

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

)	
CITIZENS FOR RESPONSIBLE)	Case No. 03-3-0013
GROWTH OF GREATER LAKE)	
[1])	<i>(Citizens)</i>
STEVENS, RUTH BRANDAL)	
AND JODY McVITTIE,)	
)	
Petitioners,)	
)	
v.)	ORDER ON MOTIONS
)	
SNOHOMISH COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
CRESCENT CAPITAL X and)	
MASTER BUILDERS)	
ASSOCIATION OF KING AND)	
SNOHOMISH COUNTY-CMANO)	
ASSOCIATION OF REALTORS)	
)	
Intervenors.)	

I. Background

A. Motions to Supplement the Record

On July 14, 2003, the Board received “Snohomish County’s Index to the Record” (**Index**). The Index lists 122 items by Index number. Other than affidavits or notices of publication, the earliest Index entry [Index #7] is dated 7/12/02 and the latest Index entry [Index #122] is dated 4/30/03.

The deadlines established by the Board for filing Motions, Responses and Replies, were August 4, 11 and 14, 2003, respectively. See July 17, 2003 “Prehearing Order and Order on

Intervention” (**PHO**).

On August 4, 2003, the Board received Petitioner McVittie and Citizen’s “Motion to Supplement the Record” (**Citizens Motion – Supp.**). Attached to the motion were 23 items labeled A-R offered as proposed exhibits. On this same date the Board received “Snohomish County’s Dispositive Motions and Motion to Supplement the Record” (**County Motion – Supp.**). One item was attached to the motion.

On August 6, 2003, the Board received Petitioner Brandal’s “Motion to Supplement the Record” (**Brandal Motion – Supp.**). Attached to the motion was one item [Letter dated 8/1/03] as a proposed exhibit and two exhibits from the Index [Index # 72 and #73].

On August 11, 2003, the Board received “Snohomish County’s Response to Petitioners’ Motion to Supplement” (**County Response – Supp.**). The Board also received “Response to Motions from Snohomish County and Master Builders Association of King and Snohomish Counties and Snohomish County-Camano Association of Realtors” (**Citizens Response – Supp.**).

[\[2\]](#)

On August 12, 2003, the Board received “Intervenors Master Builders Association and Snohomish County-Camano Association of Realtors Response to Petitioners’ and Brandal’s Motions to Supplement the Record” (**MBA Response – Supp.**).

On August 13, 2003, the Board received a letter from Petitioner McVittie indicating she had not received Intervenor’s response brief and learned there were computer virus problems and incorrect e-mail addresses involved in the faulty service. Ms. McVittie indicated that any reply she offered would be done without benefit of the MBA response, and would be filed jointly with Ms. Brandal’s Reply, if any.

On August 14, 2003, the Board received Citizens’ “Reply to Motions from Snohomish County and Master Builders Association of King and Snohomish Counties and Snohomish County-Camano Association of Realtors” (**Citizens Reply – Supp.**).

B. Dispositive Motions

On August 4, 2003 the Board received “Snohomish County’s Dispositive Motions and Motion to Supplement the Record” (**SnoCo Motion – Dismiss**). The Board also received Intervenor’s “Dispositive Motion to Dismiss for Lack of SEPA Standing (Legal Issue No. 5); Lack of GMA Standing (Brandal); and Based on Collateral Estoppel (Legal Issue No. 1, in part)” (**MBA Motion – Dismiss**).

On August 6, 2003, the Board received a letter from Intervenor correcting an error in the MBA Motion – Dismiss and including replacement pages.

On August 11, 2003, the Board received Petitioner's "Response to Motions from Snohomish County and Master Builders Association of King and Snohomish Counties and Snohomish County-Camano Association of Realtors" (**Citizens Response – Dismiss**).

On August 14, 2003, the Board received "Snohomish County's Reply in the matter of Its Dispositive Motions" (**County Reply – Dismiss**).

On August 15, 2003, the Board received "Intervenor Master Builders Association and Snohomish County-Camano Association of Realtors' Reply Re: Intervenors' Motions to Dismiss." [\[3\]](#)

II. Discussion and ORDER ON MOTION TO SUPPLEMENT the Record

A. Proposed Exhibits

Petitioner Citizens' Motion to Supplement the record addresses 23 separate items. Citizens Motion – Supp., 1-7, and attachments. The County does not object to supplementing the record with five of the items listed by Petitioner, but does oppose, on various grounds, the inclusion of the remaining 18. SnoCo Response – Supp., at 1-13. Intervenors join the County in its opposition to the 18 items being included. MBA Response – Supp., at 2-3.

Petitioner Brandal's Motion to Supplement the record addresses 1 item. Brandal Motion – Supp., at 1, and attachment. The County opposes inclusion of this item since the offered exhibit was produced "several months after the County Council adopted the ordinances at issue in this case." SnoCo. Response – Supp., at 8. Intervenors also oppose Petitioner Brandal's motion because it was untimely. MBA Response – Supp., at 1.

Respondent Snohomish County requests that the record be supplemented with its "2003-2008 Transportation Improvement Plan" (**TIP**), as adopted by Motion No. 02-437. SnoCo Motion – Supp., at 3, and attached exhibit D. Petitioners do not object to the County's motion. Citizens Response – Supp., at 2.

The Board will first address the Brandal motion, then the Citizens motion, and finally Snohomish County's motion. A summary table follows the discussion of each motion indicating Exhibit Nos., if applicable.

B. Brandal Motion – 1 Item

Intervenor MBA is correct; Petitioner Brandal's motion was not filed within the deadlines specified by the Board in the PHO. However, Petitioner Brandal explains that the proposed exhibit [an August 1, 2003 letter from Mohammed Kashani, Special Projects Engineer,

Snohomish County Surface Water Management to the Brandals] was not available to Petitioner until August 6, 2003, when it was filed. Brandal Motion – Supp., at 1. Even if this proposed exhibit had been timely filed, the Board would not admit it since it was not among the materials available to the decision-makers at the time the Ordinances at issue were enacted. The Board attempts to confine its review to the same record that was available to the decision-makers. The Board notes, however, that the minutes from the April 22, 2003 and April 28, 2003 Council Committee meetings are in the record [Ex. Nos. 72 and 73, respectively]. The Brandal motion to supplement the record is **denied**.

[4]

C. Citizens Motion – 23 Items

Items 1-5: These items offered by Petitioners, are not opposed by Respondent or Intervenor. These items are admitted and assigned Exhibit Nos. in the Table *infra*.

Items 6- 23: Petitioners provide an explanation of their perceived need for each of the proposed exhibits. Citizens Motion – Supp., at 2-7. The County offers general and specific objections to these items. First, the County argues,

[Petitioners chose] to do the bare minimum necessary to obtain GMA public participation standing, they now seek to make up for their avoidance of the public process by asking the Board to liberally grant their voluminous motion to supplement. Should the Board do that, it will send the message that uninvolved, pro forma participation at the local level will be rewarded at the Board level by packing the record with documents that have not been seen by elected officials or citizens during the deliberative process that is intended to be the foundation of legislative planning decisions.

SnoCo Response – Supp., at 2. Intervenor's voice essentially the same general objection. MBA Response – Supp., at 1-3. Additionally, as a general objection, the County asserts that the County has not changed its process for compiling the record; Petitioners have not carried their burden of showing that the proposed exhibits would be of substantial assistance to the Board; and Petitioners did not vigorously participate in the planning process related to the challenged ordinances. SnoCo Response – Supp., at 2-7.

For Items 6-23, the County includes its general objections and adds that Petitioners have not met their burden of proof in showing how the items would be of substantial assistance to the Board. Instead, the County contends, Petitioners state that the items “will give ‘historical context’ to the ‘original legislation’ (*i.e.*, the Development Phasing Ordinance (**DPO**)) that was not amended by the challenged ordinances and is not before the Board. If Petitioners felt [these] documents supported their position, they should have submitted [them] into the record as part of the

County's open public process." SnoCo Response – Supp., at 9; and repeated for each item from 6 through 23. *Id.*, at 9-13.

Intervenors object to Items 6, 8, 9, 9a, 10 -17, 19-23 on the grounds that the motion to supplement “is an attempt to place the DPO, in its entirety, before the Board. . .” MBA Response – Supp., at 3. Or, Intervenors contend that, Petitioners do not have SEPA standing to offer the Item. *Id.*

In reply Petitioners contend that virtually all of the proposed supplemental exhibits provide context for the DPO in the Lake Stevens UGA which is being removed by the challenged ordinances. Citizens Reply – Supp., at 1.

The Board is always interested in the historical and geographical context of the areas and enactments it is asked to review and rule on. This interest in context also goes to the “original” legislation that is the subject of amendments. However, once enacted, the Board is less interested in the individual testimony, comments and documents submitted to assist the legislative body in making the decision on the original enactment. The enactment reflects the decision-makers’ judgment and should stand on its own.

Additionally, the Board may take official notice of ordinances, resolutions and motions enacted by counties. WAC 242-02-660(4). The local legislative body that adopts these laws is presumed to be aware of the laws it enacts. These local laws provide additional context for the Boards as well as local decision-makers in carrying out their respective functions. Also, reports, studies or memoranda referenced in the enacted documents or prepared pursuant to these laws that assess status or implementation progress are also germane to local decision-makers and the Boards. Within this “context” the Presiding Officer has determined whether the proposed exhibits may be necessary or of substantial assistance to the Board in reaching its decision.

Items 6, 7, 7a, 8, 9, 9a: The **Board Takes Notice** of these items, each of which is a local enactment or report prepared pursuant to that enactment.

Items 11, 12, 13, 14, 15, 16 and 18: Each of these items was presented during the development, and prior to adoption, of the Lake Stevens UGA Plan – adopted 12/7/01. The Plan itself reflects the decision and judgment of the County. The motion to supplement the record with these items is **denied**.

Items 10 and 17: In lieu of admitting the previous items, which also occurred prior to the County Council’s action of adopting the Lake Stevens UGA Plan, the Board **admits** these items for additional background and context related to the Lake Stevens UGA Plan and DPO.

Items 19 and 20: These documents are either referenced in adopted documents or have been

prepared in response to County direction. The board **admits** these items.

Items 21, 22 and 23: Each of these declarations was presented to the hearing examiner in the review of individual single developments, and there is no indication that this expert testimony was ever presented to the Council. The motion to supplement the record with these items is **denied**.

D. Snohomish County Motion – 1 Item

None of the parties objected to the County's motion to include the 2003-2008 Transportation Improvement Plan, adopted by Motion 02-437. The **Board Takes Notice** of the 2003-2008 TIP.

E. Summary Table and Conclusions

The parties are cautioned that **each exhibit must be relevant to the issues before the Board**. An item's listing on the Index as a part of the record below, or its admission as a supplemental exhibit, does not necessarily mean that a specific exhibit is relevant to the legal issues, as set forth in the PHO.

The items included in the Record, as discussed *supra*, and noted in the summary table *infra*, have been determined to be necessary or may be of substantial assistance to the Board in reaching its decision.

In the summary tables below:

- ***Admitted*** means the proposed exhibit becomes a supplemental exhibit. Each new exhibit is assigned a Supplemental Exhibit No.
- ***Board Takes Notice*** means that the Board recognizes the existence of a decision, order, statute, ordinance, resolution or document adopted by such instrument. Each is assigned a Supplemental Exhibit No. However, since the Board may not have access to a copy of such documents, the party offering the exhibit shall provide a complete copy to the Board.
- ***Already in Record*** means that the exhibit is already listed on the Index and therefore is automatically admitted and need not be the subject of a motion to supplement. No New Exhibit No. is assigned.
- Exhibits that indicate ***Denied*** do not become supplemental exhibits to the Record. No Supplemental Exhibit No. is assigned.

Summary Table and Supplemental Exhibit Numbers

Proposed Exhibit: Documents	Ruling
BRANDAL ITEM:	

1. Letter from Mohammed Kashani, Special Projects Engineer, Snohomish County Surface Water Management to the Brandals, dated 8/1/03.	Denied
CITIZENS/McVITTIE ITEMS:	
1. The Lake Stevens Urban Growth Area Plan, adopted 12/7/01	Admitted – Core Document [5] #1
2. The Snohomish County Comprehensive Plan – latest printed edition.	Admitted – Core Document #2
3. Snohomish County Code (SCC) 30.33C	Admitted – Core Document #3
4. Addenda 22 (1/19/01) and 34 (11/21/02) to FEIS for Snohomish County GMA Comprehensive Plan	Admitted – Supp. Ex. 1A [Addenda 22]and Supp. Ex. 1B[Addenda 34]
5. Minutes and possibly transcripts and exhibits submitted to the 8/27/02 Planning Commission meeting and hearing.	Already in Record – Index No. 15, the minutes, transcripts and each exhibit submitted to the Planning Commission shall be identified under this Index No.[i.e., 15a, 15b, etc.]
6. Motion 99-356 re: financing capital facilities within the UGA	Board Takes Notice – Supp. Ex. No. 2
7. Motion 01-395 re: Periodic Reports on DPO	Board Takes Notice – Supp. Ex. No. 3
7a. Status Report on DPO, dated February 11, 2003	Board Takes Notice – Supp. Ex. No. 4
8. Motion 02-435 re: 2003-2008 Surface Water Management Plan	Board Takes Notice – Supp. Ex. No. 5
9. Motion 03-080 re: Final Buildable Lands Report and transmittal letter	Board Takes Notice – Supp. Ex. No. 6
9a. Maps of the Lake Stevens UGA that support the Buildable Lands Report	Admitted – Supp. Ex. No. 7A and 7B
10. Memo from K. Gurol to Council dated 10/11/01	Admitted – Supp. Ex. No. 8
11. Report by R. Bernstein to Planning Commission and County Council for Lake Stevens UGA Plan	Denied
12. Letter from WSDOT to Larry Springer re: Draft Lake Stevens Subarea Plan, dated 1/11/99	Denied

13. Letter from WSDOT to Kamuron Gurol re: Lake Stevens UGA Plan, dated 6/28/00	<i>Denied</i>
14. Letter from Director of Surface Water Management to Kurt Munnich, dated 1/19/01	<i>Denied</i>
15. Memo from Bob Drewel to County Council re: Lake Stevens UGA Plan, dated 8/22/01	<i>Denied</i>
16. Development Phasing Power Point Presentation, undated	<i>Denied</i>
17. Special Briefing – Lake Stevens DPO to Planning Commission	<i>Admitted – Supp. Ex. No. 9</i>
18. Letter from Jody McVittie to County Council, dated 10/17/01	<i>Denied</i>
19. Sunnyside Ravines Stormwater Master Plan, dated August 2000	<i>Admitted – Supp. Ex. No. 10</i>
20. Sunnyside Pump Station, Preliminary Design Report, dated April 25, 2003	<i>Admitted – Supp. Ex. No. 11</i>
21. Declaration of Steven Swenson, undated	<i>Denied</i>
22. Declaration of Steven Fransen, undated	<i>Denied</i>
23. Declaration of Ned Zaugg, dated 4/22/02	<i>Denied</i>
Snohomish County Item:	
1. 2003-2008 TIP, adopted by Motion 02-437	<i>Board Takes Notice – Supp. Ex. No. 12</i>

The Record for CPSGMHB Case No. 03-3-0013 consists of the items listed in “Snohomish County’s *Index to the Record*,” the **three Core Documents** and the **12 items assigned Supplemental Exhibit Nos.** in the summary table. These documents constitute the Board’s record in this proceeding. Each exhibit filed with the Board shall reference the document numbers as indicated in the Index or as specified above. Exhibits shall be filed with and attached to briefs and include a Table of Exhibits, listing Exhibits referenced in the brief.

III. DISCUSSION AND ORDER ON DISPOSITIVE MOTIONS

A. Position of the Parties

Collateral Estoppel:

Under a heading of Collateral Estoppel, Intervenor argues that Ms. McVittie “has previously litigated before this Board and lost the same claims brought in the PFR concerning noncompliance with Goals (1) and (12) concerning the County’s Urban Growth Areas and the adequacy of the underlying capital facilities plans.” Intervenor Motion – Dismiss, at 5.

Intervenor continues, “MBA and SCCAR request an order precluding the Petitioners from resurrecting the same legal arguments presented and denied in *McVittie VI*, CPSGMHB Case No. 01-3-0002 and *McVittie VIII*, CPSGMHB Case No. 01-3-0017, including without limitation whether the GMA requires construction and completion of capital improvements prior to the time development is available for occupancy.” *Id.*, at 6.

Petitioner acknowledges that she has brought previous challenges before the Board and notes that the Board has previously determined that it does not have jurisdiction over equitable doctrines such as collateral estoppel. Citizens Response – Dismiss, at 2. Petitioner further argues that the present petition before the Board “requests review of whether the County is complying with the Growth Management Act for entirely separate legislative actions (Ordinance Nos. 03-019, 03-020 and 03-021) that are not related to the legislation previously appealed. . . . [The issues in this case are] entirely different than the previous appeals. . . .” *Id.*, at 3.

GMA Standing:

The County moves to dismiss Petitioner Brandal for lack of GMA standing. The County states,

[A]fter review of the record of the proceedings, the County has been unable to discover any evidence that Brandal participated at all in the extensive public process that preceded adoption of the three challenged ordinances. The County has not located any written testimony or comment provided to the Planning Commission or the Council by Brandal, nor is she listed as having attended, much less participated in, any public hearing on the ordinances in question. (Citations omitted.) Because she apparently did not participate in the public process leading up to adoption of the ordinances, Brandal cannot claim GMA “participation standing” in order to challenge them. Her GMA challenge must therefore be dismissed.

County Motion – Dismiss, at 11. Intervenor joins the County and incorporates its argument in its brief. MBA Motion – Dismiss, at 5.

In response, Petitioners assert, “Petitioner Brandal did participate in the County Council hearing on April 30, 2003 and spoke to the Council on Ordinance No. 03-019 and 03-020.” Citizens Response – Dismiss, at 2. However, Petitioners acknowledge that Ms. Brandal did not participate in the April 9, 2003 hearing regarding Ordinance No. 03-021, but that her interests will be represented by Citizens. *Id.*

In reply, the County states, “The County now concedes Brandal established standing for purposes of the GMA with regard to Ordinances 03-019 and 03-020.” County Reply – Dismiss, at 1.

SEPA Standing:

The County asserts that neither Citizens nor Brandal have SEPA standing, therefore their SEPA claim [Legal Issue No. 5] must be dismissed. County Motion – Dismiss, at 5. The In reference to the two-part SEPA standing test, the County contends that even if the Petitioners meet the zone of interest portion of the test, they do cannot demonstrate that “the County’s actions cause them a “specific and perceptible” existing harm or a specific future harm.” *Id.*, at 6. The County continues, “Each of [Petitioners] claims is premised on speculation that unspecified development will occur, leading to unspecified flooding that in turn will cause unspecified damage. Such allegations do not present “immediate, concrete and specific” damage required to confer SEPA standing to a party.” *Id.*, at 7.

Next, the County contends, that even if Petitioners did meet the injury portion of the test, “they would still fail the SEPA standing test because the alleged future harm could not possibly result from adoption of the challenged ordinances. The harm alleged by Petitioners can only result from actual development, but none of the three challenged ordinances approves any actual development or undoes any of the project-level regulatory requirements that would apply to future development proposals within the Lake Stevens UGA.” *Id.*, at 7-8. The County acknowledges that the ordinances allow for future urban development, but states, “This allowance of potential future development, without more, cannot and does not cause any injury to petitioners.” *Id.*, at 9.

Intervenors join the County in the motion to dismiss SEPA claims and offer the same line of argument made by the County. However, Intervenors do point out that, the ordinances deal with the Development Phasing Overlay (**DPO**) and the Lake Stevens UGA and that “The Council’s action simply changes the timing of when urban development will occur, not whether it will occur, and thus does not injure Petitioners with some new urbanizing action. Those impacts were already considered and addressed when the County adopted the Lake Stevens urban growth area. The PFRs alleged stormwater and flood impacts relate to some future project-level action.” MBA Motion – Dismiss, at 4.

Citizens argue that one of the impacts of increasing urbanization is an increase in impervious surface. Increased impervious cover yields increased surface water runoff and the ensuing flooding and erosion. Until these ordinances were adopted, the DPO applied in the Lake Stevens UGA. “The premise of the development phasing overlay was that the surface water infrastructure would be in place *prior* to the impacts of development, thus minimizing environmental damage.” Citizens Response – Dismiss, at 5, (emphasis in original).

Petitioners contend that the three ordinances now “allow development in an area of the [Lake Stevens] UGA that has not been permitted since December 2001. While development is allowed

to proceed as of April 30, 2003, the infrastructure necessary for surface water management is not required to be installed (operational) for 6 years. *Id.*, at 8. Additionally, Petitioners contend that the Council anticipated rapid development of the area and “were aware that several applicants were eagerly anticipating the lifting of the DPO.” And “the County Council did not feel that the future development in the area was ‘speculative’.” *Id.*, at 6 and 7.

Citizens also state,

The County’s argument that it is the individual development, not the legislative action that causes harm fails to acknowledge that it is only review of the legislative action that can assess the highly probable cumulative effect of development, and that review of this kind of legislative action is specifically called for here (RCW 43.21C.030(c), RCW 43.21C.031(1)). Review at the level of individual development results in piecemeal assessment of smaller impacts, the sum of which have devastating effects to residents and farmers down stream of the water flow.

Citizens Response – Dismiss, at 8. Thus, Petitioners conclude, they have standing to pursue the SEPA challenges set forth in Legal Issue No. 5.

In reply, the County reiterates its arguments for why Petitioners Citizens and Brandal have not demonstrated immediate, concrete and specific injury in fact and conclude that these Petitioners do not have SEPA standing. County Reply – Dismiss, at 2-6. Additionally, the County notes that the three challenged ordinances: 1) modify the procedures for applying for or removing the DPO; 2) allow the County six years instead of three to complete necessary infrastructure improvements; and 3) lifts the DPO from a portion of the Lake Stevens UGA. The County also contends that the ordinances do not mandate development, they do not allow applicants to avoid the County’s regulatory permitting requirements, nor prevent the County from denying permits. The County argues that Petitioners injuries are injuries in theory, not injuries in fact, which is required to attain SEPA standing. County Reply – Dismiss, at 6-7.

B. Discussion of Dispositive Motions

MBA Motion based on Collateral Estoppel:

Intervenors assert that Petitioner McVittie is precluded by collateral estoppel from bringing her challenge to Ordinance Nos. 03-019, 03-020 and 03-021 alleging noncompliance with Goals 1 and 12 of the Act because she has previously challenged UGAs and capital facility plans for noncompliance with these Goals. Intervenors’ assertion is absolutely without merit. Petitioner has every right to challenge amendments to a Plan or development regulation for noncompliance with the goals and requirements of the Act. RCW 36.70A.290(2). The Ordinances challenged are recent GMA enactments of the County that can be challenged by any person with standing

who timely files with the Board. Intervenors' Motion to eliminate these Goals from Legal Issue No. 1 is **denied**.

The Board notes that Petitioner McVittie is correct in that the Board has consistently held that it lacks the requisite specific jurisdiction to determine whether equitable doctrines have been violated. *See discussion in: City of Tacoma, City of Milton, City of Puyallup and City of Sumner v. Pierce County*, CPSGMHB Case No. 94-3-0001, Order on Dispositive Motions, (Mar. 4, 1994), at 3-11; and *Peninsula Neighborhood Association v. Pierce County*, CPSGMHB Case No. 95-3-0071, Order Denying Pierce County's Motion to Dismiss, (Jan. 9, 1996), at 2-3; and most recently, *Hensley v. Snohomish County (Hensley VII)*, CPSGMHB Case No. 03-3-0010, Order on Motions, (Aug. 11, 2003), at 7.

GMA Standing for Petitioner Brandal:

The County acknowledges that Petitioner Brandal did participate at the April 30, 2003 City Council hearing. Therefore, Petitioner Brandal has GMA standing to challenge Ordinance Nos. 03-019 and 03-020, but not Ordinance No. 03-021. The County Motion is **denied** with respect to Brandal's standing to challenge Ordinance Nos. 03-019 and 03-020, the motion is **granted** with respect to Brandal's standing to challenge Ordinance No. 03-021.

SEPA Standing of Petitioners Brandal and Citizens to pursue Legal Issue 5:

The Board agrees with the County and MBA, Petitioners have failed to assert an immediate, concrete and specific injury. The potential increased impervious surface, subsequent potential runoff, and potential flooding and erosion damages noted by Petitioners are threatened future injuries. They are speculative. As the County argues, these speculative injuries and potential impacts can either be addressed, or mitigated as actual developments are proposed, or the County can deny the proposals.

The Board also notes that the adoption of the Lake Stevens UGA Plan occurred in late 2001, and the Board can only presume that the environmental documents prepared to accompany that plan, [which identified, designated and set the stage for the area to be developed as urban] addressed Petitioners' valid concerns about cumulative impacts of urban development.

Petitioners Citizens and Brandal do not have SEPA standing and may not pursue Legal Issue No. 5. Legal Issue No. 5 is **dismissed**.

IV. E-Mail Service of Motions, Briefs and Exhibits

At the PHC, the parties discussed the possibility of signing an agreement among themselves that stipulated e-mail service of motions, briefs and exhibits would be acceptable service. The Board

indicated that filings with the Board would not be accepted via e-mail. Apparently, the parties have been attempting to provide copies of the respective motions, briefs and exhibits to each other via e-mail, but the “experiment” has not run smoothly. Intervenor was unable to file a timely response brief with the Board due to a computer glitch which necessitated an extension to the next day. Also, apparently Intervenor entered an incorrect e-mail address in attempting to serve the same response brief on one of the Petitioners. The result is less time to reply. In light of these filing problems, **for the remainder of this proceeding, the filing of all pleadings, briefs, exhibits and other documents shall be served pursuant to WAC 242-02-340.** The parties proceed at their own peril if they continue to serve papers via e-mail.

V. ORDER

Based upon the review of briefing and arguments provided, attachments, the GMA, the Board’s Rules of Practice and Procedure, prior Board Orders, and case law, the Board ORDERS:

- The items proposed as supplemental exhibits in the motions to supplement the record are **granted** and **denied** as reflected in the Summary Table in Section II of this Order.
- Intervenor MBA’s Motion to Dismiss reference to Goals 1 and 12 from Legal Issue No. 1 is **denied**.
- The County Motion is **denied** with respect to Brandal’ GMA standing to challenge Ordinance Nos. 03-019 and 03-020, the motion is **granted** with respect to Brandal’s GMA standing to challenge Ordinance No. 03-021.
- The Motions of Snohomish County and MBA to Dismiss Legal Issue No. 5 because Petitioners Citizens and Brandal lack SEPA standing are **granted**. Legal Issue No. 5 is **dismissed** from further consideration in this proceeding.
- For the remainder of this proceeding, the filing of **all pleadings, briefs, exhibits and other documents shall be served to all parties pursuant to WAC 242-02-340.**

So ORDERED this 15th day of August, 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Note: The portion of this Order dealing with Dispositive Motions 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. Orders regarding supplementation of the record are not subject to a motion for reconsideration.

[1]

The caption for this matter has been changed with the consent of the parties to reflect the correct legal name of the non-profit organization “Citizens for Responsible Growth of Greater Lake Stevens” (underlining denotes additional language for the full legal name.)

[2]

Intervenor’s attorney telephoned the Board on August 11, 2003 and indicated that computer problems were preventing Intervenor’s from filing their response brief. The Presiding Officer gave Intervenor until 12:00 noon on August 12, 2003 to file the response brief and serve same on the other parties. The brief was timely filed with the Board on August 12, 2003.

[3]

This pleading was received in the Board’s office by telefacsimile at 5:06 p.m. on August 14, 2003. The deadline for submittal was 4:00 p.m. on August 14, 2003. PHO, at 3.

[4]

Actually Petitioner offers 25 different Items, but two are offered as subsets to the Item number, *i.e.*, 7a and 9a.

[5]

As a **Core Document**, the County shall provide one original and one copy to the Board by no later than September 15, 2003 – the deadline for Petitioner’s prehearing brief. Excerpts from Core Documents, with appropriate citations, must be provided if referenced in briefing.