalidity** for these noncompliant provisions of Ordinance Nos. 03-001.

VI. ORDER

Based upon review of the Petitions for Review, the briefs and exhibits submitted by the parties, the GMA, prior Orders of the Growth Boards, Washington case law, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

Snohomish County's adoption of Ordinance Nos. 03-001 and 03-002, as they relate to the County's: 1) amendment to Plan Policy LU 1.A.9; and 2) the School District Rezone, as discussed *supra*, either **comply** with the challenged provisions of the GMA, *or* Petitioners have **failed to carry their burden of proof** in demonstrating noncompliance with the challenged provisions of the GMA, as discussed *supra*.

Snohomish County's adoption of Ordinance Nos. 03-001, 03-002 and 03-005, as they relate to the County's expansion of the Arlington UGA, as discussed *supra*, **does not comply** with the consistency requirements of RCW 36.70A.210 and the requirements of RCW 36.70A.215.
Snohomish County's adoption of Ordinance Nos. 03-001 and 03-002, as they relate to the County's *de-designation* of 216-acres of Upland Commercial Farmland and A-10 zoning, as discussed *supra*, **does not comply** with the requirements of RCW 36.70A.170.

Snohomish County's adoption of Ordinance No. 03-001, as it relates to the County's designation of a Type 3 LAMIRD on 9-acres of land, as discussed *supra*, **does not comply** with the requirements of RCW 36.70A.070(5)(d)(iii), and **was not guided by** RCW 36.70A.020(2).

Additionally, the Board has entered a **Declaration of Invalidity** for Ordinance Nos. 03-001 and 03-002, as they relate to the de-designation of 216-acres of Upland Commercial Farmland and implementing zoning; and the Board has entered a **Declaration of Invalidity** for Ordinance No. 03-001, as it relates to the designation of 9-acres as a Type 3 LAMIRD.

The Board **remands** Ordinance Nos. 03-001, 03-002 and 03-005 to the County with the following directions:

1. By no later than **March 11, 2004**, the County shall take appropriate legislative action to achieve compliance with the goals and requirements of the GMA, pertaining to the Arlington UGA, the 216-acre Agricultural Land de-designation, and 9-acre Type 3 LAMIRD designation, as interpreted and set forth in this Order.

2. By no later than **March 18, 2004**, 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 Order. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on Petitioners.

3. By no later than **March 25, 2004**, the Petitioners may file with the Board an original and four copies of Comments on the County's SATC. Petitioners shall simultaneously serve copies of their Comments on the County's SATC on the County.

4. By no later than **March 29, 2004**, 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 a **Compliance Hearing** in this matter for **10:00 a.m. April 1, 2004,** at the Board's offices. The compliance hearing may be conducted telephonically, if the parties so stipulate.

If the County takes legislative compliance actions prior to the **March 11, 2004** 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 22nd day of September 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____

Edward G. McGuire, AICP
Board Member (Board Member McGuire files a separate concurring opinion.)

_____

Joseph W. Tovar, AICP
Board Member (Board Member Tovar files a separate concurring opinion.)

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.

Board Member Tovar's Concurring Opinion

I agree with my colleague as to the outcome of all the legal issues in this case. I write separately to express my opinion about other reasons why the County's action is noncompliant with the statute, specifically with regard to the LAMIRD and the Arlington UGA issues.

LAMIRD

I concur that the County's action on the 9-acre LAMRID does not comply with the Act because it is not "isolated." However, I would have also found noncompliance for two other reasons.

First, the County erred when it designated a Type 3 LAMIRD, a GMA creature which I conclude may only exist in rural counties, and Snohomish county is plainly not a rural county. Second, the County erred when it read into the first sentence of RCW 36.70A.070(5)(d)(iii) implicit authorization to locate "new development" basically anywhere in the rural area, while ignoring the fact that the second and third sentences explicitly describe where such LAMIRDs may locate.

In my view, RCW 36.70A.070(5)(d)(iii) is less than a model of clarity. Prior Board cases on this subject, and the briefing of the parties to this case, reflects the ambiguity in this provision. To resolve this ambiguity, I would rely upon the rules of statutory construction. [28] To glean the meaning of a specific statutory provision, it is important to read it, not in isolation, but in the context of the entire statute. *See Cramer v. Van Parys*, 7 Wn. App. 584, 586 (1972).

The first sentence of this provision must be viewed in the context of the two sentences that immediately follow it:

> . . . Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030 (14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030 (14).

RCW 36.70A.070(5)(d)(iii).

While the term "Rural county" is not defined in the Act, the Board cannot presume that any of the legislature's words are superfluous. A cardinal rule of statutory construction is to give effect to legislative intent. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 813 (1992). Therefore, to discern the legislative meaning of "rural counties" I would have taken official notice of several statutes,[29] all of which were amended in the late 1990's. A review of these statutes reveals the meaning that the legislature assigns to "rural county." In amendments to Chapters 43.160, 43.168, 82.04, 82.14, 82.16 and 53.08 RCW, the legislature consistently defined "rural county" to mean "a county with a population density of fewer than one hundred persons per square mile as determined by the office of financial management."[30] A close review of these statutes further reveals a legislative intent to create economic development opportunities in those "rural counties" of the state.

Significantly, this legislative intent, to provide tools and mechanisms to promote economic opportunity in certain parts of the state that are "experiencing insufficient economic growth,"[31] was further clarified by a 2002 amendment to the GMA. RCW 36.70A.011 provides:

> The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.
>
> The legislature finds that to retain and enhance the job base in rural areas, **rural counties** must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments **in rural counties** require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by

> the local planning unit.

(Emphasis added.)

This section clarifies that "regional differences" must be respected, and specifically identifies rural counties as areas of the state in greater need of the "flexibility to create opportunities for business development." It is also significant that this amendment, in 2000, post-dates the legislature's amendments to Chapters 43.160, 43.168, 82.04, 82.14, 82.16 and 53.08 RCW set forth in a footnote, *supra*. In view of those same citations, I would have further held that the term "rural county" in RCW 36.70A.070(5)(d)(iii) means counties with "population density of fewer than one hundred persons per square mile as determined by the office of financial management."

Does Snohomish County meet the office of financial management criteria for a "rural county"? Plainly, the answer is no. According to the Office of Financial Management "Population Density by County," table for 2003 "rural counties" are those with a population density less than one hundred persons per square mile.[32] The OFM table also reports the population densities for all Washington State counties expressed as "hundreds of persons per square mile." It shows that Snohomish County's population density is **305.16** persons per square mile.

The OFM table also shows that the population densities for the other three counties in the Central Puget Sound region[33] are also above one hundred persons per square mile.[34] Thus, no county in this region is a "rural county" within the meaning of RCW 36.70A.070(5)(d)(iii), and consequently, Type 3 LAMIRDs may not exist in the Central Puget Sound region.[35] For Snohomish County to conclude otherwise, is a clear error of law.

Even if Snohomish County is somehow a "rural county," and thus entitled to apply RCW 36.70A.070(5)(d)(iii), the County's reading of this provision is still overly broad and in error. The County focuses not just on the first sentence, but on a portion of it, which it emphasizes in its briefing:

> (iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated **small-scale businesses** that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents.

County Response, at 8, (underlined emphasis by County, bold emphasis supplied).

The immediate context of the above-cited first sentence is the balance of the subsection, specifically, the second and third sentences that follow it. Notably, whereas the second and third sentences use the active verb "allow" to explicitly authorize type and locations of Type 3 LAMIRDs, the first sentence does not. In fact, the first sentence uses **no active verb**. The words "do provide" are not synonymous with "may allow." Their position in the sentence, and the structure of the sentence itself, suggests that these words simply serve as an adjective clause describing the policy objective of a Type 3 LAMIRD (*i.e.*, job-creation.)

Under my reading of the first sentence of RCW 36.70A.070(5)(d)(iii), no direction is given as to *where* a county may locate "**new** development of isolated cottage industries and . . . **small-scale businesses**." That determination is governed by the second sentence that clarifies that a rural county "may allow the **expansion of small-scale businesses**" and the third sentence that clarifies that "**new small-scale businesses** [may] utilize a site **previously occupied by an existing business** . . ."

To agree with the County's position on the correct reading of the first sentence requires one to first read that sentence in isolation and then imagine that an active verb, such as "allow" is used. The County has made both leaps. I cannot. In addition to the reasoning outlined *supra*, I believe that to read the first sentence of RCW 36.70A.070(5)(d)(iii) as permissively as the County does would effectively eviscerate all the limiting and cautionary language elsewhere in RCW 36.70A.070(5). Why bother going through the rigorous criteria for Type 1 and Type 2 LAMIRDs if a county can simply invoke *carte blanche* permission to site Type 3 LAMIRDs literally anywhere in the rural area?

For the foregoing reasons, I would have concluded that the County erred by relying on the authority of a statutory provision, namely RCW 36.70A.070(5)(d)(iii), which is not applicable to Snohomish or any other county in the Central Puget Sound region. The County further erred by concluding that the first sentence of RCW 36.70A.070(5)(d)(iii) grants broad authority to counties to locate Type 3 LAMIRDs anywhere in the rural area, rather than only where small-scale businesses exist (as expansions pursuant to the second sentence) or previously existed (pursuant to the third sentence).

Arlington UGA

I agree with my colleague regarding the County's noncompliance with its own CPPs. I write here separately to remind the County that the Board's conclusion here focuses on the CPPs rather than the bare language of RCW 36.70A.215 or other statutory provisions. I am frankly troubled by the County's apparent belief that its duty under .215 is solely to "consider" reasonable measures, *i.e.*,

simply adopt them in a list, as a perfunctory step to adding land to the urban growth area. The prospect of expanding a UGA is a serious matter, one which my reading of .215 suggests is a last resort. I would also caution the County against excessive reliance on the "planned unit development" mechanism as the primary, or even significant, method of achieving urban densities within the UGA. As the Board has recently stated:

> . . . the Board cautions [local governments] against reliance on certain pre-GMA tools, such as planned unit development permits and site specific rezones, as the primary mechanism to enable developers to reach the GMA-mandated minimum urban densities. The growth accommodation mandate of RCW 36.70A.110 and the permit processing guidance of RCW 36.70A.020(7) would be thwarted if, in order to meet these mandates, an applicant would also be required to show "changed circumstances" (pre-GMA rezone criteria) or "public benefit" (classic PUD criteria).

Master Builders of Pierce County v. Pierce County, CPSGMHB Case No. 02-3-0010, Order Finding Partial Noncompliance and Continuing Invalidity, (Sep. 4, 2003) at 10, fn. 6.

Board Member McGuire's Concurring Opinion

I also concur in the conclusions and outcome of all the legal issues in this case. However, with respect to Type 3 LAMIRDs, I would have also addressed whether an existing use or prior activity is required for a Type 3 LAMIRD.

To resolve this issue, the Board simply needs to look at the language of RCW 36.70A.070(5)(d)(iii) and the cited language and *Panesko*, which was subsequently adopted by this Board in *Hensley IV*. Simply put, all counties are required to have a rural element in their comprehensive plans; the Act allows rural elements to include LAMIRDs; and Type 3 LAMIRDs explicitly anticipate and allow *new development*, as stated in *Panesko* and *Hensley IV*, the existing use requirement does not apply to new development in a Type 3 LAMIRD. The language of the statute is clear an unambiguous and the statement cited in *Hensley IV* is correct.

Finally, I agree that Snohomish County is not a rural county, nor are any of the other counties within this Board's jurisdiction rural; I also am intrigued by my colleague's though provoking analysis regarding "rural counties;" however, that analysis leads to a conclusion that Type 3 LAMIRDs are prohibited throughout the CPS region. This conclusion is more sweeping than necessary to resolve the dispute presented to the Board in the present case. I also note that the discussed second and third sentences of RCW 36.70A.070(5)(d)(iii), while speaking to small-scale business, do not address cottage industries.

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[1]

Petitioner Windsong's motion to supplement the record was addressed in the Board's Order on Motions. Subsequently, the Windsong portion of this case was unconsolidated due to a settlement extension. Nonetheless, the Windsong Exhibits are addressed in the context of the *Hensley VI* case.

[2]

Petitioner Windsong's standing to raise SEPA claims was addressed in the Board's Order on Motions. Subsequently, the Windsong portion of this case was unconsolidated due to a settlement extension. Nonetheless, the dismissal of Windsong's SEPA claims was addressed in the context of the *Hensley VI* case.

[3]

A portion of Petitioner Hensley's Legal Issue 3 raises a SEPA claim; a portion of Petitioner Windsong Neighborhood Association's Legal Issue 4 and all of Legal Issue 5 pose SEPA claims; and 1000 Friends of Washington's Legal Issue 7 raises SEPA issues.

[4]

Hensley's Legal Issue 1 is the subject of this GMA participation standing challenge.

[5]

Petitioner Hensley's SEPA claims were dismissed in the Board's May 19, 2003 Order on Motions.

[6]

The finding states:

> The County Council proposal B to amend GPP Policy LU 1.A.9 to clarify that allowing the expansion of a UGA for churches or school instructional facilities does not add residential, commercial, or industrial land capacity to the UGA and such dedicated uses are considered an exception to the criteria which otherwise limit UGA expansions is supported by Goal LU 2 and objective LU 2.A and 2.B which encourage development patterns that use urban land more efficiently by encouraging the intensification and revitalization of existing and planned residential, commercial and industrial areas.

Ordinance No. 03-001, Section 2. Finding O, at 8; Ex. No. 271.

[7]

The Board recalls that the original land capacity analysis conducted by the County included all uses for sizing the UGA. The Board notes that the state Office of Community Development acknowledges that, in the County's buildable land report, between 5 and 10 percent of the buildable land within the UGA will be used for the types of uses identified in this policy. Hensley Ex. 12 [12/5/02 letter to Maura Goodwin, Chair, Snohomish County Planning Commission from Dave Andersen, OCD.]

[8]

Each of the challenged CPPs supports the goal of encouraging and maintaining compact urban growth within the urban areas – UGAs. *See* Snohomish County CPPs.

[9]

Each of the challenged Plan Policies supports the goal of encouraging and maintaining compact urban growth within the urban areas – UGAs. *See* Snohomish County GMA Plan, and Hensley PHB, at 38-49.

[10]

The School Districts quote the Board's case of *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008c, Final Decision and Order, (Oct. 23, 1995), at 72, where the Board stated: "By their very nature, some schools may be in the rural area in order to serve the school children that live there. Schools can be compatible with rural character, depending largely upon how they are designed and configured to the site."

[11]

CPP UG-14 provides in relevant part: "A list of reasonable measures that may be used to increase residential, commercial and industrial capacity in UGAs, without adjusting UGA boundaries, shall be developed using the Snohomish County Tomorrow [SCT] process. The [SCT] Steering Committee will recommend to the County

Council a list of such reasonable measures. The County Council will consider the recommendation of the Steering Committee and will add a new Appendix to the [CPPs] that contain a list of reasonable measures. Once adopted, the County Council will use the list of reasonable measures to evaluate all UGA boundary expansion proposals consistent with UG-14(d)."

[12]

RCW 36.70A.215(1) provides in relevant part, "The purpose of the review and evaluation program shall be to:

> (a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and
> (b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

[13]

RCW 36.70A.110(3) provides:

> Urban growth should be located *first* in areas already characterized by urban growth that have adequate existing public facilities and service capacities to serve such development, *second* in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided either by public or private sources, and *third in the remaining portions of the urban growth areas*. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(Emphasis supplied.)

[14]

Citing: *Tacoma v. Pierce County*, CPSGMHB Case No. 94-3-0001, Final Decision and Order, (Jul. 5, 1994) and *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order, (Oct. 6, 1995).

[15]

The County's Interim List of Reasonable Measures includes 25 different techniques that are available and could be used to accommodate growth without expanding UGAs. *See* BLR, or Motion 03-080; or County Ex. A-C..

[16]

The Board notes that as land potentially in an unincorporated UGA, the County's regulations, not the City's govern development.

[17]

Ordinance No. 03-005 includes the following finding:

> The proposed expansion of the Arlington UGA is consistent with the reasonable measures requirement of RCW 36.70A.215. The county adopted a list of reasonable measures as Appendix A to the Snohomish County 2002 Preliminary Buildable Lands Report. Reasonable measures were considered in this evaluation of the Arlington UGA expansion proposal. The type of reasonable measures on the list and used by the City of Arlington to provide the opportunity for urban infill inside the city include the provision of the planned unit development techniques which allows more efficient use of land where there are site development constraints such as critical areas.

Ordinance No. 03-005, Section 2, Finding C, at 3.

[18]

Reference to Ex. 113, apparently is to County Council Ex. 113 the MacAngus Ranches Proposal, which according to the County's Index is Ex. 39. Index 8 is what the County provided to the Board, the Snohomish County Final Docket – 2002 PDS Staff Report and Recommendation, September 2002. These documents summarized the various proposals. There was no document identified as Ex. 39 [MacAngus proposal] provided to the Board. Additionally, the Board's Order on Motions granted MacAngus' motion to supplement the record with several items; included among them are Supp. Exs. 21, 22 and 23, all relating to the MacAngus proposal, and Intervenor's response to the staff report, DSEIS and Planning Commission recommendation.

[19]

The focus of MacAngus' argument is clearly on the soil characteristics, not on long-term commercial significance. *See* MacAngus Response, and attached Exhibits and MacAngus Supplemental Exhibits.

[20]

The five soil types are: Custer fine sandy loam (IVw); Lynwood loamy sand (IVs); Norma loam (IIIw); Norma variant loam (IIIw); and Ragnar fine sandy loam (IIIe). DSEIS, Ex. 21; MacAngus Response, at 5-6.

[21]

SCS has eight capability classes (I through VIII). The roman numerals indicate progressively greater limitations on the soil class. The subclasses e, w, s and c show the main limitation on the soil. The subclass "w" indicates, "that water in or on the soil interferes with plant growth or cultivation (in some soils the wetness can be partially corrected by artificial drainage). Soil Survey of Snohomish County Area Washington, USDA, SCS, Supplemental Ex. 21.

[22]

See Supplemental Ex. 21, and Ex. 8. *Note also* that the County has not altered this classification scheme for identifying and designating prime farmlands and soils.

[23]

See Finding F and its reference to the persuasiveness of the MacAngus proposal.

[24]

The County does note that there is no legal requirement for the County to maintain consistency with the Tribes Plan and regulations, but the County has adopted amendments to reconcile differences between the two Plans. The County notes that consistency between the two plans is mixed, consistent on the eastern half, and inconsistent on the western half. DSEIS, at 3-27, Ex. 21.

[25]

To the Board's knowledge, the Executive did not veto any of the present Ordinances.

[26]

Panesko v. Lewis County, WWGMHB Case No. 98-2-0011c, Final Decision and Order, (Mar. 5, 2001); and *Sky Valley, et al., v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Second Order on Compliance, (Sep. 8, 1998).

[27]

The Central Puget Sound Board adopted the *Panesko* framework analysis in *Hensley v. Snohomish County* (***Hensley IV***), CPSGMHB Case No. 01-3-0004, Final Decision and Order, (Aug. 15, 2001), at 8.

[28]

"Where the meaning of the statute is clear from the language of the statute alone, there is no room for judicial interpretation." *Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994) (citation omitted). However, where the meaning of the statute is ambiguous, "resort to rules of construction" is appropriate. *Id.* (citation omitted).

[29]

WAC 242-02-660(2).

[30]

RCW 43.160.020(12) provides:

"Rural county" means a county with a population density of fewer than one hundred persons per

square mile as determined by the office of financial management.

RCW 43.168.020(7) provides:

"Rural county" means a county with a population density of fewer that one hundred persons per square mile as determined by the office of financial management.

RCW 82.04.4456(10)(e) provides:

"Rural county" means a county with a population density of less than one hundred persons per square mile as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.

RCW 82.04.4457(9)vi(b) provides:

"Rural county" means a county with a population density of less than one hundred persons per square mile, as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.

RCW 82.14.370(5) provides:

For purposes of this section, "rural county" means a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.

RCW 82.16.0491(1)(b)(i) provides:

A rural county, which is a county with a population density of less than one hundred persons per square mile as determined by the office of financial management and published each year by the department for the period July 1st to June 30th

RCW 53.08.005(2) provides:

"Rural port district" means a port district formed under chapter 53.04 RCW and located in a county with an average population density of fewer than one hundred persons per square mile.

(Emphases supplied).

[31]

RCW 36.70A.010 provides:

The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth.

(Emphasis added.)

[32]

This document is accessible online at www.ofm.wa.gov/popden/index.htm.

[33]

The four counties in the Central Puget Sound region are King, Snohomish, Pierce and Kitsap. RCW 36.70A.040.

[34]

The OFM table shows the population per square mile densities as follows: King (836.91); Pierce (437.01) and Kitsap (598.52).

[35]

The conclusion that the Central Puget Sound region does not consist of "rural counties" comports with a long-standing observation that this region is "twelve times as dense" as the rest of the state. *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order, Oct. 6, 1995, fn. 12.