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

LORA PETSO,

Petitioner, *pro se*,

and

ALVIN RUTLEDGE,

Intervenor,

v.

SNOHOMISH COUNTY,

Respondent.

CPSGMHB Case No. 07-3-0006

ORDER OF DISMISSAL

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I. BACKGROUND

On January 18, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Lora Petso (**Petitioner** or **Petso**), *pro se*. The matter was assigned CPSGMHB Case No. 07-3-0006, and is hereafter referred to as *Petso v. Snohomish County*. Board member Margaret Pageler is the Presiding Officer (**PO**) for this matter. Petitioner challenges Snohomish County's (**Respondent** or the County) adoption of Motion 06-546. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA** or **Act**). Concurrent with the filing of the PFR, the Petitioner filed a "Motion to Disqualify Earling."

On January 22, 2007, the Board issued a "Notice of Hearing" (**NOH**) in the above-captioned case. The NOH set a date for a Prehearing Conference (**PHC**) and established a tentative schedule for the case. On the same date the Board issued an "Order on Motion to Disqualify Board Member Earling," denying the Petitioner's request.

On January 24, 2007, the Board received a Notice of Appearance from Deputy Prosecuting Attorney Elizabeth Anderson on behalf of Snohomish County.

On February 5, 2007, the Board received a Motion for Intervention from Alvin Rutledge, seeking to intervene on the side of Petitioner. Mr. Rutledge also submitted documents, which the Board will treat as a motion to supplement the record.

On February 12, 2007, the Board conducted the PHC at the Board's offices in Seattle. Presiding Officer Margaret Pageler conducted the conference. Board members Ed McGuire and Dave Earling were also present. Lora Petso appeared *pro se*. Elizabeth Anderson represented the Respondent. Board Law clerk Julie Taylor, Board extern Moani Russell, and potential

1 Intervenor Alvin Rutledge were also present at the PHC. At the PHC, the Board received
2 Petitioner's "Amended Petition for Review" and "Issues Restated GMA Style."
3

4 On February 12, 2007, the Board received Snohomish County's "Index to the Administrative
5 Record" (**Index**).
6

7 On February 13, 2007, the Board issued its "Prehearing Order" (**PHO**) and "Order Granting
8 Intervention" (**OGI**). The PHO set the final schedule and legal issues to be decided. The OGI
9 granted permission for Mr. Alvin Rutledge (**Intervenor**) to intervene on the side of Petitioner.
10

11 On February 27, 2007, the Board received Intervenor's "Motion to Supplement the Record."
12 (**Int. Motion to Supplement**).
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14 On March 5, 2007, the Board received Petitioner's "Motion to Supplement the Record." (**Petso**
15 **Motion to Supplement**).
16

17 On March 6, 2007, the Board received "Snohomish County's Motion to Dismiss" (**County**
18 **Motion to Dismiss**), seeking dismissal of the petition on the grounds that the claims are for
19 matters beyond the Board's jurisdiction. The Board also received "Snohomish County's
20 Amended Index to the Administrative Record." (**Amended Index**)
21

22 On March 13, 2007, the Board received "Intervenor's Motion to Deny County's Motion to
23 Dismiss" (**Int. Response**).
24

25 On March 19, 2007, the Board received "Petitioner's Response to Motion to Dismiss" (**Petso**
26 **Response**).
27

28 On March 21, 2007, the Board received from Respondent, "Snohomish County's Second
29 Amended Index to the Administrative Record" (**2nd Amended Index**) and "Response to
30 Petitioner's and Intervenor's Motions to Supplement the Record." (**County Response**)
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32 On March 26, 2007, the Board received Petitioner's "Rebuttal of Response to Motion to
33 Supplement the Record." (**Petso Rebuttal**).
34

35 On March 27, 2007, the Board received "Snohomish County's Reply Re: Motion to Dismiss Due
36 to Lack of Subject Matter Jurisdiction" (**County Reply**). The Board also received "Snohomish
37 County's Third Amended Index to the Administrative Record." (**3rd Amended Index**)
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39 The Board did not hold a hearing on the dispositive motions.
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1 **II. COUNTY’S MOTION TO DISMISS FOR LACK OF JURISDICTION**

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3 *The Challenged Action and Legislative Context*

4
5 Petitioner Petso challenges County Motion No. 06-546, which authorized the termination of an
6 interlocal agreement (**ILA**) established in 1999 between Snohomish County (**County**), the
7 Edmonds School District (**School District**), and the City of Edmonds (**City**). County Motion to
8 Dismiss, Ex. 13.
9

10 On June 22, 1999, Snohomish County, the Edmonds School District, and the City of Edmonds
11 entered into an ILA (**1999 ILA**) for the site renovation of Sherwood Park at the Old Woodway
12 Elementary (**Woodway site**) playfield. *Id.*, Ex. 1. The purpose of the agreement was to fulfill “a
13 need for park facilities in [the] area.” *Id.*, Ex. 1. As part of the 1999 ILA, each party would
14 fulfill certain obligations:
15

- 16 (1) the School District agreed to allow City and County residents the same access
17 to the site as given to School District residents;
18 (2) the City agreed to complete part of the renovations and provide for the long-
19 term maintenance of the ball fields; and
20 (3) the County agreed to provide the City with (Five Thousand, Five Hundred
21 dollars) \$5,500 for the renovation.
22
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24 *Id.*, Ex. 1. The term of the ILA was ten years, but “it could be terminated by written agreement
25 of the parties.” *Id.* at 3, Ex. 1.
26

27 In December 2006, the School District requested that the 1999 ILA be terminated, stating that all
28 parties had complied with their obligations under the 1999 ILA. The basis for this request was
29 that the site had been divided into two parcels – Parcel A and Parcel B – and sold in September
30 2006. *Id.* at 3; Ex. A1 and A2. Parcel A, the portion of the site that contained the park and the
31 baseball fields, was sold to a private developer and Parcel B, the remainder of the site, was sold
32 to the City of Edmonds. *Id.*
33
34

35 On December 13, 2006, the County Council passed Motion No. 06-546, the basis of the
36 Petitioner’s challenge, which terminated the 1999 ILA. On this same day, the County passed
37 Motion 06-547 which authorized a new ILA (**2006 ILA**) between the County and the City of
38 Edmonds.¹ *Id.*; Ex. 15, 16. The Petitioner did not challenge the County’s action in regard to
39 Motion 06-547.
40

41 The County moved to dismiss the present case asserting that the Board lacks subject matter
42 jurisdiction. According to the County, Motion 06-546 is not, on its face, a comprehensive plan
43 provision, amendment or a development regulation, and is not a *de facto* amendment.
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49 ¹ With the 2006 ILA, adopted December 18, 2006, the County agreed to contribute \$1.2 million to the City toward
50 the cost of acquiring Parcel B. *Id.*, Ex. 16. In return, the City agreed to make the property and recreational facilities
Id., Ex. 16.

Applicable Law

RCW 36.70A.280(1) provides in pertinent part:

RCW 36.70A.280
Matters subject to board review.

(1) A growth management hearings board shall hear and determine only those petitions alleging either:

(a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

In *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d 169, 178, 4 P.3d 123 (2000) the Supreme Court clarified the jurisdiction of the Boards:

The GMA ... limits the kinds of matters that GMHBs may review: “A growth management hearings board shall hear and determine only those petitions alleging ... [t]hat a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter....” RCW 36.70A.280(1)(a). Another provision of the GMA spells out in greater detail the subject matter of each petition: “All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter ... must be filed within sixty days after publication....” RCW 36.70A.290(2). From the language of these GMA provisions, we conclude that unless a petition alleges that a comprehensive plan or a development regulation or amendments to either are not in compliance with the requirements of the GMA, a GMHB does not have jurisdiction to hear the petition.

141 Wn.2d at 178.

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Discussion and Analysis

Positions of the Parties

Petitioner contends that Motion No. 06-546, which terminated the 1999 ILA, is inconsistent with the Snohomish County Comprehensive Plan (**Plan**) because it authorized the abandonment of “park, open space, and public use of the property.” PFR, at 2.

Snohomish County moved to dismiss the petition on grounds that the Board lacks subject matter jurisdiction because Motion No. 06-546 (1) is not on its face a comprehensive plan provision, development regulation, or an amendment and (2) is not a *de facto* amendment.

First, the County points out that the jurisdiction of the Board is narrow and is limited to actions adopting comprehensive plans, development regulations, and amendments to a plan. County Motion to Dismiss, at 5. County Reply, at 3-4. (citing RCW 36.70A.280(1)(a); *Campbell v. City of Everett (Campbell)*, CPSGMHB No. 06-3-0031, Order of Dismissal, (Nov. 9, 2006), at 7). According to the County, as a contract termination, Motion 06-546 does not meet this narrow definition. *Id.* at 5. In response, Intervenor Rutledge asserts that “Motion 06-546 altered and amended the County’s and the Edmonds City’s comprehensive plans and capital facilities plans, including both descriptive text and maps showing the Old Woodway Elementary site as a ‘public’ park.” Int. Response, at 4.

The County goes on to argue that the Board also lacks jurisdiction because Motion 06-546 is not a *de facto* amendment. According to the County, a motion authorizing termination of an ILA is a *de facto* amendment only when (1) the property in the ILA is located within the municipality’s limits or planning or zoning authority and (2) the motion to terminate an ILA is inconsistent with the municipality’s comprehensive plan. County Motion to Dismiss, at 7-8. *Campbell*, No. 06-3-0031, at 7-8.

In *Campbell*, the Board found that it lacked jurisdiction to review an agreement between the City of Everett and the Tulalip Tribes pertaining to the City of Everett supplying “up to 30 million gallons a day (mgd) of water...to construct and maintain a pipe delivery for that water, and to pay \$5 million toward the cost of the project.” *Campbell*, No. 06-3-0031, at 3. The basis for the Board’s conclusion that the agreement was not a *de facto* amendment was two-fold: (1) “the reservation is not within Snohomish County’s planning jurisdiction for unincorporated areas and is simply not subject to GMA planning” and (2) “the commitment of funds implemented in [the agreement are] consistent with the Everett Comprehensive Plan.” *Id.* at 8.

Petitioner contends that the County misreads *Campbell* as requiring the County to have “zoning authority over the property in order to find that [M]otion 06-546 constitutes a *de facto* amendment.” Petitioner Response, at 12.

According to the Petitioner, unlike the tribal trust property in *Campbell*, the Woodway site is subject to GMA planning. *Id.* at 12. For instance, the field inventory of the County Park Plan includes the soccer field at the Woodway site. *Id.* at 11. Similarly, the Intervenor asserts that the Woodway site is designated as “park & open space” in the County’s park plan, the Future Land Use Map (**FLUM**), and the capital facilities plan. Int. Response, at 5. Furthermore, Petitioner argues that the County has planning authority over the Woodway site, citing to the text of the

1 County park plan which provides: “County needs to be aggressive in the preservation of park
2 land in the urban growth areas, before it is developed for other uses.” *Id.* at 12.
3

4 In reply, the County argues that it “simply does not have control over land owned by the
5 Edmonds School District because it is not a county-owned park and it is located within the
6 Edmonds city limits, not in unincorporated Snohomish County.” County Reply, at 2 (citing *City*
7 *of Tacoma, et al v. Pierce County*, CPSGMHB No. 94-3-0001, FDO, (March 4, 1994), at 10
8 (finding that counties configure UGAs to accommodate forecasted growth, and cities have
9 discretion, as allocated to them by the county, in deciding how they will accommodate growth).
10 Furthermore, as in *Campbell*, in which the City of Everett did not have the planning authority
11 over tribal land, in the present case, the County does not have authority over the City of
12 Edmonds’ property. County Motion to Dismiss, at 8. The County also asserts that even though a
13 city park may be listed in a County’s inventory of capital facilities, this does not mean that the
14 park is part of the County’s plan. County Reply, at 5-6 (citing *Bremerton/Port Gamble v. Kitsap*
15 *County*, CPSGMHB No. 95-3-0039c, Finding Noncompliance and Determination of Invalidity in
16 *Bremerton* and Order Dismissing *Port Gamble*, (Sept. 8, 1997), at 39). In addition, the County
17 argues that it is “not obligated to list” the city-owned site in the County inventory and may
18 remove “non-County owned facilities from its inventory.” *Id.* at 11 (citing RCW
19 36.70A.070(3)(a))
20
21

22 The County goes on to argue that, in addition to the Woodway site being out of the County’s
23 planning authority, Motion 06-546 is *consistent* with the County plan, and therefore, is not a *de*
24 *facto* amendment. County Motion to Dismiss, at 8. The County states that Motion 06-546,
25 “does not act as a road block to working with cities to create an integrated system of parks, to
26 exploiting joint use opportunities for open space or to seeking to improve field conditions and
27 playing capacity at existing athletic fields.” County Reply, at 8-9 (citing *West Seattle Defense*
28 *Fund v. City of Seattle*, CPSGMHB No. 94-3-0016, FDO, (April 4, 1995), at 27).
29
30

31 According to the County, Motion Nos. 06-546 and 06-547 “further the County’s Comprehensive
32 Plan goals of identifying and protecting open space, supporting cities in obtaining neighborhood
33 parks within their UGAs and assisting in providing youth and adult athletic facilities throughout
34 the county.” County Motion to Dismiss, at 8-9. Additionally, the adoption of these motions
35 “illustrates the County’s continued pursuit of joint ventures with cities, school districts and
36 private land developers to exploit joint use opportunities for open space and recreation, as
37 required by Land Use Policy 10.B.3.” *Id.* at 9.
38
39

40 However, Petitioner argues that Motion 06-546 is inconsistent with the County’s comprehensive
41 plan and park plan, and with the City of Edmonds comprehensive plan and park plan. Petitioner
42 Response, at 11. In particular, Petitioner points to a Policy LU 10.B.3 of the County’s
43 comprehensive plan which provides: “[C]ounty shall pursue joint ventures with cities, school
44 districts, and private land developers to exploit joint use opportunities for open space and
45 recreation.” *Id.* at 14. Additionally, the Intervenor points out that Motion 06-546 changed the
46 County’s FLUM for the Woodway site from park and open space to single-family development.
47 Int. Response, at 7.
48

49 In reply, the County asserts that Motion 06-546 did not change the zoning or designation of the
50 County’s FLUM. County Reply, at 9; Index C3. The County states that “[t]he parties fail to

1 point to a single section of the Plan that was amended as a result of Motion 06-546” and that “the
2 Parties fail to show where on the County’s [FLUM] that the designation changed.” *Id.* at 8-9.
3

4 Additionally, the County points out that if the field is removed from the County’s inventory, it
5 will not conflict with the County’s plan because pursuant to RCW 36.70A.070(3)(a), the County
6 has the authority to remove “non-County owned facilities from its inventory.” *Id.* at 11.
7

8 Petitioner asserts that the Court of Appeals holding in *Alexanderson, et al v. Clark County*, 135
9 Wn. App. 542, 144 P.3d 1219 (2006) supports Petitioner’s argument that Motion 06-546 amends
10 the County’s Comprehensive Plan² and the Comprehensive Parks & Recreation Plan³ and the
11 City of Edmonds Comprehensive Plan⁴ and Recreation, and Open Space Plan⁵. Petitioner
12 Response, at 9-10. The *Alexanderson* court characterized an MOU as a *de facto* amendment of
13 Clark County’s comprehensive plan, which designated that land and zoned it for low-density use
14 inconsistent with the Tribe’s plans.⁶ *Alexanderson*, at 550. According to Petitioner, like the
15 MOU in *Alexanderson*, Motion 06-546 facilitates a use of Parcel A which is “totally
16 contradictory to the use contemplated by the comprehensive plan” because it specifically
17 “amends the county comprehensive plan to allow homes to be built on two full sized athletic
18 fields and open space.” *Id.* at 11, 17.
19
20

21 In reply, the County distinguishes *Alexanderson* on its facts. The County first argues that unlike
22 in *Alexanderson*, in which the land in question was within Clark County’s planning authority, in
23 the present case the Woodway site is outside of the County’s planning authority. County Reply,
24 at 12. The County points out that it is the City of Edmonds, and not the County, that has
25 planning authority over the Woodway site. *Id.* at 12. In addition, the County asserts that while
26 the MOU in *Alexanderson* was in conflict with Clark County’s Comprehensive Plan, Motion 06-
27 546 is consistent with County’s Comprehensive Plan. *Id.* at 12. See County’s argument, *supra*,
28 at 6.
29

30 In addition to the arguments that Motion 06-546 was an amendment to the County
31 comprehensive plan or a *de facto* amendment, both the Petitioner and the Intervenor raise
32 equitable and contractual arguments.
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39 ² Motion 06-546 alters the “land useful for public purposes designation” and the “open space” map. Further, Motion
40 06-546 amends Land Use Goal 10, Identify and Protect Open Space, because it goes against the specific instruction
41 that the “county shall pursue joint ventures with cities, school districts, and private land developers to exploit joint
42 use opportunities for open space and recreation.” LU 10.B.3. Further, Motion 06-546 goes against the requirement
43 in LU 10.B.4 that “the county shall work with cities to create an integrated system of passive and active parks, open
44 spaces, and trails in areas which are accessible to all residents of the county and cities, and provide for a variety of
45 recreational activities, and contribute to neighborhood or community identity.” Response, at 9.

46 ³ C1, Snohomish County Comprehensive Parks & Recreation Plan, Goal 8 “provide youth and adult athletic
47 facilities throughout the County.” Response, at 9.

48 ⁴ “The City of Edmonds Comprehensive plan emphasizes the role of open space in proper planning and encourages
49 the retention of open space and development of recreational opportunities.” Response, at 10.

50 ⁵ The Edmonds Park Plan “documents a shortage of 30.20 acres of open space, 21 acres of neighborhood
park, 7 baseball fields and 4 soccer fields.” Response, at 10.

⁶ Unlike in *Campbell*, in which the land was tribal land, in *Alexanderson*, the land was county land pending a trust
application.

1 According to the Petitioner, even after Parcel A was purchased by a developer it was still
2 encumbered by the 1999 ILA.⁷ Petitioner Response, at 13. In addition, the 1999 ILA cannot be
3 voluntarily terminated because the agreement had a minimum term of ten years. *Id.* at 15. Thus,
4 the County could have kept the site open to county residents. *Id.* at 16.⁸ Furthermore, Motion
5 06-547 does not provide a cure for the park acreage that will be lost due to the termination of the
6 1999 ILA because Parcel A will be developed into private homes. *Id.* at 16.
7

8
9 In reply, the County explains that Motion 06-546 was adopted because the Edmonds School
10 District and the City of Edmonds wanted to terminate the 1999 ILA, and the parties had
11 complied with their obligations under the 1999 ILA. County Reply, at 9.
12

13 Lastly, the County argues that the Board lacks jurisdiction to determine the Petitioner's and the
14 Intervenor's equitable arguments. County Reply, at 13 (citing *City of Tacoma*, No. 94-3-0001, at
15 3). The County cites to arguments of the Petitioner and the Intervenor, asserting that these
16 arguments are outside the Board's jurisdiction: (1) the 1999 ILA "was the product of a regional
17 task force where the stated purpose was to provide recreational facilities"; (2) "some citizens
18 opposed Motion No. 06-546"; (3) "citizens relied on the 1999 Agreement"; and (4) "the [1999]
19 Agreement was terminated without good cause." *Id.* at 12-13.
20

21 *Board Discussion*
22

23 The Growth Management Hearings Boards have jurisdiction to review comprehensive
24 plans and development regulations and amendments thereto. RCW 36.70A.280(1); *Wenatchee*
25 *Sportsmen Ass'n*, 141 Wn.2d at 169. This Board has long recognized that its jurisdiction is
26 narrow.⁹ In *City of Burien v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 113 Wn. App.
27 375, 384-5, 53 P.3d 1028 (2002), the Court of Appeals upheld this Board's determination that it
28 lacked jurisdiction to review an ILA between the Sea-Tac and the Port of Seattle, except to the
29 extent the terms of that agreement were enacted as comprehensive plan or development
30 regulations or amendments.
31

32
33 *Is Motion 06-546 an amendment to the Snohomish County Comprehensive Plan or implementing*
34 *development regulations?* On its face, the Board concludes that it is not.
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40 _____
41 ⁷ SNOHOMISH COUNTY REGIONAL RECREATION TASK FORCE ILA WITH THE CITY OF EDMONDS
42 AND EDMONDS SCHOOL DISTRICT #15 FOR THE OLD WOODWAY ELEMENTARY SITE RENOVATION
43 AND THE TERMS, CONDITIONS, AND PROVISIONS CONTAINED THEREIN. Ex. A1, at 5, paragraph 6; Ex.
44 A2, at 5, paragraph 6.

45 ⁸ 1999 ILA **3.2 Direction and Control**. The City and School District will perform the service under this agreement
46 as independent contractors and not as agents, employees, or servants of the County. The City and School District
47 specifically have the right to direct and control their own activities in providing the agreed services in accordance
48 with the specifications set out in this agreement. *The County shall only have the right to ensure performance*
(emphasis added). Ex. 1.

49 ⁹ See, e.g., *Anderson Creek v. City of Bremerton*, CPSGMHB Case No. 95-3-0053c, Order on Dispositive Motions
50 (Oct. 18, 1995) (no jurisdiction over surplus and sale of city property); *Harless, et al v. Kitsap County*, CPSGMHB
Case No. 02-3-0018c, Order on Motions (Jan 23, 2003) (Memorandum of Agreement and ULID neither amended
the plan nor development regulations; board lacked subject matter jurisdiction).

1 In light of the *Alexanderson* and *Campbell* opinions, is Motion 06-546 a de facto amendment to
2 the *Snohomish County Comprehensive Plan*? The Board concludes that it is not.

3
4 The Court of Appeals in *Alexanderson* recently held that the Western Board had jurisdiction to
5 review a Memorandum of Understanding (MOU) between Clark County and the Cowlitz Tribe.
6 *Alexanderson*, at 550. Under the challenged MOU, Clark County would provide water service to
7 the Tribe to facilitate development of a casino complex on rural land which the Tribe was
8 seeking to have designated as tribal trust land. *Id.* at 544-45. The *Alexanderson* court
9 characterized the MOU as a *de facto* amendment of Clark County's comprehensive plan, which
10 designated that land and zoned it for low-density use inconsistent with the Tribe's plans.¹⁰ *Id.* at
11 550. The court concluded that the Western Board should not have dismissed the petition on
12 jurisdictional grounds. *Id.* at 550-51.

13
14
15 In *Campbell*, the Board concluded that an agreement between the Everett and the Tulalip Tribe
16 was not a *de facto* amendment because it involved land which was tribal trust land and not
17 within the City of Everett or its planning area, and the commitment of funds which was
18 implemented in the agreement were consistent with the Capital Facilities Element of the Everett
19 Comprehensive Plan. *Campbell*, No. 06-3-0031, at 8.

20
21 The present case differs from *Alexanderson* and is analogous to *Campbell*.

22
23 **First**, the Woodway site is not within the planning and zoning authority of unincorporated
24 Snohomish County. In *Alexanderson*, at the time of the MOU the non-tribal lands was within
25 Clark County's planning authority. By contrast, in *Campbell*, the tribal trust lands in the
26 Settlement Agreement were not within the City of Everett nor within its extended planning area.

27
28 Here, the Woodway site is not within unincorporated Snohomish County and not within the
29 County's extended planning area. The Woodway site is completely within the City of Edmonds
30 municipal limits and planning area. Therefore, the decision to sell Parcel A of the Woodway site
31 was not under the County's control; the Edmonds School District sold Parcel A to a private
32 developer before Motion 06-546 was adopted. While the Woodway site is listed among the
33 County's inventory of capital facilities, this does not necessarily give the County planning
34 authority over a city park. The County is correct in its conclusion that even though a city park
35 may be listed in a County's inventory of capital facilities, does not mean that a city park is part
36 of the County's plan. County Reply, at 5-6 (citing *Bremerton/Port Gamble v. Kitsap County*,
37 CPSGMHB No. 95-3-0039c, Finding Noncompliance and Determination of Invalidity in
38 *Bremerton* and Order Dismissing *Port Gamble*, (Sept. 8, 1997), at 39).

39
40
41 **Second**, Motion 06-546 is consistent with the County comprehensive plan.

42
43 In the present case, Motion 06-546 was the first step in creating an ILA that furthers the goals of
44 the County Comprehensive Plan and the County Park Plan. On the same day Motion 06-546
45 passed, the County adopted Motion 06-547, thereby authorizing the 2006 ILA for the
46 "acquisition and recreational development" of Parcel B. Ex. 15. Specifically, the 2006 ILA
47
48

49
50 ¹⁰ Unlike in *Campbell*, in which the land was tribal land, in *Alexanderson*, the land was county land pending a trust application.

1 commits the County to provide \$1.2 million for the City's purchase of Parcel B, and in exchange,
2 the City will make Parcel B and its recreational facilities available to county residents.
3

4 By enacting a joint venture that will allow county residents access to a community park, Motion
5 Nos. 06-546 and 06-547 are consistent with the County's Comprehensive Plan. Specific goals of
6 the Snohomish County Comprehensive Plan and the County Park Plan include "identifying and
7 protecting open space, supporting cities in obtaining neighborhood parks within their Urban
8 Growth Areas and assisting in providing youth and adult athletic facilities throughout the county.
9 See C1 (specifically, Goal 7, 8, 8.1 and 8.2) and C2 (specifically, LU 10.B.3, 10.B.4). The
10 Board concurs with the County that helping to fund the City's purchase of Parcel B, illustrates
11 the County's continued pursuit of joint ventures and joint use opportunities for open space and
12 recreation as required by Land Use Policy 10.B.3.
13
14

15 As the County correctly asserted, the present case differs from *Alexanderson* in several
16 significant ways. First, *Alexanderson* involved a proposed water service extension to non-tribal
17 land which was within the planning and zoning authority of Clark County. While the Cowlitz
18 Tribe anticipated that the property would be granted trust status, at the time of the MOU the land
19 was within the County's authority. Here, by contrast, the Woodway site is not within
20 unincorporated Snohomish County nor within its extended planning area. Therefore, the
21 Woodway site is not subject to GMA planning by the County.
22

23 Second, in *Alexanderson*, the MOU water service extension to serve Cowlitz Tribal development
24 was directly contrary to the Clark County comprehensive plan; it would have accommodated
25 more intense development than the uses allowed in the Clark County plan. *Id.* By contrast, in
26 the present case, Motion 06-546 led to the adoption of Motion 06-547, in which the County
27 authorized another ILA with the City that allows County residents recreational access to Parcel
28 B. By providing open space and recreational facilities through a joint venture, the County is
29 continuing to fulfill the goals of the County's Comprehensive Plan.
30

31 The County also correctly argued that the present case is analogous to *Campbell*. In *Campbell*,
32 one basis for the Board's holding that the agreement between the City of Everett and the Tulalip
33 Tribe was not a de facto amendment was that the property in question was tribal land; therefore,
34 the land was outside the City of Everett's planning or zoning authority. As in *Campbell*, in this
35 case, the Woodway site is outside of the County's planning authority. It is the City of Edmonds,
36 not Snohomish County, that has planning authority over the Woodway site.
37

38 The Board finds and concludes that the challenged motion – Motion No. 06-546 – is not (1) a
39 comprehensive plan or development regulation or amendment thereto, nor (2) a *de facto*
40 amendment to the Snohomish County Comprehensive Plan. Therefore, the Board has no
41 jurisdiction to hear the matter.
42

43 *Conclusion*

44
45 The Board finds and concludes that it lacks subject matter jurisdiction to review Motion 06-546.
46 The County's Motion to Dismiss is **granted**.
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3 **III. MOTIONS TO SUPPLEMENT**

4 The Petitioner’s and Intervenor’s Motions to Supplement the Record are denied because they
5 were not relied on in the Order of Dismissal. Documents included in the 3rd Amended Index are
6 considered part of the record. The Board notes that exhibits A1 and A2 in the 3rd Amended
7 Index were presented by Petitioner in Petso Motion to Supplement as #6 and #7.

8 **ORDER**

9
10 Based upon review of the GMA, Board’s Rules of Practice and Procedure, briefing and exhibits
11 submitted by the parties, case law and prior decisions of this Board, and having deliberated on
12 the matter, the Board enters the following ORDER:

- 13
14 1. Snohomish County’s Motion to Dismiss is **granted**.
- 15
16 2 The matter of *Petso v. Snohomish County*, CPSGMHB Case No. 07-3-0006, is
17 **dismissed with prejudice**.
- 18
19 3 All further proceedings in this matter are **cancelled** and the matter is **closed**.

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22 So ORDERED this 11th day of April, 2007.

23 CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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30 _____
31 David O. Earling
32 Board Member

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34 _____
35 Edward G. McGuire, AICP
36 Board Member

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39 Margaret A. Pageler
40 Board Member

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43 Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a
44 motion for reconsideration pursuant to WAC 242-02-832.¹¹

45
46 _____
47 ¹¹Pursuant to RCW 36.70A.300 this is a final order of the Board.

48
49 Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The
50 original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing,
faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties

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of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)