CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD

DIGEST OF DECISIONS

SECOND EDITION ♦ 1992 - 2001

WASHINGTON STATE
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CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD

DIGEST OF DECISIONS

SECOND EDITION ♦ 1992 – 2001

AUTHORED BY
EDWARD G. MCGUIRE, AICP

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This Digest contains summaries of decisions from the Central Puget Sound Growth Management Hearings Board as an aid to research. The Central Puget Sound Growth Management Hearings Board Digest of Decisions (Second Edition) is available on our board website: http://www.gmaboards.wa.gov/central/central_index.html.

The full text of final decisions and orders of all the Boards are available at our website on http://www.gmaboards.wa.gov .

In addition, final decisions and orders are available from:

CD Law
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To request a hard copy of the digest contact any of the Boards.

INTRODUCTION

The Washington State Growth Management Hearings Boards published the First Edition of its Digest of Decisions, in 1999. Part I of that document, contained a digest of decisions issued from 1992 through February 1999 by the Central Puget Sound Growth Management Hearings Board (CPSGMHB or CPS Board). In 2000 and 2001 the Boards published two Supplements to the Digest, each covered cases for the previous calendar year. This publication of the Digest of Decisions replaces those three documents and includes 2001 decisions.

This Volume of the Digest provides a synopsis of all the published decisions of the Central Puget Sound Growth Management Hearings Board from 1992 through February 2002. This year marks the ten-year point for the Boards. After a decade of decisions it seemed appropriate to look back and take stock in our past decisions. Consequently, as an added feature, this Volume contains several Ten-Year Tables that summarize: the Board's caseload; disposition of cases; and break-out of cases by the CPS Counties and their Cities.

The Case Lists include all cases filed from 1992 through 2001. This Volume of the CPSGMHB Digest of Decisions, like the First Edition and the two Supplements, is organized around the topical "key word" system. Most reported material is quoted directly from the referenced decision. Language that appears in [brackets] is paraphrased. All page citations noted in the key words reference the Board's Final Decisions and Orders (FDOs) unless the date of another Order is specified.

The CPS Board's Digest of Decisions, like the previous Digests, is intended as a legal research aide, not a substitute for review of the Board's written Orders. The text of the Board's decisions and orders, not these Digest excerpts, should be referenced as legal authority.

Decisions and orders for all three Boards are available on the Boards' website: www.gmaboards@wa.gov. To access the decisions and orders of the CPS Board, simply go to the Boards' website and click on the panel for the CPSGMHB. From here the CPSGMHB decisions and orders can be accessed as well as this ten-year Volume of the Digest of Decisions. These tools are prepared and maintained for, and offered to, the citizens of the State of Washington to foster an understanding of, and further the goals and requirements of, the Growth Management Act. Managing growth wisely will secure our quality of life long into the future.

Edward G. McGuire, AICP
Tacoma, Washington

ACKNOWLEDGEMENTS

Preparing and maintaining a Digest can appear to be an intimidating undertaking. Compiling this Volume, as well as the First Edition and two Supplements, could not have happened without the good humor and cooperation of my attorney colleagues on the Eastern and Western Boards – Dennis Dellwo and William Nielsen. I owe my CPSGMHB colleagues, Lois North and Joe Tovar, special thanks for their review and editing patience. Thanks also to Susannah Karlsson for assisting me with the mechanics of compiling these materials and especially Mary Anderson for formatting this Volume and getting it to the printer! Additionally, the following attorneys, or soon to be attorneys, served this Board as interns, externs or law clerks during their legal education and contributed to the preparation and maintenance of this "Digesting" effort: Duana Kolouskova, Brian Norkus, Heather Cowdrey, Gary Watkins and Andy Lane.

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CASE LISTS – SHORT CAPTIONS (PETITIONERS)

The full case caption indicates the Petitioner(s) and Respondent (e.g., *Jody L. McVittie v. Snohomish County*). The cases are named after the Petitioner. The short name of the case appears in (parenthesis) and in ***bold italics*** after the full name of the case as it appears in the full case caption (***McVittie IV***). Consolidated cases contain two or more petitions for review (**PFRs**) and are typically named after the first Petitioner that files a PFR. A roman numeral in case name indicates that a Petitioner has been involved in multiple cases. The notation "pdr" following the case name and number indicates a Petition for Declaratory Rulings (**PDRs**).

The full case number (e.g. CPSGMHB Case No. 00-3-0006c) indicates: the year the case was filed (first two digits – 20<u>00</u>); the Board where the case was filed (third digit – <u>3</u> = Central Puget Sound, 2 = Western, and 1 = Eastern); the PFR number filed that year (last four digits – the <u>6th</u> PFR filed); and whether the case was consolidated (<u>c</u> = consolidated). Usually the consolidated case number assigned corresponds to the number of the last PFR that was filed or consolidated. The short number of the case is depicted the same way as the short case name – parenthetically and in ***bold italics***. However, only four digits are used to depict the same information just described (e.g., ***0306c***: year 200<u>0</u>, Board <u>3</u>, case <u>06c, c</u>onsolidated). [For example: For the case captioned *Jody L. McVittie v. Snohomish County* (***McVittie IV***), CPSGMHB Case No. 00-3-0006c (***0306c***), the short caption is noted as *McVittie IV, 0306c*.]

The full title of each matter that has come before the Central Puget Sound Growth Management Hearings Board between 1992 and 2001 is set forth a following section entitled "Synopsis of Decisions 1992 – 2001." The short caption reference is noted there for each case.

CASE LIST – BY YEAR (PETITIONERS)

1992 Cases[1] – 6
Tracy – 2301
Manke – 2302
Ruston – 2303
Snoqualmie – 2304c[2]
Gutschmidt – 2306
Poulsbo – 2309c

1993 Cases – 5
Twin Falls – 3303c
Edmonds – 3305c
Happy Valley – 3308c
Northgate – 3309
Rural Residents – 3310

1994 Cases – 19
Tacoma – 4301
Pilchuck I[3] – 4302
FOTL I – 4303
Black Diamond – 4304
KCRP – 4305
Kitsap – 4306
Brown – 4307
FOTL II – 4309
Aagaard – 4311c
In Re: Kitsap – 4312
Sumner – 4313
Kitsap/OFM – 4314
WSDF I – 4316
PNO – 4318
Robison – 4325c
KCRP III – 4327c
Slatten – 4328
Hensley I – 4329
Wright – 4330

[1] A case may include more than one Petition for Review due to consolidation. Cases may also include more than one Order or Decision.
[2] "c" means consolidated case
[3] Roman numerals indicate that a petitioner has been involved in multiple cases.

1995 Cases – 28
Vashon-Maury – 5308c
Children's I – 5311
Gig Harbor – 5316c
Pierce Co. – 5320
Bremerton – 5339c
WSDF II – 5340
Alberg – 5341c
Valley Alliance – 5342
Hensley II -5343
CCSV – 5344
Pilchuck II – 5347c
Bigford – 5348
BNRR – 5350
Anderson Creek – 5353c
South Bellevue – 5355
AFT – 5356
Salisbury – 5358
PNA I – 5359
Sky Valley – 5368c
S. Lake Union – 5370
PNA II -5371
Benaroya I – 5372c
WSDF III – 5373
Hapsmith I – 5375c
Schulman – 5376
TAS – 5377
Keesling – 5378
Hayes – 5381

1996 Cases – 31
Overton – 6301pdr[4]
Sundquist – 6301
Litowitz – 6305
Baker – 6308
Cole – 6309c
HEAL – 6312
COPAC – 6313c
Hapsmith II – 6314
Harston – 6315
Banigan – 6316c

[4] "pdr" means petition for declaratory ruling

1996 Cases (continued)
Rural Residents II- 6317
SCBB – 6318
Cosmos – 6319
Buckles – 6322c
Children's II – 6323
Arlington – 6324
Wallock I – 6325
PNA V – 6326
McGowan – 6327
Battrum – 6328
Tulalip – 6329
Tacoma Mall I – 6330
Hensley III – 6331
Des Moines – 6332
WSDF IV – 6333
Tacoma Mall II – 6334
FOTL V – 6335
Lake Forest Park – 6336
Wallock II – 6337
Torrance – 6338
PNA VI – 6339

1997 Cases – 17
Renton – 7301pdr
Johnson I – 7301
Johnson II – 7302
Gilpin – 7303
Fennel Creek – 7305
Frick – 7307
Tukwila – 7309
Benaroya II – 7310c
Kelly – 7312c
Auburn – 7313
Port of Seattle – 7314
Port Gamble[5] – 7324c
Renton – 7326
Keesling II – 7327
Morris – 7329c
Issaquah 69 – 7330
Lakehaven -7331

[5] Coordinated with Bremerton, 5339c.

1998 Cases – 16
Alpine/Posten – 8301pdr
Port of Seattle II – 8301
Fircrest – 8302
Rabie – 8305c
Green Valley – 8308c
Style – 8309
Burien – 8310
Parsons – 8311
LMI/Chevron – 8312
Hanson – 8315c
RBI/Andrus – 8330c
Alpine – 8332c[6]
Lane – 8333
URBPA – 8334
WRECO – 8335
Carkeek – 8336

1999 Cases – 18
Montlake – 9302c
Sound Transit – 9303
AFT II – 9304
Screen I – 9306c
Pilchuck IV – 9307
Parsons III – 9308
Olympic – 9309
Housing Partners – 9310
Westcot – 9311
Screen II – 9312
Tulalip II – 9313
NW Golf – 9314
McVittie – 9316c
MacAngus – 9317
Burrow – 9318
Gain – 9319
Kenyon – 9320
Tacoma II – 9323c

2000 Cases – 18
Shoreline – 0301pdr
Bidwell – 0302pdr
Radabaugh – 0302
Grubb – 0304
Kimmett – 0305
McVittie IV – 0306c
DOC/DSHS – 0307

[6] Coordinated with Bremerton, 5339c.

2000 Cases (continued)

Harvey Airfield – 0308
Bidwell – 0309
Shoreline – 0310
Gawenka – 0311
WHIP – 0312
Petersville Road Residents – 0313
Homebuilders – 0314
Pierce County – 0315
McVittie V – 0316
LIHI I – 0317
Kitsap Citizens – 0319c

2001 Cases – 23

Kenyon II – 1301
McVittie VI – 1302
Hensley IV – 1304c
Mesher – 1307
Forster Woods – 1308c
Nelson – 1309
FOTL VI – 1310
Vine Street – 1311
Nardo – 1312
Shoreline II – 1313
SHAG – 1314
DOC II - 1315
MBA – 1316
McVittie VIII – 1317
Edgewood – 1318
HBA II – 1319
Lewis – 1320
Bennett – 1322
LIHI II – 1323
Lotto – 1324
McVittie IX – 1325
WHIP II – 1326
Crofut – 1327

ALPHABETICAL CASE LIST – (PETITIONERS)

Aagaard – 4311c
AFT – 5356
AFT II– 9304
Alberg – 5341c
Alpine – 8332c
Alpine/Posten –8301pdr
Anderson Creek – 5353c
Andrus/RBI – 8330c
Arlington – 6324
Auburn – 7313
Baker – 6308
Banigan – 6316c
Battrum – 6328
Benaroya I– 5372c
Benaroya II – 7310c
Bennett – 1322c
Bidwell – 0302pdr
Bidwell – 0309
Bigford – 5348
Black Diamond – 4304
BNRR – 5350
Bremerton – 5339c
Brown – 4307
Buckles – 6322c
Burien – 8310
Burrow – 9318
CCSV – 5344
Carkeek – 8336
Children's I – 5311
Children's II – 6323
Cole – 6309c
COPAC – 6313c
Cosmos – 6319
Crofut – 1327
Des Moines – 6332
DOC/DSHS – 0307
DOC II – 1315
Edmonds – 3305c
Edgewood – 1318
Fennel Creek – 7305
Fircrest – 8302
Forster Woods – 1308c
FOTL I – 4303
FOTL II – 4309
FOTL V – 6335
FOTL VI – 1310
Frick – 7307
Gain – 9319
Gawenka – 0311
Gig Harbor – 5316c
Gilpin – 7303
Green Valley – 8308c
Grubb – 0304
Gutschmidt – 2306c
Hanson – 8315c
Happy Valley – 3308c
Hapsmith I – 5375c
Hapsmith II – 6314
Harston – 6315
Harvey Airfield – 0308
Hayes – 5381
HBA II – 1319
HEAL – 6312
Hensley I – 4329
Hensley II –5343
Hensley III –6331
Hensley IV – 1304c
Homebuilders – 0314
Housing Partners – 9310
In Re: Kitsap – 4312
Issaquah 69 – 7330
Johnson I – 7301
Johnson II – 7302
KCRP – 4305
KCRP III – 4327c
Keesling – 5378
Keesling II – 7327
Kelly – 7312c
Kenyon I – 9320
Kenyon II – 1301
Kimmett – 0305
Kitsap – 4306
Kitsap Citizens – 0319c
Kitsap/OFM – 4314
Lakehaven –7331
Lake Forest Park – 6336
Lane – 8333
Lewis – 1320
LIHI I – 0317
LIHI II – 1323
Litowitz – 6305
LMI / Chevron – 8312
Lotto – 1324
MacAngus – 9317
Manke – 2302
MBA – 1316
McGowan – 6327
McVittie – 9316c
McVittie IV – 0306c
McVittie V – 0316
McVittie VI – 1302
McVittie VIII – 1317
McVittie IX – 1325
Mesher – 1307
Montlake – 9302c
Morris – 7329c
Nardo – 1312
Nelson – 1309
Northgate – 3309
NW Golf – 9314
Olympic – 9309
Overton – 6301pdr
Parsons - 9308
Petersville Road Residents – 0313
Pierce Co. – 5320
Pierce II – 0315
Pilchuck I – 4302
Pilchuck II – 5347c
Pilchuck IV – 9307
PNA I – 5359
PNA II –5371
PNA V – 6326
PNA VI – 6339
PNO – 4318
Port Gamble – 7324c
Port of Seattle – 7314
Port of Seattle II – 8301
Poulsbo – 2309c
Rabie – 8305c
Radabaugh – 0302
RBI/Andrus – 8330c

Renton – 7301pdr
Renton – 7326
Robison – 4325c
Rural Residents – 3310
Rural Residents II – 6317
Ruston – 2303
SCBB – 6318
Screen I – 9306c
Screen II – 9312
SHAG – 1314
Shoreline – 1313
Shoreline II – 0301pdr
Shoreline II – 0310
Schulman – 5376
Sky Valley – 5368c
Slatten – 4328
Snoqualmie – 2304c
Sound Transit – 9303
South Bellevue – 5355
South Lake Union – 5370
Style – 8309
Sumner – 4313
Sundquist – 6301
Tacoma – 4301
Tacoma II – 9323
Tacoma Mall – 6330
Tacoma Mall II – 6334
TAS – 5377
Torrance – 6338
Tracy – 2301
Tukwila – 7309
Tulalip – 6329
Tulalip II – 9313
Twin Falls – 3303c
URBPA – 8334
Valley Alliance – 5342
Vashon-Maury – 5308c
Vine Street – 1311
Wallock I – 6325
Wallock II – 6337
Westcot – 9311
WHIP – 0312
WHIP II – 1326
WRECO – 8335
Wright – 4330
WSDF I – 4316
WSDF II – 5340
WSDF III – 5373
WSDF IV – 6333

TABLES: CPS REGION AND CPSGMHB

Central Puget Sound Region

TABLE 1A – URBAN AREA AND POPULATION - 1990[7]

	CPS Region		King County		Kitsap County		Pierce County		Snohomish County	
AREA	**Sq.Mi.**	*%*	**Sq.Mi.**	*%*	**Sq.Mi.**	*%*	**Sq.Mi.**	*%*	**Sq.Mi.**	*%*
Total	6287.9	-	2126.1	-	395.9	-	1675.6	-	2090.2	-
UGA	-	-	-	-	-	-	-	-	-	-
Incorporated	461.4	*7.3*	286.6	*13.5*	28.4	*7.2*	62.1	*3.7*	84.4	*4.0*
POPULATION	**'000s**	*%*	**'000s**	*%*	**'000s**	*%*	**'000s**	*%*	**'000s**	*%*
Total	2,748.9	-	1,507.3	-	189.7	-	586.2	-	465.6	-
UGA	-	-	-	-	-	-	-	-	-	-
Incorporated	1,497.4	*54.5*	994.2	*66.0*	51.1	*26.9*	246.3	*42.0*	205.8	*44.2*

TABLE 1B – URBAN AREA AND POPULATION - 2000[8]

	CPS Region		King County		Kitsap County		Pierce County		Snohomish County	
AREA	**Sq.Mi.**	*%*	**Sq.Mi.**	*%*	**Sq.Mi.**	*%*	**Sq.Mi.**	*%*	**Sq.Mi.**	*%*
Total	6287.9	-	2126.1	-	395.9	-	1675.6	-	2090.2	-
UGA	1035.0	*16.5*	502.4	*23.7*	87.6	*22.1*	260.4	*15.5*	183.4	*8.8*
Incorporated[9]	684.0	*10.8*	391.4	*18.4*	63.0	*15.9*	114.4	*6.8*	115.2	*5.5*
POPULATION	**'000s**	*%*	**'000s**	*%*	**'000s**	*%*	**'000s**	*%*	**'000s**	*%*
Total	3,275.8	-	1,737.0	-	232.0	-	700.8	-	606.0	-
UGA[10]	2,789.6	*85.2*	1,612.1	*92.8*	129.2	*55.7*	556.8	*79.5*	491.5	*81.1*
Incorporated[11]	2,156.2	*65.8*	1,384.3	*79.7*	72.1	*31.1*	385.2	*55.0*	314.6	*51.9*

[7] Puget Sound Regional Council – *Trends*, No. D6 July 2001
[8] Puget Sound Regional Council – *Trends*, No. D6 July 2001
[9] Includes numerous incorporations and annexations since 1990.
[10] PSRC estimated population. UGA boundaries and Census Block data boundaries differ.
[11] Includes numerous incorporations and annexations since 1990.

CPSGMHB Caseload Data[12] 1992 - 2001[13]

TABLE 2 – CPSGMHB PFRS, CASES, HEARINGS AND DECISIONS

	'92[14]	'93	'94	'95	'96	'97	'98	'99	2000	'01	TOTAL
PFRs Filed[15]	9	10	31	81	40	32	37	23	21	27	311
New Cases[16]	6	5	19	28	31	17	16	18	18	23	181
Cases Remanded to Board by the Courts[17]	0	0	0	0	0	0	2[18]	1[19]	1[20]	4[21]	8
Total Cases[22]	6	5	19	28	31	17	18	19	19	27	189
Hearings held[23]	14	10	40	62	45	31	32	38	42	45	359
Decisions issued[24]	13	11	38	65	39	25	42	32	44	43	352

[12] Based upon published decisions reported on Board website: www.gmaboards.wa.gov.
[13] As of March 1, 2002.
[14] Beginning in May 1992, following initial Board Member appointments.
[15] Petitions for Review, includes 5 Petitions for Declaratory Rulings (pdr).
[16] After PFRs have been consolidated.
[17] Remands from Supreme Court, Court of Appeals and Superior Courts, where additional proceedings were required by the Board. Counted in year Board remand decision issued.
[18] *Benaroya I ('95)*: [Devoted to Agriculture - Supreme Court] and *Hapsmith ('95):* [Include Board's interpretation in Plan language – Superior Court.] – both closed.
[19] *Sky Valley/Island Crossing ('95):* [Change UGA to Agriculture – Superior Court] – closed.
[20] *Vashon-Maury/Bear Creek ('95):* [Island UGA or Fully Contained Community – Supreme Court] – closed?
[21] *Duwamish/Buckles ('96):* [Rebuttal evidence – Court of Appeals], and *HEAL ('96):* [BAS for policies - Court of Appeals] –both closed. *LIHI I ('01):* [Clarify basis for FDO] and *Ramey-consolidated with MCC ('99):* [Substitution of parties for standing – awaiting Court of Appeals resolution of MCC issues] – both pending.
[22] Includes Cases and Court Remand Cases.
[23] Includes prehearing conferences, hearings on motions, hearings on the merits and compliance hearings. Each case has a prehearing conference, occasionally the Board has hearings on motions, each case that is not settled, withdrawn or dismissed has a hearing on the merits, and cases that are remanded for noncompliance have at least one compliance hearing.
[24] Includes ONLY: Orders on Dispositive Motions, Final Decisions and Orders (FDOs), Compliance Orders (includes compliance and noncompliance orders), Orders on Reconsideration and Orders on Court Remand.

CPSGMHB Disposition of Cases[25] : 1992 - 2001[26]

TABLE 3A – CPSGMHB DISPOSITION OF CASES

	'92[27]	'93	'94	'95	'96	'97	'98	'99	2000	'01	TOTAL
Number of Cases Decided[28]	6	5	19	28	31	17	16	18	18	23[29]	181
Dismissed[30]	2	2	8	11	21	12	7	8	9	7	87
Upheld[31]	0	1	1	1	6	1	4	7	2	3	26
Remanded[32]	4	2	10	16	4	4	5	3	7	6	61
Invalidity[33]	-	-	-	2	-	2	1	-	4	3	12
Sanctions[34]	-	-	1/w[35]	3/w	-	1/w	-	-	-	-	5
Pending[36]	-	-	-	-	-	-	-	-	-	7	7

The Board has **dismissed 48.0%** of its cases. Those cases **upheld** or found to be in compliance account for another **15%**. The remaining cases, or **33%,** were **remanded**. [4% are pending.] Invalidity has been employed in approximately 19% of the remand cases. Contingent sanctions or sanctions have been recommended, but ultimately withdrawn, in only 8%, of the remand cases.

[25] Based upon published decisions reported on the Board website: www.gmaboards.wa.gov.
[26] As of March 1, 2002.
[27] Beginning in May 1992, following initial Board Member appointments.
[28] Does not include cases remanded from the Courts. [The Board had 8 cases remanded from the Courts that required further proceedings and decisions.]
[29] Pending as of March 1, 2002 = 7 cases.
[30] Cases withdrawn (21), stipulated dismissals (18), or dismissed by Order of the Board (48).
[31] Cases where the challenged failed and/or the local government action was found to comply.
[32] Cases where the Board found noncompliance with the goals and/or requirements of the Act.
[33] Cases that included a determination of invalidity by the Board on at least one of the noncompliant actions.
[34] Cases where the Board either recommended sanctions or contingent sanctions. In all cases, the jurisdiction complied with the Act within the compliance period and the recommendation of sanctions was withdrawn. No jurisdiction within the Central Puget Sound region has ever been subject to sanctions imposed by the Governor.
[35] "w" means the Board recommendation for contingent sanctions or sanctions were withdrawn after compliance was achieved.
[36] Pending as of March 1, 2002.

Disposition of County and City Cases: 1992 – 2001

TABLE 3B – CPSGMHB DISPOSITION OF COUNTY CASES

	'92	'93	'94	'95	'96	'97	'98	'99	2000	'01	TOTAL
Number of Cases Decided	4	4	9	12	13	6	9	12	8	10[37]	87[38]
Dismissed	2	1	2	4	9	3	6	6	5	1	39
Upheld	-	1	-	-	2	1	1	3	2	2	12
Remanded	2	2	7	8	2	2	2	3	1	4	33
Invalidity	-	-	-	2	-	1	1	-	1	3	8
Sanctions	-	-	1	2	-	-	-	-	-	-	3
Pending	-	-	-	-	-	-	-	-	-	3	3

The Board has **dismissed 45%** of its County cases. Those cases **upheld** or found to be in compliance account for approximately **14%**. The remaining County cases, or **38%,** were **remanded**. [3% are pending.] Twenty five percent of the remand cases have involved invalidity; ten percent have involved contingent sanction or sanction recommendations (withdrawn at compliance).

TABLE 3C – CPSGMHB DISPOSITION OF CITY CASES

	'92	'93	'94	'95	'96	'97	'98	'99	2000	'01	TOTAL
Number of Cases Decided	2	1	7	16	17	11	7	6	10	13[39]	90
Dismissed	0	1	4	7	11	9	1	3	4	6	46
Upheld	0	0	0	1	4	0	3	3	0	1	12
Remanded	2	0	3	8	2	2	3	0	6	2	28
Invalidity	-	-	-	-	-	1	-	-	3	-	4
Sanctions[40]	-	-	-	1	-	1	-	-	-	-	2
Pending	-	-	-	-	-	-	-	-	-	4	4

The Board has **dismissed 51%** of its City cases. Those cases **upheld** or found to be in compliance account for only **13.0%**. The remaining cases, or **31%,** were **remanded**. [5% are pending.] Invalidity has been employed in approximately 15% of the remand cases. Contingent sanctions or sanctions have been recommended in only 7%, of the remand cases.

[37] Pending as of March 1, 2002 = 3 County cases.
[38] An additional 4 cases were filed against state agencies or other governmental entities; 3 were dismissed for lack of Board jurisdiction, OFM's population forecast for Kitsap County was challenged, but upheld.
[39] Pending as of March 1, 2002 = 4 city cases.
[40] Cases where the Board either recommended sanctions or contingent sanctions. In all cases, the jurisdiction complied with the Act within the compliance period and the recommendation of sanctions was withdrawn. No jurisdiction within the Central Puget Sound region has ever been subject to sanctions imposed by the Governor.

CPSGMHB Settlement Conference[41] Summary

TABLE 4 – CPSGMHB SETTLEMENT/MEDIATION SUMMARY

	'92	'93	'94	'95	'96	'97	'98	'99	2000	'01	TOTAL
Settlement Conferences BY CPSGMHB[42]	-	-	-	-	-	1	5	8	6	1	21[43]
Settlement Conferences FOR CPSGMHB[44]	-	-	-	-	1[45]	-	-	1[46]	3[47]	-	5[48]

[41] Cases where the parties have sought settlement assistance with the help of Board Members. Due to conflict of interest and *ex parte* concerns, CPS Board Members do not act as settlement officers for cases pending before the CPS Board. Western and Eastern Board members serve as settlement officers.
[42] Members of the CPS Board served as settlement officers in cases for the Western Board [CPS Members have never served as settlement officers for an Eastern Board case.] The numbers represented here indicate the number of PFRs before the Western Board that were involved in a settlement conference. The numbers do not reflect the number of sessions held.
[43] 11 PFRs were settled or dismissed, 2 PFRs were partially settled and 8 PFRs were not settled.
[44] Members of the Western or Eastern Board served as settlement officers for the CPSGMHB. The numbers represented here indicate the number of PFRs before the CPS Board that were involved in a settlement conference. The numbers do not reflect the number of sessions held.
[45] *Benaroya I:* [Agriculture within city]
[46] *Housing Partners:* [No public participation on Emergency Ordinance – Regulations]
[47] *DOC/DSHS:* [Siting Essential Public Facilities (work release and mental health facilities] and *McVittie V:* [No public participation on Emergency Ordinances – UGA, Plan and Regulations]
[48] 2 PFRs were settled or dismissed, 0 were partially settled and 3 PFRs were not settled.

Challenges to CPSGMHB Counties: 1992 – 2001

TABLE 5A – CHALLENGES TO KING AND KITSAP COUNTIES

Year	KING COUNTY	KITSAP COUNTY
1992	*Snoqualmie, 2304c [R]*[49]	*Manke, 2302 [D]* *Poulsbo, 2309c [R]*
1993	*Happy Valley, 3308c [D]*[50]	*Rural Residents, 3310 [R]*
1994	*FOTL, 4303 [R]* *Black Diamond, 4304 [R]* *FOTL II, 4309 [R]*	*KCRP, 4305 [R]* *KCRP III, 4327c [D]*
1995	***Vashon-Maury, 5308c [R/I]***[51] *Alberg, 5341c [R]* *Keesling, 5378 [D]*	*Bremerton, 5339c [R/I/Sw]*[52] *Hayes, 5381c [D]*
1996	*COPAC, 6313c [R]* ***Buckles, 6322c [R]*** *FOTL V, 6335 [D]* *Torrance, 6338 [D]*	*Overton, 6301pdr [D]* *Banigan, 6316c [D]* *Rural Residents II, 6317 [D]*
1997	*Johnson II, 7302 [R]* *Keesling, 7327 [C]*[53]	*Port Gamble, 7324c [D]*
1998	*Green Valley, 8303c [R/I]* *Style, 8309 [D]* *Hanson, 8315c [C]* *Carkeek, 8336 [D]*	*Posten, 8301pdr [D]* *Alpine, 8332c [R]* *URBPA, 8334 [D]*
1999		*Screen I, 9306c [R]* *Screen II, 9312 [R]* *NW Golf, 9314 [D]* *Burrows, 9318 [C]*
2000		*Kimmett, 0305 [D]* *Petersville Road Residents, 9313 [D]* *Kitsap Citizens, 9319c [C]*
2001	*Forster Woods, 1308c [R/I]* *Nelson, 1309 [P]*[54] *FOTL V, 1310 [R/I]*	
Total By County	**21**	**21**

[49] [R] Indicates Remand. The action was found noncompliant and remanded.
[50] [D] Indicates Dismissed. The case may have been dismissed due to the PFR being withdrawn, settled or by Board Order.
[51] [I] Indicates Invalidity. If the caption is in ***bold type*** it is the base case from which appeals to the Courts were taken and one of the 8 cases that were remanded back to the Board for further proceedings.
[52] [Sw] Indicates Sanctions or Contingent Sanctions recommended, but withdrawn after compliance.
[53] [C] Indicates Compliance. The action was upheld or found to comply.
[54] [P] Indicates Pending. The case is still pending before the Board

TABLE 5B – CHALLENGES TO PIERCE AND SNOHOMISH COUNTIES AND STATE AGENCIES OR OTHER ENTITIES

Year	Pierce County	Snohomish County	State Agencies or Other Entities	Total By Year
1992	*Ruston, 2303 [D]*			4
1993		*Twin Falls, 3303c [C]* *Edmonds, 3305c [R]*		4
1994	*Tacoma, 4301 [R]*	*Pilchuck, 4302 [R/Sw]* *PNO, 4318 [R]* *Hensley, 4329 [D]*	*In Re Kitsap, 4312 [D]* *Kitsap/OFM, 4314 [C]* *Sumner, 4313 [D]*	12
1995	*Gig Harbor, 5316c [R]* *PNA, 5359 [D]* *PNA II, 5371 [R]* *TAS, 5377 [D]*	*Hensley, 5343 [R/Sw]* *Pilchuck II, 5347c [R]* ***Sky Valley, 5368c [R]***		12
1996	*Cole, 6309c [C]* *PNA V, 6326 [D]* *McGowan, 6327 [D]* *PNA VI, 6339 [D]*	*Sunquist, 6301 [D]* *Tulalip, 6329 [C]*	*DesMoines, 6332 [D]*	14
1997	*Fennel Creek, 7302 [D]* *Auburn, 7313 [D]*	*Kelly, 7312c [R/I]*		6
1998	*Fircrest, 8302 [D]*	*Lane, 8333c [D]*		9
1999	*Gain, 9319 [C]* *Kenyon, 9320 [D]* *Tacoma II, 9323c [R]*	*AFT, 9304 [D]* *Pilchuck IV, 9307 [D]* *Housing Partners, 9310 [D]* *McVittie, 9316c [D]* *MacAngus, 9317 [C]*		12
2000		*Shoreline, 0301pdr [D]* *McVittie IV, 0306c [C]* *Harvey Airfield, 0308 [D]* *Shoreline, 0310 [D]* *McVittie V, 0316 [R/I]*		8
2001	*Kenyon II, 1301 [P]* *DOC II, 1315 [P]*	*McVittie VI, 1302 [R]* *Hensley IV, 1304c [R/I]* *MBA, 1316 [C]* *McVittie VIII, 1317 [C]* *McVittie IX, 1325 [D]*		10
Total by County	18	27	4	91

The four counties within the CPSGMHB jurisdiction were challenged **87** times between 1992 and 2001. During the same period, **4** challenges were brought challenging State Agencies or other governmental entities. Of the **181** cases before the Board during 1992 - 2001, the CPS Counties accounted for **48%** of the caseload; State Agencies or other entities accounted for **2%** of the caseload. King and Kitsap Counties each accounted for **12%** of the cases; Pierce County cases made up **10%** and Snohomish comprised **15%** of the Board's caseload.

Challenges to CPSGMHB Cities [By County]

1992 – 2001

There are **82** Cities within the four CPS Counties, **42** of them were challenged between 1992 and 2001. There were **90** cases filed against these Cities. Of the **181** cases before the Board during this period, the Cities within the regions accounted for **50%** of the caseload. The Cities within King, Kitsap, Pierce and Snohomish made up 34%, 2%, 7% and 7%, respectively, of the Board's caseload.

Cities in King County

Of the 38 Cities within King County, 21 of them were challenged between 1992 and 2001. These 21 Cities were the focus of 61 challenges during this period. Of the 181 cases before the Board during 1992 – 2001, Cities in King County accounted 34% of the Board's caseload. TABLES 6A through 6E show the King County Cities challenged, the year of the case, the short caption and disposition of the case.

TABLE 6A – CHALLENGES TO KING COUNTY CITIES [A-B]

Year	Auburn	Bainbridge Island	Bellevue	Black Diamond	Bothell[55]
'92	-	-	-	-	-
'93	-	-	-	-	-
'94	-	*Robison, 4325c [R]*	-	-	*Aagaard, 4311c [R]*
'95	*BNRR, 5350 [D]* ***Hapsmith, 5375c [R]***	-	*Children's I, 5311[R/Sw]* *South Bellevue, 5355 [D]* *Schulman, 5376, [C]*	-	-
'96	*Hapsmith II, 6314 [D]*	-	*Harston, 6315 [D]* *Children's II, 6323 [C]*	-	-
'97	-	*Gilpin, 7303 [D]*	-	*Johnson I, 7301, [D]*	-
'98	-	*Andrus, 8330 [R]*	-	-	-
'99	-	-	-	-	-
'00	-	*Homebuilders, 0314 [R/I]*	*Bidwell, 0302pdr [D]* *Bidwell, 0309 [D]*	-	-
'01		*HBA II, 1319 [D]* *Crofut, 0127 [P]*	*Bennett, 0122c [P]*		
Total	**3**	**6**	**8**	**1**	**1**

[55] Bothell is partially in King County and partially in Snohomish County.

TABLE 6B – CHALLENGES TO KING COUNTY CITIES [B-I]

Year	Burien	Covington	DesMoines	Federal Way	Issaquah
'92	-	-	-	-	-
'93	-	-	-	-	-
'94	-	-	-	-	-
'95	-	-	-	-	-
'96	-	-	-	*Litowitz, 6305 [C]*	-
'97	-	-	*Port of Seattle, 7314 [R/I/Sw]*	*Lakehaven, 7331 [D]*	*Issaquah 69, 7330 [D]*
'98	*Port II, 8301 [D]* *Rabie, 8305 [C]* *Parsons, 8311 [C]*	-	-	-	-
'99	*Parsons III, 9308 [D]*	-	*Westcot, 9311 [D]*	-	-
'00	-	*WHIP, 0312 [R/I]*	-	-	-
'01	-	*WHIP II, 1326 [P]*	-	-	*Lotto, 1324 [D]*
Total	**4**	**2**	**2**	**2**	**2**

TABLE 6C – CHALLENGES TO KING COUNTY CITIES [K-N]

Year	Kent	Lake Forest Park	Mercer Island	Newcastle
'92	-	-	*Tracy, 2301 [R]* *Gutschmidt, 2306 [R]*	-
'93	-	-	-	-
'94	-	-	*Wright, 4330 [D]*	-
'95	*Bigford, 5348 [D]*	-	-	-
'96	-	-	-	-
'97	-	*Morris, 7329c [D]*	-	*Renton, 7301pdr [D]* *Renton, 7326 [R]*
'98	-	-	-	-
'99	-	-	-	-
'00	-	-	-	-
'01	-	-	-	-
Total	**1**	**1**	**3**	**2**

TABLE 6D – CHALLENGES TO KING COUNTY CITIES [N-S]

Year	North Bend	Redmond	SeaTac	Seattle
'92	-	-	-	-
'93	-	-	-	*Northgate, 3309 [D]*
'94	-	-	-	*WSDF, 4316 [R]*
'95	-	***Benaroya, 5372c [R]***	-	*WSDF II, 5340 [R]* *South Lake Union, 5370 [D]* *WSDF III, 5373 [R]*
'96	-	*Cosmos, 6319 [D]* *Battrum, 6328 [D]*	-	***HEAL, 6312 [C]*** *SCBB, 6318 [D]* *WSDF IV, 6333 [R]*
'97	-	*Benaroya II, 7310c [D]*	-	*Tukwila, 7309 [D]*
'98	-	-	*Burien, 8310 [C]*	-
'99	*Olympic, 9309 [D]*	-	-	*Montlake, **{Ramey} 9302c [C]***
'00	-	*Grubb, 0304 [R/I]*	-	*Radabaugh, 0302 [R]*
'01	-	-	-	*Mesher, 1307 [D]*
Total	**1**	**5**	**1**	**12**

TABLE 6E – CHALLENGES TO KING COUNTY CITIES [S-T]

Year	Shoreline	Snoqualmie	Tukwila	Total by Year
'92	-	-	-	**2**
'93	-	-	-	**1**
'94	-	-	-	**4**
'95	-	*Valley Alliance, 5342 D]*	-	**11**
'96	*Lake Forest Park, 6336 [D]*	-	*Baker, 6308 [D]*	**11**
'97	-	-	-	**10**
'98	-	-	-	**5**
'99	-	-	*Sound Transit, 9303 [C]*	**5**
'00	-	-	-	**6**
'01	-	-	-	**6**
Total	**1**	**1**	**2**	**61**

Cities in Kitsap County

Of the **4** Cities within Kitsap County, **2** of them were challenged during the period between 1992 and 2001. These **2** Cities were the focus of **4** challenges during this time. Of the **181** cases before the Board during 1992 – 2001, Cities in Kitsap County accounted for about **2%** of the caseload. **TABLE 7** shows the **Kitsap County Cities** challenged, the year of the case, the short caption and disposition of the case.

TABLE 7 – CHALLENGES TO KITSAP COUNTY CITIES

Year	Bremerton	Poulsbo	Total By Year
'92	-	-	0
'93	-	-	0
'94	-	*Kitsap, 4306 [D]*	1
'95	*Anderson Creek, 5353 [R]*	-	1
'96	-	-	0
'97	-	-	0
'98	-	-	0
'99	-	-	0
'00	*Gawenka, 0311 [D]*	-	1
'01	-	*Nardo, 1312 [D]*	1
Total	2	2	4

Cities in Pierce County

Of the **21** Cities within Pierce County, **9** of them were challenged during the period between 1992 and 2001. These **9** Cities were the focus of **13** challenges during this time. Of the **181** cases before the Board during 1992 – 2001, Cities in Pierce County accounted **7%** of the caseload. **TABLES 8A** and **8B** show the **Pierce County Cities** challenged, the year of the case, the short caption and disposition of the case.

TABLE 8A – CHALLENGES TO PIERCE COUNTY CITIES [B-L]

Year	Bonney Lake	DuPont	Edgewood	Gig Harbor	Lakewood
'92	-	-	-	-	-
'93	-	-	-	-	-
'94	-	-	-	-	-
'95	*Salisbury, 5358 [D]*	-	-	*Pierce Co, 5320 D]*	-
'96	-	-	-	-	-
'97	-	-	-	-	-
'98	-	*WRECO, 8335 [R]*	-	-	-
'99	-	-	-	-	-
'00	-	-	-	-	*Pierce II, 0315 [D]* ***LIHI I, 0317 [R]***
'01	-	-	*Lewis, 1320 [R]*	-	*LIHI II, 1323 [P]*
Total	**1**	**1**	**1**	**1**	**3**

TABLE 8B – CHALLENGES TO PIERCE COUNTY CITIES [M-T]

Year	Milton[56]	Steilacoom	Sumner	Tacoma	Total by Year
'92	-	-	-	-	**0**
'93	-	-	-	-	**0**
'94	-	*Slatten, 4328 [D]*		-	**1**
'95	-	-	-	-	**2**
'96	-	-	-	*Tacoma Mall I, 6330 [D]* *Tacoma Mall II, 6334 [D]*	**2**
'97	*Frick, 7307 [D]*	-	-	-	**1**
'98	-	-	-	-	**1**
'99	-	-	-	-	**0**
'00	-	-	-	*DOC/DSHS, 0307 [R]*	**3**
'01	-	-	*Edgewood, 1318 [C]*		**3**
Total	**1**	**1**	**1**	**3**	**13**

[56] Milton is partially in Pierce and partially in King County.

Cities in Snohomish County

Of the **19** Cities within Snohomish County, **10** of them were challenged during the period between 1992 and 2001. These **10** Cities were the focus of **12** challenges during this time. Of the **181** cases before the Board during 1992 – 2001, Cities in Snohomish County accounted for about **7%** of the caseload. **TABLES 9A** and **9B** show the **Snohomish County Cities** challenged, the year of the case, the short caption and disposition of the case.

TABLE 9A – CHALLENGES TO SNOHOMISH COUNTY CITIES [A-M]

Year	Arlington	Everett	Gold Bar	Lake Stevens	Lynwood	Marysville
'92	-	-	-	-	-	-
'93	-	-	-	-	-	-
'94				*Brown, 4307 [D]*	-	-
'95	*AFT, 5356 [R]*		*CCSV, 5344 [R]*	-	-	-
'96	-	*Wallock I, 6325 [C]* *Wallock II, 6337 [D]*	-	-	-	*Arlington, 6304 [D]*
'97	-	-	-	-	-	-
'98	-	-	-	-	-	-
'99	-	-	-	-	-	-
'00	-	-	-	-	-	-
'01	-	-	-	-	*SHAG, 1314 [D]*	-
Total	**1**	**2**	**1**	**1**	**1**	**1**

TABLE 9B – CHALLENGES TO SNOHOMISH COUNTY CITIES [M-W]

Year	Monroe	Stanwood	Woodinville	Woodway	Total by Year
'92	-		-	-	**0**
'93	-	-	-	-	**0**
'94	-	-	-	-	**1**
'95	-	-	-	-	**2**
'96	-	-	*Hensley, 6331 [R]*	-	**4**
'97	-	-	-	-	**0**
'98	-	-	-	*LMI/Chevron, 8312 [R]*	**1**
'99	*Tulalip II, 9313 [C]*	-	-	-	**1**
'00	-	-	-	-	**0**
'01	-	*Vine St., 1311 [D]*	-	*Shoreline II, 1313 [R]*	**3**
Total	**1**	**1**	**1**	**2**	**12**

SYNPOSIS OF 1992 CASES[57]

CPSGMHB Decisions [With Key Words]

James Tracy v. City of Mercer Island (***Tracy***), CPSGPHB[58] Case No. 92-3-0001 (***2301***), Final Decision and Order, (Jan. 5, 1993). The challenged portions of Mercer Island's Interim Critical Areas Regulations were **upheld, except** for: certain lands and structures were not critical areas as defined in the GMA, and were **remanded**. [Interim – Critical Areas – SMJ – SEPA – Public Participation]

Tracy, 2301, Finding of Compliance, (May 24, 1993). Mercer Island **complied** with the January 5, 1993 FDO.

Manke Lumber Company Inc. v. Kitsap County [Peter Overton and Overton and Associates – Intervenors] (***Manke***), CPSGPHB Case No. 92-3-0002 (***2302***), Order Authorizing Withdrawal of Intervenor and Dismissing Matter with Prejudice, (Nov. 18, 1992). The challenge to Kitsap County's Interim Resource Land Designations and Regulations was **dismissed;** the petitioners withdrew their PFR.

Town of Ruston v. Pierce County (***Ruston***), CPSGPHB Case No. 92-3-0003 (***2303***), Order of Dismissal, (Oct. 13, 1992). Ruston's challenge to Pierce County's County-wide Planning Policies was **dismissed** since the Town failed to serve the County and did not participate in the prehearing conference. [Service – Default]

City of Snoqualmie and City of Issaquah v. King County (***Snoqualmie***), *CPSGPHB* Case No. 92-3-0004c[59] (***2304c***), Order Denying Motion for Continuance Beyond 180-Day Limit, (Nov. 4, 1992). Issaquah's and King County's motion for continuance or extension was **denied.** [180 Days – CPPs]

Snoqualmie, *2304c,* Stipulation and Agreed Order of Dismissal without Prejudice, (Nov. 22, 1992). Issaquah's challenge to King County's CPPs was **dismissed; t**he City withdrew its PFR.

Snoqualmie, 2304c, Final Decision and Order, (Mar. 1, 1993). The challenged portions of King County's County-wide Planning Policies were **upheld, except** for: several policies, which infringed on the land use powers of cities, which were **remanded.** [CPPs – General Discussion – Regional Planning – ILAs – Land Use Powers – SEPA]

Snoqualmie, 2304c, Finding of Compliance, (Jun. 28, 1993). King County **complied** with the March 1, 1993 FDO.

James Gutschmidt v. City of Mercer Island [William Wright and Ralph Gutschmidt – Intervenors] (***Gutschmidt***), CPSGPHB Case No. 92-3-0006 (***2306***), Final Decision and Order, (Mar. 16, 1993). The challenged portions of Mercer Island's Interim Critical Areas regulations were **upheld, except** for: several definitions and non-legislative amendments, which were **remanded**. [SMJ – Goals – Interim – Critical Areas – Amendment – Definitions – SEPA]

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[57] Note that decisions were not necessarily issued in the year the case was filed.
[58] Originally, the Board was named the Central Puget Sound Growth *Planning* Hearings Board, or CPSGPHB. Therefore, citations in 1992 and 1993 use CPSGPHB.
[59] The suffix "c" means that the case is a consolidation of several petitions for review.

Gutschmidt, 2306, Finding of Compliance, (Sep. 16, 1993). Mercer Island **complied** with the March 16, 1993 FDO.

City of Poulsbo, City of Port Orchard and City of Bremerton v. Kitsap County (***Poulsbo***), CPSGPHB Case No. 92-3-0009c (***2309c***) Final Decision and Order, (Apr. 6, 1993). The challenged portions of Kitsap County's County-wide Planning Policies were **upheld, except** for: policies that direct annexation methods or urban service provision, which were **remanded.** [CPPs - General Discussion – Annexation – Urban Growth – Transformation – ILAs]

Poulsbo, 2309c, Order Granting Kitsap County's Petition for Reconsideration and Modifying Final Decision and Order, (May 17, 1993). Reconsideration was **granted** and the Board clarified that urban governmental services were provided primarily by cities. [Reconsideration – Transformation of Governance – Annexation – PFR]

Poulsbo, 2309c, Finding of Compliance, (Oct. 10, 1993). Kitsap County **complied** with the May 17, 1993 FDO.

SYNOPSIS OF 1993 CASES[60]

CPSGMHB Decisions [With Key Words]

Twin Falls Inc., Weyerhaeuser Real Estate Co., Snohomish County Property Rights Alliance and Darrell R. Harting v. Snohomish County (***Twin Falls***), CPSGPHB[61] Case No. 93-3-0003c (***3303c***), Order on Dispositive Motions, (Jun. 11, 1993). Several issues were **dismissed** from the case for lack of subject matter jurisdiction. [Dismissal - SMJ - Minimum Guidelines - Forest Lands - 180 Days]

Twin Falls, 3303c, Final Decision and Order, (Sep. 7, 1993). The challenged portions of Snohomish County's Interim Forest Land designations and regulations were **upheld**. [Upheld - Abandoned Issues - Minimum Guidelines – Goals - Forest Lands - Existing Use – Property Rights – Interim – Boards – Standard of Review – Discretion – Quasi-Judicial – SEPA – Notice - Public Participation]

Twin Falls, 3303c, Order Granting WRECO's Petition for Reconsideration and Modifying Final Decision and Order; and Order Denying SNOCO PRA's Petition for Reconsideration, (Oct. 6, 1993). The Board **denied** reconsideration to one party but **granted** reconsideration to another, and modified findings of fact and clarified a discussion.

City of Edmonds and City of Lynwood v. Snohomish County (***Edmonds***), CPSGPHB Case No. 93-3-0005c (***3305c***), Final Decision and Order, (Oct. 4, 1993). The challenged portions of Snohomish County's County-wide Planning Policies were **upheld, except** for: policies violating local land use powers, which were **remanded**. [General Discussion – CPPs – Land Use Powers – Allocation – UGAs –Hierarchy – Housing Element – CFE]

Edmonds, 3305c, Finding of Compliance, (Mar. 25, 1994). Snohomish County **complied** with the October 4, 1993 FDO.

Happy Valley Associates, City of Issaquah, Grand and Glacier Ridge Partnerships v. King County (***Happy Valley***), CPSGPHB Case No. 93-3-0008c (***3308c***), Order Granting Respondent King County's Motion to Dismiss and Denying Happy Valley's Motion to Amend Its Petition For Review, (Oct. 25, 1993). The challenge to King County's East Sammamish Community Plan was **dismissed** since it was a pre-existing, non-GMA plan beyond the Board's subject matter jurisdiction. [Dismissal – PFR – Amendment – Pre-GMA – Subarea Plans – CPPs – UGAs]

Northgate Mall Partnership v. City of Seattle (***Northgate***), CPSGPHB Case No. 93-3-0009 (***3309***), Order Granting Seattle's Motion to Dismiss and Denying Northgate Mall's Cross Motion and Its Motion to Strike Statements, (Nov. 8, 1993). The challenge to Seattle's Northgate Plan was **dismissed** since it was a pre-existing, non-GMA plan beyond the Board's subject matter jurisdiction. [Dismissal – Rules of Evidence – SMJ – Pre-GMA]

Association of Rural Residents v. Kitsap County (***Rural Residents***), CPSGPHB Case No. 93-3-0010 (***3310***), Order Granting Dispositive Motions, (Feb. 16, 1994). Certain SEPA issues were **dismissed**

[60] Note that decisions were not necessarily issued in the year the case was filed.
[61] See footnote 2.

since Petitioners had failed to exhaust administrative remedies. [IUGAs - SEPA – Exhaustion – Quasi-judicial – Discretion]

*Rural Residents, 3310***,** Final Decision and Order, (Jun. 3, 1994). Kitsap County's adoption of Interim UGAs was **remanded** since it failed to use OFM projections and locate urban growth within an IUGA. [IUGAs – General Discussion – Hierarchy – Goals – UGAs - OFM Population - Open Space / Greenbelts]

Rural Residents, 3310, Order Denying Kitsap County's Motion for Reconsideration, (Jun. 24, 1994). Kitsap County's request for reconsideration regarding population and UGAs was **denied**.

Rural Residents, 3310, Finding of Noncompliance and Recommendation of Sanctions, (Nov. 18, 1994). Kitsap County **did not comply** with the June 3, 1993 FDO; **sanctions** were recommended to the Governor. [Noncompliance – Sanctions]

SYNOPSIS OF 1994 CASES[62]

CPSGMHB Decisions [With Key Words]

City of Tacoma, City of Milton, City of Puyallup and City of Sumner v. Pierce County (***Tacoma***), CPSGMHB[63] Case No. 94-3-0001 (***4301***), Order on Dispositive Motions, (Mar. 4, 1994). Certain affirmative defenses based on common-law doctrines and equity were **denied** for lack of subject matter jurisdiction. [SMJ]

*Tacoma, 4301***,** Final Decision and Order, (Jul. 5, 1994). Pierce County's Interim Urban Growth Areas were **remanded** to: use OFM 2012 population, adjust urban densities, include open space and greenbelts, clearly define IUGAs, and show its work. The County was given the option of either amending its IUGAs or adopting Final Urban Growth Areas by the compliance date. (The County adopted its Plan, including FUGAs, within the compliance period). [Remand – UGAs - General Discussion – Recap - Transformation of Governance - Urban Growth – IUGAs - Development Regulations - OFM Population - Open Space / Greenbelts – Tiering – CPPs – Discretion]

Tacoma, 4301, Finding of Compliance, (Jan. 18, 1994). Pierce County **complied** with the FDO.

Pilchuck Audubon Society and Snohomish Wetlands Alliance v. Snohomish County (***Pilchuck I***[64]), CPSGMHB Case No. 94-3-0002 (***4302***), Dispositive Order Granting Stipulated Motion, (May 10, 1994). Snohomish County stipulated that it had failed to adopt interim critical areas designations and regulations for protecting critical areas. The County was **directed to comply** by October 1, 1994. [Interim – Failure to Act – Critical Areas]

Pilchuck I, 4302, Finding of Noncompliance, (Oct. 28, 1994). Snohomish County did **not comply** with the Board's 5/10/94 Order; the imposition of **sanctions** was recommended. [Noncompliance – Sanctions – Critical Areas]

Friends of the Law and Bear Creek Citizens for Growth Management v. King County [Blakely Ridge Limited Partnership, City of Issaquah, Glacier Ridge Limited Partnership, Grand Ridge Limited Partnership, Sunrise Ridge Limited Partnership and Quadrant Corporation – Intervenors] (***FOTL I***), CPSGMHB Case No. 94-3-0003 (***4303***), Order on Dispositive Motions, (Apr. 22, 1994). King County **did not comply** with the GMA since it failed to adopt designations and protection for critical areas. The County was **directed to comply**. [Timeliness – Standing – Failure to Act – Critical Areas – Interim]

FOTL I, 4303, Order Denying Reconsideration and FOTL's Motion to Amend Petition, (May 18, 1994). Petitioners' request for reconsideration was **denied**. [Board Rules – 180 days – Compliance – Standing – PFR]

FOTL I, 4303, Finding of Compliance, (Oct. 14, 1994). King County **complied** with the direction of the Board's 4/22/94 Order, by adopting the required designations of critical areas and regulations to protect them. [Compliance – Failure to Act – Critical Areas]

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[62] Note that decisions were not necessarily issued in the year the case was filed.
[63] See footnote 2.
[64] The Roman numeral indicates which case this is of several cases brought by the same petitioner.

City of Black Diamond and Black Diamond Associates v. King County [Palmer Coking Coal Company – Intervenors] (***Black Diamond***), CPSGMHB Case No. 94-3-0004 (***4304***), Order on Dispositive Motion and Order Granting Amicus Status to City of Woodinville, (Jun. 9, 1994). King County stipulated that its IUGAs did **not comply** with the GMA. [IUGAs]

Black Diamond, 4304, Order Dismissing Legal Issues and Case and Directing Amendment to IUGA Map, (Jul. 18, 1994). The case was **dismissed** and the City directed to comply. [IUGA]

Black Diamond, 4304, Finding of Compliance, (Nov. 29, 1994). King County **complied** with the 6/9/94 Order.

Kitsap Citizens for Rural Preservation, Beth Wilson, Charlie Burrow, Tom Donnelly and Charlotte Garrido v. Kitsap County [Kitsap Audubon Society and Port Blakely Tree Farms – Intervenors] (***KCRP***), CPSGMHB Case No. 94-3-0005 (***4305***), Order on Kitsap County's Dispositive Motion, (Jul. 27, 1994). Kitsap County's motion was **granted,** in part, and **denied,** in part. Several legal issues were dismissed others were retained. [Development Regulations – SMJ – Exhaustion – SEPA - Failure to Act - Forest Lands - Sanctions]

KCRP, 4305, Final Decision and Order, (Oct. 25, 1994). Kitsap County's Conservation Easement Ordinance **did not comply** with the GMA since it permitted urban growth in the rural areas, and was **remanded**. [Development Regulations – Rural Element – Rural Densities – SEPA – Exhaustion]

KCRP, 4305, Finding of Compliance, (Jan. 25, 1995). Kitsap County **complied** with the GMA and October 25, 1994 FDO since it repealed its CEO ordinance.

Kitsap County v. City of Poulsbo (***Kitsap***), CPSGMHB Case No. 94-3-0006 (***4306***), Order of Dismissal, (Dec. 2, 1994). The challenge to Poulsbo's Comprehensive Plan was **dismissed** since neither County nor City briefed any issues. [Dismissal – Withdrawal – Abandoned Issues]

Brown v. City of Lake Stevens (***Brown***), CPSGMHB Case No. 94-3-0007 (***4307***), Stipulation and Order of Dismissal, (Nov. 30, 1994). Petitioner stipulated that Lake Stevens had complied with SEPA and the GMA; therefore, the case was **dismissed**.

Friends of the Law and Bear Creek Citizens for Growth Management v. King County [Port Blakely Tree Farms – Intervenor] (***FOTL II***), CPSGMHB Case No. 94-3-0009 (***4309***), Order Granting Dispositive Motions, (Nov. 8, 1994). King County's Comprehensive Plan did **not comply** with the GMA and was **remanded** since it did not include UGAs. [Comprehensive Plan – Failure to Act – UGAs]

FOTL II, 4309, Finding of Compliance, (Jan. 25, 1995). King County adopted its final UGAs; therefore it **complied** with the 11/8/94 Order.

Ann Aagaard, Sue Kienast, Tris Samberg, Cheri Miller, Michael Hablewitz, Craig Bernhart and Judy Fisher v. City of Bothell (***Aagaard***), CPSGMHB Case No. 94-3-0011c (***4311c***), Final Decision and Order, (Feb. 21, 1995). The challenged portions of Bothell's Comprehensive Plan were **upheld, except** for a high-density senior housing policy, which was inconsistent with the capital facilities element and transportation analysis and thus **remanded**. [Remand - Comprehensive Plan – Hierarchy - General Discussion – Framework – Goals - OFM Population – Consistency - Pre-GMA - Subarea Plans – UGAs – LUPP - Open Space / Greenbelts – CPPs - Housing Element – SEPA - Standing]

Aagaard, 4311c, Finding of Compliance, (Aug. 29, 1995). The City of Bothell **complied** with the FDO.

In Re: the Matter of Kitsap County's Twenty Year Growth Management Planning Population Projection (***In Re: Kitsap***), CPSGMHB Case No. 94-3-0012 (***4312***), Order of Dismissal Without Prejudice, (Sep. 29, 1994). Kitsap County withdrew its petition, but filed a new petition naming OFM as respondent (*See:* 94-3-0014). Therefore, the case was **dismissed**.

City of Sumner v. Pierce County Boundary Review Board and City of Pacific (***Sumner***), CPSGMHB Case No. 94-3-0013 (***4313***), Order Granting Respondent's Motion to Dismiss, (Dec. 14, 1994). The challenge to the BRB's approval of an annexation to the City of Pacific was **dismissed**, for lack of subject matter jurisdiction. [SMJ]

Kitsap County v. Office of Financial Management ***(Kitsap/OFM),*** CPSGMHB Case No. 94-3-0014 (***4314***), Final Decision and Order, (Mar. 27, 1995). OFM's 2012 population projection for Kitsap County was **upheld**. [OFM Population – General Discussion – Standard of Review]

West Seattle Defense Fund v. City of Seattle (***WSDF I***), CPSGMHB Case No. 94-3-0016 (***4316***), Order Granting Seattle's Motion to Dismiss SEPA Claim [Legal Issue No. 10], (Dec. 30, 1994). WSDF's SEPA challenge was **dismissed** for lack of standing and failure to exhaust administrative remedies. [Standing – Exhaustion - SEPA]

WSDF I, 4316, Final Decision and Order, (Apr. 4, 1995), {Tovar Dissenting}. The challenged portions of Seattle's Comprehensive Plan were **upheld, except** for treatment of Urban Villages and Centers in the CFE and transportation element, which were **remanded**. [Remand – Comprehensive Plan – Precedent – Mandatory Elements – Innovative Techniques - Goals - Subarea Plans - CFE - Localized Analysis –Abandoned Issues – CPPs - OFM Population - Transportation Element – Concurrency - Public Participation]

WSDF I, 4316, Finding of Compliance, (Nov. 2, 1995). Seattle **procedurally complied** with the GMA as set forth in the FDO; substantive compliance is to be resolved in ***WSDF III***. (*See: WSDF III,* CPSGMHB Case No. 95-3-0073 *and WSDF IV,* CPSGMHB Case No. 96-3-0033.) [Compliance – Pre-GMA]

Pilchuck-Newberg Organization, Andrea Moore, Isabel Loveluck, Steven Thomas and Barbara Miles v. Snohomish County [Weyerhaeuser Real Estate Company – Intervenors] (***PNO***), CPSGMHB Case No. 94-3-0018 (***4318***), Final Decision and Order, (Apr. 28, 1995). Certain Petitioners were **dismissed** for lack of standing; Snohomish County's interim forest land regulations **did not comply** with the GMA's definition of forest lands and were **remanded.** [Interim – Forest Lands – SEPA – Standard of Review – Standing]

PNO, 4318, Finding of Noncompliance, (Jul. 24, 1994). Snohomish County **did not comply** with the FDO; **no sanctions** were recommended. [Noncompliance – Sanctions]

Robison, et al., v. City of Bainbridge Island [SBCA and BISD – Intervenors] (***Robison***), CPSGMHB Case No. 94-3-0025c (***4325c***), Order Granting BISD's Dispositive Motion re: Jurisdiction, (Feb. 24, 1995). Petitioner's challenge relating to school impact fees was **dismissed;** the Board lacked subject matter jurisdiction. [SMJ – Impact Fees]

Robison, 4325c, Final Decision and Order, (May 3, 1995). The challenged portions of the City of Bainbridge Island's Comprehensive Plan were **upheld, except** for: incorporation of the County's population allocation, and localized capital facility analysis for the Winslow Urban Core, which were **remanded.** [Comprehensive Plan - Burden of Proof – Incorporation – UGAs – CFE - Localized Analysis – Water - Public Participation - Economic Development Element - Urban Growth – Infrastructure - Transportation Element – CPPs – TDRs – Allocation - Open Space - Rural Element - Rural Densities - Consistency]

Robison, 4325c, Finding of Compliance, (Dec. 11, 1995). Bainbridge Island **procedurally complied** with the FDO. (Note: No new PFRs were filed.)

Kitsap Citizens for Rural Preservation, Zane Thomas, Tom Donnelly and Beth Wilson v. Kitsap County (***KCRP III***), CPSGMHB Case No. 94-3-0027c (***4327c***), Order Granting Motion to Dismiss SEPA Issues, (Feb. 14, 1995). Petitioners' SEPA challenge to the County's CPPs was **dismissed;** Petitioners withdrew their appeal agreeing that the SEPA issues were not ripe. [SEPA – Ripeness]

KCRP III, 4327c, Order of Dismissal Without Prejudice, (Mar. 17, 1995). Petitioners' challenge to Kitsap County's CPPs was **dismissed** since Petitioners withdrew their petition for review.

Terry and Randi Slatten v. Town of Steilacoom (***Slatten***), CPSGMHB Case No. 94-3-0028 (***4328***), Order on Steilacoom's Dispositive Motion, (Feb. 21, 1995). Steilacoom's motion to dismiss several legal issues was **granted** for lack of subject matter jurisdiction and no duty to act. [UGAs – Goals – Impact Fees]

Slatten, 4328, Order Dismissing Legal Issue No. 10, (Feb. 24, 1995). Legal Issue No. 10, which dealt with impact fees, was **dismissed**. The Board had determined in *Robison, 4325*, that it did not have subject matter jurisdiction over challenges to impact fees established pursuant to Chapter 82.02 RCW. [Precedent – SMJ – Impact Fees]

Slatten, 4328, Order of Dismissal, (Mar. 9, 1995). The challenge to Steilacoom's Plan was **dismissed**, since Petitioners withdrew their petition for review.

Corinne Hensley v. Snohomish County, Cross Valley Water District and Alderwood Water District (***Hensley I***), CPSGMHB Case No. 94-3-0029 (***4329***), Order Granting Snohomish County's Dispositive Motion, (Feb. 24, 1995). Petitioner's challenge was **dismissed** for lack of subject matter jurisdiction. [SMJ - Sewer – Water – Consistency]

Wright v. City of Mercer Island (***Wright***), CPSGMHB Case No. 94-3-0030 (***4330***), Order of Dismissal With Prejudice, (Jan. 24, 1995). The parties stipulated to a dismissal of a challenge to OFM population projections and SEPA compliance; therefore, the case was **dismissed**.

SYNOPSIS OF 1995 CASES[65]

CPSGMHB Decisions [With Key Words]

Vashon-Maury, et al., v. King County (***Vashon-Maury***), CPSGMHB Case No. 95-3-0008c (***5308c***), Final Decision and Order, (Oct. 23, 1995), {Tovar Dissenting}. The challenged portions of King County's Comprehensive Plan were **upheld, except**: certain map amendments were **invalidated** and **remanded** due to lack of opportunity for public comment; the UGAs for certain rural cities were **remanded**; 5-acre lots in the rural area were **remanded**; and industrial areas in the rural area were **remanded**. [Comprehensive Plan – UGAs - OFM Population - Market Factor - Innovative Techniques – CFE – Water - Forest Lands – Amendments - Public Participation - Rural Element - Rural Densities - Critical Areas – SEPA – Standing – SMJ - Official Notice - Invalidity]

Vashon-Maury, 5308c, Order on Motions to Reconsider and Motion to Correct, (Dec. 1, 1995), {Towne and Tovar Dissenting}. The Board corrected several technical errors in its FDO and reconsidered and reversed its holding on the Bear Creek "Island" UGA. The Bear Creek "Island" UGA was **remanded** to be deleted or designated as a New Fully Contained Community. [UGAs – FCCs]

Vashon-Maury, 5308c, Finding of Compliance, May 24, 1996. The Board found **procedural compliance** with the Board's FDO and the Act. (*See: Buckles,* CPSGMHB Case No. 96-3-0022c.)

King County v. CPSGMHB (***Bear Creek***), [Supreme Court Remand of a portion of *Vashon Maury v. King County*, CPSGMHB Case No. 95-3-0008c], (***5308c***), Second Precompliance Hearing Order, (Jan. 24,2000). The Board determined that for its deliberations on this case, remanded from the State Supreme Court, the Board's review would be based upon the "clearly erroneous standard." [Burden of Proof - Retroactive - Standard of Review]

Bear Creek, 5308c, Order on Quadrant's Motions to Dismiss and to Take Official Notice, (Apr. 4, 2000). The Board determined that the question of whether the Bear Creek area was justified as a UGA or FCC was properly before the Board and not moot. The Motion to Dismiss was **denied**. [FCC – UGA – Mootness – Official Notice]

Bear Creek, 5308c, Order on Supreme Court Remand, (Jun. 15, 2000) {McGuire concurring, North concurring and Tovar dissenting}. Designation of the Bear Creek area as a UGA **did not comply** with the GMA's locational criteria for designating urban growth areas. However, the County's designation of the area as a fully contained community and any UGA designation flowing from approval of an FCC permit **comply** with the provisions of the GMA. The case was **remanded** with direction to the County to remove any UGA designations of the Bear Creek area based solely upon compliance with the locational criteria for UGA designation in the GMA. [UGAs – FCCs – CPPs – General Discussion – Definitions – CTED – OFM Population – Discretion – Deference – Zoning]

Bear Creek, 5308c, Order on FOTL's Motion for Reconsideration, (Aug. 22, 2000). The Board denied Petitioner's request to reconsider its determination that the Bear Creek area FCC was fully contained. [FCC – Reconsideration]

[65] Note that decisions were not necessarily issued in the year the case was filed.

Bear Creek, 5308c, Order Finding Partial Noncompliance and Partial Invalidity, (Nov. 3, 2000). [On November 8, 2000, the Board issued a Scrivener's Error Correction to this Order.] The County's effort to comply with the GMA, by the adoption of an emergency interim ordinance, was found **not to comply** with the public participation requirements of the GMA; additionally, a noncompliant legend designation on the zoning map was determined to be **invalid**. . [Invalidity – Public Participation – Emergency – Amendment – Development Regulations – Interim – Plan – Land Use Powers – Zoning]

Bear Creek, 5308c, Order Rescinding Partial Invalidity and Finding Compliance, (Jan. 8, 2001). The County took the necessary actions to correct the map legend and held a public hearing on the remand items. The Board **rescinded invalidity** and entered a **finding of compliance**. [Compliance – Invalidity – Public Participation – Interim – Zoning]

The Children's Alliance and Low Income Housing Institute v. City of Bellevue (***Children's I***), CPSGMHB Case No. 95-3-0011 (***5311***), Order Partially Granting Bellevue's Dispositive Motion, (May 17, 1995). Several of the challenges to Bellevue's development regulations pertaining to group homes were **dismissed**, since certain cited GMA requirements applied to plans, not development regulations. [Dismissal - Development Regulation - Summary Judgment – Procedural – Criteria – CPPs - Consistency]

Children's I, 5311, Final Decision and Order, (Jul. 25, 1995). The City's development regulations pertaining to group homes were **remanded** for **non-compliance** with the nondiscriminatory and essential public facility provisions of the GMA. (*See: Children's II,* CPSGMHB Case No. 96-3-0023.) [Development Regulations – EPFs - Discrimination - Abandoned Issues – CTED - Housing Element]

Children's I, 5311, Finding of Noncompliance, (Feb. 2, 1996). Bellevue acknowledged that it was unable to repeal or amend its plan to comply with the Board's Order by the deadline in the FDO; therefore, the Board **recommended sanctions** be imposed to the extent necessary to bring about compliance. [Noncompliance – Sanctions – Invalidity]

City of Gig Harbor, et al., v. Pierce County (***Gig Harbor***), CPSGMHB Case No. 95-3-0016c (***5316c***), Final Decision and Order, (Oct. 31, 1995). The challenged portions of Pierce County's Comprehensive Plan were **upheld, except** for: lack of an open space map; failure to incorporate its market factor; allowing urban uses in the rural area (Rural Activity Centers); and rural lot sizes, which were **remanded.** [Remand – Comprehensive Plan - Official Notice – CFE - Open Space - Critical Areas - Agricultural Lands – CPPs – UGAs - OFM Population - Allocation – Market Factor – Rural Densities]

Gig Harbor, 5316c, Finding of Compliance, (May 20, 1996). Pierce County **complied** with the FDO.

Pierce County v. City of Gig Harbor (***Pierce County***), CPSGMHB Case No. 95-3-0020 (***5320***), Stipulated Order of Dismissal, (Apr. 25, 1995). Pierce County's challenge to Gig Harbor's comprehensive plan was **dismissed**, since the County withdrew the petition. [Dismissal – Withdrawal]

Bremerton, et al., v. Kitsap County (***Bremerton***), CPSGMHB Case No. 95-3-0039c (***5339c***), Order on County's Dispositive Motions, (Jun. 5, 1995), {Philley dissenting}. Various SEPA challenges were **dismissed** for failure to exhaust administrative remedies and other parties' SEPA challenges were **dismissed** for lack of standing. [SMJ – Exhaustion – Standing – SEPA]

Bremerton, 5339c, Final Decision and Order, (Oct. 6, 1995). Kitsap County's entire Comprehensive Plan and all its implementing regulations were found **not in compliance** with the GMA and were

remanded and **invalidated.** The Plan was incomplete, did not address certain GMA requirements and inadequately addressed others. [Comprehensive Plan - Development Regulations - General Discussion – UGAs - Market Factor - Rural Element - Rural Densities – Suburban - OFM Population – CFE – EPFs - Forest Lands - Invalidity]

Bremerton, 5339c, Order on Poulsbo's Request for Clarification, (Nov. 6, 1995). Since the Board does not have subject matter jurisdiction over the annexation statutes, it **could not clarify** whether Poulsbo could annex territory since Kitsap County's Comprehensive Plan, including UGAs, had been invalidated. [UGAs – SMJ - Annexation]

Bremerton, 5339c, Finding of Noncompliance, (May 28, 1996). Kitsap County failed to adopt a comprehensive plan and implementing regulations by April 3, 1996 – within the 180-day deadline allowed by the GMA and the Board's FDO. Therefore, Kitsap County was found **not in compliance** with the GMA; the determination of **invalidity** on the plan and regulations was **not rescinded**, and gubernatorial **sanctions were recommended**. However, the Board requested that the Governor defer taking action on sanctions until after September 3, 1996. [Noncompliance – Sanctions – Invalidity]

Bremerton v. Kitsap County / Port Gamble v. Kitsap County (***Bremerton/Port Gamble)***, CPSGMHB Case No. 95-3-0039c Coordinated with Case No. 97-3-0024c ***(5339c/7324c)***, Order on Motions, (Apr. 22, 1997). Various parties were either **granted** or **denied** participation or standing based upon the facts of the petition or request for participation. [Public Participation – Standing]

Bremerton/Port Gamble, 5339c/7324c, Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble,* (Sep. 8, 1997). The Board **rescinded** an existing determination of **invalidity** on the entire Comprehensive Plan and **withdrew** a recommendation to the Governor to impose contingent **sanctions.** However, the amended Plan's Rural and Land Use Elements, including UGAs, were **invalidated**; other elements were found **not to comply** with the GMA; the entire plan was **remanded** for consistency review. The County was also directed to adopt permanent critical area and natural resource lands designations and implementing regulations at the time of Plan adoption. [Comprehensive Plan – Development Regulations – UGAs – Rural Element - Rural Densities - Land Use - Forest Lands - Critical Areas – SEPA – CFE - Transportation Element – CPPs - OFM Population - Public Participation - Invalidity]

Bremerton, 5339c, Order Denying County's Motion and Notice of Invalidity Hearing, (May 22, 1998). The County's motion for an expedited compliance hearing was **denied** as untimely. However, the Board separated the invalidity and compliance portions of the case and expedited the invalidity hearing. [Compliance – Timeliness – Invalidity]

Bremerton, 5339c, Order Consolidating Schedules for Invalidity and Compliance and Changing Case Schedule, (Jun. 15, 1998). The County's request to consolidate and delay the Invalidity and Compliance hearings was **granted**. [Compliance – Invalidity]

Bremerton, et al., v. Kitsap County / Alpine Evergreen, et al., v. Kitsap County (***Bremerton/Alpine***), CPSGMHB Case No. 95-3-0039c Coordinated with Case No. 98-3-0032c (***5339c/8332c***), Order on Dispositive Motions, (Oct. 7, 1998). Kitsap County moved to dismiss two PFRs as untimely – one was **granted**, one was **denied**. The County also sought to dismiss parties for lack of SEPA standing – **granted**; and lack of (issue specific) participation standing – **denied**. [Dispositive Motion – Public Participation – PFR – Standing – Timeliness – SEPA]

Bremerton/Alpine, 5339c/8332c, Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine,* (Feb. 8, 1999). The Board's prior Determination of Invalidity in *Bremerton* was **rescinded** and the remanded issues were found to **comply** as to *Bremerton*. The challenged portions of Kitsap's 1998 Comprehensive Plan (*Alpine*) were **upheld, except** for the County's failure to address forest lands, restrictions on annexations within UGAs, designating Port Gamble as a UGA and use of an inappropriate timeframe for the six-year financing plan (CFE). [Invalidity – Compliance - Comprehensive Plan - Development Regulations - Burden of Proof - Public Participation – Notice - Critical Areas – BAS - Forest Lands – UGAs - OFM Population – Allocation - Urban Densities – ADUs – Interjurisdictional – Annexation - Economic Development Element - Market Factor - Rural Element - Rural Densities - Rural Densities – Goals – CFE - Transportation Element - Urban Services - Drainage]

West Seattle Defense Fund, Neighborhood Rights Campaign and Charlie Chong v. City of Seattle (***WSDF II***), CPSGMHB Case No. 95-3-0040 (***5340***), Order Denying WSDF's Dispositive Motion, (Jun. 16, 1995). Since only portions of the Seattle's Comprehensive Plan were remanded, only portions of the City's development regulations may be subject to challenge, if they implement a remanded portion of the plan. Therefore, WSDF's motion to remand the development regulations was **denied**. [Development Regulations]

WSDF II, 5340, Final Decision and Order, (Sep. 11, 1995). The challenged portions of Seattle's Development Regulations and Map were **upheld, except** for the urban commercial village areas within urban villages, which were **remanded**. [Development B*remerton/Alpine* – Consistency – Interim – Goals – Concurrency]

WSDF II, 5340, Finding of Compliance, (Jan. 11, 1996). Seattle was found to have **procedurally complied** with the GMA and FDO.

Alberg, et al., v. King County (***Alberg***)*,* CPSGMHB Case No. 95-3-0041c (***5341c***)**,** Final Decision and Order, (Sep. 13, 1995). The challenged portions of King County's Development Regulations were **upheld, except** for several provisions related to open space/agricultural land preservation, and uses on the land, which were **remanded**. [Remand – Development Regulations– Consistency – Mineral Lands – Agricultural Lands – Critical Areas – Indispensable Party – Recap – SMJ – Property Rights]

Alberg, 5341c, Finding of Compliance, (Jan. 30, 1996). King County **complied** with the GMA and FDO.

Snoqualmie River Valley Alliance v. City of Snoqualmie [Weyerhaeuser Real Estate Company – Intervenor] (***Valley Alliance***), CPSGMHB Case No. 95-3-0042 (***5342***), Order of Dismissal, (May 23, 1995). Petitioners withdrew their petition for review. The Board **dismissed** the case.

Hensley, et al., v. Snohomish County (***Hensley II***)*,* CPSGMHB Case No. 95-3-0043 (***5343***)**,** Order Granting Hensley's Dispositive Motion, (Jun. 9, 1995). Snohomish County was found **not in compliance** with the requirements of the GMA, since it failed to meet the statutory deadlines to adopt its comprehensive plan, UGAs and implementing regulations. The County was **directed to comply**. [Comprehensive Plan – Development Regulations – Failure to Act – Pre-GMA]

Hensley II, 5343, Finding of Noncompliance, (Nov. 3, 1995). Snohomish County failed to adopt implementing regulations (zoning) by September 6, 1995, as set forth in the Board's FDO. Therefore,

Snohomish County was found **not in compliance** with the GMA, and gubernatorial **sanctions were recommended**. *See: Kelly,* CPSGMHB Case No. 97-3-0012c. [Noncompliance – Sanctions]

Concerned Citizens for Sky Valley v. City of Gold Bar (***CCSV***), CPSGMHB Case No 95-3-0044 (***5344***), Order Granting Dispositive Motion of Concerned Citizens for Sky Valley Regarding Legal Issues 1, 2, 3 and 4, (Jun. 14, 1995). Gold Bar was found **not in compliance** with the requirements of the GMA, since it failed to meet the statutory deadline in designating and protecting critical areas and resource lands, and adopting its comprehensive plan, UGAs and implementing regulations. The City was **directed to comply**. [Comprehensive Plan – Failure to Act – Pre-GMA]

CCSV, 5344, Finding of Compliance, (Jan. 9, 1996). Gold Bar **complied** with the adoption requirements of the GMA as directed in the Board's 6/14/95 Order.
Pilchuck Audubon Society v. Snohomish County (Master Builders Association and Snohomish County Realtors Association – Intervenors) (***Pilchuck II***), CPSGMHB Case No. 95-3-0047c (***5347c***), Order Granting Snohomish County's Dispositive Motion to Dismiss SEPA Claims, (Aug. 17, 1995). Several SEPA claims were **dismissed** for lack of standing. [PFR – Standing –SEPA]

Pilchuck II, 5347c, Final Decision and Order, (Dec. 6, 1995). The challenged portions of Snohomish County's critical areas ordinance were **upheld, except** for: its failure to designate and protect all critical areas; define fish and wildlife habitat areas, and its exemption process, which were **remanded**. [Goals – Critical Areas – Forest Lands – Abandoned Issues – Definitions – Minimum Guidelines – Interim – Public Participation – SEPA]

Pilchuck II, 5347c, Finding of Compliance, (Jul. 18, 1996), {Tovar dissenting}. (*See also*: Amended Finding of Compliance, (Aug. 14, 1996). Snohomish County **procedurally complied** with the requirements of the GMA as set forth in the Board's December 6, 1995 FDO. Substantive Compliance is addressed in *Tulalip Tribes of Washington v. Snohomish County,* CPSGMHB Case No. 96-3-0029**.** [Compliance – Savings Clause – BAS]

Thomas Bigford v. City of Kent (***Bigford***), CPSGMHB Case No. 95-3-0048 (***5348***), Order of Dismissal, (Aug. 7, 1995). Petitioner's challenge to Kent's comprehensive plan was **dismissed**, since neither the petitioner nor his representative appeared at the prehearing conference. [Default]

Burlington Northern Railroad v. City of Auburn (***BNRR***), CPSGMHB Case No. 95-3-0050 (***5350***), Order of Dismissal, (Aug. 30, 1995). A challenge to Auburn's Comprehensive Plan was **dismissed**, since its adoption of the plan by resolution did not constitute adoption of a plan as required by the GMA. [Dismissal - Comprehensive Plan – Adoption - Failure to Act]

Association to Protect Anderson Creek, et al., v. City of Bremerton [Sciepko and Lunde – Intervenors] (***Anderson Creek***), CPSGMHB Case No. 95-3-0053c (***5353c***), Order on Bremerton's Dispositive Motions, (Oct. 18, 1995). Certain issues were **dismissed** from the appeal due to several procedural deficiencies, including standing and subject matter jurisdiction. [SEPA – Exhaustion – Standing – SMJ – Annexation - Impact Fees - Indispensable Party - Timeliness]

Anderson Creek, 5353c, Final Decision and Order, (Dec. 26, 1995). The challenged portions of Bremerton's Comprehensive Plan were **upheld, except** for: the need to adopt it by ordinance, internal inconsistency of the land use element, and factual errors, which were **remanded**. [Comprehensive

Plan – Adoption – Public Participation – Open Space / Greenbelts – CFE – Critical Areas – CPPs – Consistency]

Anderson Creek, 5353c, Finding of Compliance, (Apr. 15, 1996). Bremerton **complied** with the requirements of the GMA as set forth in the FDO. Public participation was adequate, given the 62-day compliance period.

South Bellevue Partners Limited Partnership and South Bellevue Development, Inc. v. City of Bellevue and Issaquah School District No. 411 (***South Bellevue***), CPSGMHB Case No 95-3-0055 (***5355***), Order of Dismissal, (Nov. 30, 1995). A challenge to Bellevue's ordinance adopting school impact fees was **dismissed** for lack of subject matter jurisdiction. [SMJ – Impact Fees – Board Rules]

Agriculture for Tomorrow v. City of Arlington (***AFT***), CPSGMHB Case No. 95-3-0056 (***5356***), Final Decision and Order, (Feb. 13, 1996). The challenged portions of Arlington's Comprehensive Plan and regulations were **upheld, except** for: failure to adopt critical area regulations by ordinance, identification of open space corridors, and review of flooding, drainage and stormwater runoff, which were **remanded**. [Development Regulations – UGAs - Critical Areas - Land Use - Open Space Interjurisdictional - Public Participation – Consistency – Goals - Drainage]

AFT, 5356, Finding of Compliance, (Jul. 23, 1996). Arlington **complied** with the requirements of the GMA as set forth in the FDO.

Jon T. Salisbury, Gerald C. Schmitz, and Connells Prairie Community Council v. City of Bonney Lake (***Salisbury***), CPSGMHB Case No. 95-3-0058 (***5358***), Order Granting Bonney Lake's Motion to Dismiss, (Oct. 27, 1995). The challenge to the capital facilities element of Bonney Lake's Plan was **dismissed** for improper and untimely service. [Service]

Peninsula Neighborhood Association v. Pierce County (***PNA I***), CPSGMHB Case No. 95-3-0059 (***5359***), Final Decision and Order, (Jan. 24, 1996). Petitioner's challenge to Pierce County's environmental review of its comprehensive plan was **dismissed** since the filing of the petition was untimely. [SEPA – Timeliness]

Sky Valley, et al., v. Snohomish County [Association of Rural Land Owners, Snohomish County Realtors, Gold Bar, Hensley and FPD #7 – Intervenors] (***Sky Valley***), CPSGMHB Case No. 95-3-0068c (***5368c***), Order on Dispositive Motions, (Jan. 9, 1996). Certain issues and parties were **dismissed** from the proceeding for lack of standing, inadequate service and withdrawal. [Intervention – Service – Standing - PFR]

Sky Valley, 5368c, Final Decision and Order, (Mar. 12, 1996). The challenged portions of Snohomish County's Comprehensive Plan were **upheld, except** for: showing work for rural designations, 5-acre rural designations generally and adjacent to the UGA, clustered developments in rural area, Maltby UGA designation, EPF siting, designation of certain forest lands, and criteria for designating forest lands, which were **remanded.** [Comprehensive Plan - APA Rules – SMJ – Standing - Abandoned Issues - Public Participation – UGAs - Rural Element - Rural Densities - Land Use Pattern – Goals – Consistency - Pre-GMA - Subarea Plans - Agricultural Lands - Forest Lands – Dedesignation – CFE – LUPP - Minimum Guidelines – Implementation – Transportation Element – Concurrency - Open Space / Greenbelts]

Sky Valley, 5368c, Order on Motions to Reconsider and Correct, (Apr. 15, 1996). The FDO was amended to **remand** for identification of lands useful for public purposes and Utility Element provisions. [Reconsideration – LUPP - Utilities Element - Public Participation - Subarea Plans - Transportation Element]

Sky Valley, 5368c, Order Denying Reconsideration and Notice of Compliance Schedule and Briefing Schedule, (Sep. 19, 1996). Snohomish County's motion for extension of time beyond the 180-day statutory period was **denied**. [Reconsideration – 180 Days]

Sky Valley, 5368c, Finding of Noncompliance, Order on Motions, Notice of Second Compliance Hearing, and Briefing Schedule, (Nov. 5, 1996). Within the timeframe stated in the FDO, Snohomish County had **not complied** with any of the remand items identified in the March 12, 1996 FDO. Although requested, neither invalidity nor sanctions were imposed. [Noncompliance – Forest Lands – Invalidity]

Sky Valley, 5368c, Order on Compliance, (Oct. 2, 1997). Third Compliance Hearing {McGuire Dissenting}. The County's adoption of Comprehensive Plan amendments to address six remand issues, was **upheld, except** for one issue, relating to a rural designation in the Darrington area, which was **remanded**. [Comprehensive Plan - Show Your Work - Rural Element - Rural Densities – UGAs - Forest Lands -Utilities Element]

Sky Valley, 5368c, Order on Compliance, (Apr. 23, 1999). Pursuant to a Superior Court Order and Remand from the Board, the County removed Smith and Spencer Islands and the Island Crossing area from the UGA and designated Smith and Spencer Islands and Area B of Island Crossing as Riverway Commercial Farmland, and Area A of Island Crossing as Rural Commercial. The Board concurred with the County's findings and conclusions and adopted and incorporated them as its own, thereby **affirming** the County's actions. [Adjacent - Agricultural Land – Consistency – Definitions - Land Use Element – NRLs - Rural Element – UGA - Location]

Sky Valley, 5368c, Finding of Compliance (Jun. 29, 1999), {McGuire concurring}. This portion of the *Sky Valley* case involved the Darrington remand. Pursuant to the Board's First and Second Orders on Compliance, the County amended the land use designations in the Darrington Valley so they would reflect appropriate rural densities. Snohomish County's action **complied** with the GMA and Board's prior Orders. [Compliance – Rural Density]

South Lake Union Defense Fund v. City of Seattle (***South Lake Union***), CPSGMHB Case No. 95-3-0070 (***5370***), Order of Dismissal, (Oct. 19, 1995). Petitioner's challenge to the South Lake Union Plan for the proposed Seattle Commons was **dismissed**, since the City stipulated that the challenged plan was null and void.

Peninsula Neighborhood Association v. Pierce County (***PNA II***), CPSGMHB Case No. 95-3-0071 (***5371***), Order Denying Pierce County's Motion to Dismiss, (Jan. 9, 1996). The County's motion to dismiss was **denied**, since equitable doctrines are beyond the Board's jurisdiction. [SMJ – Mootness]

PNA II, 5371, Final Decision and Order, (Mar. 20, 1996). Pierce County's Development Regulations (zoning) implementing its Comprehensive Plan were found **not in compliance** with the GMA and were **remanded** to amend: shoreline densities, accessory dwelling units, 5-acre zoning and nonconforming use expansion. [Development Regulations - Rural Element - Rural Densities – Shorelines – ADUs - Nonconforming Uses]

PNA II, 5371, Stipulated Order to Dismiss, (Sep. 3, 1996). Petitioners stipulated to compliance pending legislative review of certain amendments; petitioners also withdrew a court appeal. The Board **dismissed**. [[Apparently, the Board never determined whether the County was in compliance!!]]

Benaroya et al., v. City of Redmond [SKCAR and BIAW – Intervenors] (***Benaroya I***), CPSGMHB Case No. 95-3-0072c (***5372c***)**,** Order on Redmond's Dispositive Motions and Benaroya's Motion to Intervene as a Party, (Jan. 9, 1996). Petitioner's challenge to SEPA claims was **dismissed** for failure to exhaust administrative remedies. [Service – SEPA – Exhaustion – Standing – Intervention]

Benaroya I, 5372c, Final Decision and Order, (Mar. 25, 1996). The challenged portions of Redmond's Comprehensive Plan were **upheld, except** for: agricultural land designations, consistency of population projections, and urban densities, which were **remanded**. [Comprehensive Plan - Agricultural Lands – TDRs – Consistency – Discretion – Housing Element - OFM Population - Urban Growth – CPPs - Public Participation - Amendments - Average Net Density – CFE - Transportation Element]

Benaroya I, 5372c, Finding of Compliance, (Mar. 13, 1997). After two compliance hearings, the City of Redmond **complied** with the requirements of the GMA, as set forth in the Board's FDO and remand. [Compliance – Court – UGAs – Duties - Agricultural Lands – TDRs - Discretion]

Benaroya I, 5372c, Order on Remand from Washington Supreme Court, (Dec. 31, 1998). The Supreme Court **upheld** the Board's FDO relating to Redmond's noncompliance with the GMA for failing to establish a transfer of development rights program prior to designating agricultural land within the City. The Court **reversed** the Board's FDO regarding its determination that the Benaroya and Cosmos properties could not be designated as agriculture since they were not primarily devoted to agricultural uses. The Board modified its Order accordingly. [Court - Agricultural Lands – TDRs – Definitions - Natural Resource Lands]

West Seattle Defense Fund, Neighborhood Rights Campaign, and Charles Chong v. City of Seattle (***WSDF III***), CPSGMHB Case No. 95-3-0073 (***5373***)**,** Final Decision and Order, (Apr. 2, 1996). Seattle's Comprehensive Plan was **remanded** to the City with direction to comply with public participation provisions of the GMA and to modify a policy related to neighborhood or subarea plans. [All compliance issues from WSDF I were not addressed. *See: WSDF IV,* CPSGMHB Case No. 96-3-0033.] [Remand - Comprehensive Plan - Public Participation - Subarea Plans]

WSDF III, 5373, Order Partially Granting Petitions for Reconsideration, (May 14, 1996). The Board modified it FDO to make factual corrections. [Reconsideration – Invalidity]

Hapsmith, et al., v. City of Auburn (***Hapsmith I***)**,** CPSGMHB Case No. 95-3-0075c (***5375c***)**,** Final Decision and Order, (May 10, 1996). {*Philley dissenting*} Several Petitioners were **dismissed** for lack of standing, and certain SEPA issues were **dismissed**. The challenged portions of Auburn's Comprehensive Plan were **upheld, except** for: the transportation element's traffic forecast and assessment of impacts on adjacent jurisdictions, policies requiring certain industrial activities to occur inside structures, and lack of a process for siting essential public facilities, which were **remanded**. [Comprehensive Plan – SMJ – Standing – SEPA – Exhaustion – Consistency – Transportation Element – CPPs – EPFs – Goals - Property Rights - Innovative Techniques - Utilities Element]

Hapsmith I, 5375c, Finding of Noncompliance and Notice of Second Compliance Hearing, (Feb. 13, 1997). In the FDO, four items were remanded to the City of Auburn for revision. The City **complied**

with three of the items in the FDO, but **did not comply** with one of the items. [Compliance – EPFs – CPPs]

Hapsmith I, 5375c, Finding of Compliance and Order Denying Motion Requesting Substantive Compliance Hearing, (Jul. 24, 1997). Auburn **complied** with the requirements of the GMA, as set forth in the Board's FDO and remand.

Hapsmith I, 5375c, Second Finding of Compliance Pursuant to Superior Court Judgment in Case No. 97-2-06689-KNT, (Apr. 24, 1998). Although the Board found Auburn in compliance with the Act, Burlington Northern Santa Fe Railroad appealed the action to Superior Court. The Court remanded the case for Auburn, through the Board, to explicitly include the Board's interpretation of ambiguous language in its plan. Auburn **complied** with the Court's order. [Compliance – Court]

Shulman v. City of Bellevue **(*Shulman*)**, CPSGMHB Case No. 95-3-0076 (***5376*),** Final Decision and Order, (May 13, 1996). The challenged portions of Bellevue's Comprehensive Plan amendments relating to urban densities were **upheld**. [Comprehensive Plan – Goals - Property Rights - Urban Densities]

Tahoma Audubon Society and Peninsula Neighborhood Association v. Pierce County (***TAS***), CPSGMHB Case No. 95-3-0077 (***5377***), Stipulation and Order of Dismissal, (Jan. 8, 1996). The case was **dismissed** since the Petitioners withdrew their petition for review.

Keesling v. King County (***Keesling***), CPSGMHB Case No. 95-3-0078 (***5378***), Order Granting Motion to Dismiss for Lack of Timely Service, (Mar. 18, 1996). Petitioner's challenge to a King County development regulation relating to drainage was **dismissed** for lack of timely service. [Service]

Martin P. Hayes v. Kitsap County (***Hayes***), CPSGMHB Case No. 95-3-0081c (***5381c***), Order Granting Motion to Dismiss, (Apr. 23, 1996). Petitioner's challenge to various emergency GMA enactments of the County were **dismissed** as moot, since interim ordinances were adopted by the County to replace them. [Mootness – SMJ – SEPA - Emergency]

SYNOPSIS OF 1996 CASES[66]

CPSGMHB Decisions [With Key Words]

Petition of Peter E. Overton for Declaratory Ruling (***Overton***), CPSGMHB Case No. PDR 96-3-0001 (***6301pdr***), Notice of Decision Not to Issue a Declaratory Ruling, (Feb. 26, 1996). Petitioner's request for a Declaratory Ruling to seek clarification of the Board's ruling in *Bremerton* was **denied,** since the deadline for compliance had not passed and the case had been appealed to Superior Court. [Declaratory Ruling]

Sundquist Homes v. Snohomish County (***Sundquist***), CPSGMHB Case No. 96-3-0001 (***6301***), Order Granting Snohomish County's Motion to Dismiss, (Feb. 21, 1996). Petitioner's challenge to Snohomish County's amendment of a CPP and its Comprehensive Plan was **dismissed** for lack of standing and untimeliness. [CPPs – Standing – Timeliness - OFM Population]

Aaron, Faith, David and Becky Litowitz; Bill, Eldrid, Tony and Patricia Segale; Rajinder and Kulwinder Johal v. City of Federal Way (***Litowitz***), CPSGMHB Case No. 96-3-0005 (***6305***), Final Decision and Order, (Jul. 22, 1996). The challenged portions of Federal Way's comprehensive plan amendments relating to urban densities in critical areas were **upheld**. [Comprehensive Plan – Discretion - Standard of Review - Public Participation – Amendments - General Discussion – UGAs – Duties – Goals - Show Your Work - Critical Areas - Urban Densities - Pre-GMA - Housing Element – CFE - Localized Analysis – Infrastructure – Precedent - Property Rights]

Baker Commodities v. City of Tukwila (***Baker***), CPSGMHB Case No. 96-3-0008 (***6308***), Order Granting Stipulated Dismissal, (May 13, 1996). Petitioner's challenge was **dismissed**, at the request of the parties.

Alan and Karen Cole and Michael and Michele Millsap, Steve and Kim Burnside, Cathy Hyneman, Cynthia and Bryant Meyer, Peter Holt, Randy Mohoric, Julie Anne Cunningham and Laura Roberts, et al., v. Pierce County (***Cole***), CPSGMHB Case No. 96-3-0009c (***6309c***), Final Decision and Order, (Jul. 31, 1996). One Petitioner withdrew, and another Petitioner's challenge was **dismissed** for lack of subject matter jurisdiction; in the remaining challenge Pierce County's amendments to its comprehensive plan were **upheld,** since there was no duty to amend the plan as Petitioner proposed. [Comprehensive Plan – SMJ – Timeliness – Duties – Amendments - General Discussion – Goals - Burden of Proof - Abandoned Issues - Public Participation - Procedural Criteria]

Honesty in Environmental Analysis and Legislation v. City of Seattle (***HEAL***), CPSGMHB Case No. 96-3-0012 (***6312***), Final Decision and Order, (Aug. 21, 1996). Several individual Petitioners were **dismissed** for lack of standing, and a challenge to a resolution amending city policies for critical area regulations was **dismissed** for lack of subject matter jurisdiction; in the remaining challenge Seattle's amendments to its critical areas ordinance were **upheld**. [Development Regulations – Exhibits – Official Notice – Standing – SMJ – Amendment – Critical Areas – BAS – Court]

[66] Note that decisions were not necessarily issued in the year the case was filed.

H.E.A.L., 6312, Order on Remand [Court of Appeals Division I, Remand of Case No. 40939-5-I and Mandate of Superior Court Case No. 9602-24695-6.SEA], (Oct. 4, 2001), {Tovar Concurring}. The Court of Appeals directed the Board to determine whether the City of Seattle's steep slope *policies* complied with the best available science requirements of RCW 36.70A.172(1). [Note: The Board had previously found that the City's critical areas (steep slope) regulations complied with .172(1).] The Board found that the steep slope policies **complied** with the GMA. [BAS – Standing – Critical Areas]

COPAC-Preston Mill Inc. v. King County (***COPAC***), CPSGMHB Case No. 96-3-0013c (***6313c***), Final Decision and Order, (Aug. 21, 1996). The challenged portions of King County's comprehensive plan amendments and forestry land map were **upheld, except** the County stipulated to a **remand** regarding one plan policy. [Comprehensive Plan - Official Notice - General Discussion – Record – CPPs - Forest Lands – Amendments – Duties - Discretion]

COPAC, 6313c, Finding of Compliance, (Nov. 27, 1997). The County **complied** with the requirements of the GMA, as set forth in the Board's FDO.

Hapsmith v. City of Auburn (***Hapsmith II***), CPSGMHB Case No. 96-3-0014 (***6314***), Order Granting City of Auburn's Motion to Dismiss, (Jun. 10, 1996). Petitioner's challenge to the Auburn's plan amendments was **dismissed** for lack of standing. [Comprehensive Plan – Standing – SEPA]

Harston v. East Bellevue Community Council and the City of Bellevue (***Harston***), CPSGMHB Case No. 96-3-0015 (***6315***), Order Granting Stipulated Dismissal, (Aug. 1, 1996). The challenge to the City's action was **dismissed**, since the Superior Court entered a Stipulated Partial Judgment, therefore making the petition moot. [Mootness]

Banigan, et al., v. Kitsap County (***Banigan***), CPSGMHB Case No. 96-3-0016c (***6316c***), Order Granting Dispositive Motions, (Jul. 29, 1996). The challenge to the termination of Kitsap County's renewal of adoption of Interim UGAs and Interim Zoning and Critical Areas ordinances, in light of the Board's invalidation of the County plan in a prior FDO, was **dismissed**. [Interim – Abandoned Issues – Standing – PFR]

Association of Rural Residents v. Kitsap County (***Rural Residents II***), CPSGMHB Case No. 96-3-0017 (***6317***), Order Granting Stipulated Dismissal, (May 13, 1996). Petitioner's challenge to the Kitsap County's approval of a planned unit development for Apple Tree Point, as a violation of the GMA, was **dismissed**; the parties stipulated and the Board agreed, that it did not have subject matter jurisdiction.

Send the Commons Back to Boston v. City of Seattle (***SCBB***), CPSGMHB Case No. 96-3-0018 (***6318***), Order of Dismissal, (Jul. 2, 1996). SCBB's challenge to the Seattle's plan was **dismissed; t**he petitioner withdrew its PFR.

Cosmos Development and Administration Corp., and Universal Holdings Ltd. Partnership v. City of Redmond (***Cosmos***), CPSGMHB Case No. 96-3-0019 (***6319***), Order on Dispositive Motions, (Jun. 17, 1996). Petitioners' challenge to Redmond's adoption of a transferable development rights (TDR) program was **dismissed.** The City amended the challenged ordinance to cure alleged defects. [Development Regulations – TDRs – Burden of Proof – Record – Agricultural Lands]

Cosmos, 6319, Order of Dismissal, (Jul. 12, 1996). Petitioner's challenge to the City's action was **dismissed**; petitioners withdrew their PFR.

Buckles, et al., v. King County (***Buckles***), CPSGMHB Case No. 95-3-0022c (***6322c***), Final Decision and Order, (Nov. 12, 1996), {Tovar dissenting}. The challenged portions of King County's comprehensive plan amendments (made in response to the Board's FDO and remand in *Vashon-Maury, 5308*) were **upheld**. [Comprehensive Plan - Property Rights – Consistency – Notice – Goals - Housing Element - Public Participation – Standing – SEPA – SMJ - Quasi-Judicial - Abandoned Issues – UGAs - FCCs]

Buckles, 6322c, Order Denying Reconsideration, (Dec. 18, 1996). Petitioner's request for reconsideration was **denied**.

Buckles, 6322c, Superior Court Remand of Case No. 96-2-31900-7.KNT CPSGMHB Case No 96-3-0022c *Buckles v. King County [Duwamish Portion],* Order Finding Noncompliance and Notice of Compliance Hearing, (Apr. 19, 2001). The Court of Appeals – Division I upheld the Board's FDO in the *Buckles* case, but remanded the Duwamish Valley portion of the case because the Board denied Duwamish's request to supplement the record with rebuttal evidence at the hearing on the merits. On remand, the Board admitted the rebuttal evidence and concluded that the County had failed to provide effective notice. The case was remanded to the County for failing to comply with the notice and public participation requirements of the Act. [Notice – Public Participation]

Buckles, 6322c, Superior Court Remand of Case No. 96-2-31900-7.KNT CPSGMHB Case No. 96-3-0022c [Duwamish Portion], Order Finding Compliance, (Jul. 31, 2001). [Note: The Board's decision in this matter was pursuant to a remand from the Court of Appeals Division I in Duwamish Valley Neighborhood Preservation Coalition v. CPSGMHB, No. 41523-9-I.] On remand, the County provided adequate notice and the opportunity for public comment on the proposed amendments; therefore, the Board entered a **Finding of Compliance**.

The Children's Alliance and Low Income Housing Institute v. City of Bellevue (***Children's II***), CPSGMHB Case No. 96-3-0023 (***6323***), Final Decision and Order, (Nov. 13, 1996). The challenged portions of Bellevue's amendments to its plan and development regulations, adopted pursuant to the Board's FDO and remand in *Children's I,* were **upheld**. Once Bellevue responded to the remand by adopting amendments, the Board withdrew its recommendation for **sanctions**. [Comprehensive Plan - Development Regulations – EPFs - Group Homes – Goals - Housing Element – Consistency – CPPs – CTED - Notice]

City of Arlington v. City of Marysville (***Arlington***), CPSGMHB Case No. 96-3-0024 (***6324***), Order Granting Stipulated Dismissal, (Oct. 15, 1996). Petitioner's challenge to the City's plan was **dismissed**. Petitioner withdrew its PFR.

John Wallock v. City of Everett (***Wallock I***), CPSGMHB Case No. 96-3-0025 (***6325***), Final Decision and Order, (Dec. 3, 1996). Petitioner's challenge to Everett's adoption of emergency interim adult entertainment regulations and plan amendments was **dismissed** and the regulations **upheld**. [Comprehensive Plan – Development Regulations – Interim – Emergency – Public Participation]

Peninsula Neighborhood Association v. Pierce County (***PNA V***), CPSGMHB Case No. 96-3-0026 (***6326***), Stipulated Order of Dismissal, (Aug. 27, 1996). Petitioner's challenge to Pierce County's plan was **dismissed**. Petitioner withdrew its PFR.

McGowan, et al., v. Pierce County (***McGowan***), CPSGMHB Case No. 96-3-0027 (***6327***), Order on Motions, (Sep. 5, 1996). Petitioner's challenge to Pierce County's development regulations was **dismissed** for lack of standing. [Notice – Standing – Amendments Comprehensive Plan]

McGowan, 6327, Order Denying Reconsideration, (Oct. 9, 1996). Petitioner's motion for reconsideration was **denied**.

Dr. Herbert Battrum v. City of Redmond (***Battrum***), CPSGMHB Case No. 96-3-0028 (***6328***), Order Dismissing Dr. Herbert Battrum's Petition for Review, (Oct. 18, 1996). Petitioner's challenge to Redmond's development regulations was **dismissed.** Petitioner withdrew the PFR.

Tulalip Tribes of Washington v. Snohomish County (***Tulalip***), CPSGMHB Case No. 96-3-0029 (***6329***), Final Decision and Order, (Jan. 8, 1997). The challenged portions of Snohomish County's amendments to its critical areas regulations were **upheld.** [Development Regulations – Critical Areas – Abandoned Issues – BAS – Incentives]

Tulalip, 6329, Order Denying Petition for Reconsideration, (Feb. 19, 1997). Petitioner's request for reconsideration was **denied**.

Tacoma Mall Partnership v. City of Tacoma (***Tacoma Mall I***), CPSGMHB Case No. 96-3-0030 (***6330***), Order Granting Stipulated Dismissal, (Nov. 1, 1996). Petitioner's challenge to Tacoma's development regulations regarding movie theaters was **dismissed**. Petitioner withdrew its PFR.

Corrine R. Hensley v. City of Woodinville (***Hensley III***), CPSGMHB Case No. 96-3-0031 (***6331***), Final Decision and Order, (Feb. 25, 1997). The challenged portions of Woodinville's comprehensive plan were **upheld, except** for two areas: review of drainage, flooding and stormwater; and urban densities that were **remanded.** [Comprehensive Plan - Official Notice - Abandoned Issues – UGAs – Consistency – CFE - Urban Services Housing Element - ILAs]

Hensley III, 6331, Finding of Compliance, (Oct. 10, 1997). Woodinville **complied** with the requirements of the GMA, as set forth in the Board's FDO.

City of Des Moines et al., v. The Puget Sound Regional Council and the Port of Seattle (***Des Moines***), CPSGMHB Case No. 96-3-0032 (***6332***), Stipulation and Order of Dismissal, (Oct. 10, 1996). Petitioner's challenge to the Port of Seattle's proposed third runway at SeaTac and the PSRC's approval of the project was **dismissed.** Petitioners withdrew their PFR.

West Seattle Defense Fund and Neighborhood Rights Campaign v. City of Seattle (***WSDF IV***), CPSGMHB Case No. 96-3-0033 (***6333***), Final Decision and Order, (Mar. 24, 1997). The challenged portions of Seattle's plan amendments, adopted pursuant to the Board's FDO and remand in *WSDF I and WSDF III*, were **upheld, except** for lack of citation or reference to the location of the needs analysis in the City's capital facilities and utilities elements, which were **remanded**. (*See: WSDF I,* CPSGMHB Case No. 94-3-0016, and *WSDF III,* CPSGMHB Case No. 95-3-0073) [Comprehensive Plan - General Discussion - Subarea Plans – CFE - Transportation Element - Localized Analysis - OFM Population - Procedural Criteria - Consistency]

WSDF IV, 6333, Finding of Compliance, (Nov. 13, 1997). Seattle **complied** with the requirements of the GMA, as set forth in the Board's FDO and remand. (*See: WSDF I,* CPSGMHB Case No. 94-3-0016, and *WSDF III,* CPSGMHB Case No. 95-3-0073).

Tacoma Mall Partnership v. City of Tacoma (***Tacoma Mall II***), CPSGMHB Case No. 96-3-0034 (***6334***), Order Granting Stipulated Dismissal, (Mar. 21, 1997). Petitioner's challenge to Tacoma's amendment to its development regulations for movie theaters was **dismissed**. Petitioner withdrew the PFR.

Friends of the Law and the Coalition for Public Trust v. King County (***FOTL V***), CPSGMHB Case No. 96-3-0035 (***6335***), Final Decision and Order, (May 12, 1997). Petitioner's allegation that King County failed to act consistently with the King County CPPs was **dismissed** as untimely. [Failure to Act – UGAs – SMJ – Timeliness]

City of Lake Forest Park v. City of Shoreline (***Lake Forest Park***), CPSGMHB Case No. 96-3-0036 (***6336***), Order Granting Dispositive Motions, (Feb. 14, 1997). Petitioner's challenge to Shoreline's adoption of a Resolution regarding future annexations was **dismissed** as not ripe. [SMJ – Annexation – Interim]

John Wallock and DEJA Vu of Everett v. City of Everett (***Wallock II***), CPSGMHB Case No. 96-3-0037 (***6337***), Order Granting Motion to Dismiss, (Feb. 20, 1997). Petitioners' challenge to Everett's amendments to its plan and adult entertainment regulations was **dismissed** for improper service. [Development Regulations - Service]

Wallock II, 6337, Order Denying Petition for Reconsideration, (Mar. 21, 1997). Petitioner's petition for reconsideration was **denied.**

John R. Torrance and William Torrance v. King County (***Torrance***), CPSGMHB Case No. 96-3-0038 (***6338***), Order Granting Dispositive Motion, (Mar. 31, 1997). Petitioners' challenge to King County's plan was **dismissed,** since the County had not failed to act when it did not amend its plan as Petitioner had requested. [Comprehensive Plan – Failure to Act – Amendment]

Peninsula Neighborhood Association v. Pierce County (***PNA IV***), CPSGMHB Case No. 96-3-0039 (***6339***), Order Granting Stipulated Dismissal, (May 2, 1997). Petitioner's challenge to the County's development regulations pertaining to administrative and conditional use permits was **dismissed**. Petitioner withdrew the PFR.

SYNOPSIS OF 1997 CASES[67]

CPSGMHB Decisions [With Key Words]

City of Renton v. City of Newcastle (***Renton***), CPSGMHB Case No. 97-3-0001 PDR (***7301pdr***)**,** Notice of Decision Not to Issue Declaratory Ruling, (Sep. 11, 1997). Renton's Petition for Declaratory Ruling (**PDR**) was **denied** since the City's PFR *(Renton, 7326)* incorporated the issues raised in the PDR. [Declaratory Ruling]

Doreen Johnson, Christy Ellingson, Daniel Palmer, Gil and Marlene Bortelson, Dan and Diane Peterson, James Morrissey Jr., Forrest Wright and Soos Creek Area Response v. City of Black Diamond [Plum Creek Timber Company, L.P. and Palmer Coking Coal Company – Intervenors] (***Johnson I***), CPSGMHB Case No. 97-3-0001 (***7301***), Order Granting Dispositive Motions, (Apr. 4, 1997). Petitioners' challenge to a Resolution approving and authorizing the execution of an interlocal agreement regarding potential future amendments to Black Diamond's plan and regulations was **dismissed**, since the Board lacked subject matter jurisdiction. [SMJ – ILAs]

Doreen Johnson, Christy Ellingson, Daniel Palmer, Gil and Marlene Bortelson and Friends of the Green v. King County [Plum Creek Timber Company, L.P. and Palmer Coking Coal Company – Intervenors] (***Johnson II***), CPSGMHB Case No, 97-3-0002 (***7302***), Final Decision and Order, (Jul. 23, 1997). The County's designation of an Urban Growth Area for the City of Black Diamond, pursuant to an Interlocal Agreement, was **upheld**, **except** for one geographic location – Lake 12, which was remanded. [Comprehensive Plan – UGAs - Show Your Work - Innovative Techniques – CFE - ILAs]

Johnson II, 7302, Finding of Compliance, (Mar. 23, 1998). The County **complied** with the requirements of the GMA, as set forth in the Board's FDO.

Sharon Gilpin v. Washington State Department of Ecology and City of Bainbridge Island (***Gilpin***), CPSGMHB Case No. 97-3-0003 (***7303***), Final Decision and Order, (Jun. 30, 1997). A challenge to the Department of Ecology's approval of Bainbridge Island's amendment to its Shoreline Master Program was **dismissed**, since consistency with the SMA was not alleged. [SMA - General Discussion - Standard of Review]

Friends of Fennel Creek v. Pierce County [City of Bonney Lake – Intervenor] (***Fennel Creek***), CPSGMHB Case No. 97-3-0005 (***7305***), Order on Motions, (Apr. 22, 1997). A challenge to Pierce County's designation of a UGA for the City of Bonney Lake was **dismissed,** since the Petitioners lacked standing to challenge the designation. [Comprehensive Plan – Standing – PFR – UGAs]

David Frick and Park Ryker v. City of Milton [Fife School District – Intervenor] (***Frick***), CPSGMHB Case No. 97-3-0007 (***7307***), Order Granting Dispositive Motion, (Apr. 17, 1997). A challenge to Milton's adoption of school impact fees was **dismissed,** since the Board lacked subject matter jurisdiction. [SMJ – Impact Fees]

[67] Note that decisions were not necessarily issued in the year the case was filed.

City of Tukwila v. City of Seattle (***Tukwila***), CPSGMHB Case No. 97-3-0009 (***7309***), Order Granting Stipulated Dismissal, (Jul. 2, 1997). Tukwila's challenge to Seattle's Plan amendment regarding annexation policies and overlapping Potential Annexation Areas was **dismissed**, at the parties' request.

Benaroya Shareholders Trust, Larry R Benaroya- Trustee and Cosmos Development and Adminsitration Corp. and Universal Holdings LTD. Partnership II v. City of Redmond (***Benaroya II***), CPSGMHB Case No. 97-3-0010c (***7310c***), Order Dismissing Consolidated Case, (Mar. 17, 1997). A challenge to Redmond's adoption of a Plan amendment pursuant to an FDO and remand was **dismissed,** since, at the Compliance Hearing, the Board had determined that the Plan amendment complied with the GMA and FDO. *See: Benaroya,* CPSGMHB Case No. 95-3-0072c. [Dismissal –Comprehensive Plan – Withdrawal]

Kristin Kelly, Carol McDonald, City of Woodinville, 1000 Friends of Snohomish County and Corinne Hensley and Concerned Citizens for Clearview Growth and Land Use v. Snohomish County [Cavalero Hill LLC and Snohomish-Camano Association of Realtors – Intervenors] (***Kelly***), CPSGMHB Case No. 97-3-0012c (***7312c***), Order on Dispositive Motions and Motions to Supplement the Record, (May 8, 1997). A Petitioner was **dismissed** from the *Kelly* case for lack of standing. [Standing]

Kelly, 7312c, Final Decision and Order, (Jul. 30, 1997). The challenged portions of Snohomish County's amendments to its Plan and Development Regulations, pursuant (partially) to an FDO and remand, were **upheld, except** one Plan amendment failed to comply with public participation requirements, and was **remanded** and **invalidated**. [Comprehensive Plan - Development Regulations - Public Participation – UGAs – Annexation - Abandoned Issues – Notice – ILAs - Urban Services - Invalidity]

Kelly, 7312c, Order Finding Noncompliance, (Mar. 31, 1999). Snohomish County chose to address the Plan amendment, invalidated by the Board in the FDO, as part of a subarea plan for the Lake Stevens UGA. After 19 months, the County had not acted to comply or remove invalidity. The Board again **remanded** the Ordinance with direction to **repeal** the invalid amendment. [Public Participation – Invalidity – Notice - Subarea Plans - Land Use Element – UGA-Generally - Compliance]

Kelly, 7312c, Order Rescinding Invalidity and Finding of Compliance (Jun. 28, 1999). Snohomish County's adoption of an ordinance repealing the noncompliant amendments, and a commitment to reconsider its designation in the context of the Lake Stevens Subarea Plan, removed the substantial interference with Goal 11. The Board's determination if invalidity was **rescinded** and a **Finding of Compliance** entered. [Compliance – Invalidity – Goals - Public Participation - Notice]

City of Auburn v. Pierce County and City of Bonney Lake (***Auburn***), CPSGMHB Case No. 97-3-0013 (***7313***), Order Granting Dispositive Motion, (May 1, 1997). A challenge to the Pierce County's adoption of a Coordinated Water System Plan was **dismissed** for lack of subject matter jurisdiction. [SMJ]

Port of Seattle v. City of Des Moines (***Port of Seattle***), CPSGMHB Case No. 97-3-0014 (***7314***), Final Decision and Order, (Aug. 13, 1997), {Tovar concurring}. Des Moines' Plan, which included policies opposing construction of the third runway at Sea-Tac International Airport, was **remanded** and **invalidated** for precluding the siting of an essential public facility. [Comprehensive Plan – EPFs – Duties – Amendments - Invalidity]

Port of Seattle, 7314, Order Finding Noncompliance and Invalidity, and Recommending Contingent Sanctions, (May 26, 1998). Six policies in the City's plan were **invalidated**, including two prior invalidated policies, one newly amended policy, and four unamended polices. The Plan's continued preclusive treatment of EPFs justified **continuing noncompliance** and a **contingent recommendation of sanctions.** [EPFs – Duties – Sanctions - Amendments – Standard of Review]

Port of Seattle, 7314, Recission of Invalidity and Finding of Compliance, (Jan. 5, 1999). Des Moines **complied** with the requirements of the GMA, as set forth in the Board's 5/26/98 Order. The Board **rescinded** its determination of invalidity regarding Plan Policies that precluded the third runway at Seattle Tacoma International Airport. [Invalidity – Compliance – EPFs]

Port Gamble v. Kitsap County (***Port Gamble***), CPSGMHB Case No. 97-3-0024c (***7324c***). *Port Gamble* was coordinated with the compliance hearing for *Bremerton. Port Gamble* was **dismissed** in the coordinated decision. *See: Bremerton/Port Gamble,* 5339c/7324c*, supra.*

City of Renton v. City of Newcastle (***Renton***), CPSGMHB Case No. 97-3-0026 (***7326***), Final Decision and Order, (Feb. 12, 1998). Renton challenged the newly incorporated City of Newcastle's comprehensive plan, specifically its provisions for affordable housing and Potential Annexation Areas. The challenged portions of the plan were **upheld, except** for Newcastle's designation of an overlapping PAA, which was **remanded**. [CPPs – Housing Element – Consistency – Annexation – Overlap - UGAs]

Renton, 7326, Finding of Compliance, (Oct. 6, 1998). Newcastle amended its Plan to eliminate the overlapping Potential Annexation Area, thereby **complying** with the requirements of the Act as set forth in the Board's FDO. [Comprehensive Plan – Annexation – Compliance – Overlap]

Maxine Keesling v. King County (***Keesling***), CPSGMHB Case No. 97-3-0027 (***7327***), Final Decision and Order, (Mar. 23, 1998). Petitioner challenged King County's amendment to its development regulations that eliminated P-suffix conditions and replaced them with Special District Overlays (SDOs). The challenged portions of the County's action were **upheld** since they **complied** with the requirements of the GMA. However, King County admitted to including too great an area in application of its "Tree Removal SDO." The Board encouraged the County to correct its error, even though the ordinance applying the SDO was not before the Board. [Comprehensive Plan - Development Regulations – Amendment - Rural Element - Rural Densities - Agricultural Lands – Notice - Public Participation]

Marcia Morris, Susan Fodor, Margaret Anderson, v. City of Lake Forest Park (***Morris***), CPSGMHB Case No. 97-3-0029c (***7329c***), Order Denying Dispositive Motion re: Standing to Raise Legal Issue No. 5, (Jan. 9, 1998). Lake Forest Park's motion to dismiss for lack of SEPA standing was **denied**. [SEPA –Standing – Failure to Act]

Morris, 7329c, Order of Dismissal, (Feb. 26, 1998). Following several settlement extensions, Lake Forest Park repealed the challenged ordinance thereby rendered the appeal moot. The case was **dismissed**. [Development Regulations – Mootness]

Issaquah 69 Association v. City of Issaquah (***Issaquah 69***), CPSGMHB Case No. 97-3-0030 (***7330***)**,** Order Granting Stipulated Dismissal, (Dec. 16, 1997). Petitioner's challenge was **dismissed**, at the request of the parties. [Comprehensive Plan]

Lakehaven Utility District, Beverly Tweddle and Richard Mayer v. City of Federal Way (***Lakehaven***), CPSGMHB Case No. 97-3-0031 (***7331***)**,** Order on Dispositive Motions, (Mar. 6, 1998). Petitioner's challenge was **dismissed**, since the challenged ordinance did not amend Federal Way's plan and petitioners lacked standing. [SMJ – Standing]

SYNOPSIS OF 1998 CASES[68]

CPSGMHB Decisions [With Key Words]

Warren Posten v Kitsap County (***Posten***), CPSGMHB Case No. 98-3-0001 PDR (***8301pdr***), Notice of Decision Not to Issue Declaratory Ruling, (Oct. 7, 1998). Mr. Posten's Petition for Declaratory Ruling (**PDR**) was **denied**. [Declaratory Ruling]

Port of Seattle v. City of Burien (***Port II***), CPSGMHB Case No. 98-3-0001 (***8301***), Order of Dismissal of Case, (Apr. 28, 1998). Burien amended its Plan to address the issues raised by the Port in its challenge, thereby making the case moot. The case was **dismissed**. [Mootness]

City of Fircrest v. Pierce County (***Fircrest***), CPSGMHB Case No. 98-3-0002 (***8302***). Order on Dispositive Motion, (Mar. 27, 1998). Fircrest's challenge of Pierce County's failure to amend its Plan to designate an overlap Urban Service Area for Fircrest was **dismissed**. There was no GMA duty for the County to amend its Plan. [Amendment – CPPs – UGAs]

Lee Rabie, Keith Inness and Randal Parsons v. City of Burien [Robert Ramboll – Intervenor] (***Rabie***), CPSGMHB Case No. 98-3-0005c (***8305c***), Order on Dispositive Motions, (Apr. 3, 1998). Burien's motion to dismiss for improper service was **denied**, and a Petitioner's motion to direct Burien to suspend efforts to amend its plan was **denied**. [PFR – Service – SMJ]

Rabie, 8305c, Order Granting 90 Day Settlement Extension and Amending Prehearing Order – Final Schedule, (Apr. 17, 1998). The request of all parties for a ninety-day settlement extension for the purpose of negotiating a settlement was **granted**.

Rabie, et. al, and Randall L. Parsons v. City of Burien (***Parsons***), CPSGMHB Case No. 98-3-0011 (***8311***), Order on Motions, Second Order of Consolidation, and Order Amending Prehearing Order, (Apr. 24, 1998). Petitioner's challenge to an ordinance implementing Burien's comprehensive plan was **consolidated** with *Rabie, 8305c,* and its schedule was extended. [180 days – PFR – Consolidation]

Rabie, 8305c, Order Dismissing Petitions, Deferring Consideration of Motions and Announcing Location and Schedule for Hearing, (Sep. 10, 1998). Two Petitioners failed to file prehearing briefs; therefore, their petitions were **dismissed.** [Intervention – Abandoned Issues – Board Rules]

Rabie, 8305c, Final Decision and Order, (Oct. 19, 1998). Petitioners challenged whether Burien's Plan complied with many of the GMA goals. The challenged provisions of the City's Plan were **upheld**. The Plan **complied** with the requirements of the GMA. [Comprehensive Plan – Goals - Abandoned Issues - Property Rights - Critical Areas - Public Participation - Development Regulations]

Upper Green Valley Preservation Society v. King County [Novelty Hill Neighbors, Northshore Youth Soccer Association, City of Woodinville, Pro Parks and Woodinville Fire & Life Safety District – Intervenors] (***Green Valley***), CPSGMHB Case No. 98-3-0008c (***8308c***), Order on Alberg's Motion on Legal Issue No. 3 and Novelty Neighbors' Cross-Motion on Legal Issues 1, 2 and 3, (Apr. 17, 1998). Petitioner's assertion that King County improperly used the legislative process to adjudicate allowed

[68] Note that decisions were not necessarily issued in the year the case was filed.

uses on his property was **dismissed**. [Property Rights - Nonconforming Use - Existing Use - Quasi-Judicial]

Green Valley, 8308c, Final Decision and Order, (Jul. 29, 1998), {McGuire dissenting}. King County's Plan and zoning code amendments, allowing active recreation on designated agricultural lands, were **invalidated** and **remanded**. [Agricultural Lands – Duties – Goals – Interim – Invalidity - Mineral Lands -Public Participation]

Green Valley, 8308c, Order Finding Compliance and Rescinding Invalidity Pursuant to Supreme Court Remand in Upper Green Valley Preservation Society, et al., v. King County, Cause No. 68284-4 and Superior Court Remand in King County v. Central Puget Sound Growth Management Hearings Board, et al., Case No. 98-2-20858-9SEA, (Nov. 21, 2001). The Board's FDO was upheld by the Supreme Court. King County amended its Plan and regulations to comply. The Board entered a **Finding of Compliance**. [Agriculture – Goals]

Robert L. Style v. King County (***Style***), CPSGMHB Case No. 98-3-0009 (***7309***), Order of Dismissal, (Feb. 13, 1998). Petitioner's challenge to the levy vote, by the citizens of King County, for Medic One Emergency Medical Services was **dismissed** *sua sponte* for lack of subject matter jurisdiction. [SMJ]

City of Burien, City of Des Moines, City of Normandy Park and City of Tukwila v. City of Sea-Tac (***Burien***), CPSGMHB Case No. 98-3-0010 (***8310***), Order of Dismissal – Portion of Issue 7 Pertaining to RCW 47.80.023, (Apr. 23, 1998). The parties stipulated, and the Board concurred, that the Board did not have subject matter jurisdiction over Chapter 47.80 RCW; the relevant portion of the legal issue was **dismissed**. [SMJ]

Burien, 8310, Final Decision and Order, (Aug. 10, 1998). The challenged portions of SeaTac's Plan were **upheld** and found to **comply** with the requirements of the GMA. The Airport Coalition Cities challenged SeaTac's Plan amendments which accommodated the third runway at the Seattle Tacoma International Airport. [Comprehensive Plan - Abandoned Issues – EPFs - Public Participation – CPPs – MPPs – Consistency – SEPA - Goals]

Randall L. Parsons v. City of Burien (***Parsons***), CPSGMHB Case No. 98-3-0011 (***8311***), Order on Motions, Second Order of Consolidation, and Order Amending Prehearing Order, (Apr. 24, 1998). Petitioner's challenge to an ordinance implementing Burien's comprehensive plan was **consolidated** with the *Rabie, 8305c,* and its **extended** schedule. (*See: Rabie, 8305c*) [180 days – PFR – Consolidation]

Lawrence Michael Investments, Chevron U.S.A. and Chevron Land and Development Company v. Town of Woodway (***LMI/Chevron***), CPSGMHB Case No. 98-3-0012 (***8312***), Order on Dispositive Motion, (Sep. 2, 1998). Woodway's motion to dismiss was **denied.** The question of whether RCW 36.70A.020(7), .130 and .470 create a duty to consider amendments at least within one year was postponed until the hearing on the merits. [Amendment]

LMI/Chevron, 8312, Final Decision and Order, (Jan. 8, 1999). The challenged amendments to Woodway's Plan, which limited development to a portion of the City's Subarea Plans area, were found **not in compliance** with the requirements of the GMA and were **remanded**. [Comprehensive Plan - Development Regulations – Amendments – Discrimination - Quasi-Judicial - Abandoned Issues – Consistency - Critical Areas – BAS – Discretion - Minimum Guidelines – Deference - General Discussion – UGAs - Urban Densities - Urban Growth - Land Use Element - Land Use Pattern – Duties

– Goals - Subarea Plans - Standard of Review - Housing Element - Property Rights - Transportation Element – CPPs – MPPs - Mandatory Elements - Open Space / Greenbelts]

LMI/Chevron, 8312, Order Finding Noncompliance and Notice of Second Compliance Hearing, (Oct. 7, 1999). Woodway amended its plan to allow urban densities in its Urban Reserve District. However, Woodway's Plan amendment effort was insufficient to achieve full compliance with the GMA. The Board entered a **Finding of Noncompliance** and forwarded it to the Governor – sanctions were not recommended. A second compliance hearing was scheduled. [Noncompliance]

LMI/Chevron, 8312, Finding of Compliance, (Dec. 20, 1999). In its effort to comply with the GMA, Woodway maintained appropriate urban densities in its Plan, amended its future land use map, and repealed portions of prior ordinances to remove provisions that created internal inconsistencies within the Plan. The Board entered a **Finding of Compliance** and notified the Governor that Woodway had achieved compliance. [Compliance]

Philip Hanson, Anne Herfindahl, Anne Woodward, Jake Jacobovitch and Vashoh-Maury Community Council v. King County [Sprint PCS – Intervenor] (***Hanson***), CPSGMHB Case No. 98-4-0015c (***8315c***), Order Granting Dispositive Motion, (Sep. 28, 1998). Petitioners' challenge to King County's issuance of three conditional use permits for wireless communication towers was **dismissed**. [SMJ – Definitions - Dispositive Motion - Development Regulation]

Hanson, 8315c, Order Denying Reconsideration and Motion to Compel, (Oct. 15, 1998). The Board **denied** the request to reconsider its disposition of a motion regarding Board jurisdiction over project permits. [Reconsideration – Dispositive Motion – Board Rules]

Hanson, 8315c, Final Decision and Order, (Dec. 16, 1998). Petitioners' challenge to an amendment to King County's development regulations, asserting the regulation amendments did not comply with GMA plan requirements, was **dismissed** and the regulations **upheld**. [Development Regulation – Plan - Mandatory Elements - Utilities Element - Rural Element - Rural Densities – Definitions – Consistency - Abandoned Issues]

Rural Bainbridge Island and A. Andrus v. City of Bainbridge Island (***RBI***), CPSGMHB Case No. 98-3-0030c (***8330c***), Order on Dispositive Motions, (Oct. 16, 1998). Various Petitioners were **dismissed** for lack of standing. [Dispositive Motion – Standing - SEPA]

RBI, 8330c, Order Dismissing Appeal of Rural Bainbridge Island, (Dec. 28, 1998). Petitioners withdrew their appeal; therefore, the RBI PFR was **dismissed** from the consolidated case. CPSGMHB Case No. 98-3-0030c was recaptioned *Andrus v. City of Bainbridge Island* (***Andrus***) Case No. 98-3-0030 (***8330c***).

Andrus v. City of Bainbridge Island (***Andrus***), CPSGMHB Case No. 98-3-0030c (***8330c***), Final Decision and Order, (Mar. 31, 1999). Bainbridge Island's notice and public participation process for amendments to the Winslow Master Plan, pertaining to the ferry terminal area, did not provide a reasonable opportunity for public review and comment prior to adoption of the subarea plan. The Plan was **remanded**. [Public Participation -- Notice -- Subarea plan --Amendment]

Andrus, 8330c, Finding of Compliance, (Feb. 10, 2000). The Board entered a **Finding of Compliance** for the City regarding the notice and public participation issues surrounding the Winslow Master Plan. [Compliance – Public Participation – Notice]

Alpine Evergreen, et al., v. Kitsap County (***Alpine***), *CPSGMHB Case No. 98-3-0032c* (***8332c***). *Alpine* was coordinated with the compliance hearing for *Bremerton.* While the *Bremerton* portion of the case **complied** with the GMA, the *Alpine* Iportion of the case did **not comply,** and was **remanded** regarding forest lands, annexation restrictions, Port Gamble UGA, and its CFE. *See: Bremerton/Alpine, 5339c/8332c supra.*

Alpine, 8332c, Order Denying Petitions for Reconsideration, (Mar. 5, 1999). Petitioners' request for reconsideration was **denied**.

Alpine, 8332c, Order Denying Posten's Petition for Stay of Effectiveness, (Mar.ch 24, 1999). The Board **denied** the petition for a stay of the *Alpine* FDO, pursuant to RCW 34.05.467. [Board Rules - Presumption of Validity]

Alpine, 8332c, Notice of Hearing, Order of Consolidation of Portion of *Screen I* with *Screen II* and Coordination with Portion of *Alpine* (Jul. 22, 1999).

Alpine, 8332c, Order on Compliance Re: Forestry Issues in *Alpine* and Final Decision and Order in *Screen (**Screen I**)* (Oct. 11, 1999). Kitsap County's designation of forest lands complied with the GMA and one of the Board's remand items (3b) in the February 8, 1999 FDO. The **Finding of Compliance** is included in the FDO in *Screen, et al., v. Kitsap County. [McCormick Land Company – Intervenor]. See: Screen I, 9306c*.

Alpine, 8332c, Order on Compliance with Remand Paragraph 3e in *Alpine* and Final Decision and Order in *Screen* (***Screen II***), (Nov. 22, 1999). Kitsap County addressed one of eight remand items from the Board's FDO. The County removed an inconsistency between the Plan text and Plan map by amending the Plan text. The **Finding of Compliance** is included in the FDO in *Screen II. 9312.* [Compliance – Forestry]

Alpine, 8332c, Order on Compliance with Remand Paragraphs 3a, 3b, 3c, 3g and 3h in *Alpine* (Nov. 22, 1999). The County addressed five of eight remand items from the Board's FDO. The Board entered a **Finding of Compliance** for these five items. [Compliance – Public Participation – Annexation – Transportation – Economic Development Element – Forestry -- Mootness]

Alpine, 8332c. The remaining portion of the compliance case was coordinated with the Board's decision in *Burrow v. Kitsap County*, CPSGMHB Case No. 99-3-0018, Order on Compliance in a Portion of Alpine and Final Decision and Order, (Mar. 29, 2000). The Board entered a **Finding of Compliance** for the County on the capital facilities and Port Gamble UGA compliance issues. [Compliance – CFE – UGA]

Dwayne Lane and Sky Valley v. Snohomish County (***Lane***), CPSGMHB Case No. 98-3-0033c (***8333c***), Order Granting Motion to Dismiss, (Jan. 20, 1999). Petitioner's appeal challenging Snohomish County's designation of agricultural land, pursuant to a Court remand and Board Order, was **dismissed** for failure to serve the PFR on the County Auditor. [Dispositive Motion – Service – Boards Rules – Court]

Union River Basin Protection Association, et al., v. Kitsap County (***URBPA***), CPSGMHB Case No. 98-3-0034 (***8334***), Order Granting Settlement Extension and Continuing Prehearing Conference, (Nov. 25, 1998). The parties agreed to, and the Board **granted,** a 90-day extension pending the Board's decision in *Bremerton/Alpine,* 5339c/8332c. [Extension]

URBPA, 8334, Order Dismissing Petition, (Feb. 26, 1999). Following the Board's FDO in *Alpine,* Petitioners withdrew their PFR. Petitioners' claims were **dismissed**.

Weyerhaeuser Real Estate Company, Land Management Division v. City of Dupont (***WRECO***), CPSGMHB Case No. 98-3-0035 (***8335***), Final Decision and Order, (May 19, 1999). DuPont's notice and public participation process for Plan amendments was limited to adjacent property owners which was determined to be too narrow and limiting to comply with the Act's requirement for broad based public participation. The Ordinance establishing the Plan amendment procedure was **remanded** to revise the notice provisions. [Notice - Public Participation – Record - Dispositive Motions – Standing – PFR – Amendment – Timeliness - Procedural Criteria]

WRECO, 8335, Finding of Compliance (Oct. 14, 1999). DuPont adopted new notice procedures designed to encourage broad public participation and provide effective notice procedures. The Board entered a **Finding of Compliance**. [Compliance – Notice – Public Participation]

Paul P. Carkeek v. King County (***Carkeek***), CPSGMHB Case No. 98-3-0036 (***8336***), Order Granting Stipulated Dismissal, (Oct. 9, 2000). After seven settlement extensions and twenty-two months, the parties reached agreement and the case was **dismissed**. [Settlement Extension – Dismissal]

[69]

SYNOPSIS OF 1999 CASES

CPSGMHB Decisions [With Key Words]

Montlake Community Club, et al. v. City of Seattle (***Montlake***), CPSGMHB Case No. 99-3-0002c (***9302c***), Order on Dispositive Motions, (Apr. 23, 1999). The Board **dismissed** the petition for review filed by Friends of Brooklyn since the organization lacked GMA [participation] standing. SEPA issues were also **dismissed** since the remaining petitioner withdrew the issue. [Amendments - Board Rules – PFR - Public Participation – Publication – SEPA – SMJ – Standing - Timeliness]

Montlake, 9302c, Final Decision and Order (Jul. 30, 1999). The City's adoption of 'portions' of the University Community Urban Center Plan developed by the neighborhood, as the City's Community Plan for the neighborhood, was **upheld**. [Subarea Plans – Adoption – General Discussion – Discretion – Public Participation – Timeliness -- Abandoned Issues – LOS – Concurrency – SEPA]

*Brian Ramey v. City of Seattle (**Ramey Remand**),* [The Board consolidated the Ramey PFR with the Montlake Community Club case. [Superior Court Remand of CPSGMHB Case No. 99-3-0002 – *Ramey* portion] This case is discussed under 2000 decisions.

Sound Transit v. City of Tukwila (***Sound Transit***), CPSGMHB Case No. 99-3-0003 (***9303***), Order on Dispositive Motion (Jun. 18, 1999). The City's motion to dismiss the PFR, alleging that the Director of Sound Transit lacked authority to initiate the challenge was **denied**. [SMJ – Dispositive Motion]

Sound Transit, 9303, Final Decision and Order (Sep. 15, 1999). The City of Tukwila's efforts to influence the location of Sound Transit's preferred, but not selected, light-rail route through use of its plan policies and development regulations **complied** with the GMA. [Plan – Discretion – EPF – Land Use Powers – Regional Planning – Duties - Goals]

Agriculture for Tomorrow (***AFT II***) *v. Snohomish County,* CPSGMHB Case No. 99-3-0004 (***9304***), Order on Dispositive Motion (Jun. 18, 1999). Petitioner's challenge was **dismissed** as untimely. [Amendment – Duty – SMJ – Timeliness]

Screen, et al. v. Kitsap County (***Screen I***), CPSGMHB Case No. 99-3-0006c (***9306c***), Notice of Hearing, Order of Consolidation of Portion of *Screen I* with *Screen II* and Coordination with Portion of *Alpine* (Jul. 22, 1999).

Screen I, 9306c, Order on Compliance Re: Forestry Issues in *Alpine* and Final Decision and Order in *Screen (Screen I)* (Oct. 11, 1999). The County's designation of forest lands complied with the GMA and one of the Board's remand items (3b) in the FDO. The **Finding of Compliance** is included in the FDO in *Screen I, 9306c.* [Compliance – Forest Land]

Pilchuck Audubon Society v. Snohomish County (***Pilchuck IV***), CPSGMHB Case No. 99-3-0007 (***9307***), Order of Dismissal (May 28, 1999). Both parties stipulated to the dismissal of this case, consequently, it was **dismissed**.

[69] Note that decisions were not necessarily issued in the year the case was filed.

Randall L. Parsons v. City of Burien (***Parsons III***), CPSGMHB Case No. 99-3-0008 (***9308***), Order on Dispositive Motion (Aug. 30, 1999). The City amended the Plan Policies that Petitioner sought to have implemented; therefore the challenge became moot, and was **dismissed**. [Mootness]

*Olympic Pipe Line Company v. City of North Bend (**Olympic**)*, CPSGMHB Case No. 99-3-0009 (***9309***), Order of Dismissal (Jul. 15, 1999). Olympic Pipe Line withdrew its petition for review. Therefore, the case was **dismissed**.

Housing Partners, L.L.C.; W. Noel Higa; and The Class of Affordable Housing Advocates v. Snohomish County (***Housing Partners***), CPSGMHB Case No. 99-3-0010 (***9310***), Order of Dismissal, (May 5, 2001). After almost two years, and ten settlement extensions, the parties agreed to a voluntary dismissal of Housing Partner's challenge to the County's adoption of an emergency ordinance modifying its development regulations. The Board **dismissed** the petition for review. [Emergency – Dismissal]

The Westcot Company and Environmental Transport v. City of Des Moines (***Westcot***), CPSGMHB Case No. 99-3-0011 (***9311***), Order of Dismissal, (Jan. 26, 2000). Following three settlement extensions, the parties agreed to a stipulated dismissal; the challenge was **dismissed**.

*Robert and Janet Screen v. Kitsap County (**Screen II**)*, CPSGMHB Case No. 99-3-0012 (***9312***), Notice of Hearing, Order of Consolidation of Portion of *Screen I* with *Screen II* and Coordination with Portion of *Alpine,* (Jul. 22, 1999).

Screen II, 9312, Order on Compliance with Remand Paragraph 3e in *Alpine* and Final Decision and Order in *Screen* (*Screen II*) (Nov. 22, 1999). The County removed an inconsistency between the Plan text and Plan map by amending the Plan text. The County's action complied with the goals and requirements of the Act. The FDO includes the **Finding of Compliance** for a portion of the *Alpine* case. *See Alpine, et al., v. Kitsap County,* CPSGMHB Case No. 98-3-0032c. [Compliance – Forest Land]

The Tulalip Tribes of Washington v. City of Monroe (***Tulalip II***), CPSGMHB Case No. 99-3-0013 (***9313***), Final Decision and Order, (Jan. 28, 2000). The Tulalip Tribe failed to carry its burden of proof in its challenge to the City of Monroe's adoption of the North Area Community Plan. The Plan was **upheld**. [Abandoned Issues – CA – Fish and Wildlife Habitat Conservation Areas – Development Regulations – Plan – Exhaustion – SEPA – BAS – Innovative Techniques – Duty – Subarea Plans – Mandatory Elements – Open Space/Greenbelts – Consistency]
Robert Ross, d/b/a Northwest Golf, Inc. v. Kitsap County (***NW Golf***), CPSGMHB Case No. 99-3-0014 (***9314***), Order on Dispositive Motions (Sep.29, 1999). Kitsap County's motion to dismiss several issues for lack of standing was granted. Several issues were **dismissed** for lack of participation standing. [SMJ -- Standing]

*NW Golf, 9314,*Order Granting Stipulated Dismissal (Oct. 21, 1999). The parties filed a stipulation requesting the case be dismissed. The Board case was **dismissed** with prejudice.

Jody McVittie, et al., v. Snohomish County [Snohomish County-Camano Association of Realtors – Intervenor] (***McVittie I***), CPSGMHB Case No. 99-3-0016c (***9316c***), Order on Dispositive Motions (Oct. 26, 1999). Motions by the County and Intervenor to dismiss various issues were **denied**. [Dispositive Motion]

McVittie I, 9316c, Final Decision and Order, (Feb. 9, 2000). All issues raised in this case were ultimately **dismissed** as untimely, moot, abandoned or because petitioner failure to meet the burden of

proof. However, the Board was asked to interpret and provide guidance on the scope of Goal 12 [Timeliness – Mootness – Abandoned Issues – Burden of Proof – Housing Element – Goals – Transportation Element – LOS – CFE – Consistency]

McVittie, 9316c, Order on Motion to Reconsider, (Mar. 16, 2000). Petitioner's motion to reconsider was **granted in part and denied in part**. The Board clarified one portion of its discussion. [LOS]

*MacAngus Ranches Inc., Michael Leung and Dennis Daley v. Snohomish County, (**MacAngus**),* CPSGMHB Case No. 99-3-0017 (***9317***), Final Decision and Order, (Mar. 23, 2000) {North concurring}. The challenge to the County's Plan and zoning code amendments were **upheld**, the case was **dismissed**. [Standing – Timeliness – Agricultural Lands – Development Regulations – Zoning – Consistency – Show Your Work – Public Participation – Amendment – Land Use Element – Subarea Plans – Mandatory Elements – Reaffirm - .120]

Charlie Burrow, Linda Cazin and KCRP v. Kitsap County, (***Burrows***), CPSGMHB Case No. 99-3-0018 (***9318***), Order on Compliance in a Portion of *Alpine* and Final Decision and Order in *Burrow*, (Mar. 29, 2000). Kitsap County was found to **comply** with the GMA regarding the *Alpine* case, which was finally closed. The County's designation of Port Gamble as a limited area of more intensive rural development was found to **comply** with the GMA in the *Burrow* case. [Abandoned Issues – Amendment – Average Net Density – CFE – Deference – General Discussion – Goals – LAMIRD – Land Use Element – Public Participation – Rural Element – Rural Densities – Standard of Review – Urban Growth]

Kenneth and Sharon Gain v. Pierce County (***Gain***), CPSGMHB Case No. 99-3-0019 (***9319***), Order on Dispositive Motions, (Jan. 28, 2000). Thirty-three of Petitioner's thirty-five issues were **dismissed** as untimely or for lack of subject matter jurisdiction. [Abandoned Issues – Board – Failure to Act – FCC – Forest lands – MPRs – OFM Population – SMJ – Timeliness – UGAs]

Gain, 9319, Order on Petitioner's Motion for Reconsideration of Dispositive Order, (Feb. 15, 2000). The Board **denied** the request for reconsideration.

Gain, 9319, Final Decision and Order, (Apr. 18, 2000). On the two remaining issues in this matter, the County's action was found to **comply** with the Act. [Amendment – CPP – Forest lands – UGA – LAMIRD – Sewer – MPRs – Rural Element – Urban Growth]

*David and Meredith Kenyon v. Pierce County (**Kenyon I**),* CPSGMHB Case No. 99-3-0020 (***9320***), Order Granting Stipulated Dismissal, (Dec. 14, 2000). After granting four settlement extensions, the parties stipulated to **dismissal** of the case.

City of Tacoma, et al., v. Pierce County (***Tacoma II***), CPSGMHB Case No. 99-3-23c (***9323c***), Order on Dispositive Motions, (Mar. 10, 2000). The Board **dismissed** two PFRs alleging the County failed to adopt amendments proposed by Petitioners. [Amendment – Duty – Failure to Act – Timeliness]

Tacoma II, 9323c, Order on Motion for Reconsideration, (Mar. 27, 2000). The Board reconsidered its 3/10/00 Order, considered Petitioners' response briefs and **dismissed** the two PFRs alleging the County failed to adopt amendments proposed by Petitioners.

Tacoma II, 9323c, Final Decision and Order, (Jun. 26, 2000). The County's designation of a RAID (LAMIRD) did not comply with the GMA's rural element requirements; it was **remanded**. [Abandoned Issues – CPP – Infrastructure – LAMIRD – Land Use Element – Sewer – Rural Element – UGA]

Tacoma II, 9323c, Finding of Compliance, (Sep. 11, 2000). The County repealed the challenged RAID; the Board entered a **Finding of Compliance**.

[70]

SYNOPSIS OF 2000 CASES

CPSGMHB Decisions [With Key Words]

City of Shoreline v. Snohomish County, (***Shoreline pdr***), CPSGMHB Case No. 00-3-0001pdr (***0301pdr***), Order Declining to Issue Declaratory Ruling, (Feb. 6, 2000), {Dissenting opinion by North, Concurring opinion by Tovar}. The Board **declined** to issue a declaratory ruling stating that Shoreline's Plan was valid and binding on Snohomish County and the cities of Snohomish County. [Abandoned Issues – Declaratory Ruling – PFR – SMJ]

In the Matter of the Petition of Geoffrey J. Bidwell for a Declaratory Ruling, (***Bidwell pdr***), CPSGMHB Case No. 00-3-0002 PDR (***0302pdr***), Notice of Decision not to issue a declaratory ruling, (Dec. 6, 2000), {Concurring opinion by North}. The Board **declined** to issue a declaratory ruling regarding the City of Bellevue's compliance with the GMA. [Declaratory Ruling]

Brian Ramey v. City of Seattle (***Ramey Remand***), [Superior Court Remand of CPSGMHB Case No. 99-3-0002] (***9302***), Order on Motions [To supplement the record and dispositive], (Nov. 11, 2000). The Board **declined to rule** on the City's dispositive motion until the hearing on the merits. [Dispositive Motion – Exhibits – Record – Standing]

Ramey Remand, 9302, Order on Motion to Reconsider, (Dec. 15, 2000). The Board reconsidered its Order on Motions and **dismissed** four of five legal issues from the remand case. [Reconsideration – Standing – CFE – EPFs – Open Space/Greenbelts – Historic Preservation]

Ramey Remand, 9302, Order Granting Continuance Pending Outcome of Court of Appeals Decision in *Montlake Community Club v. City of Seattle*, (***MCC***) Cause No. l 46708-5-I, (Jan. 8, 2000). The parties requested, and the Board **granted a continuance** pending the outcome of the MCC case. The parties will report quarterly on the status of the MCC case.

David Radabaugh v. City of Seattle (***Radabaugh***), CPSGMHB Case No. 00-3-0002 (***0302***), Final Decision and Order, (Jul. 7, 2000). Policies in the City's Greenwood/Phinney Ridge Neighborhood Plan and the City's Comprehensive Plan were inconsistent and **did not comply** with the requirements of the GMA. The matter was **remanded**. [Amendment – Concurrency – Consistency – CFE – Discretion – Duties – LOS - Subarea Plans]

Radabaugh, 0302, Order on Compliance, (Dec. 20, 2000). Seattle removed the Plan inconsistencies and the Board entered a **Finding of Compliance**.

Richard L. Grubb v. City of Redmond, (***Grubb***), CPSGMHB Case No. 00-3-0004 (***0304***), Final Decision and Order, (Aug. 10, 2000). Redmond's re-designation of several parcels of land, that were previously designated as agriculture, to urban recreation **did not comply** with the Act. A **determination of invalidity** was entered pertaining to these parcels. [Agricultural lands – CTED – Definitions – Duties – General Discussion – Goals Open Regional Planning – Space/Greenbelts]

[70] Note that decisions were not necessarily issued in the year the case was filed.

Grubb, 0304, Order Finding Continued Noncompliance and Invalidity, Denying Motion to Extend and Providing Notice of Second Compliance Hearing, (Feb. 16, 2001). Redmond challenged the Board's FDO in Superior Court, but took no legislative action to comply with the Act or remove invalidity. The Board entered a **continuing finding of noncompliance, a continued determination of invalidity** and scheduled a second compliance hearing. The Board's Order was transmitted to the Governor, but the Board **did not to recommend sanctions at this time**. [Noncompliance – Invalidity – Sanctions]

Grubb, 0304, Order Finding Compliance, (Jun. 15, 2001). Redmond re-designated the noncompliant properties as Agriculture and made the necessary text amendments to its Plan and regulations. The Board entered a **Finding of Compliance**.

Larry Kimmett v. Kitsap County, (***Kimmett***), CPSGMHB Case No. 003-0005, (***0305***), Order of Dismissal, (Apr. 27, 2000). Petitioner withdrew his challenge to Kitsap County; the matter was **dismissed**.

Jody L. McVittie v. Snohomish County [Snohomish County-Camano Island Realtors – Intervenor, 1000 Friends of Washington – Amicus] (***McVittie IV***), CPSGMHB Case No. 00-3-0006c, (***0306c***), Order on Dispositive Motion, (Apr. 25, 2000), The County and Intervenor's motions to dismiss for lack of subject matter jurisdiction were **denied**. [Publication – Timeliness – Mootness]

McVittie IV, 0306c, Final Decision and Order, (Sep. 9, 2000). The challenge to Snohomish County's Transportation and Capital Facilities Elements was **dismissed**; the County's action was **upheld**. [Abandoned Issues – CFE – Consistency – Goals – Implementation – LOS - Public Participation - Transportation Element]

McVittie IV, 0306c, Order on Motion to Reconsider, (Oct. 9, 2000). The Board **denied** the motion to reconsider.

State of Washington Department of Corrections and Department of Social and Health Services v. City of Tacoma, (***DOC/DSHS***), CPSGMHB Case No. 00-3-0007, (***0307***), Final Decision and Order, (Nov. 20, 2000). The City stipulated to **noncompliance** pertaining to DSHS's challenge to the City's restrictions on juvenile community facilities. The Board found that the City's restrictions on work release facilities **did not comply** with the requirements of the Act. The challenged ordinance was **remanded** to the City with direction to comply with the terms of the stipulated agreement and the requirements of the GMA. Two separate compliance schedules, one for DSHS and one for DOC, were included in the Board's Order. [Settlement – EPFs – Definitions – CPPs – Notice – Public Participation – CTED – Goals]

DOC/DSHS, 0307, Finding of Partial Compliance [Re: DSHS portion of case – juvenile correction facilities], (Feb. 5, 2001). The City adopted a new ordinance governing juvenile correction facilities that implemented the settlement agreement and complied with the Act. The Board entered a Finding of Partial Compliance. [Compliance – EPFs]

DOC/DSHS, 0307, Finding of Compliance [Re: DOC portion of case – work release facilities], (May 30, 2001). The City of Tacoma amended its zoning code so as not to preclude the siting of work release facilities and the Board entered a **Finding of Compliance**. [EPFs]

Harvey Airfield v. Snohomish County (***Harvey Airfield***), CPSGMHB Case No. 00-3-0008 (***0308***), Order on Dispositive Motion, (Jul. 13, 2000) {North dissenting}. Petitioner's challenge to the County's failure

to adopt Petitioner's proposed amendments was **dismissed**. [Airports – Amendment – Duties – EPFs – Re-evaluate – Regional Planning]

Geoffrey J. Bidwell v. City of Bellevue, (***Bidwell***), CPSGMHB Case No. 00-3-0009 (***0309***), Order on Dispositive Motion, (Jul. 14, 2000). Petitioner's challenge to the City's failure to adopt Petitioner's proposed amendments was **dismissed**. [Amendment – Duties]

Bidwell, 0309, Order Denying Motion for Reconsideration on Board's Order on Dispositive Motion, (Aug. 3, 2000). The Board **denied** the motion to reconsider.

City of Shoreline v. Snohomish County, (***Shoreline***), CPSGMHB Case No. 003-0010 (***0310***), Order on County's Motion to Dismiss, Order on Supplemental Evidence and Notice of Hearing, (Sep. 5, 2000). The Board **dismissed** Shoreline's challenge for lack of jurisdiction. [Annexation – Overlap – SMJ – UGAs]

Michael Gawenka, Helen Miller, Paul Scheyer and Joanne and David Forbes v. City of Bremerton, (***Gawenka***), CPSGMHB Case No. 00-3-0011 (***0311***), Order on Dispositive Motion, (Oct. 10, 2000). The City repealed the challenged ordinance. Consequently the case was **dismissed**. [Definitions – Dismissal – Mootness]

Wildlife Habitat Injustice Prevention, Bruce Diehl, Ed Nicholas, Pamela Yeager, Joel and Gina Guddat, B.W. Abbott, Terri R. Sapp, Jon Owens, Patti Melton, Mark Lanza and Susan Fenderson v. City of Covington [Lee J. Moyer, Jack D. Clark and Alayar Deabestani – Intervenors], (***WHIP***), CPSGMHB Case No. 00-3-0012 (***0312***), Order on Motions, (Nov. 6, 2000). The City contended it was not subject to the Board's jurisdiction or the requirements of the GMA, thus it did not have to comply with the Act's public participation requirements. The Board has jurisdiction; it found the City's action in adopting 10 Ordinances **did not comply** with the GMA and entered a **determination of invalidity** for each of the ordinances. [Adoption – Incorporation – SMJ – Plan – Pre-GMA – Public Participation – Invalidity]

WHIP, 0312, Order on Motions for Reconsideration, (Dec. 4, 2000). The Board **denied** the request for reconsideration.

WHIP, 0312, Order Rescinding Invalidity and Entering a Finding of Compliance, (Mar. 5, 2001). The City enacted a public participation ordinance, several interim control ordinances and repealed prior challenged ordinances. The Board **rescinded** the Determination of Invalidity and entered a **Finding of Compliance**. [Compliance – Invalidity - Public Participation – Reconsideration - SMJ]

Petersville Road Area Residents, Eugene G. Ollenbuger, Dave Mitchell and Earl Gallagher v. Kitsap County, (***Petersville Road Residents***), CPSGMHB Case No. 00-3-0013 (***0313***), Order on Motions, (Oct. 23, 2000). Petitioners' challenge was **dismissed** for lack of subject matter jurisdiction. [SMJ – EPFs – Group Homes]

Homebuilders Association of Kitsap County v. City of Bainbridge Island, (***Homebuilders***), CPSGMHB Case No. 00-3-0014 (***0314***), Final Decision and Order, (Feb. 26, 2001) {McGuire concurring}. The City's notice and public participation process for adoption of the challenged ordinance did **not comply** with the Act and was **remanded**. The Board entered a **determination of invalidity**. [Notice – Public Participation – Goals – CTED – Consistency – Invalidity]

Homebuilders, 0314, Rescission of Invalidity and Finding of Compliance, (Aug. 20, 2001). The City provided effective notice in amending its critical areas ordinance. The Board **rescinded invalidity** and entered a **Finding of Compliance**.

Pierce County v. City of Lakewood (***Pierce II***), CPSGMHB Case No. 00-3-0015 (***0315***), Order of Dismissal, (Apr. 16, 2001). Neither party filed prehearing briefs by the deadlines established in the prehearing order. Pursuant to WAC 242-02-570(1), the Board **dismissed** the petition for review. [Board Rules]

Jody L. McVittie v. Snohomish County, (***McVittie V***), CPSGMHB Case No. 00-3-0016 (***0316***), Order Denying Dispositive Motions Re: Participation Standing, (Nov. 6, 2000). The Board **denied** the County's motion to dismiss for lack of participation standing. [Standing (Participation and Governor Certified)]

McVittie V, 0316, Order on Motion to Reconsider, (Dec. 4, 2000) {North dissenting}. The Board **granted** the County's motion to reconsider its 11/6/00 Order. Further consideration of participation standing was postponed until the Final Decision and Order.

McVittie V, 0316, Order on Request for Expedited Review and Clarification, (Jan. 4, 2001). A request for expedited review was **denied**. [Board Rules]

McVittie V, 0316, Order on Dispositive Motions, (Jan. 22, 2001). Various motions to dismiss or address different Legal Issues, in a dispositive manner, were **denied** and **granted**. [Dispositive Motion – Emergency – SMJ]

McVittie V, 0316, Final Decision and Order, (Apr. 12, 2001), {Tovar concurring}. The County's adoption of emergency ordinances expanding its UGA, designating and rezoning the area for urban uses without any notice or opportunity for public participation **did not comply** with the GMA. The Board issued a **Determination of Invalidity** along with the **remand** order. The Board also found that notwithstanding the lack of opportunity for public participation, Petitioner had standing to pursue the appeal. [Mootness – Standing – Notice – Public Participation - Emergency]

McVittie V, 0316, Order on Motion to Reconsider FDO, (May 4, 2001). The County contended it had no jurisdiction to take legislative action to remove a noncompliant, invalidated UGA designation since the area had been subsequently annexed and to change the designation would be a meaningless act. The Board **denied** the County's motion. [Reconsideration – Compliance]

McVittie V, 0316, Order Finding Validity of the Prior Plan and Regulations During the Remand Period, Rescinding Invalidity and Finding Compliance, (Aug. 16, 2001). The County took corrective action to achieve compliance with the GMA, therefore the Board **rescinded invalidity**, found **compliance** and determined the prior plan and regulations were compliant during the remand period.

Low Income Housing Institute, Fair Housing Center of South Puget Sound, V.L. Kershaw, Starlit Rothe and Beverly Edwards v. City of Lakewood (***LIHI I***), CPSGMHB Case No. 00-3-0017 (***0317***), Order on Motions, (Nov. 22, 2000). The Board **granted** a request to change the location of the hearing on the merits. [Board Rules]

LIHI I, 0317, Final Decision and Order, Mar. 9, 2001. The Board found the challenged provisions of the City's housing element **complied** with the requirement of the Act, but entered a **Finding of**

Noncompliance because the City had not adopted development regulations to implement its plan. The City was directed to adopt the GMA required implementing regulations. [Housing Element – Development Regulations – Failure to Act – Affordable Housing]

LIHI I, 0317, Order Finding Compliance, (Oct. 11, 2001). The City of Lakewood adopted its Land Use and Development Code to implement its Plan. The Board found that adoption of these development regulations corrected the City's admitted failure to act and **complied** with the requirements of the GMA. The Board entered a **Finding of Compliance**.

LIHI I, 0317, Order on Superior Court Remand [No. 01-2-000608-5] in *LIHI I*, CPSGMHB Case No. 00-3-0017, (Feb. 21, 2002). Thurston County Superior Court remanded two issues from the Board's FDO because the Board had failed to adequately articulate the basis for its decision on those issues. On remand, the Board further **explained** its rationale for the decision on the two remanded issues.

Kitsap Citizens for Rural Preservation and Suquamish Tribe v. Kitsap County [Port Blakely Tree Farms L.P.- Intervenor] (***Kitsap Citizens***), CPSGMHB Case No. 00-3-0018 (***0319c***), Order on Dispositive Motions and Motions to Supplement the Record, (Feb. 16, 2001). The Board **denied** the County's motion to dismiss. [Mootness – UGA - Annexation]

Kitsap Citizens, 0319c, Final Decision and Order, (May 29, 2001), {Tovar concurring}. The County's adoption of the Port Blakely Subarea Plan and UGA expansion was **upheld**. Petitioners' challenge was **dismissed**. [Subarea Plan – Annexation – UGA]

SYNOPSIS OF 2001 CASES[71]

CPSGMHB Decisions [With Key Words]

David and Meredith Kenyon and Gold Hill Community Club v. Pierce County [Crystal Conservation Coalition and Dana Meeks & Associates – Intervenors] (***Kenyon II***), CPSGMHB Case No. 01-3-0001 (***1301***), - fifth settlement extension pending.

Jody L. McVittie v. Snohomish County (***McVittie VI***), CPSGMHB Case No. 01-3-0002, Final Decision and Order, (Jul. 25, 2001). The Board **upheld** the challenged portions of Snohomish County's capital facilities element **except** the Board **remanded** for the Ordinances for **failure to comply** with the Act's notice and public participation requirements. [Notice – Public Participation - CFE]

McVittie VI, 1302, Notice of Partial Reconsideration and Notice of Schedule for Board to Rule on Remaining Issues, (Aug.24, 2001). The Board **adjusted** the compliance schedule to allow the County to consider the remand amendments as part of consideration of its 2001 CFE amendments. The Board also indicated a time it would rule on the outstanding motions.

McVittie VI, 1302, Order on Motions, (Oct. 11, 2001). Both Petitioner and Respondent moved the Board to reconsider its FDO. Petitioner's motion was **denied**, Respondent's motion was **granted** to allow adjustments to the compliance schedule.

McVittie VI, 1302, Order Finding Compliance, (Feb. 7, 2001). The County's notice and public participation process on remand cured the noncompliance found in the Board's FDO. The Board entered a **Finding of Compliance**.

Corinne R. Hensley and Jody L. McVittie v. Snohomish County (***Hensley IV***), CPSGMHB Case No. 01-3-0004c (***1304c***), Order on Dispositive Motion [Motion to Invalidate], (Apr. 30, 2001). The County's Ordinance Plan amended various sections of its GMA Plan. In its notice, the County failed to indicate that it was amending the Plan's Transportation Element. The County agreed that due to a clerical error, the newspaper notice omitted reference to the Transportation Element amendments, and stipulated to non-compliance and remand. The Board found **non-compliance** with the public participation requirements of the Act and **remanded** the matter for corrective action. The Board declined to issue a Determination of Invalidity. [Notice – Transportation Element]

Hensley IV, 1304c [McVittie Portion – Transportation Element], Finding of Partial Compliance, (Aug. 16, 2001). Per a stipulation of the parties, the Board's April 30, 2001 Order found noncompliance with the GMA and remanded the Ordinance amending the County's Transportation Element back to the County so that notice could be provided. The County published notice prior to the reenactment of the Transportation Element amendments thereby **complying** with the notice requirements of the GMA. [Notice]

Hensley IV, 1304c, Final Decision and Order, (Aug. 15, 2001), {Tovar concurring}. Petitioners challenged the County's designation of a Limited Area of More Intensive Rural Development [Clearview] and the County's expansion of its UGA [Maltby]. The Board found that both actions did

[71] Note that decisions were not necessarily issued in the year the case was filed.

not comply with the requirements of the GMA, **remanded** the challenged Ordinances for compliance and entered a **Determination of Invalidity** on the UGA expansion. [LAMIRD – UGA - Goals]

Hensley IV, 1304c, Order on Reconsideration [Clearview], (Sep. 7, 2001). On reconsideration the Board **granted** the County's request to adjust the compliance schedule from 90 to 180 days for the Clearview portion of the case. The compliance schedule for the Maltby portion of the case remained the same as stated in the FDO.

Hensley IV, 1304c, compliance pending for Clearview, action on Maltby has been **stayed**.

Shirley Mesher and Citizens for Land Use and Public Accountability v. City of Seattle (***Mesher***), CPSGMHB Case No. 01-3-0007 (***1307***), Order on Motions, (Aug. 2, 2001). Petitioners' petition for review was **dismissed** for failing to establish participation standing. [Dispositive Motion - Standing - Board Rules]

Mesher, 1307, Order Denying Motion for Reconsideration, (Aug. 20, 2001). The Board found no basis for reconsideration and **denied** the motion.

Forster Woods Homeowners' Association and Friends and Neighbors of Forster Woods, Washington State Department of Natural Resources, City of North Bend et al., v. King County [Robert Yerkes and Richard and Rosanne Zemp – Intervenors] (***Forster Woods***), CPSGMHB Case No. 01-3-0008c (***1308c***), Final Decision and Order, (Nov. 6, 2001). The Board granted motions to **dismiss** several issues and amend the issue statements in the prehearing order. A de-designation of forest lands was **upheld**, several zoning changes and designations were found **not to comply** and the Board entered a **determination of invalidity** pertaining to one action. [Public Participation – Forest lands – Goals – Consistency – CPPs – Zoning – Urban Density]

Forster Woods, 1308c, compliance pending on DNR action.

John Nelson, Fredrick Nelson and Nancy Bauer v. King County (***Nelson***), CPSGMHB Case No. 01-3-0009 (***1309***), fourth settlement extension.

Friends of the Law v. King County [Quadrant Corporation – Intervenor] (***FOTL VI***), CPSGMHB Case No. 01-3-0010 (***1310***), Final Decision and Order, (Oct. 29, 2001). After having achieved compliance with the GMA regarding the Bear Creek area, the County again designated a portion of the Bear Creek area as a UGA. The Board determined that the designation of the area in question as a UGA did **not comply** with the goals and requirements of the Act and **invalidated** the County's action. The matter was **remanded**. [UGA – FCC – Transportation Element - Definitions]

FOTL VI, 1310, Order Acknowledging Stay – Canceling Compliance Proceedings, (Jan. 15, 2001). Pursuant to an "Order Staying Board's Decision Pending Review," issued by King County Superior Court, the Board **cancelled** the compliance proceedings.

Vine Street Investors LLC. v. City of Stanwood (***Vine Street***), CPSGMHB Case No. 01-3-0011 (***1311***), Order of Dismissal, (Jul. 12, 2001). Petitioner concurred in the City's motion to dismiss for lack of subject matter jurisdiction and withdrew its appeal. The Board **dismissed** the petition for review.

James and Carmen Nardo v. City of Poulsbo (***Nardo***), CPSGMHB Case No. 01-3-0012 (***1312***), Order of Dismissal, (Jun. 29, 2001). Pursuant to a stipulation of the parties, the Board **dismissed** Petitioner's petition for review.

City of Shoreline v. Town of Woodway [Snohomish County - Intervenors] (***Shoreline II***), CPSGMHB Case No. 01-3-0013 (***1313***), Order on Motions to Dismiss, (August 9, 2001). Woodway and the County moved to dismiss several (eight) of the issues stated in the petition for review and prehearing order. The Board granted the motions and **dismissed** the eight challenged issues.

Shoreline II, 0313, *[Chevron USA – additional Intervenor]*, Order on Motions to Reconsider and to Amend and Order Modifying Prehearing Order, (Sep. 10, 2001), {McGuire Concurring and Dissenting}. The Board **denied** the motion to reconsider and **denied** the motion to amend its petition for review on six issues, but **granted** the motion to amend by combining two issues and restating them as one.

Shoreline II, 1313, Final Decision and Order, (Nov. 28, 2001), {McGuire Dissenting}. The City of Shoreline persuaded the Board that Woodway's Plan policy statements regarding potential annexation of the Point Wells area did **not comply** with the interjurisdictional coordination requirements of RCW 36.70A.100. The Plan amendment was **remanded** with direction to repeal or revise the noncompliant Plan policy. [Annexation - Consistency – Interjurisdictional - Overlap]

Shoreline II, 1313, Order Denying Motions for Reconsideration of Final Decision and Order, (Dec. 28, 2001), {McGuire concurring and dissenting}. The Board **denied** the motions for reconsideration of Chevron, Woodway and Snohomish County.

Shoreline II, 1313, compliance pending.

Senior Housing Assistance Group; Lynwood RM Investors, LLC; Alderwood Court Associates Limited Partnership; Alderwood Condominiums LLC, Sunquist Homes Inc; and Carlyle Condominiums LLC. v. City of Lynnwood (***SHAG***), CPSGMHB Case No. 01-3-0014 (***1314***), Order on Motions, (Aug. 3, 2001). Petitioners' challenge to the City's procedures in adopting an Ordinance imposing a moratorium was **dismissed**. [Emergency - Interim]

Washington State Departments of Corrections and Social and Health Services v. Pierce County (***DOC II***), CPSGMHB Case No. 01-3-0015 (***1315***), *– settlement extensions – pending.*

Master Builders Association, et al., v. Snohomish County [Jody L. McVittie – Intervenor] (***Master Builders Association***), CPSGMHB Case No. 01-3-0016 (***1316***), Final Decision and Order, (Dec. 13, 2001). The County's amendments to its planned residential development regulations were **upheld** by the Board and found to **comply** with the implementation requirements of the GMA. [Implementation regulations – UGA – Urban Density]

Jody L. McVittie v. Snohomish County (***McVittie VIII***), CPSGMHB Case No. 01-3-0017 (***1317***), Final Decision and Order, (Jan. 8, 2002), {Tovar concurring}. The County's Transportation Element amendments were found to **comply** with the requirements of the GMA. [Public Participation – Transportation Element - LOS]

City of Edgewood, W. Dale and Joanne R Overfield, Carl R. and Betty Hogan, Donald R and Camille Vandevante, Larry G. and Louetta Oney, Mel and Jean Korum and Anne C. Pyfer v. City of Sumner (***Edgewood***), CPSGMHB Case No. 01-3-0018 (***1318***), Final Decision and Order, (Jan. 18, 2002). The

City of Sumner's Plan and development code amendment were found to **comply** with the requirements of the GMA. [Interjurisdictional – Consistency – Implementing regulations]

Homebuilders Association of Kitsap County v. City of Bainbridge Island (***HBA II***), CPSGMHB Case No. 01-3-0019 (***1319***), Order on Motion, (Oct. 18, 2001). Petitioners posed a constitutional protection of private property issue in its petition for review. The City moved to dismiss the issue. The Board granted the motion and **dismissed** the issue for lack of subject matter jurisdiction. [SMJ]

HBA II, 1319, Order of Dismissal, (Dec. 3, 2001). Petitioners withdrew their petition for review. The Board **dismissed** the PFR.

Elaine Lewis v. City of Edgewood (***Lewis***), CPSGMHB Case No. 01-3-0020 (***1320***), Order on Motions, (Oct. 29, 2001). Pursuant to a motion by the City the Board **dismissed** one of the issues in the case.

Lewis, 1320, Order Denying Motion for Reconsideration, (Nov. 9, 2001). The Board determined that motions to supplement the record are not subject to motions for reconsideration. [Reconsideration]

Lewis, 1320, Final Decision and Order, (Feb. 7, 2001). The Plan for Edgewood, a newly incorporated city, was challenged. The Board determined that the notice and public participation process for last minute amendments and its policies for frequently flooded areas did **not comply** with the requirements of the Act and **remanded** the Plan. [Notice – Public Participation – BAS – Transportation Element]

Lewis, 1320, compliance pending.

Renay Bennett, Jan Benson and East Bellevue Community Council v. City of Bellevue (***Bennett***), CPSGMHB Case No. 01-3-0022c (***1322c***), Order on City's Dispositive Motion, (Jan. 7, 2002). The Board **denied** the City's motion to dismiss the East Bellevue Community Council from the case for lack of standing. [Standing]

Bennett, 1322, Final Decision and Order - pending.

Low Income Housing Institute, Fair Housing Center of South Puget Sound, V.L. Kershaw, Starlit Rothe and Beverly Edwards v. City of Lakewood (***LIHI II***), CPSGMHB Case No. 01-3-0023 (***1323***), Final Decision and Order - pending.

Michael S. Lotto and Ann M. Lotto and Angelo Toppano and June Toppano v. City of Kent (***Lotto***), CPSGMHB Case No. 01-3-0024 (***1324***), Order of Dismissal, (Dec. 13, 2001). The parties filed a stipulated dismissal with the Board. The Board **dismissed** the petition for review.

Jody L. McVittie v. Snohomish County (***McVittie IX***), CPSGMHB Case No. 01-3-0025 (***1325***), Order of Dismissal, (Jan. 29, 2002). Petitioner withdrew the petition for review. The Board **dismissed** the PFR.

Wildlife Habitat Injustice Prevention, Bruce Diehl, Ed Nichols, Bud Sizemore, Joel and Gina Guddat, Deborah Jacobsen, Jon Jones and Patti Melton v. City of Covington (***WHIP II***), CPSGMHB Case No. 01-3-0026 (***1326***), - settlement extension.

Sheila Crofut and Friends of the Ravine and The Save Ericksen Committee v. City of Bainbridge Island (***Crofut***), CPSGMHB Case No. 01-3-0027 (***1327***), - settlement extension.

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180 DAYS

- Nothing in the GMA suggests that a growth planning hearings board has the authority to waive the 180-day limit to issue its final order as specified in RCW 36.70A.300. [*Snoqualmie, 2304c,* 11/4/92 Order, p. 3]

ABANDONED ISSUES

- As a general rule, the Board will treat an unbriefed legal issue as abandoned; it will not be considered, and will be dismissed with prejudice. [*Twin Falls, 3303c,* FDO, p. 18]
- In the absence of a brief on any of the issues set forth in the prehearing order, by the deadline, all issues have been abandoned – per WAC 242-02-570(1). [*Kitsap, 4306,* 12/2/94 Order, p.1]
- Inadequately briefed issues must be considered similar to unbriefed issues, i.e., abandoned. [*Sky Valley, 5368c,* FDO, p. 24]
- In order for an issue to be considered by the Board, it must be briefed. Failure to brief an issue shall constitute abandonment of the issue. [*Sky Valley, 5368c,* 4/15/96 Order, p. 3]
- Inadequately briefed issues would be considered in a manner similar to consideration of unbriefed issues and, therefore, should be deemed to be abandoned. [*Sky Valley, 5368c,* 4/15/96 Order, p. 3]
- If petitioner fails to brief an issue in its required prehearing brief, the issue will be deemed abandoned; it is not sufficient for a petitioner to brief an issue for the first time in a reply brief. [*Tulalip, 6329,* FDO, p. 7]

ACCESSORY DWELLING UNITS - ADUS

- The only record evidence indicates that the effect of ADUs on housing capacity is *de minimis*. (Municipal Research & Service Center of Washington: "communities with favorable zoning can expect to get approximately one ADU per 1,000 single family homes per year.) [*Bremerton/Alpine, 5339c/8332c*, FDO, p. 40]

ADJACENT

- City comprehensive plans must contain an assessment of its impact on adjacent jurisdictions. . . . At the very least, a plan must indicate which jurisdictions are adjacent to the city, what the present traffic volumes and system capacities of major arterials in those jurisdiction connected to the city's are, and an analysis of what impact, if any, the city's transportation plan will have on those neighboring jurisdictions. [*WSDF I, 4316,* FDO, p. 68]
- General discussion of transportation coordination with adjacent jurisdictions. [*Hapsmith I, 5375c,* FDO, pp. 32-34]
- For purposes of evaluating a jurisdiction's compliance with RCW 36.70A.070(6)(d), adjacent jurisdictions are those, which are connected to the jurisdiction by a major arterial. [*WSDF IV, 6333,* FDO, p. 35]
- The principal legal theory underlying the issues raised in this case is that the GMA establishes a duty upon the City of SeaTac to provide for mitigation of the impacts of STIA activities, in its Plan or development regulations, for its neighboring jurisdictions. Petitioners attempt to construct a duty to mitigate from the provisions of RCW 36.70A.100 and .210. The attempt to create a GMA duty on

jurisdictions to provide for mitigation of impacts on surrounding communities, in their plans and development regulations, fails. [*Burien, 8310,* FDO, pp. 5-6]

- In evaluating plans of adjacent jurisdictions for consistency, the Board will examine the challenged amendments to determine if, on their face, the amendments are inconsistent with [thwart] the adjacent jurisdictions' provisions identified. If the challenged amendments are consistent with the identified policies, the challenge fails. If the challenged amendments are facially inconsistent, the Board will examine the challenged amendments in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the identified adjacent jurisdiction policies. [*LMI/Chevron, 8312,* FDO, p. 48]
- The Board rejects [the] unsupported assertion that Island Crossing is "clearly" an entryway to Arlington. Area A of the Island Crossing area is an isolated, small-scale freeway service node, and all of the Island Crossing area is on the flat bottom land of a river valley. In addition to being a mile away, Arlington is neither physically nor visually connected to Island Crossing and is situated above the valley floor. [*Sky Valley,* 5368c, 4/22/99 Order, at 10]
- RCW 36.70A.100 and .210 refer to consistency of Plans with adjacent jurisdictions; they do not relate to the application of a Plan within a jurisdiction. [*Sky Valley,* 5368c, 4/22/99 Order, at 12]
- The City's notice provisions [mailed to adjacent property owners] fall woefully short of the required "broad dissemination" and "notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses and organizations [of RCW 36.70A.140 and .035(1)]." [*WRECO, 8335,* FDO, at 13.]
- The County's argument about the propriety of its RAID designation evidence several fundamental misapprehensions. What the Act contemplates is flexibility for counties, in certain circumstances and subject to careful restrictions, to "round off" with logical outer boundaries "limited areas of more intensive rural development" [LAMIRDs]. However, simply because an unincorporated parcel was urbanized as of July 1, 1990, does not mean that it is appropriate to designated it as a LAMIRD. The County's spacing criteria for rural activity centers (RACs) and rural neighborhood centers (RNCs) indicates that it grasps the concept of a "central place," the idea that a commercial center serves a surrounding hinterland. The placement of its RAID less than 400 feet from the UGA flies in the face of this "central place" theory. The location of the [property] immediately adjacent to the UGA makes it a candidate not for LAMIRD designation, but potentially for UGA expansion. [*Tacoma II, 9323c,* FDO, at 7.]

ADOPTION

- The legislative body has authority to create whatever advisory apparatus it deems appropriate – however, the authority to adopt cannot be delegated to such advisory groups. [*Twin Falls, 3303,* FDO, p. 79]
- A development regulation, whether interim or implementing, must be a binding legislative enactment. The Board is not ruling that a resolution or motion can never be used to comply with GMA critical areas and natural resource lands requirements. The test is whether the public has advance notice providing the opportunity to comment before the matter is adopted; whether a public hearing is held; whether the legislative action has the force and effect of law; and whether notice of adoption is published – regardless whether the enactment took place by way of ordinance, motion or resolution. [*FOTL I, 4303,* 4/22/94 Order, pp. 20-21]
- Upon initial adoption of a comprehensive plan, jurisdictions planning under the Act must have fully completed all the mandatory requirements of RCW 36.70A.070. [*WSDF I, 4316,* FDO, p. 12]

- Optional features of a comprehensive plan do not have to be complete at the time of plan adoption, provided that the adopted portions otherwise comply with the Act's requirements. [*WSDF I, 4316,* FDO, p. 14]
- All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning. [*Bremerton, 5339c,* FDO, p. 77]
- Because comprehensive plans are controlling documents under the GMA, rather than discretionary advice, or "a basic source of reference," they now have the force of law, unlike the comprehensive plans adopted pursuant to Chapters 36.70 RCW and 35A.63 RCW. It is both appropriate and necessary that such binding laws be codified, as ordinances are and resolutions are not. [*BNRR, 5350,* 8/30/95 Order, p. 3]
- The Central Puget Sound Board respectfully disagrees with the Western Board's conclusion that "ordinance" is a generic term. The Board holds that a GMA comprehensive plan can only be adopted by ordinance. [*BNRR, 5350,* 8/30/95 Order, p. 3]
- RCW 36.70A.290(1) requires that cities adopt their comprehensive plans by ordinance. [*Anderson Creek, 5353c,* FDO, p. 10]
- Cities must adopt comprehensive plans and development regulations adopted pursuant to the requirements of the GMA by ordinance, and they must publish notice of adoption promptly thereafter. [*South Bellevue, 5355,* 11/30/95 Order, p. 14]
- Development regulations adopted pursuant to RCW 36.70A.060 must be adopted by ordinance, not by resolution. [*AFT, 5356,* FDO, p. 13]
- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317,* FDO, at 7-8.]
- The adoption of [a subarea plan] is a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to [an unchanged plan designation.] [A jurisdiction's decision to maintain an existing designation does not reopen the appeal period of that unchanged designation.] [*MacAngus, 9317,* FDO, at 8.]
- In adopting the Tulalip Subarea Plan, the County did not change, re-adopt, or re-affirm the [agricultural] designation; it merely maintained the existing designation. Additionally, the County's action was not taken in response to a statutory requirement, such as RCW 36.70A.215, which may require the County to change, re-adopt, or re-affirm its comprehensive plan or development regulations. [*MacAngus, 9317,* FDO, at 8-9.]

AFFORDABLE HOUSING

- The Act requires cities and counties to preserve existing housing while promoting affordable housing and a variety of residential densities and housing types. No jurisdiction is required to reconcile these seemingly inconsistent requirements by totally focusing on one requirement, for instance preserving existing housing, to the exclusion of other requirements, such as encouraging more affordable housing. Instead, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them. [*WSDF I, 4316,* FDO, p. 30]

- The Board rejects the argument that because RCW 36.70A.070(2)(c) requires jurisdictions to identify "sufficient land for housing" in their comprehensive plans, that their development regulations must also do so. The sufficiency of land supply required by RCW 36.70A.070(2)(c) is a mandate that the city, as a matter of policy, identify sufficient land for this purpose. Development regulations are to then impose controls to assure that the land identified in the plan for housing is available for that purpose. Because development regulations must be consistent with the comprehensive plan, they cannot decrease the land supply available for housing. RCW 36.70A.040(3). [*Children's I, 5311,* 5/17/95 Order, p. 6]
- RCW 36.70A.020(4) does not prohibit the demolition of existing housing structures. Instead, cities and counties must balance the Act's requirements to "encourage preservation of existing housing stock" with the demand to "encourage the availability of affordable housing" and the promotion of a "variety of residential densities and housing types." . . . It does not mandate that single-family residences be preserved at the expense of every other housing type. [*WSDF II, 5340,* FDO, p. 25]
- The requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas – while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." [*Benaroya I, 5372c,* FDO, p. 21]
- Nothing in the GMA or the CPPs requires a jurisdiction to show a detailed plan as to how affordable housing policies will be achieved. There is nothing in the Plan or in the record that suggests the housing affordability policies are not capable of being carried out. [*Benaroya, 5372c,* FDO, p. 26]
- As important as the affordable housing policy is, CPPs can only be as directive as they are clear. [*Renton, 7326,* FDO, p. 7]
- [RCW 36.70A.020(4) does not require that each and every land use designation of a jurisdiction provide for affordable housing. [*LMI/Chevron, 8312,* FDO, p. 29]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, p. 30]
- The GMA's provisions for "ensuring" the "vitality" and "character" of established residential neighborhoods applies to all neighborhoods, including those that house predominantly low income people. In many ways the GMA represents a break from the land use decision-making that preceded it, learning from and attempting not to repeat the mistakes of the past. Among the most sobering of those failures nationally has been the needless wholesale destruction of entire neighborhoods in the name of "urban renewal." With this history clearly in mind, the Board looked closely at the GMA's provisions and the City's actions. [*LIHI I*, *0317*, FDO, at 4.]
- The conversion of up to one third [of the land area in two neighborhoods] to industrial uses is strong, albeit necessary, medicine. Had it been in a larger dosage, the Board would have seriously questioned whether these areas could remain viable as residential neighborhoods. [LIHI's concern was focused on the City's willingness to follow through on the commitments made in the Plan, the subject of a subsequent proceeding.] [*LIHI I*, *0317*, FDO, at 4.]
- [It is undisputed that the City must ensure the vitality and character of the two existing neighborhoods in question.] The question is whether the content of the City's Plan, including not just the industrial designation for portions of these two neighborhoods, but also other goals, policies and strategies set forth in the Plan, meet the duty of ensuring neighborhood vitality and character. [The Board found that they did.] [*LIHI I*, *0317*, FDO, at 6.]
- The City proposes to promote the *vitality* of these two entire residential neighborhoods, and perhaps others by making non-residential land use designations for a portion of them. These non-residential designations may reasonably be expected to lead to the elimination of some amount of sub-standard

residential housing and its replacement with industrial uses that will have several benefits for the vitality of the area. [*e.g.* Investment in sewers to eliminate a public health problem and employment opportunities.] The City has made a credible argument that such policies are an appropriate strategy to encourage long-term investment in these neighborhoods. [*LIHI I*, *0317*, FDO, at 12.]

- Ensuring the neighborhood's *character* is not simply a matter of maintaining homogeneity of land use – but rather, as the Board noted in Benaroya, a question of accommodating growth and change in such a way as to respect, maintain or even improve residential character. This would be true even with regard to non-residential uses, whether they are industrial, as here, or neighborhood commercial, or institutional. The Plan lays some policy groundwork for the integration of industrial uses into what will remain a predominantly residential area, however the details of many project design considerations (e.g. building bulk, signage, grading, landscaping, noise, traffic and access) are largely the focus of development regulations. [The Board notes that many Plan policies provide for the housing needs of existing neighborhood residents, including those that may be displaced. Implementing these Plan provisions will not be limited to development regulations but other City actions.] [*LIHI I*, *0317*, FDO, at 12-13.]
- By allowing the conversion of up to one-third [of the existing residential neighborhoods to industrial uses] the City will ensure the vitality of these established residential neighborhoods by providing job opportunities, sewering the area and improving public services, including public health and safety. [*LIHI I*, *0317*, FDO, at 13.]
- The "character" of these neighborhoods will inevitably change over time, and the City's policy of having new industrial uses as a part (not the whole) of that character is not inconsistent with preserving a residential character for the remaining two-thirds of the area. Because "character" is largely a matter of the scale and design of specific projects, the GMA policy objective of ensuring that future growth that is "in character" with an existing residential neighborhood must be the focus for the specific development regulations that the City has yet to adopt. [*LIHI I*, *0317*, FDO, at 13.]
- [The MBA exhibit] illustrates the benefits of housing affordability that accrue from use of the PRD approach compared to not having the benefits of the PRD regulations (or average lot sizing). However, MBA's concern about the impact on affordable housing is one of degree. While the housing affordability statistics are likely to be different under the new PRD regulations than they were under the prior PRD regulations, those statistics will still be better under the new PRD regulations than under a development scheme with no PRD option. This difference in degree of benefit is not sufficient to find the County's action was in error. [*Master Builders Association, 1316*, FDO, at 22-23.]

AGRICULTURAL LANDS

- *See also:* **Natural Resource Lands**
- The Board declines the invitation to establish a minimum lot size for agricultural parcel sizes. [*Gig Harbor, 5316c,* FDO, p. 31]
- The County's intention to conserve agricultural lands does not prohibit the County from establishing policies for the conversion of some agricultural lands to other uses, when the CPPs mandate such conversion policies. [*Gig Harbor, 5316c,* FDO, p. 33]
- RCW 36.70A.170(1)(a) requires counties and cities to designate all lands that meet the definition of agricultural lands, unless the lands fall within a UGA lacking a program for purchase or transfer of development rights, and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all designated agricultural lands. [*Sky Valley, 5368c,* FDO, p. 113]

- Lands not receiving interim designation as agricultural lands may receive such a designation during the review required by RCW 36.70A.060(3). However, such a designation is predicated on the parcels in question meeting the definition of "agricultural lands." [*Sky Valley, 5368c,* FDO, p. 114]
- A county or city does not *per se* violate the Act simply because its final agricultural land designations approved at the time of comprehensive plan adoption include lesser acreage than the preliminary, interim agricultural land designations. [*Sky Valley, 5368c,* FDO, p. 114]
- A city is without authority to make any agricultural designations within a UGA prior to the enactment of a program authorizing a transfer or purchase of development rights pursuant to RCW 36.70A.060(4). Unless and until it adopts such a program, it is obliged to designate such properties for non-agricultural urban uses. [*Benaroya I, 5372c,* FDO, pp. 11-12]
- Open space is an inevitable byproduct of land being put to an agricultural use. However, this fact alone is insufficient grounds for a claim that agricultural designation by a local government requires development rights acquisition pursuant to RCW 36.70A.160. Only if a government restricts the use of designated agricultural lands solely to maintain or enhance the value of such lands as open space, must the City or County acquire a sufficient interest in the property. [*Benaroya I, 5372c,* FDO, p. 13]
- The Board reaffirmed its holding in the FDO that the City could not designate lands agriculture unless and until it adopted a program authorizing the transfer of development rights. [*Benaroya I, 5372c,* 12/31/98 Order, Court Remand, p. 3]
- The Board reversed its holding in the FDO to the extent that it was based upon the determination that the Benaroya and Cosmos properties were not agricultural land within the meaning of that term in RCW 36.70A.030(2). [*Benaroya I, 5372c,* 12/31/98 Order, Court Remand, p. 4]
- The remainder of the Board's FDO and the Board's Finding of Compliance remain unaffected by the Washington Supreme Court Opinion. [*Benaroya I, 5372c,* 12/31/98 Order, Court Remand, p. 4]
- RCW 36.70A.020(8), .060, and .170, when read together, create an agricultural conservation imperative that imposes an affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry. [*Green Valley, 8308c,* FDO, p. 16]
- The location-specific and directive duty of RCW 36.70A.020(8), .060 and .170 to designate and conserve agricultural lands clearly trumps the non-directive, non-site specific guidance and inventory requirements for open space and recreation of .020(9), .150 and .160. [*Green Valley, 8308c,* FDO, p. 17]
- General discussion and interpretation of RCW 36.70A.177 by majority and dissent. [*Green Valley, 8308c,* FDO, pp. 17-18 and 24-25]
- RCW 36.70A.177 does create an opportunity for land use and development techniques that are new and innovative, [but] the Board cannot read these provisions to be interpreted to allow the effective evisceration of agricultural lands conservation on a piecemeal basis. [*Green Valley, 8308c,* FDO, p. 18]
- Both experience and common sense indicate that conversion of agricultural resource lands to nonagricultural uses is a one-way ratchet. To suggest that designated agricultural resource lands, once given over to intensive uses demanded by an ever-increasing urban population, could ever be "retrieved" is simply not credible. [*Green Valley, 8308c,* FDO, p. 18]
- [RCW 36.70A.177] allows flexibility on a site or parcel basis to enable a portion of a parcel not suitable for agricultural purposes to have a non-agricultural use; however, the County's amendments allow entire parcels to be given over to nonfarm and nonagricultural uses [thereby violating .177]. [*Green Valley, 8308c,* FDO, pp. 18-19]

- The Act requires conservation not just of the soil attributes that make agricultural lands productive and potentially subject to designation, but also of the agricultural use of that land, to the end that the resource-based industry is maintained and enhanced. [*Green Valley, 8308c,* FDO, p. 19]
- Land use plans and development regulations which allow parcels designated agricultural resource lands to be used for active recreation uses and supporting facilities does not assure the conservation of those lands for the maintenance and enhancement of the agricultural industry. [*Green Valley, 8308c,* FDO, p. 19]
- The Washington Supreme Court has determined that land is devoted to agricultural use under the GMA "if it is an area where the land is actually used or capable of being used for agricultural production. *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.* 136 Wn.2d 38, 56 (1998). It is irrelevant that a parcel has not been farmed for 25 years. The question is whether the land is actually used or capable of being used for agriculture. [*Sky Valley,* 5368c, 4/22/99 Order, at 8-9]
- It is absurd to argue that the presence of roads, even an interstate highway, automatically prohibits designation of land as agriculture. [*Sky Valley,* 5368c, 4/22/99 Order, at 11]
- It is hard to imagine a situation where agricultural use of land near an urban area is the most economically valuable use of that land. [Relying on such facts alone cannot dictate the designation of land.] [*Sky Valley,* 5368c, 4/22/99 Order, at 11]
- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317,* FDO, at 7-8.]
- [This case] is the first GMA challenge arising form the action of a local government to remove the agricultural resource land designation that it had previously adopted. The permanence of agricultural resource lands designations have been discussed only peripherally in prior Board decisions, and never settled as a matter of law. [The threshold question in this case is] can lands that have been designated [agricultural lands] pursuant to RCW 36.70A.170(1)(a) and regulated pursuant to RCW 36.70Al060(1) be "de-designated" and, and if so, under what conditions? [*Grubb, 0304,* FDO, at 8.]
- General discussion of agricultural lands designation and the agricultural conservation imperative. [*Grubb, 0304*, FDO, at 8-12.]
- The GMA's provisions for the conservation of natural resource lands, including agricultural lands, constitutes on of the Act's most important and directive mandates. [*Grubb, 0304,* FDO, at 8.]
- [In *Green Valley, 8308c*] the Board examined and rejected the argument that the discretion that the GMA affords to local governments to "balance the goals of the Act" somehow elevates recreational uses to an equal with agricultural uses. [*Grubb, 0304,* FDO, at 9.]
- The Board has interpreted the Act to acknowledge the paramount importance of the designation, conservation and protection of agricultural lands. It is a duty local government should not take lightly. [*Grubb, 0304,* FDO, at 9.]
- Although both RCW 36.70A.130 and .215 require counties and cities to systematically review their comprehensive plans, and to take action to amend them when appropriate, neither provision requires that amendment actually occur. Significantly, neither .130 nor .215 make explicit mention of reviewing or amending agricultural resource lands designations. More significantly, neither .170 nor .060 describe a process or criteria to amend or "de-designate" agricultural lands. Does the lack of an explicit GMA mention, much less mandate, to review and amend prior agricultural lands

designations mean that ag lands may never be "de-designated"? [The Board answers this question in the negative.] [*Grubb, 0304*, FDO, at 10-11.]

- Once lands are designated as agricultural lands they are not necessarily destined to be agricultural lands forever. This is not license for local governments to "de-designated" agricultural lands where it may simply be locally popular or politically convenient. "De-designation" of agricultural lands is a serious matter with potentially very long-term consequences. Such de-designation may only occur if the record shows demonstrable and conclusive evidence that the Act's definitions and criteria for designation are no longer met. The documentation of changed conditions that prohibit the continued designation, conservation and protection of agricultural lands would need to be specific and rigorous. If such de-designation action were challenged, it would be subject to heightened scrutiny by the Board. [*Grubb, 0304,* FDO, at 11.]
- There are two criteria for local governments to [use when designating] agricultural resource lands. 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. [*Grubb, 0304,* FDO, at 11.]
- [The Washington Supreme Court has held that] land is "devoted to" agricultural use under RCW 36.70A.030 if it is in an area where the land is actually used or capable of being used for agricultural production. (Citation omitted). [*Grubb, 0304,* FDO, at 11.]
- [There are two components to "lands of long-term commercial significance."] The first addresses the viability of the lands as a function of intrinsic attributes, i.e., "growing capacity" and "productivity" which in turn are largely a function of the suitability of the soils for growing agricultural products. The second involves consideration of the off-site factors and some degree of judgment about how those factors affect the long-term viability of agriculture. [*Grubb, 0304*, FDO, at 9.]
- When both the statutory definition [RCW 36.70A.030(10)] and the factors set forth in the Department's regulations [the Department of Community, Trade and Economic Developments – WAC 365-190-050(1)] are considered, it is apparent that [generally,] the Northern Sammamish Valley no longer has long-term commercial significance for agricultural production. [*Grubb, 0304,* FDO, at 7.]
- [Judged against these criteria and factors, the record shows that] Redmond's conclusion that [most of the] properties [in the Northern Sammamish Valley] no longer have long-term commercial significance is reasonable and supportable. Even if lands have prime soils, and have been historically farmed, it does not follow that they must remain designated as agricultural resource lands if a significant physical change has occurred to destroy the long-term viability of *those parcels* as agricultural land. Likewise, the fact that [certain parcels] are surrounded by incompatible residential uses and [are] severed from connection with a larger pattern of agricultural land makes them also untenable long-term as commercial agriculture. [These parcels no longer meet the definition of "long-term commercial significance."] [*Grubb, 0304,* FDO, at 13.]
- The properties in the "Northern Sammamish Valley" are, in fact, the *southerly portion* of the much larger lands of the Sammamish River Valley. Thus, when Redmond argues that 80% of the "Northern Sammamish Valley" [within the city-limits] is irrevocably committed to non-agricultural uses, it is actually talking only about the relatively small piece of a much bigger picture – a picture that is overwhelmingly agricultural. [*Grubb, 0304,* FDO, at 13.]
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- The term "lands" in the definition of "long-term commercial significance," means more than an individual parcel – it means the patterns of contiguous parcels, regardless of jurisdictional

boundaries, that are "devoted to" agriculture. [Several parcels that are immediately adjacent to King County's agricultural production districts are visually, functionally and effectively a part of these lands with long-term commercial significance. [*Grubb, 0304,* FDO, at 13.]

- It is undisputed that the County complied with the Board's FDO as to the APD [agricultural production district] development regulations. Plainly, the County has deleted the language [in the King County Code] that permitted active recreation on designated resource lands. The remaining dispute between the parties is whether the County's action resurrecting the Plan's prior policy statements does not comply with the GMA as construed by the Supreme Court in the *King County* decision, and by the Board in the *Green Valley* FDO. [*Green Valley, 8308c*, 11/21/01 Order, at 9.]
- [The County's Plan language says active recreation *should not* be located within APDs. Petitioners contend this language carries an unspoken but implied modifier - "unless" and ask the Board to direct the County to change it to *shall not* for fear that the County may revisit the notion of placing active recreation on agricultural lands. The Board declined.] The Board reads the Supreme Court's decision as clear an unequivocal – the County's development regulations [which regulate the use of land] shall not permit active recreation on designated resource lands with prime soils for agriculture. Attempts to carve out loopholes, under the aegis of RCW 36.70A.177, are flatly prohibited by the Supreme Court's decision, notwithstanding any reading that the County chooses to give to [the Plan policy]. [*Green Valley, 8308c*, 11/21/01 Order, at 10.]
- The term "de-designated," rather than simply "re-designated" was first used by the Board in *Grubb* [0314, FDO]. Under the GMA all lands are either: (1) *urban* lands (i.e. within urban growth areas); (2) *rural* lands; or *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as either urban or rural. In contrast, a "**de**-designation" of lands from resource land to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction. [*Forster Woods, 1308c*, FDO, at 14, footnote 4.]
- General discussion of the Grubb and Green Valley cases as they relate to resource lands. [*Forster Woods, 1308c*, FDO, at 16-18.]

AIRPORTS

- There are two duties imposed by RCW 36.70A.200: a duty to adopt, in the plan, a process for siting essential public facilities (EPFs); and a duty not to preclude the siting of EPFs in a plan or implementing development regulations. [*Port of Seattle, 7314,* FDO, p. 7]
- The GMA duty for cities and counties not to preclude the siting of essential public facilities encompasses: new EPFs; existing EPFs; the expansion of existing EPFs; and necessary support activities for expansion of an EPF. [*Port of Seattle, 7314,* FDO, p. 7]
- A local government plan, through policies or strategy directives, cannot effectively make the siting or expansion of an EPF, or its support activities, incapable of being accomplished by means available to the EPF proponent. [*Port of Seattle, 7314,* FDO, p. 8]
- RCW 36.70A.200 imposes a duty on cities and counties not to preclude EPFs, even when the decision regarding the EPF was made subsequent to the initial adoption of the jurisdiction's plan. In other words, if a decision regarding an EPF follows the adoption of the plan, and if the plan violates the .200 duty 'not to preclude', the jurisdiction has a duty to amend its plan. [*Port of Seattle, 7314,* FDO, p.8]

- [T]he regional decision regarding STIA [an EPF] triggered Des Moines' duty to review its Plan for preclusive policies and amend its Plan to eliminate the preclusive effect of any of its policies. [*Port of Seattle, 7314,* 5/26/98 Order 1]
- If certain conditions are not met, the "mitigation" language obligates the City to oppose airport-related projects and to deny certain permits. The inescapable conclusion is that opposition . . . and denial of certain permits can result in preclusion of STIA expansion or some other EPF. There is no Plan provision excluding EPFs from these preclusive requirements. [*Port of Seattle, 7314,* 5/26/98 Order, at 3]
- Because the City is under a continuing duty, imposed by RCW 36.70A.200, not to preclude EPFs, any and all Plan policies that direct the City to use them to preclude EPFs, such as the expansion of STIA, even if not specifically identified above, are not in compliance with the GMA and the City must amend them. [*Port of Seattle, 7314,* 5/26/98 Order, at 6]
- [Petitioner tried to distinguish this case from *AFT, 9304*, and *Cole, 6309c*, arguing that it is more like *Port of Seattle II, 7314*. In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Poet wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]

ALLOCATION OF POPULATION

- The County may allocate population and employment to cities. [*Edmonds, 3305c,* FDO, p. 27]
- Allocating growth (and its constituent parts, population and employment) is a regional policy exercise rather than a local regulatory exercise. [*Edmonds, 3305c,* FDO, p. 31]
- Counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act. [*Tacoma, 4301,* FDO, p. 10]
- Unless a specific policy in the CPPs prohibits a city from planning for a greater population capacity than the allocation granted it by the county, the city may plan for more than the allocation. [*WSDF I, 4316,* FDO, p. 55]
- Determining how to distribute projected population growth among existing cities falls within the ultimate discretion of counties, subject to the requirements of RCW 36.70A.110(2) to attempt to reach agreement with cities. The Act does not require proportionate distributions. [*Vashon-Maury, 5308c,* FDO, p. 34]
- Allocating a portion of its projected population to the rural area, even though the rural area had capacity, during the planning period, for more than that allocated, does not violate the Act. [*Gig Harbor, 5316c,* FDO, p. 44]
- In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development, the duty to accommodate the population and employment that is allocated to them by a county, the duty to accommodate a county allocation and reflect it in both a city's comprehensive plan land use

designations and capital facility plans, the Act imposes a duty on cities to encourage urban growth within UGAs. [*Benaroya I, 5372c,* 3/13/97 Order, p. 8]

- A petition alleging 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 can be filed at any time. WAC 242-02-220(3). This provision addresses challenges to OFM's adoption of population projections; it does not address a county's allocation of its OFM population within the county. [*Gain, 9319*, 1/28/00 Order, at 9.]

AMENDMENT

- No provision of the GMA prohibits or restricts amendment of the county-wide planning policies (unlike comprehensive plans that can be amended no more frequently than once every year). [*Snoqualmie, 2304c,* 11/4/92 Order, p. 5]
- When a change [amendment] is substantially different from the prior designation, the public needs a reasonable opportunity to comment. [*Vashon-Maury, 5308c,* FDO, p. 58]
- Formal actions taken by the legislative bodies of cities and counties to amend their comprehensive plans and/or development regulations in response to a Board remand order are entitled to the presumption of validity contained in RCW 36.70A.320(1). [*Vashon-Maury, 5308c,* 5/24/96 Order, p. 8]
- Planning jurisdictions may adopt contingent implementing development regulations that do not take effect until some future amendment to a comprehensive plan has been formally adopted. [*WSDF II, 5340,* FDO, p. 17]
- If the amendments to a draft that were included in the final Plan were within the range of options discussed in the EIS, considered by the Planning Commission, and/or raised at the Council's public hearings, and were presented with sufficient detail and analysis at an adequately publicized hearing, then the public has had an opportunity to review and comment. [*Sky Valley, 5368c,* FDO, p. 31]
- RCW 36.70A.130 authorizes a local government to amend comprehensive plans annually; it does not require amendments. Moreover, it does not dictate that a specific proposed amendment be adopted. [*Cole, 6309c,* FDO, p. 10]
- The GMA's planning goals guide the development and adoption of comprehensive plans, and guide the adoption of amendments to comprehensive plans. [*Cole, 6309c,* FDO, p. 15]
- The Board is authorized to review a jurisdiction's legislative action that is alleged not to comply with the Act. The Board will not review quasi-judicial actions of local jurisdictions. Simply because a person has requested that a designation be changed does not mean that the resulting action taken by the legislative body was quasi-judicial. [*Buckles, 6322c,* FDO, p. 24]
- The legislative action of the Council was a vote on two ordinances that amended the county-wide comprehensive plan and amended the county-wide development regulations. Adoption of these ordinances affected property owners throughout the County. Quasi-judicial actions do not include the legislative actions of adopting, amending or revising comprehensive plans. [*Buckles, 6322c,* FDO, p. 25]
- Before the GMA was enacted, a jurisdiction considering [numerous] changes to its comprehensive plan or zoning code might take separate and discrete actions. Because of the narrow focus of such separate and discrete actions, characterization of the jurisdiction's action as quasi-judicial or legislative may have been difficult. However, it is an easier task to characterize a jurisdiction's action under the GMA. The Act generally limits a jurisdiction's ability to amend its comprehensive plan to no more than once a year. In these annual amendment cycles, a jurisdiction must consider all proposals concurrently so that the cumulative effect of the various proposals can be ascertained. Consequently, the proposals that, prior to GMA, may have been considered on a case-by-case basis,

through separate actions by the jurisdiction, must now be considered as a single bundle of proposals. Such consideration precludes a jurisdiction from functioning in a quasi-judicial manner; it amounts to broad policy-making action by the jurisdiction. The pros and cons of individual proposals are weighed and considered in light of the cumulative effects of all proposals, and action on all proposals is combined into one vote. [*Buckles, 6322c,* FDO, pp. 25-26]

- RCW 36.70A.130(2) requires local governments to establish a public participation process and procedure for plan amendments. The Board's jurisdiction extends only to determining compliance with that requirement, not to reviewing the circumstances, situations or events that may precipitate a proposed amendment. [*Wallock I, 6325,* FDO, p. 10]
- Petitioners cannot now challenge the original designation of their property (untimely); neither can they challenge the County's decision not to adopt the proposed amendments. [*Torrance, 6338,* 3/31/97 Order, pp. 5-6]
- When a plan or development regulation amendment involves the pending, or future, redesignation of specific geographic locations, the legal notice explaining the general purpose of the hearing must identify the location and proposed or future reclassification. [*Kelly, 7312c,* FDO, p. 9]
- RCW 36.70A.200 imposes a duty on cities and counties not to preclude EPFs, even when the decision regarding the EPF was made subsequent to the initial adoption of the jurisdiction's plan. In other words, if a decision regarding an EPF follows the adoption of the plan, and if the plan violates the .200 duty 'not to preclude', the jurisdiction has a duty to amend its plan. [*Port of Seattle, 7314,* FDO, p. 8]
- [T]he regional decision regarding STIA [an EPF] triggered Des Moines' duty to review its Plan for preclusive policies and amend its Plan to eliminate the preclusive effect of any of its policies. [*Port of Seattle, 7314,* 5/26/98 Order, at 1]
- Because the City is under a continuing duty, imposed by RCW 36.70A.200, not to preclude EPFs, any and all Plan policies that direct the City to use them to preclude EPFs, such as the expansion of STIA, even if not specifically identified above, are not in compliance with the GMA and the City must amend them. [*Port of Seattle, 7314,* 5/26/98 Order, at 6]
- The requirement of RCW 36.70A.130 that provides for comprehensive plan amendments no more frequently than once every year, does not apply to development regulations. [*Keesling, 7327*, FDO p. 5]
- Based upon the Board's prior decisions and the assertions of the parties in this case, it is undisputed that the County was not required to adopt the City's proposed amendment to the County Plan; and the County's rejection of the City's proposal did not violate any GMA duty to amend its comprehensive plan. [*Fircrest, 8302*, 3/27/98 Order, p. 4]
- The County must adhere to the plan amendment process set forth in its CPPs. If the CPPs are not clear, the Board will defer to the County's reasonable interpretation of its CPPs. Citing *King County v.Central Puget Sound Growth Management Hearings Board,* 91 Wash. App. I (1998). [*Fircrest, 8302*, 3/27/98 Order, p. 4]
- Although the purchase of [certain parcels or property] was linked to subsequent Plan and development regulation amendments, the purchase itself is not a GMA action and thus not subject to RCW 36.70A.140. (*See also* Footnote 4, [T]he Board recognizes that local government must undertake many steps, internal communications and activities prior to the development of a proposed amendment to a GMA plan or regulation, at least some of which actions are not GMA actions. The Board has not previously articulated, and does not here articulate, a standard for when such local government steps, communications and activities arise to the status of a "proposed GMA amendment" that would be subject to the requirements of RCW 36.70A.140 or other provisions of the Act. [*Green Valley, 8308c,* FDO, p. 10]

- The Act requires early and continuous public participation on proposed amendments of GMA plans and development regulations; the Act does not require public participation prior to the development and consideration of a proposal to amend the plan or development regulations. [*Green Valley, 8308c,* FDO, p. 10]
- Provisions of an ILA, if any, that are included as Plan or zoning code amendments are subject to the provisions of RCW 36.70A.140 during the plan or zoning code amendment process. [*Burien, 8310,* FDO, p. 9]
- RCW 36.70A.020(7) provides guidance for processing applications for permits, not plan amendments]. [*LMI/Chevron, 8312,* FDO, p. 9]
- The docketing and consideration of suggested amendments referenced in RCW 36.70A.470 pertains to comprehensive plan or development regulation deficiencies or improvements identified during the project review process. These docketed suggestions must be reviewed, at least annually, and scheduled for consideration as possible future amendments during the jurisdiction's next RCW 36.70A.130(2) plan amendment review process or development regulation review. [*LMI/Chevron, 8312,* FDO, p. 10]
- Each local government has discretion in establishing and designing its .130 plan amendment process. [*LMI/Chevron, 8312,* FDO, p. 12]
- The plain language of RCW 36.70A.130(2)(a) limits consideration of plan amendments to no more frequently than once every year; it does not require annual review. [*LMI/Chevron, 8312,* FDO, p. 12]
- RCW 36.70A.020(7), .470, and 130, read individually or collectively, [do not] establish a duty [for jurisdictions] to consider specific plan amendments on an annual basis. [*LMI/Chevron, 8312,* FDO, p. 12]
- RCW 36.70A.070 provides that a comprehensive plan "shall be an internally consistent document." Amendments to a plan are not exempt from this requirement and must not result in an internally inconsistent plan. *See* RCW 36.70A.130(1). For internal consistency challenges pursuant to RCW 36.70A.070(preamble), it is appropriate and necessary for the Board to review plan amendments for consistency with preexisting plan provisions. [*LMI/Chevron, 8312,* FDO, p. 39]
- The GMA requires that comprehensive plans, as a whole, be consistent with CPPs and MPPs. Amendments to a comprehensive plan may not cause the comprehensive plan to be inconsistent with CPPs and MPPs. [*LMI/Chevron, 8312,* FDO, p. 44]
- To determine consistency of a Plan, as amended, with the CPPs and MPPs, the Board will examine the challenged amendments to determine, if on their face, the amendments are consistent with the CPPs and MPPs identified. If the challenged amendments are consistent with the identified CPPs and MPPs, the challenge fails. If a challenged amendment is facially inconsistent, the Board will examine the challenged amendment in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the CPPs and MPPs identified. [*LMI/Chevron, 8312,* FDO, p. 44]
- In evaluating plans of adjacent jurisdictions for consistency; the Board will examine the challenged amendments to determine if, on their face, the amendments are inconsistent with [thwart] the adjacent jurisdictions' provisions identified. If the challenged amendments are consistent with the identified policies, the challenge fails. If the challenged amendments are facially inconsistent, the Board will examine the challenged amendments in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the identified adjacent jurisdiction policies. [*LMI/Chevron, 8312,* FDO, p. 48]
- When a plan revision amends one of the mandatory elements set forth in RCW 36.70A.070, the element, as amended, must comply with the requirements of RCW 36.70A.070. [*LMI/Chevron, 8312,* FDO, pp. 50-51]

- [Limiting the length of oral testimony and limiting the subject of oral testimony allowed at public hearings is fair and reasonable, so long as written testimony is accepted throughout the jurisdiction's process.] [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 26]
- Public participation requirements regarding changes made by the legislative body are contained in RCW 36.70A.035. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 27]
- As long as the amendments adopted by the legislative body are within the scope of alternatives available for public comment, additional opportunity for public notice and comment is not required. RCW 36.70A.035(2)(b)(ii). [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 27]
- When a change is proposed to an amendment to a comprehensive plan, the public must have an opportunity to review and comment on the proposed change before the legislative body votes on the proposed change. RCW 36.70A.035(2)(a), *but see* RCW 36.70A.035(2)(b)(i-iii) for exceptions. [*Andrus, 8330,* FDO, p. 7]
- [Given the facts of this case,] [a]t best the public was notified of the City's consideration of revisions to the [plan] . . . as early as six days and as late as one day prior to the April 16 public meeting. A citizen receiving all forms of notice published by the City would reasonably conclude that no comments would be accepted after the April 17 [published written comment] deadline. Although the April 16 meeting was continued, no explicit revision of the April 17 deadline for written comments was issued by the City, and the record does not show that the City indicated by any means that it would accept written comments during the time between the announced April 17 deadline and the May 21, 1998 adoption [date]. [*Andrus, 8330,* FDO, p. 9]
- Review of the reasonableness of the opportunity provided for review and comment is measured against all the proposed revisions to the [plan]; it is not measured against only the proposed revisions to [one area or provision]. [*Andrus, 8330,* FDO, p. 10, *footnote 5*]
- Under the facts of this case, the Board concludes that the opportunity provided for public review and comment on the proposed revisions to the [plan] was not reasonable. [*Andrus, 8330,* FDO, p. 10]
- [RCW 36.70A.470] recognizes a distinction between specific project review [subject to RCW 36.70B] and comprehensive land use planning. The action challenged. . . was a legislative action involving comprehensive land use planning; the action was not a project review pursuant to Chapter 36.70B RCW. [*Andrus, 8330,* FDO, p.10]
- Petitioners make no attempt to explain how .470 precludes any citizen, including one with a pending development proposal, from commenting on proposed land use planning legislation; neither do petitioners explain how .470 prohibits the City from considering comments from all citizens when it considers a proposed legislative action. [*Andrus, 8330,* FDO, p. 11]
- [The Board may refer to the Civil Rules for guidance, but it is not bound by them.] The Board is not a court; its jurisdiction and authority is prescribed by the Legislature. The explicit statutory filing period for a petition is sixty days yet [petitioner] asks that the Board in effect, extend it. . . . To allow the addition of [or substitution of] a new petitioner at this time and allow this change to relate back to [the original filing date of the PFR], would substantially expand the jurisdictional limits the Legislature established for the Boards. This the Board cannot do. [*Montlake, 9302c*, 4/23/99 Order, at 6.]
- Local governments have discretion in designing and establishing their required RCW 36.70A.130 plan amendment procedures, including setting different submittal and review timeframes. However, the Act does require [the governing body] to consider all Plan amendments concurrently. It is during this final deliberative phase that the decision-makers must have all proposals before them, at the same time, in order to ascertain the cumulative effects of the various proposals and make their decisions. [*WRECO, 8335,* FDO, at 8-9.]

- The City's decision to enable the Planning Agency to hold its public hearings on plan amendments without requiring a public hearing before the City Council is not clearly erroneous. [*WRECO, 8335,* FDO, at 14.]
- [S]ome cities have delegated to a Planning Commission (or planning agency) the responsibility for conducting public hearings on amendments to plans and regulatory codes. Others have chosen to have the legislative bodies themselves conduct such hearings, either in addition to or in place of those held by the planning commission. While neither might constitute a clear error of law under the GMA, taking either approach to extremes could have serious negative consequences. For example, consistently refusing to <u>ever</u> have a public hearing on plan amendments could undermine the public's faith in the accessibility and accountability of its elected officials. Conversely, <u>always</u> conducting duplicative hearings by the legislative body on actions already heard by the planning commission could erode the credibility and effectiveness of an important advisory body. [*WRECO, 8335,* FDO, footnote 7, at 13.]
- The Board has generally upheld local government in the situation where a petitioner has proposed a Plan amendment to a local government and the local government had declined to adopt the proposed amendment. . . . The GMA, pursuant to RCW 36.70A.130, requires local governments to have a process for amending their Plans. However, the Act does not require local government to adopt a particular proposed amendment offered by a petitioner, absent an explicit non-discretionary GMA duty compelling such amendment. [*AFT, 9302,* 6/18/99 Order, at 4.]
- [Interim Rural Forestry – IRF] is not an invalid land use designation and Petitioners have not shown that it is not an appropriate designation for their property. However the continued application of the term "interim" can lead to confusion in the GMA context. As used here by the County, "interim" is meant to notify the public that the County intends to revisit this rural designation now that it has designated its GMA forest lands. The County may revisit any of its land use designations during its annual plan amendment cycle, regardless of whether the term "interim" is attached to any given designation. [*Screen II, 9312,* FDO, at 9.]
- [Where] the subject matter of a [planning commission's] public hearing includes the possible redesignation of property; "consideration" of a revision to a land use designation includes the possibility of not revising the designation. [*Screen II, 9312,* FDO, at 11.]
- When any local government in the Central Puget Sound region adopts amendments to policies and regulations that purport to protect critical areas pursuant to RCW 36.70A.060(2), those enactments will be subject to meeting the best available science requirements of RCW 36.70A.172 and the potential of appeal to this Board pursuant to RCW 36.70A.280. [*Tulalip II, 9313*, 1/28/00 Order, at 4.]
- Neither RCW 36.70A.130(1) nor *WSDF III* stand for the proposition that subarea plans must contain, in every case, each of the mandatory comprehensive plan elements set out in RCW 36.70A.070 (footnote pertaining to *LMI* omitted). [*Tulalip II, 9313*, 1/28/00 Order, at 11.]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]
- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes

the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]

- [A challenge to an Ordinance amending the Capital Facilities Element cannot be a vehicle to challenge the jurisdiction's Housing, Utilities and Transportation Element. Such challenges to these elements are untimely, since they were not amended in the challenged Ordinance.] [*McVittie, 9316c, FDO, at* 15-17.]
- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317,* FDO, at 7-8.]
- These provisions [RCW 36.70A.035] require the opportunity for the public to review and comment on proposed amendments and changes to those proposed amendments. However, an additional opportunity for public review and comment is not required if the proposed change is within the scope of the alternatives available for public comment. RCW 36.70A.035(2)(b)(ii). In other words, if the public had the opportunity to review and comment on the changes to the proposed amendments, then the County is not required to provide an additional opportunity for public participation. There is no GMA requirement that the County must have prepared a document for public inspection specifically proposing all elements of the amendments ultimately adopted by the County; it is enough that the changes to the County-proposed amendments were within the scope of alternatives available for public comment. [*Burrow, 9318,* FDO, at 10.]
- [A jurisdiction] is under no GMA duty to adopt the amendments proposed [by petitioners]. [*Tacoma II, 9323c*, 3/10/00 Order, at 2]
- When a local government adopts an optional element, such as a neighborhood plan, it must be consistent with both the GMA and the provisions of the City-wide comprehensive plan. [Subarea Plan policies] may not over-ride, amend or "modify" such city-wide provisions [or policies.] [*Radabaugh, 0302,* FDO, at 7.]
- The Board also rejects the City's curious argument that, in case of an internal plan inconsistency, the most recent policy prevails. While there may be circumstances wherein a local government chooses to cure such an inconsistency by amending the older, rather than the newer policy, it is unsupportable to suggest that previously adopted policies must yield to newer ones. [*Radabaugh, 0302*, FDO, at 8.]
- The Board understands that the City wishes to provide non-urban village citizens with some assurances that capital facility investments can be made outside of designated urban village boundaries. However, such a policy choice would have implications for existing (city-wide) comprehensive plan policies. For this and other reasons, not the least of which is the public notice requirements of RCW 36.70A.035, the avenue to pursue that end would be in a proposed amendment to the adopted city-wide policy rather than incremental, ad-hoc amendment to thirty-seven individual neighborhood plans. [*Radabaugh, 0302,* FDO, at 10.]
- Although both RCW 36.70A.130 and .215 require counties and cities to systematically review their comprehensive plans, and to take action to amend them when appropriate, neither provision requires that amendment actually occur. Significantly, neither .130 nor .215 make explicit mention of reviewing or amending agricultural resource lands designations. More significantly, neither .170 nor .060 describe a process or criteria to amend or "de-designate" agricultural lands. Does the lack of an explicit GMA mention, much less mandate, to review and amend prior agricultural lands

designations mean that ag lands may never be "de-designated"? [The Board answers this question in the negative.] [*Grubb, 0304,* FDO, at 10-11.]

- [Petitioner tried to distinguish this case from *AFT, 9304*, and *Cole, 6309c*, arguing that it is more like *Port of Seattle II, 7314*. In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Poet wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]
- The salient facts in the Bidwell case are indistinguishable from the facts before the Board in the AFT, 9304, case. [The City has no duty to docket or adopt the proposed amendment.] [*Bidwell, 0309*, 7/14/00 Order, at pp. 3-4.]
- [Publication of the City Council Agenda, with the notation "Revision to Critical Areas Ordinance," without describing the nature of the proposed changes is insufficient notice.] It would be difficult for a potentially interested member of the public at large to ascertain what the pending ordinance was proposing. [*Homebuilders, 0314,* FDO, at 10-11.]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5]
- General discussion and overview of the difference between Plans and regulations and the importance of public participation in the processes. [*McVittie V, 0316*, FDO, at 13-15.]
- The GMA 20-year plan is a guiding light; it is a long-term vision for [a jurisdiction, it is generally] not something that you need to change on an emergency basis. However, development regulations may need to be changed on an emergency, but temporary, basis to respond to unforeseen circumstances. [Once a jurisdiction enacts] temporary controls or a moratorium, the jurisdiction should proceed through the [amendment or] docketing process to make the regulations permanent, if necessary, and to amend the plan if necessary. [This is a very reasonable approach that is consistent with the decision-making regime of the GMA.] [*McVittie V, 0316*, FDO, at 15.]
- [RCW 36.70A.130] outlines the procedures for consideration and adoption of proposed plan amendments. This process *amplifies* and *refines* the broader .140 public participation process that applies to the adoption and amendment of plans and development regulations. Providing the opportunity for public participation is a condition precedent to adoption or amendment of a plan. Here, a special process for plan amendments is required. The limitation on considering proposed plan amendments "no more frequently than once every year," or annual concurrent review provision, necessitates the establishment of deadlines and schedules for filing and review of such amendments so they can be considered concurrently. Although this section provides exceptions to the annual concurrent plan review limitation, none of these exceptions are excused from public participation requirements. [*McVittie V, 0316*, FDO, at 19.]
- [RCW 36.70A.390] does not apply to plan amendments. It does not apply to permanent changes in development regulations or controls. It applies only to the adoption or amendment of temporary controls or development regulations, those measures that are adopted for an interim period – generally six-months. This section of the Act is unique in that it permits a deviation from the norm

of providing the opportunity for public participation prior to action; here a jurisdiction can act or adopt first, then provide the opportunity for public participation after adoption. However, this post-adoption opportunity for public participation must occur within 60-days of adoption. [*McVittie V, 0316*, FDO, at 20.]

- [Plan] Amendments precipitated by emergencies are clearly governed by .130(2)(b), not .140 or even .130(2)(a). Within the confines of the goals and requirements of the Act, local governments have discretion to determine what "appropriate public participation" to provide before they take action on emergency plan amendments. The word "after" [in .130(2)(b)'s phrase "after appropriate public participation] evidences the clear and explicit Legislative intent to prohibit adoption of a plan amendment until "after" (behind in place or order, subsequent in time, late in time than, following) (citation omitted) appropriate public participation takes place. [*McVittie V, 0316*, FDO, at 23-24.]
- [A jurisdiction] has discretion to define "appropriate," but deciding to provide "zero" opportunity for public participation is not "appropriate" and an abuse of that discretion and contrary to the Act. [Providing no notice or opportunity for public participation before the adoption of the emergency plan amendment emasculates the GMA. [It is irreconcilable with the public participation requirements and renders the GMA's public participation provisions absolutely meaningless. [*McVittie V, 0316*, FDO, at 24.]
- In order to maintain consistency between its plan and implementing development regulations, as required by RCW 36.70A.040, the County correctly considered the [Plan and implementing regulation] amendments concurrently. [In a footnote, the Board noted that some development regulation amendments implement existing Plan policies and do not necessitate a reciprocal amendment to the Comprehensive Plan. Here, however, the proposal required both a Plan and development regulation amendment, thereby calling for concurrent consideration of both proposed amendments to maintain consistency, as required by RCW 36.70A.040.] [*McVittie V, 0316*, FDO, at 7.]
- *See also:* **Public Participation** [*McVittie V, 0316*]
- The initial adoption of a subarea plan is explicitly excepted from [the] annual concurrent review process RCW 36.70A.130(2)(a)(i). [*Kitsap Citizens, 0319c*, FDO, at 12.]
- [During the amendment review and discussion process several proposed amendments were withdrawn and several of these were subsequently revived.] The amendments at issue arose during the County's lengthy public process of developing Comprehensive Plan amendments and were debated for six-months by proponents and opponents. The Board concurs [with the County] that notice for the public hearing . . .was adequate ant the County complied with the requirements of RCW 36.70A.035. The County provided reasonable opportunity for public participation and the County complied with the requirements of RCW 36.70A.140. [*Forster Woods, 1308c*, FDO, at 12.]

AMICUS CURIAE

- *Edmonds, 3305c.*
- *Rural Residents, 3310.*
- *Tacoma, 4301.*
- *KCRP, 4305.*
- *Kitsap/OFM, 4314.*
- *WSDF I, 4316c.*
- *Vashon-Maury, 5308c.*
- *Children's I, 5311.*
- *Benaroya I, 5372c.*
- *Children's II, 6323.*

- *Port of Seattle, 7314.*
- *LMI/Chevron, 8312.*

ANNEXATION

- The eventual and logical culmination of 'cities as the primary providers of urban services requires that annexation and incorporation occur rather than service agreements sufficing as more than a transitional device. [*Poulsbo, 2309c,* FDO, p. 26]
- Annexation is an exercise of the land use powers of cities, and therefore a CPP cannot express a preference or otherwise provide direction to cities as to the methods of annexation. If a county wishes to discuss methods of annexation within the CPPs, it may do so, provided that such language serves to facilitate rather than frustrate the legislative directive of "that which is urban should be municipal." In any event, such language must not alter the land use powers of cities. [*Poulsbo, 2309c,* FDO, p. 26]
- The regulatory effect of IUGAs ceases upon adoption of the FUGA boundary with regard to annexations, and upon adoption of implementing regulations with regard to prohibiting urban development beyond the boundary. [*Rural Residents, 3310,* FDO, p. 15]
- Annexations are prohibited beyond UGAs. RCW 35.13.005 and RCW 35A.14.005. [*Rural Residents, 3310,* FDO, p. 42]
- The Board does not have jurisdiction over Title 35 as it relates to annexation. [*Anderson Creek, 5353c,* 10/18/95 Order, p. 7]
- Nothing in the Act requires a jurisdiction to adopt annexation policies. [*Lake Forest Park, 6336,* 2/14/97 Order, p. 4]
- If a County adopts annexation policies as part of its CPPs or if annexation policies are included in an adopted comprehensive plan, the Board would have jurisdiction to review such annexation policies. [*Lake Forest Park, 6336,* 2/14/97 Order, p. 4]
- Annexation, although encouraged by the GMA, is not a condition precedent to urban development in a UGA. [*Johnson II, 7302,* FDO, p. 10]
- A county may take precautions (i.e., requiring interlocal agreements) regarding the allocation of responsibility for services, and the process of transfer of jurisdiction, especially where the potential annexing city lies outside that county. [*Kelly, 7312c,* FDO, pp. 12 -13]
- The GMA does not require a county to actively support annexation, nor does it make such support a predicate to a GMA-compliant annexation. [*Kelly, 7312c,* FDO, p. 14]
- [U]nequivocal and directive language that, on its face, imposes conditions precedent to city annexations in urban growth areas . . . fail to comply with RCW 36.70A.110. [*Bremerton/Alpine,* 5339c/8332c, FDO, p. 48]
- Once a UGA has been designated, the provisions of a county plan may not condition or limit the exercise of a city's annexation land use power. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 48]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5]
- [There is] interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. The Growth Boards have jurisdiction to determine compliance with the GMA, including UGA designations. UGA designation enables city annexations, since cities are prohibited from annexing areas beyond designated UGAs. Boundary

Review Board decisions must be consistent with provisions of the GMA, including the UGA provisions. This system is consistent and coordinated and yields certainty in situations where UGAs have been found by the Board to comply with the Act, or where UGA designations have not been challenged. However, this system yields uncertainty where the UGA designation has been challenged, but not resolved as the annexation process proceeds. It is a situation that the Legislature has not, to date, addressed. [This uncertainty is prevalent in this case. In this case, the Board cannot, and will not, address the effect of the annexation, nor will it speculate on the outcome of pending litigation. However, the Board must carry out its mandated responsibilities.] Determining compliance with the goals and requirements of the GMA is the primary responsibility of the Board; it cannot shirk this duty. The Board must determine whether the challenged UGA designation complies with the goals and requirements of the Act. [*Kitsap Citizens, 0319c*, 2/16/01 Order, at 9-11.]

- The UGA amendment in this case is essentially the same situation as posed in *Kitsap Citizens* [*0319c*, 2/16/01 Order]. Snohomish County's action of amending its previous UGA designation also precipitated two courses of action. One course led to the City of Arlington's annexation of the area; the other course led to a PFR before this Board challenging the Ordinance that enabled the annexation to occur. Consequently, as in *Kitsap Citizens*, here the Board will proceed to carry out its GMA mandated duty to review the challenged actions for compliance with the goals and requirements of the Act. [*McVittie V, 0316*, FDO, at 11.]

APPEAL TO COURT

- No entries

AQUIFER RECHARGE AREA

- *See also:* **Critical Areas**
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, p. 79]
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c,* FDO, p. 20]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, pp. 41-42]
- When environmentally sensitive systems are large in scope (e.g., a watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may also choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre. Such designation must be supported by adequate justification. [*Litowitz, 6305,* FDO, p. 12]

- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 31]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]
- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]

ARCHEOLOGY

- No entries

AVERAGE NET DENSITY

- On parcels large enough to have more than one density designation, the Board will look at the average net density of that entire ownership. [*Benaroya I, 5372c,* FDO, p. 33]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in visual character. The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New England towns that Pope and Talbot used as templates for their company town. The Board finds that Port Gamble's mix of uses and physical forms clearly qualify as a "village," a "hamlet" or a "rural activity" center within the meaning of RCW 36.70A.070(5)(d)(i). [*Burrow, 9318,* FDO, at 18-19.]

BEST AVAILABLE SCIENCE - BAS

- *See also*: **Critical Areas**
- RCW 36.70A.172 does not impose a requirement that cities and counties adopt policies to protect critical areas; therefore, the Board does not have jurisdiction to hear an appeal of the City's resolution adopting such policies. Such a requirement cannot be implied by RCW 36.70A.170 or .060. [*HEAL, 6312,* FDO, p. 15]
- Amendments to a previously adopted critical areas ordinance, after the effective date of a legislative amendment (BAS – RCW 36.70A.172) of the GMA, are subject to the best available science requirement of RCW 36.70A.172(1). [*HEAL, 6312,* FDO, p. 17]
- The language of RCW 36.70A.172 that states: "shall include best available science in developing policies and development regulations" is interpreted by the Board as not mandating any substantive outcome or product, but rather requiring jurisdictions to make the best available science a part of their process of developing policies and development regulations to protect the functions and values of critical area. [*HEAL, 6312,* FDO, p. 19]
- The Board interprets the legislature's intent to be that counties and cities include the best available science in their process of developing critical areas regulations, so that this information can be considered before any legislative action is taken. [*HEAL, 6312,* FDO, p. 20]
- The GMA requires the Board to give deference to a local government's choice of scientific data. [*HEAL, 6312,* FDO, p. 21]

- A jurisdiction is required to include as part of the record of its development of its [critical areas regulations or amendments] the scientific information that was developed by the jurisdiction and presented to the jurisdiction by others during its development of its regulations. The City included the best available science when it developed its amendments to its critical areas regulations, and did not violate RCW 36.70A.172. [*HEAL, 6312,* FDO, p. 21]
- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 31]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]
- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]
- When any local government in the Central Puget Sound region adopts amendments to policies and regulations that purport to protect critical areas pursuant to RCW 36.70A.060(2), those enactments will be subject to meeting the best available science requirements of RCW 36.70A.172 and the potential of appeal to this Board pursuant to RCW 36.70A.280. [*Tulalip II, 9313*, 1/28/00 Order, at 4.]
- [The Court of Appeals Division I] found that the Board had erroneously concluded that it did not have jurisdiction to review a resolution amending the City of Seattle's critical area policies. The Court found that where a jurisdiction chooses to adopt critical area policies the Growth Boards have jurisdiction to review such policies and determine whether the policies comply with the requirements of RCW 36.70A.172. [*HEAL, 6312*, 10/4/01 Remand Order, at 4.]
- Evidence of the best available science must be included in the record and must be considered substantively in the development of critical areas policies and regulations. (Citation omitted.) [*HEAL, 6312*, 10/4/01 Remand Order, at 4.]
- [The question before the Board was whether Seattle's policy preference for preventing harm to steep slopes by minimizing disturbance and maintaining and enhancing existing ground cover was developed and derived from a process where the evidence of best available science was in the record and was considered substantively – was it discussed, deliberated upon and balanced with other factors? The Board found BAS was included in the record and considered substantively in developing the policy preference.] [*HEAL, 6312*, 10/4/01 Remand Order, at 4-7.]
- The Board properly applied the <u>State of Louisiana v. Verity</u> to the record before it in this case. [If there are scientifically respectable conclusions disputed by rival scientific evidence of presumably equal dignity, the court will not displace the administrative choice.] The Board found that the City took evidence and included it in the record. HEAL presented evidence contrary to the evidence relied upon by the City. The Board properly concluded it could not displace the City's judgment about which science the City would rely upon as the best available science. The Board rejected the idea that the statute required any particular substantive outcome or product. The Board is correct. The legislature passed RCW 36.70A.172(1) five years after the GMA was adopted. It knew of the other factors [goals and specific requirements], but neither made best available science the sole factor, the factor above all other factors nor made it purely procedural. Instead the legislature left the cities and counties with the authority and obligation to take scientific evidence and to balance that evidence among the many goals and factors to fashion locally appropriate regulations based on the evidence not on speculation and surmise. (Citations omitted.) [*HEAL, 6312*, 10/4/01 Remand Order, at 6-7.]

- [The record contained scientific evidence based on "natural systems sciences" and "engineering sciences," the City discussed both sciences, discussed and deliberated on the capital and operational costs of each, then chose and used the "natural systems sciences" in developing its steep slope regulations.] The same evidence of best available science was included and substantively considered by the City when it simultaneously adopted amendments to the steep slope portion of its critical areas regulations and the amendment to its steep slope policy. Consequently, the Board concludes that the City's adoption of the steep slope (critical area) policy amendment, complies with [the BAS requirement of .172(1). [*HEAL, 6312*, 10/4/01 Remand Order, at 7.]
- [Respondent asserted that RCW 36.70A.172 only applies to critical area regulations and argued] "A Comprehensive Plan is a policy statement, and therefore any critical area policies are not subject to Board review." [Citing the Court of Appeals in the HEAL case, the Board concluded] Respondent is wrong on the law. [*Lewis, 1320*, FDO, at 14.]
- [Petitioner cited to science in the record from the City's Surface Water Management Plan, recommending regulation based upon the 500-year flood plain. Yet the City designated the 100-year flood plain as its frequently flooded area.] Although there may well be a scientific basis to support this designation, Edgewood fails to cite to a scientific basis for this 100-year flood plain designation. Consequently, the Board concludes that Edgewood's Plan declaration and designation of the 100-year flood plain, as its frequently flooded area – critical area, does not comply with the requirements of RCW 36.70A.172. [*Lewis, 1320*, FDO, at 15.]

BEST MANAGEMENT PRACTICES - BMPS

- No entries

BOARD RULES

- Although a dispositive motion before a board and a motion for summary judgment before a superior court may be similar, the Board is not constrained by CR 56 time limits or case law interpretation of that rule. [*Twin Falls, 3303c,* 6/11/93 Order, p. 19]
- WAC 242-02-650 does not require the strict application of the Washington Rules of Evidence in hearings before the Board. [*Northgate, 3309,* 11/8/93 Order, p. 8]
- General discussion and recap of the quasi-judicial nature of the Board, jurisdictional issues and the APA. [*Sky Valley, 5368c,* FDO, pp. 6-20]
- The Board's Rules of Practice and Procedure require that, as part of a petition for review, a petitioner must show standing. WAC 242-02-210(d). However, no such requirement exists for an intervenor. [*Benaroya I, 5372c,* 1/9/96 Order, p. 6]
- [When intervention is granted after the deadline for filing motions, and a motion is filed by an intervenor, the Board's Rules require approval of the Presiding Officer for consideration of the motion; if granted, consideration may be deferred until the hearing on the merits – WAC 242-02-532(2) and (3).]
- A Board Order on Dispositive Motions is a final decision of the Board subject to reconsideration. [*Hanson, 8315c,* 10/15/98 Order, p. 2]
- [The GMA, specifically RCW 36.70A.290, does not provide for service requirements. However, the Board's rules, at WAC 242-02-230, do establish service requirements. The Board views failure to comply with the WAC service requirements as jurisdictional, not merely procedural.] [*Lane, 8333c,* 1/20/99 Order, p. 2]
- [The Board denied the motion because, absent the FDO, the County's action is presumed valid and Posten would be in the same position as after the FDO issued. The Order did not address the

timeliness issue or the fact that numerous other parties besides Posten were affected by the FDO.] [*Alpine, 8332c,* 3/24/99 Order, p. 2]

- It is unfortunate that Petitioner's counsel could not find the Board's decisions until respondent noted them in the dismissal motion, but Petitioner's statements are simply wrong. The Board's Rules of Practice and Procedure indicate where the Board's orders are available and published. [*Montlake, 9302c*, 4/23/99 Order, at 5.]
- [Filing motions (dispositive or to supplement the record) are untimely if filed after the deadline established in the prehearing order, unless written permission is granted by the Board.] [*WRECO, 8335,* FDO, at 2-3]
- Without any explanation, Petitioners filed their response brief with the Board two days after the Board's deadline. The Board may dismiss any action for failure to comply with any order of the Board. WAC 242-02-720. Because Petitioners' brief was filed late and without prior approval of the Board, the Board has not considered Petitioners' response brief. [*Tacoma II, 9323c*, 3/10/00 Order, at 2]
- [On reconsideration, the Board considered Petitioners' response brief, but affirmed its decision to dismiss the PFRs alleging the County failed to adopt the amendments proposed by Petitioners.] [*Tacoma, 9323c*, 3/27/00 Order, at 1-2.]
- Pursuant to WAC 242-02-532(4), a motion, other than a dispositive motion or a motion to supplement the record, is deemed denied unless the Board takes action within twenty days of filing the motion. (The Board did not act on the request for expedited review.) [*McVittie, 0316*, 1/4/01 Order, at 2.]
- There is nothing in the GMA nor the Board's rules to suggest that the City waived its rights to bring a dispositive motion simply because it did not, at the time of the prehearing conference, declare its intention to file such a motion. [*Mesher, 1307*, 8/2/01 Order, at 9.]

BOARDS

- Nothing in the GMA suggests that a growth planning hearings board has the authority to waive the 180-day limit to issue its final order as specified in RCW 36.70A.300. [*Snoqualmie, 2304c,* 11/4/92 Order, p. 3]
- General discussion of Board powers. [*Twin Falls, 3303c,* 6/11/93 Order, p. 7]
- The phrase "judicial review" in RCW 43.21C.075(4) refers to both review by courts and by this quasi-judicial growth planning hearings board. Thus, the doctrine of exhaustion of administrative remedies applies to petitions before the Board. [*Rural Residents, 3310,* 2/16/94 Order, p. 6]
- The CPSGMHB's jurisdiction is limited to the four-county Central Puget Sound region by RCW 36.70A.250. Thus, the precedential impact of this Board's decisions is limited to King, Pierce, Snohomish and Kitsap counties. This is consistent with the regional diversity that is one of the hallmarks of the Growth Management Act. [*Kitsap/OFM, 4314,* FDO, p. 5]
- General discussion of GMA and summary of prior Board holdings. [*Bremerton, 5339,* FDO, pp. 20-24]
- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c, FDO, at* 13.]

BUFFERS – *SEE:* CRITICAL AREAS

BUILDABLE LANDS – *SEE:* RE-AFFIRM OR RE-EVALUATE

- [The buildable lands review requirement of RCW 36.70A.215 requires certain counties "to adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program." The first review and evaluation must be completed no later than September 1, 2002. A challenge to compliance with the requirements of .215 is only timely after a jurisdiction adopts its .215 CPP or after September 1, 2002.] [*Kitsap Citizens, 0319c*, FDO, at 11-12.]
- [Pursuant to RCW 36.70A.215, the County adopted a CPP to govern UGA expansions. To maintain consistency with the UGA expansion CPP, the County also adopted an identical Plan policy. The CPP and Plan policy include review and analysis requirements for the expansion of UGAs for residential, commercial and industrial lands. The (Maltby) UGA expansion, designation and rezone indicate commercial designations. However, a concomitant agreement limited the area in dispute for use as a church, thereby allegedly precluding other commercial uses. Consequently, the issue for the Board was whether the existence of the concomitant agreement made the UGA review and analysis required by CPP and Plan policy necessary. The Board determined the County CPP and Plan policy both apply and govern the expansion of the UGA.] [*Hensley IV, 1304c*, FDO, at 29.]
- Full compliance with [the provisions of] RCW 36.70A.215 is not required to be completed until September 1, 2002. However, portions of the County's "buildable lands" process have been completed, adopted and are effective, including the guiding principle of [the CPP and Plan policy, which state:] "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 [GMA] and one of the following four conditions are met." If the conditions have not yet been fully defined, by necessity, the [CPPs and Plan policy's] prohibition on UGA expansion is operative until such time as they have are established and applied. [*Hensley IV, 1304c*, FDO, at 33.]
- The Board notes that RCW 36.70A.130(3) was amended in 1997 to provide: "The review required by this subsection *may be combined* with the review and evaluation required by RCW 36.70A.215." (Emphasis supplied.) RCW 36.70A.215 further supports the principle that *periodic* review and evaluation for UGA sizing and designation, *not continuous updates*. [*Master Builders Association, 1316*, FDO, at 10.]

BURDEN OF PROOF

- A petitioner must first show that the Act imposes a duty upon a local jurisdiction to undertake a particular action and then show by a preponderance of the evidence how the local jurisdiction has breached that duty. Conclusory statements that the Act imposes a duty are insufficient to carry the petitioner's burden of proof. [*Robison, 4325c,* FDO, p. 10]
- The Board acknowledges that at a compliance hearing, the burden of proof has shifted to the respondent city or county to show that it has procedurally complied with the Board's order. Accordingly, this Board routinely requires a city or county whose GMA enactment was not in compliance with the Act to first indicate what actions it took to bring the enactment into compliance. Petitioners and intervenors are then given the opportunity to comment on the city or county's statement of compliance. Finally, the city or county is given the opportunity to reply to any responses that were filed. This shifting in the burden of proof does not, however, alter the presumption of validity to which the action of local government is entitled. [*Vashon-Maury, 5308c,* 5/24/96, FOC, p. 8]
- To successfully challenge a local government's GMA actions, a petitioner must first demonstrate that the local government had a duty to act under the GMA and then must show, by a preponderance of the evidence, how the city violated that duty. [*Litowitz, 6305,* FDO, p. 5]

- It is not the jurisdiction's burden to demonstrate the effectiveness of a TDR program. [*Cosmos, 6319,* 6/17/96 Order, p. 4]
- The burden rests on a petitioner to identify those provisions of the challenged comprehensive plan that are uncoordinated or inconsistent. To do this, petitioners must identify the provision in the challenged plan and explain how it is uncoordinated with or inconsistent with a provision in another jurisdiction's comprehensive plan. [*Hensley III, 6331,* FDO, p. 13]
- As to invalidation, the jurisdiction has the burden of demonstrating that the [legislative action] taken in response to the Board's finding of invalidity no longer substantially interferes with the fulfillment of the [specified] goals of the GMA. [*Port of Seattle, 7314,* 5/26/98 Order, p. 2]
- The burden of proof is on petitioner to demonstrate that the actions taken by the local government are not in compliance with the requirements of the GMA. RCW 36.70A.320(2). [*Burien, 8310,* FDO, p. 4]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, p. 30]
- This Board has addressed the application of the 1997 amendment to the standard of review in several prior cases. All of these prior cases shared a common procedural posture: except for the issuance of the Board's final order, all events, including all briefing and oral argument, had occurred prior to the effective date of the amended standard of review (citations omitted). The Board's review and deliberation of whether the local government was in compliance with the GMA had already commenced prior to the effective date of the amended standard of review. Unlike these prior cases, the briefing of the substantive issues now on remand from the Supreme Court, the hearing on the merits, and the Board's review and deliberation have not yet begun. [*Bear Creek,* 5308c, 1/24/00 Order, at 3.]
- ESB6094 provided that most of the Legislature's 1997 GMA amendments "are prospective in effect and shall not effect the validity of <u>actions taken or decisions made</u> before the effective date of this section." 1997 Wash. Laws ch. 429 § 53 (emphasis added). The amendment to the standard of review clearly affects "action taken and decisions made" by the Board. There is nothing in RCW 36.70A.320(3), the codification of the amended standard of review that speaks to actions or decisions of the local governments. Consequently, the Board's deliberation and review in this case, where briefing, oral arguments, and the issuance of the Board's order will occur after the effective date of the 1997 amendment, the Board is obligated to apply the Legislature's amended standard of review – clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. [*Bear Creek,* 5308c, 1/24/00 Order, at 3.]
- [Except for the Board's standard of review] the Board will apply the provisions of the GMA that were in effect at the time the County took the challenged actions. [*Bear Creek,* 5308c, 1/24/00 Order, at 4.]

CAPITAL FACILITIES ELEMENT – CFE

- If a county elects to utilize tiering within its UGAs, it is best served at the FUGA stage, when the capital facilities plan element of the comprehensive plan has been prepared. It is premature to require tiering at the IUGA level. [*Tacoma, 4301,* FDO, p. 35]
- For purposes of conducting the inventory required by RCW 36.70A.070(3)(a), "public facilities" as defined at RCW 36.70A.030(13) are synonymous with "capital facilities owned by public entities." [*WSDF I, 4316,* FDO, p. 45]
- The phrase "existing needs" from RCW 36.70A.070(3)(e) refers not only to the construction of new or expanded capital facilities that can be currently identified as needed, but also the maintenance of

existing capital facilities. . . . Determining the appropriate level of maintenance for capital facilities falls within the local government's discretion. [*WSDF I, 4316,* FDO, p. 47]

- As a matter of law, when "probable funding falls short of meeting existing needs" then the jurisdiction in question must reassess its land use element. [*WSDF I, 4316,* FDO, p. 47]
- Although OFM's population projections and those used in county-wide planning policies tend to have a 20-year time frame, the Act at a minimum requires only a six-year capital facilities plan. [*WSDF I, 4316,* FDO, p. 49]
- Unless a specific policy in the CPPs prohibits a city from planning for a greater population capacity than the allocation granted it by the county, the city may plan for more than the allocation. [*WSDF I, 4316,* FDO, p. 55]
- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, p. 60]
- [Where a large percentage of population and employment growth is concentrated by a city's comprehensive planning process, a city's comprehensive plan must at least discuss what impact its concentrated population growth strategy will have on future traffic forecasts.] [*WSDF I, 4316,* FDO, p. 63]
- If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed must be included in the Plan. [*WSDF I, 4316,* FDO, p. 65]
- Although urban growth should be located where there is adequate infrastructure to support it, the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. [*Robison, 4325c,* FDO, pp. 20-21]
- A jurisdiction is not required to tabulate "certificates of water availability" in order to measure water supply. [*Vashon-Maury, 5308c,* FDO, p. 48]
- Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place "at the time development is available for occupancy and use" and second, adequacy is measured by "locally established minimum standards." [*Gig Harbor, 5316c,* FDO, p. 13]
- All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. (citations omitted) A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning. [*Bremerton, 5339c,* FDO, p. 77]
- The lack of a fully completed capital facilities plan is more than a conceptual shortcoming – it is a fatal legal defect in a comprehensive plan. It alone is sufficient cause for the Board to find that the land use element and every other component of a plan violates the requirements of the Act. [*Bremerton, 5339c,* FDO, p. 77]

- Regarding RCW 36.70A.070(3)(a-b), counties and cities must include an inventory and needs analysis of existing publicly-owned capital facilities, regardless of ownership, in their CFE. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at p.39]
- Regarding RCW 36.70A(3)(c-d), if a county does not own or operate a facility, it should not be required to include the locational or financing information in its CFE since these decisions are beyond its authority. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at p. 39]
- When a jurisdiction that owns and/or operates a specified capital facility cooperates with the county and discloses information pertaining to location or financing (RCW 36.70A.070(3)(c-d)), the county may include such information in its CFE. Indeed, aside from being sound growth management and public policy, it may be a necessary prerequisite to access a new funding source – e.g., impact fees. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at p. 39]
- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at p. 41]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, at p. 42]
- The Board interprets RCW 36.70A.070(3)(c) as if the phrase "owned or operated by the city or county" existed at the end [i.e., the capital facilities element shall contain the proposed locations and capacities of expanded or new capital facilities "owned or operated by the city or county"]. [*Sky Valley, 5368c,* FDO, p. 66]
- [A]fter the initial inventory and forecast requirements of section .070(3(a)(b) are completed, the Act permits a county to choose to shift some of the facility components that it has inventoried to other categories within the overall mandatory elements of .070 if there is adequate supporting rationale. [*Sky Valley, 5368c,* FDO, p. 67]
- In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development, the duty to accommodate the population and employment that is allocated to them by a county, the duty to accommodate a county allocation and reflect it in both a city's comprehensive plan land use designations and capital facility plans, the Act imposes a duty on cities to encourage urban growth within UGAs. [*Benaroya I, 5372c,* 3/25/96 Order, p. 8]
- The Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. [*Hensley III, 6331,* FDO, p. 9]
- The Board surmises that the Urban Village strategy is intended to be realized through various implementation approaches, including not only the traditional regulatory-zoning reclassifications, but also including targeted or focused City capital investment as an incentive to private investment, and various administrative incentives. [*WSDF IV, 6333,* FDO, pp. 20-21]
- The public facilities required to be inventoried in a capital facilities element includes: parks and recreation facilities, domestic water supply systems, storm and sanitary sewer systems, and schools. [*WSDF IV, 6333,* FDO, p. 22]

- To determine whether existing capital facilities are adequate to meet the future needs of the projected population and employment growth, the Board looks to the language of the plan itself, its appendices, departmental letters, departmental functional plans and the capital improvement program. [*WSDF IV, 6333,* FDO, p. 24]
- If existing capital facilities are adequate to meet the needs of the projected future population and employment growth, and if no new or expanded facilities are needed, the jurisdiction need not specify the location or capacity, nor indicate financing of any such facilities. Further, a reassessment of the land use element is only required if funding falls short for the new or expanded facilities. [*WSDF IV, 6333,* FDO, p. 28]
- The results or conclusions of a jurisdiction's capital facilities needs analysis (i.e., determinations of adequacy, or identification, location, capacity and six-year financing or new or expanded facilities) must be contained directly in the plan or incorporated CIP. Additionally, the Plan must also cite, reference or otherwise identify and indicate the source document(s) containing the required capital facilities needs analysis. [*WSDF IV, 6333,* FDO, p. 28]
- The Act does not impose a duty or requirement upon local governments to eliminate or substantially reduce capital facilities maintenance backlogs, nor to guarantee the funding or financing of capital facilities maintenance projects. [*WSDF IV, 6333,* FDO, p. 31]
- The Act requires local jurisdictions to plan for and accommodate new growth – that projected by OFM and allocated by the County. There is no provision in the GMA to suggest that the Act allows a jurisdiction not to accommodate new growth because it has a capital facilities maintenance backlog or has not guaranteed funding to remove any maintenance backlog, or it is postponing indefinitely its duty to accommodate new growth until its maintenance backlog is removed or reduced. To do so would fly in the face of one of the cornerstones of the GMA. [*WSDF IV, 6333,* FDO, p. 32]
- Although an Interlocal Agreement may address the timing of, and allocation of responsibility for, infrastructure planning in a UGA, the requirements of the GMA govern infrastructure planning within a UGA. [*Johnson II, 7302,* FDO, pp. 19-20]
- "Front-end loading" of population [in the CFP] is not a GMA violation. . . . Neither the GMA nor the Procedural Criteria requires or suggests that the OFM population be evenly distributed over the planning period. The County clearly has discretion to distribute the population over the planning horizon as it sees fit, so long as the urban growth is accommodated. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 75]
- [Although] the GMA does not designate a specific six-year period for CFE planning, it is illogical, and contrary to one of the bedrock purposes of the GMA – *planning* to manage *future* growth – to suggest that the CFE's six-year financing *plan* can be, in whole or in part, an historical report of capital facility financing for prior years. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 77]
- The "at least six-year plan" period [of RCW 36.70A.070(3)(d)] begins with the date of the adopted Plan. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 77]
- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c, FDO, at* 13.]
- [Where a jurisdiction's challenged six-year financing program has been repealed and superceded by a more current six-year financing program, the Board cannot provide effective relief; therefore, issues relating to compliance with the capital facilities element, inconsistency and whether capital budget decisions in compliance with the comprehensive plan are moot.] [*McVittie, 9316c, FDO, at* 14.]
- A threshold issue for determining whether [Snohomish] County has made its capital budget decisions, pertaining to roads, in conformity with its comprehensive plan, is the relationship of the

County's Transportation Element, the six-year financing plan in the 1999-2004 Capital Plan Detail and the Transportation Improvement Plan (TIP). Conceptually, the starting point for this inquiry is the County's Transportation Element, [as adopted in 1995]. Within this document, the County identifies its proposed transportation improvements for the short range (1995-2000 Phase) and long range (2001-2012 Phase). The transportation improvements identified in the Transportation Element are the baseline Plan provisions against which conformity of capital budget decisions are measured. The next question for assessing [a RCW 36.70A.120] challenge is which documents contain the capital budget decisions that must conform to the comprehensive plan? [Here these decisions were contained in the County's TIP, and summarized in the CFE's six-year financing plan. In this case, Petitioner did not challenge the TIP; consequently, the issue was dismissed.] [*McVittie, 9316c, FDO, at* 18-20.]

- *See also:* **Goals** [*McVittie, 9316c*]
- While Board review of a challenge to RCW 36.70A.070(3) or (6) focuses on the specific requirements of the section, the Board's review must be done in light of Goal 12, not in lieu of Goal 12. [*McVittie, 9316c, FDO, at* 22.]
- [R]eading RCW 36.70A.070(3) in light of Goal 12, the Board concludes that the CFE must include locally established minimum standards, a baseline, for included public facilities, so that an objective measurement test of need and system performance is available. [*McVittie, 9316c, FDO, at* 25.]
- The capital facilities element also specifies a "trigger" for reevaluation action by the local government – RCW 36.70A.070(3)(e). (Quotation omitted.) [I]t is clear that a local government must take action to ensure that existing identified needs are met, if (the "trigger") probable capital facility funding falls short of meeting capital facility needs. [*McVittie, 9316c, FDO, at* 26.]
- It is important to recognize that local government may use various regulatory techniques to avoid the situation where funding shortfalls occur. However, once local action is forced by a probable funding shortfall, a local government has numerous options to consider in reassessing and reevaluating its plan. In reassessing or reevaluating its plan, a local government is not automatically required to revise its land use element. There are other options that may be considered to meet identified capital facility needs and maintain plan consistency. [Options include: reducing standard of service (LOS); increase revenue; reduce average cost of the capital facility; reduce demand – reallocate or redirect population within the jurisdiction; reduce consumption; combinations of these options.] [*McVittie, 9316c, FDO, at* 26-27.]
- If reassessment action is triggered, the local government's response must culminate in public action in the public forum. [Pursuant to RCW 36.70A.020(11), .035, .130 and .140] This includes, but is not limited to, disclosure of the need for a reassessment, disclosure of options under consideration, and public participation prior to local legislative action. (Footnote omitted.) [*McVittie, 9316c, FDO, at* 27.]
- Unlike the transportation element, the capital facilities element does not use the phrase "concurrent with development" and does not specify an enforcement procedure. [However, read in light of Goal 12] a local government is obligated to take steps to ensure that those facilities and services it has identified as being necessary to support development are adequate and available to serve development. [*McVittie, 9316c, FDO, at* 29.]
- [For capital facilities, adoption of a concurrency ordinance is not required, but it is not prohibited; such action is within local discretion. In any case, an enforcement mechanism is required.] [*McVittie, 9316c, FDO, at* 30.]
- The record before the Board does not make clear whether the "Sidewalk Inventory" map was produced, or available, during the pendency of the adoption of the Greenwood/Phinney Ridge Urban Village. Even if the Board were to agree with Petitioner that the necessary inventory was not available during that process, the fact that it presently exists arguably renders legal issue 4 [alleging no inventory of sidewalks] moot. [*Radabaugh, 0302,* FDO, at 11.]

- In order to determine whether [a jurisdiction] is experiencing a shortfall in funding, the question is simply, have the needs identified in the capital improvement program, as derived from the capital facilities element (and supporting documents) been funded. [*McVittie IV, 0306c*, at 14.]
- The choice of what is funded during a six-year financing plan cycle is a discretionary choice of the County. It is not for Petitioner to decide which projects are to be funded in a six-year cycle. So long as the needs identified in the CFE are reflected in the capital improvement program, the scheduling of their implementation, including the delay of project to later years, is a discretionary choice of the County. However, the County should be mindful that those needs identified in the 20-year Plan (CFE), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan. [*McVittie IV*, *0306c*, at 14-15.]
- While project backlogs are a problem faced by most local governments, the GMA does not provide the remedy. (Citing: *WSDF IV, 6333*, at 31.) [*McVittie IV*, *0306c*, at 15.]
- [O]nce a shortfall is established and a reassessment precipitated, the GMA's public participation requirements come into play. [Conversely, if a shortfall is not established, and reassessment is unnecessary, public participation is not required.] [*McVittie IV*, *0306c*, at 23.]
- At the heart of this issue is the question of whether the notices the County published told the general public what it needed to know about the pending County action to amend the standards in its CFP. The Board agrees with the County that a capital facility planning is a complex subject and that the notices it published did mention the general topics under discussion. The Board also presumes that the County has made a good faith attempt to engage the public in the capital facilities dialogue. However, a notice that is *reasonably calculated* to reach the intended public must be measured against something more than the good faith intent of the local government publishing it. Rather, it must also be measured against whether it is *effective* in alerting the public to the key questions in play. It is this latter bar that the County's notices fail to clear. [*McVittie VI*, *1302*, FDO, at 9.]
- The Board holds that effective notice of an amendment to a Capital Facilities Element involving the addition or subtraction of facilities deemed to be "necessary for development" or a change in a level of service (LOS) for a listed facility must clearly and concisely describe the nature or magnitude of modifications being considered. Likewise, if a jurisdiction wishes to consider amending a previously adopted standard, by increasing or decreasing a level of service, by revising the methods used to measure performance, or by deletion of the standard altogether, it must explicitly say so in its notice. It is not sufficient for a notice to simply say that the jurisdiction is considering updating or changing previously adopted facilities, standards or methods. It must give a clear indication of WHAT, HOW and, if applicable, HOW MUCH the facility, standard or method might be changed. [*McVittie VI*, *1302*, FDO, at 9-10.]
- The County's notice, while lengthy and exhaustively detailed in some ways, misses the mark by not clearly conveying to the average citizen that the County proposed to distinguish in its CFP between certain public facilities as "necessary to support development" and others that are not, and to characterize "parks" as one of the latter. Such changes are too fundamental and persuasive in their effect to be excused by the "errors in exact compliance" language of .140. [*McVittie VI*, *1302*, FDO, at 10.]
- One of [the Board's] fundamental conclusions was the Board review of a challenge to RCW 36.70A.020(3) or (6) must be done "in light of Goal 12, not in lieu of Goal 12. [*McVittie VI*, *1302*, FDO, at 11.]
- [In McVittie I, 9316c, FDO, 23-30.] [T]he Board reached four other basic conclusions about the cumulative effect of Goal 12 and the capital facilities requirements of the Act: (1) Goal 12 creates a duty beyond the capital facility planning that is required by RCW 36.70A.070(3) and requires substantive, as well as procedural compliance; (2) Goal 12 requires the designation of a locally established single Level of Service (LOS) standard for the facilities and services contained in the Capital Facilities Element, below which the jurisdiction will not allow service to fall; (3) Goal 12

operating through RCW 36.70A.070(3) and (6), requires an enforcement mechanism or "trigger" to compel either concurrency implementation or reevaluation of numerous options; and (4) Goal 12 does **not** require a development-prohibiting concurrency ordinance for non-transportation facilities and services, rather, it allows local governments to determine what facilities and services are necessary to support development and the enforcement mechanism for ensuring that identified necessary facilities and services for development are adequate and available. (Footnotes omitted). [*McVittie VI*, *1302*, FDO, at 11-12.]

- The Board holds that a Capital Facilities Element must include all facilities that meet the definition of public facilities set forth in RCW 36.70A.030(12). All facilities included in the CFE must have a minimum standard (LOS) clearly labeled as such (i.e., not "guidelines" or "criteria"), must include an inventory and needs assessment and include or reference the location and capacity of needed, expanded or new facilities. (RCW 36.70A.070(3)(a), (b) and (c). In addition, the CFE must explicitly state which of the listed public facilities are determined to be "necessary for development" and each of the facilities so designated must have either a "concurrency mechanism" or an "adequacy mechanism" to trigger appropriate reassessment if service falls below the baseline minimum standard. Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may choose to adopt a concurrency mechanism for other facilities. [*McVittie VI*, *1302*, FDO, at 17.]
- To clarify, the Board did not intend that the degree of detail of the notice mimic the actual ordinance. The "reasonable notice" standard or .035 presumes that the County will exercise some judgment about what the essential features of the Ordinance are that require summarization in the notice. The example provided by the County would meet the reasonably calculated standard because it alerts the citizens to the nature of the change (a lowering of the standard) and the likely consequence (approval of more development that would otherwise be allowed). This would be more meaningful to the lay public than a technically precise phrase such as "the change in LOS will be from .076 V/C to .074 V/C." However, to the extent that the changes contemplated in LOS can be expressed with commonly used terminology (e.g. a change from LOS "C" to LOS "D" it would be appropriate to include such information in the notice. [*McVittie VI, 1302*, 10/11/01 Order, at 4.]

CLUSTERING

- No entries

COMMUNITY, TRADE & ECONOMIC DEVELOPMENT, DEPARTMENT OF – CTED

- [The CTED] Minimum Guidelines are advisory only; to be considered by counties when classifying and designating natural resource lands. [*Twin Falls, 3303c,* FDO, p. 21]
- RCW 36.70A.110(2) implicitly requires the written justification before a legislative action establishing UGAs is taken so that the dissatisfied city can decide whether to formally object to DCTED. [*Tacoma, 4301,* FDO, p. 36]
- The Act does not require a planning jurisdiction to submit any draft copies of proposed plans or regulations to CTED, much less a copy of each and every revision that a comprehensive plan or development regulation undergoes during the legislative process. All that the Act requires of a city proposing to adopt development regulations is that it provide notice of its intent to CTED. [*Children's I, 5311,* FDO, p. 21]
- The land capacity analysis should be related to the CTED models, other accepted models, or the methodology, if any, established in the CPPs. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 17]

- RCW 36.70A.106 requires a jurisdiction to provide CTED notice of intent to adopt amendments. [*Children's II, 6323,* FDO, p. 14]
- When both the statutory definition [RCW 36.70A.030(10)] and the factors set forth in the Department's regulations [the Department of Community, Trade and Economic Developments – WAC 365-190-050(1)] are considered, it is apparent that [generally,] the Northern Sammamish Valley no longer has long-term commercial significance for agricultural production. [*Grubb, 0304,* FDO, at 7.]
- The Board has interpreted (RCW 36.70A.106) in (*Children's I, 5311*). In that decision, the Board did not elaborate on what a jurisdiction must actually submit to CTED as "notice of intent," but the Board recognizes that CTED must be fully apprised and fully aware of the substance of any proposed amendment. A city or county notice must describe *what* it is proposing to do. The Board sees two aspects to the issue of notification of [CTED]: timeliness and sufficiency. [*Homebuilders, 0314,* FDO, at 6-7.]
- [Regarding timeliness] the GMA stipulates that notice of any amendments for permanent changes to a comprehensive plan or development regulation "shall" be submitted "at least sixty-days" prior to its final adoption. [*Homebuilders, 0314,* FDO, at 7.]
- [Regarding sufficiency] Local governments cannot give CTED proper notice of a proposed amendment to a comprehensive plan or development regulation simply by sending a copy of an environmental notice as embodied in a [DNS]. The DNS is a creature of SEPA, and would typically only be sent to the Department of Ecology. [*Homebuilders, 0314,* FDO, at 7.]
- The Board is mindful that in the year 2002 all local government jurisdictions in the Central Puget Sound region must review their comprehensive plans and regulations, including critical areas ordinances (citations omitted). CTED will need to coordinate these notices with other state agencies who may be affected and to properly review the substance of all proposed amendments submitted by local government entities. The Board would in no way undermine the statutorily mandated 60-day timeframe that CTED needs to carry out its duty under the GMA. [*Homebuilders, 0314,* FDO, at 7.]

COMPLIANCE

- The GMA authorizes the Board to determine whether an enactment by a local jurisdiction is in compliance with the requirements of the act. In so doing, the Board will necessarily consider whether a local jurisdiction planning under the GMA has exceeded the requirements of that act. The Board will do this by examining whatever action was taken by the local jurisdiction and comparing it to the purposes, requirements and goals of the GMA as a whole. If the local action is consistent with the requirements of the GMA, this Board will find that the local government was in compliance with the GMA. Conversely, inconsistent actions will be remanded. [*Tracy, 2301,* FDO, p. 21]
- At the time of the compliance hearing, for the purposes of determining whether the state agency, county or city is in compliance with the requirements of the Act, the respondent jurisdiction must comply not just with the statutory language but also with the Board's final decision and order, however specific it might be. The Board nonetheless notes that the final decision and order itself must comply with the requirements of the Act. [*Tacoma, 4301,* 1/18/94, Order, p. 7]
- The scope of a compliance hearing will be limited to whether the subsequent action was taken by the compliance deadline and, in taking such action, whether the minimal requirements of pre-hearing notice, a public hearing and post adoption publication of notice of adoption took place. [*WSDF I, 4316,* 11/2/95, Order, p. 5]
- The Board acknowledges that at a compliance hearing, the burden of proof has shifted to the respondent city or county to show that it has procedurally complied with the Board's order. Accordingly, this Board routinely requires a city or county whose GMA enactment was not in

compliance with the Act to first indicate what actions it took to bring the enactment into compliance. Petitioners and intervenors are then given the opportunity to comment on the city or county's statement of compliance. Finally, the city or county is given the opportunity to reply to any responses that were filed. This shifting in the burden of proof does not, however, alter the presumption of validity to which the action of local government is entitled. [*Vashon-Maury, 5308c,* 5/24/96, FOC, p. 8]

- Generally, the Board will continue to determine only procedural compliance in the compliance findings it issues pursuant to RCW 36.70A.330(2). Substantive compliance will be determined only if a new petition for review is timely filed. On occasion, the Board may determine both procedural and substantive compliance in a compliance finding if it determines that the circumstances are appropriate. The Board will consider the following factors in deciding whether it will consider substantive compliance at a compliance hearing: the Board's own schedule, the number of parties in the case, the scope and nature of the legal issues before the Board, and (if possible to determine at the time) whether new petitions for review challenging the substance of the remand amendment have been timely filed. [*Vashon-Maury, 5308c,* 5/24/96, FOC, p. 9]
- When portions of a comprehensive plan have been remanded with instructions to bring those provisions into compliance with the Act, and when other portions of the plan have been found to comply with the Act, the Board must determine on a <u>case-by-case basis</u> whether the contested portions of implementing development regulations comply with the GMA. [*WSDF II, 5340,* 6/16/95 Order, p. 6]
- [Anticipated, but not yet achieved, compliance with a remand order in a previous case cannot moot issues in a subsequent case where the Board's statutory deadline for filing its final order in the subsequent case precedes the deadline established by the Board for the jurisdiction to comply with the previous remand order.] [*PNA II, 5371,* FDO, pp. 6-8]
- A jurisdiction's action to achieve compliance with a remand is presumed valid upon adoption. [*Hapsmith I, 5375c,* 2/13/97 Order, p. 4]
- [Although the Board's Determination of Invalidity has been rescinded, the Board must inquire as to whether these remanded provisions comply with the goals and requirements of the Act.] [*Bremerton/Alpine, 5339c/8332c,* FDO, pp. 21-22]
- The County's decision to attempt to comply with the FDO and address the land use of the [property] in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy. The time and effort expended on the present process illustrate the difficulty and complexity of developing an optional Lake Stevens UGA subarea plan. The Board does not want to dissuade the County from subarea planning and notes that neither the substance or the Lake Stevens subarea plan nor the appropriateness of that public process is presently before the Board. Unfortunately, the action needed for the County to address the Board's finding that the notice was defective for the County's amendment to 33.7 acres in Ordinance No. 96-074 had been needlessly enmeshed in the subarea planning process. The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan. Further, the County's Lake Stevens UGA subarea plan process had interjected broader GMA and subarea planning issues into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance No. 96-074. [The Board directed the County to repeal those portions of Ordinance 96-074 that were invalidated due to defective notice.] [*Kelly, 7312c,* 3/31/99 Order, pp. 6-7]
- While the Board suggested the repeal **or** amendment of [the ordinance] as a means of achieving compliance with the GMA, it did not direct the Town to rescind [the ordinance]. Likewise, the Board viewed [a portion of the ordinance] as an improvement to the Town's Plan; on remand, the

Board merely directed the Town to amend its Plan to remove inconsistencies, it did not direct the Town to rescind [the portion of the ordinance]. *See LMI/Chevron,* FDO, at 55-57. It was the Town's choice, and within its discretion, to rescind all, or part, of these ordinances in its effort to remove inconsistencies and achieve compliance with the GMA. [*LMI/Chevron, 8312,* 12/20/99 Order, at 6.]

- Implicit in the remand was the assumption that the [designation] criteria would remain unchanged. Consistency between the Plan text and map is what the GMA and the Board's FDO required. Nothing in the [FDO] restricts the County's ability to achieve compliance with the GMA through means other than those discussed in the Board's Order. [*Screen II, 9312,* FDO, at 6.]
- [While the Board may acknowledge a petitioner's skepticism], the Board presumes that the [jurisdiction] will act in good faith to comply with the requirements of the Board's Orders. [*Bear Creek, 3508c*, 11/3/00 Order, at 11.]
- The Board found the *County's* action . . .noncompliant and invalid. Consequently, the Board directed the *County to take legislative action*, not merely rely upon the Board's determination of invalidity, to bring the Plan and development regulations (zoning) into compliance. . . .How the County chooses to comply with the Board's FDO [and the Act] is left to the County's discretion; however, providing effective notice and the opportunity for public participation for the citizens of Snohomish County on the County's chosen legislative action to comply with the Board's FDO is not a meaningless act. [*McVittie V, 0316*, 5/4/01 Order, at 2-3.]

COMPREHENSIVE PLAN

- Just as a comprehensive plan must be internally consistent (see first paragraph of RCW 36.70A.070), so too does this Board hold that interim development regulations must be internally consistent. [*Tracy, 2301,* FDO, p. 27]
- Two of the most profound impacts of the GMA upon planning are that: (1) planning is now required of all cities and counties and (2) consistency is now required of that planning. The mandated county-wide planning policies and comprehensive plans, as defined and developed under the authority of Chapter 36.70A RCW, are fundamentally different than the voluntary comprehensive plans authorized under the Planning Enabling Act, Chapter 36.70 RCW. [*Snoqualmie, 2304c,* FDO, p. 15]
- Prior to GMA, plans were voluntary and advisory and there was no requirement that plans be guided by state goals or be consistent with the plans of others. Under GMA, plans are now mandatory (RCW 36.70A.040) and directive. RCW 36.70A.100, .103 and .120. Plans must now be guided by planning goals (RCW 36.70A.020) and be mutually consistent. RCW 36.70A.110 and .210. [*Rural Residents, 3310,* FDO, p. 17]
- A purpose of any section of the Act, therefore, is to further growth and land use decision-making that is comprehensive, coordinated and consistent. [*Rural Residents, 3310,* FDO, p. 17]
- Comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve compact urban development. [*Tacoma, 4301,* FDO, p. 12]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive

plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, p. 6]

- The comprehensive plans provide the mechanism for balancing local, regional and state interests into coherent policies to guide specific actions. [*Aagaard, 4311c,* FDO, p. 7]
- The Act does not require, and the Board does not expect, that the plans of a county and its cities, based on the most objective data, credible assumptions and analytical methods, will guarantee a specific population result twenty years hence. [*Kitsap/OFM, 4314,* FDO, p. 9]
- If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed must be included in the Plan. [*WSDF I, 4316,* FDO, p. 65]
- Comprehensive plans must be consistent with county-wide planning policies. [*Vashon-Maury, 5308c,* FDO, p. 34]
- A local jurisdiction's comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities. [*Children's I, 5311,* 5/17/95 Order, p. 12]
- The GMA requires communities to manage change and change to manage – general discussion. [*Children's I, 5309,* FDO, p. 4]
- Discussion of UGAs in other states – evaluation. [*Gig Harbor, 5316c,* FDO, p. 55]
- Compact Urban Development v. Sprawl – general discussion of the literature. [*Bremerton, 5339c,* FDO, pp. 24-32]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, p. 28]
- When portions of a comprehensive plan have been remanded with instructions to bring those provisions into compliance with the Act, and when other portions of the plan have been found to comply with the Act, the Board must determine on a <u>case-by-case basis</u> whether the contested portions of implementing development regulations comply with the GMA. [*WSDF II, 5340,* 6/16/95 Order, p. 6]
- A county cannot adopt development regulations that are consistent with and implement its comprehensive plan until that plan itself is adopted under the GMA. [*Hensley II, 5343,* 6/9/95 Order, p. 5]
- While it is not the Board's responsibility to identify each and every development regulation which would be necessary to achieve full implementation of the Plan, the Board can and will conclude that, lacking a comprehensive zoning code or its functional equivalent, a county has not adopted implementing development regulations that "work together in a coordinated fashion to achieve a common goal." [*Hensley II, 5343,* 11/3/95 Order, p. 7]
- Because comprehensive plans are controlling documents under the GMA, rather than discretionary advice, or "a basic source of reference," they now have the force of law, unlike the comprehensive plans adopted pursuant to Chapters 36.70 RCW and 35A.63 RCW. It is both appropriate and

necessary that such binding laws be codified, as ordinances are and resolutions are not. [*BNRR, 5350,* 8/30/95 Order, p. 3]

- The Central Puget Sound Board respectfully disagrees with the Western Board's conclusion that "ordinance" is a generic term. The Board holds that a GMA comprehensive plan can only be adopted by ordinance. [*BNRR, 5350,* 8/30/95 Order, p. 3]
- Cities are required to plan under both the GMA mandate for comprehensive plans and must also follow the mandates of the CPPs applicable to its jurisdiction. [*Benaroya I, 5372c,* FDO, p. 25]
- Nothing in the GMA or the CPPs requires a jurisdiction to show a detailed plan as to how affordable housing policies will be achieved. There is nothing in the Plan or in the record that suggests the housing affordability policies are not capable of being carried out. [*Benaroya I, 5372c,* FDO, p. 26]
- If GMA stands for nothing else, it stands for the proposition that the citizens of a neighborhood are also citizens of a larger community, be it a city and/or county, a region and indeed, the state itself. To allow the City to proceed with a neighborhood planning process that is segmented and insulated from the goals and requirements of the Act, and the policy documents that the Act requires of cities and counties, would ignore this basic axiom of comprehensive planning. [*WSDF III, 5373,* FDO, p. 28]
- General discussion of the Board's treatment of plans and local discretion. [*Litowitz, 6305,* FDO, pp. 3-5]
- There is no GMA prohibition from a jurisdiction using its pre-GMA zoning designations a starting point or a benchmark in the development of its GMA-required comprehensive plan. [*Litowitz, 6305,* FDO, p. 13]
- RCW 36.70A.010 is not a substantive or even a procedural requirement of the Act, and it creates no specific local government duty for compliance apart from the subsequent goals and requirements of the Act. Neither RCW 36.70A.010 nor Board decisions in prior cases impose a duty on a jurisdiction to avoid the use of previous plans and regulations in preparing its GMA plan. [*Litowitz, 6305,* FDO, p. 14]
- RCW 36.70A.130 authorizes a local government to amend comprehensive plans annually, it does not require amendments. Moreover, it does not dictate that a specific proposed amendment be adopted. [*Cole, 6309c,* FDO, p. 10]
- The GMA's planning goals guide the development and adoption of comprehensive plans, and guide the adoption of amendments to comprehensive plans. [*Cole, 6309c,* FDO, p. 15]
- A city may plan for areas outside of its city limits if it chooses to do so; however, such planning has no GMA effect. [*Hensley III, 6331,* FDO, p. 14]
- In the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the GMA. [*WSDF IV, 6333,* FDO, p. 11]
- The sizing of the UGA must be supported by analytical rigor and an explicit accounting, yet [the sizing of UGAs] is an inexact science. The specificity and precision important to the accounting are tempered by the imprecise nature of long-range population projections, and indeed comprehensive planning itself. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 37]
- The fact that an area is urbanized [does not] compel the County to designate it as a UGA. The Board affirms its prior holding to that effect. Likewise, the mere fact that a [prior version or draft plan] designated [an area] as UGA. . . does not mandate the same outcome in [a subsequent] plan. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 58]
- [The fact that an area is adjacent to a UGA does not compel its designation as a UGA.] [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 59]
- [The fact that an area was designated within a UGA and designated industrial in a prior version or draft plan, does not mandate the same outcome in a subsequent plan.] [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 65-66]

- While there is an important directive linkage between them, policies (i.e. plans) and regulations are distinct GMA creatures. The Acts consistency requirements give plans directive effect over regulations, however this does not convert policy documents into land use controls. Simply put, plans are not regulations. [The City's critical areas regulations are not before the Board.] [*Tulalip II, 9313*, 1/28/00 Order, at 4.]
- The critical area scheme set out by the GMA for [jurisdictions] is: (1) designate critical areas by September 1, 1991; (2) adopt development regulations to protect these designated critical areas by September 1, 1991; and (3) when adopting a comprehensive plan by the July 1, 1994 deadline, review the critical area designations and protective development regulations. In other words, the requirement of RCW 36.70A.060(3) applies to the adoption of the <u>initial</u> comprehensive plan required by RCW 36.70A.040; nothing in RCW 36.70A.060(3) creates a duty for the [jurisdiction] to review its critical area designations and development regulations upon adoption of a subsequent subarea plan. [*Tulalip II, 9313*, 1/28/00 Order, at 10.]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]
- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]
- The Supreme Court stated, "Upon a determination that the [UGA] provision violates the GMA, it should be stricken from both the comprehensive plan <u>and the CPPs</u>. The Board has determined that the County's UGA provision for Bear Creek violates the GMA. Therefore, by operation of law, the urban designation has effectively been stricken from both the plan and CPP. A CPP that directs an unlawful outcome is inoperative. [*Bear Creek, 3508c*, 11/3/00 Order, at 11-12.]
- Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl. The Act's lengthy definitions and requirements regarding urban growth areas and natural resource lands also date to 1990. However, the Act's initial description of future rural uses and development patterns was spare. While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. [*Burrow, 9318,* FDO, at 18.]
- The Board understands that the City wishes to provide non-urban village citizens with some assurances that capital facility investments can be made outside of designated urban village boundaries. However, such a policy choice would have implications for existing (city-wide) comprehensive plan policies. For this and other reasons, not the least of which is the public notice requirements of RCW 36.70A.035, the avenue to pursue that end would be in a proposed amendment

to the adopted city-wide policy rather than incremental, ad-hoc amendment to thirty-seven individual neighborhood plans. [*Radabaugh, 0302,* FDO, at 10.]

- The choice of what is funded during a six-year financing plan cycle is a discretionary choice of the County. It is not for Petitioner to decide which projects are to be funded in a six-year cycle. So long as the needs identified in the CFE are reflected in the capital improvement program, the scheduling of their implementation, including the delay of project to later years, is a discretionary choice of the County. However, the County should be mindful that those needs identified in the 20-year Plan (CFE), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan. [*McVittie IV*, *0306c*, at 14-15.]
- [Jurisdictions] should be aware that those needs identified in the 20-year Plan (transportation element ending in 2012), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan i.e. by 2012. If these needs are not met by 2012, at a minimum, the [jurisdiction] will be noncompliant in meeting the funding requirements of RCW 36.70A.070(6). [*McVittie IV*, *0306c*, at 21.]
- *See also*: **GMA Planning** [*LIHI I, 0317*, 2/21/02 Order]
- [The requirements of RCW 36.70A.070(preamble), .070(1) and .110(3)] apply to comprehensive plans and UGA designations; they do not apply to development regulations – *i.e.* rezones. [The Board dismissed these issues *sua sponte*.] [*Forster Woods, 1308c*, FDO, at 29.]

CONCURRENCY

- Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place "at the time development is available for occupancy and use" and second, adequacy is measured by "locally established minimum standards." [*Gig Harbor, 5316c,* FDO, p. 13]
- [The City's "screenline" LOS methodology and Concurrency Regulations were adopted in 1994. The Ordinance challenged here, which adopted the Plan amendments, did not amend the LOS provisions of the Transportation Element or Concurrency Regulations as adopted in 1994. Petitioner cannot now challenge these provisions.] [*Montlake, 9302c,* FDO, at 10-12.]
- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c,* FDO, at 13.]
- The transportation element requires a local government to adopt a "concurrency" ordinance that will prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan. (Footnote omitted.) [*McVittie, 9316c,* FDO, at 29.]
- Unlike the transportation element, the capital facilities element does not use the phrase "concurrent with development" and does not specify an enforcement procedure. [However, read in light of Goal 12] a local government is obligated to take steps to ensure that those facilities and services it has identified as being necessary to support development are adequate and available to serve development. [*McVittie, 9316c,* FDO, at 29.]
- The answer to question 4 – Does Goal 12 require "concurrency" for all public facilities and services, beyond the explicit concurrency requirement of RCW 36.70A.070(6)(b) for transportation" is no. Goal 12 does not require a development-prohibiting concurrency ordinance for non-transportation facilities and services. Goal 12 allows local governments to determine what facilities and services are necessary to support development and develop an enforcement mechanism for ensuring that

identified necessary facilities and services for development are adequate and available. [*McVittie, 9316c*, FDO, at 30.]

- [For capital facilities, adoption of a concurrency ordinance is not required, but it is not prohibited; such action is within local discretion. In any case, an enforcement mechanism is required.] [*McVittie, 9316c,* FDO, at 30.]
- [Sidewalks are a critical component of successful compact urban development. However,] the Board cannot, with the facts and argument presented in this case, discern a GMA duty that would oblige the City to adopt "levels of service" for sidewalks in urban villages nor subject projects in urban villages to a "concurrency" requirement for the installation of such facilities. [*Radabaugh, 0302,* FDO, at 14.]
- The Board holds that a Capital Facilities Element must include <u>all</u> facilities that meet the definition of public facilities set forth in RCW 36.70A.030(12). <u>All</u> facilities included in the CFE must have a minimum standard (LOS) clearly labeled as such (i.e., not "guidelines" or "criteria"), must include an inventory and needs assessment and include or reference the location and capacity of needed, expanded or new facilities. (RCW 36.70A.070(3)(a), (b) and (c). In addition, the CFE must explicitly state which of the listed public facilities are determined to be "necessary for development" and each of the facilities so designated must have either a "concurrency mechanism" or an "adequacy mechanism" to trigger appropriate reassessment if service falls below the baseline minimum standard. Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may choose to adopt a concurrency mechanism for other facilities. [*McVittie VI*, *1302*, FDO, at 17.]

CONCURRING OPINIONS

- *Hapsmith I, 5375c,* FDO, Philley concurring (and dissenting)
- *Port of Seattle, 7314,* FDO, Tovar concurring
- *Bear Creek, 5308c,* 6/15/00 Order, McGuire concurring, North concurring.
- *MacAngus, 9317,* FDO, North concurring.
- *Shoreline pdr, 0301pdr,* Tovar concurring.
- *Bidwell pdr, 0302pdr,* North concurring.
- *Homebuilders, 0314,* FDO, McGuire concurring.
- *HEAL, 6312,* 10/4/01 Order, Tovar concurring.
- *McVittie V, 0316,* FDO, Tovar concurring.
- *Shoreline II, 1313,* 12/28/01 Order, Mc Guire concurring (and dissenting).
- *McVittie VIII, 1317,* FDO, Tovar concurring.

CONSISTENCY

- The GMA authorizes the Board to determine whether an enactment by a local jurisdiction is in compliance with the requirements of the act. In so doing, the Board will necessarily consider whether a local jurisdiction planning under the GMA has exceeded the requirements of that act. The Board will do this by examining whatever action was taken by the local jurisdiction and comparing it to the purposes, requirements and goals of the GMA as a whole. If the local action is consistent with the requirements of the GMA, this Board will find that the local government was in compliance with the GMA. Conversely, inconsistent actions will be remanded. [*Tracy, 2301,* FDO, p. 21]
- Just as a comprehensive plan must be internally consistent (see first paragraph of RCW 36.70A.070), so too does this Board hold that interim development regulations must be internally consistent. [*Tracy, 2301,* FDO, p. 27]

- The CPP "framework" of .210(1) is to ensure the consistency (required by .100) of the comprehensive plans of cities and counties that have common borders or related regional issues. [*Snoqualmie, 2304c,* FDO, p. 8]
- Two of the most profound impacts of the GMA upon planning are that: (1) planning is now required of all cities and counties and (2) consistency is now required of that planning. The mandated county-wide planning policies and comprehensive plans, as defined and developed under the authority of Chapter 36.70A RCW, are fundamentally different than the voluntary comprehensive plans authorized under the Planning Enabling Act, Chapter 36.70 RCW. [*Snoqualmie, 2304c,* FDO, p. 15]
- The CPPs provide substantive direction not to development regulations, but rather to the comprehensive plans of cities and counties. Thus, the consistency required by RCW 36.70A.100 and RCW 36.70A.210 is an external consistency between comprehensive plans. The CPPs do NOT speak directly to the implementing land use regulations of cities and counties. [*Snoqualmie, 2304c,* FDO, p. 16]
- County wide planning policies are policy documents that have both a procedural and a substantive effect on the comprehensive plans of cities and the county. The immediate purpose of the CPPs is to achieve consistency between and among the plans of cities and the county on regional matters. A long-term purpose of the CPPs is to facilitate the transformation of local governance in urban growth areas so that cities become the primary providers of urban governmental services and counties become the providers of regional and rural services and the makers of regional policies. [*Poulsbo, 2309c,* FDO, p. 23]
- Annexation is an exercise of the land use powers of cities, and therefore a CPP cannot express a preference or otherwise provide direction to cities as to the methods of annexation. If a county wishes to discuss methods of annexation within the CPPs, it may do so, provided that such language serves to facilitate rather than frustrate the legislative directive of "that which is urban should be municipal." In any event, such language must not alter the land use powers of cities. [*Poulsbo, 2309c,* FDO, p. 26]
- The Act's requirements for consistency and coordination oblige cities and counties to balance local interests with regional and state interests when implementing the GMA. [*Rural Residents, 3310,* FDO, p. 14]
- UGAs take direction from the Act's planning goals at RCW 36.70A.020 and from CPPs. UGAs therefore also serve the three purposes of CPPs: (1) to achieve consistency between plans as required by RCW 36.70A.100; (2) to achieve a transformation of local governance within the UGA; and (3) to direct urban development to urban areas and to reduce sprawl. [*Rural Residents, 3310,* FDO, p. 14]
- A purpose of any section of the Act, therefore, is to further growth and land use decision-making that is comprehensive, coordinated and consistent. [*Rural Residents, 3310,* FDO, p. 17]
- Comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve compact urban development. [*Tacoma, 4301,* FDO, p. 12]
- The provisions of any GMA enactment must be internally consistent. [*Tacoma, 4301,* FDO, p. 32]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.

2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, p. 9]

- Local jurisdictions are required to meet both the preamble and subsequently specified elements of RCW 36.70A.070. [*Aagaard, 4311c,* FDO, p. 13]
- The amount of growth a city plans for in its comprehensive plan must be consistent with the CPPs, including a population allocation, if any, and any interlocal agreement the city may have reached with the county or counties, and must meet the external consistency requirements of RCW 36.70A.100 and internal consistency requirements of RCW 36.70A.070. [*Aagaard, 4311c,* FDO, pp. 14-15]
- A comprehensive plan, including both mandatory elements and optional elements or features, must be internally consistent. [*WSDF I, 4316,* FDO, p. 14]
- Internal consistency means that provisions are compatible with each other-that they fit together properly. In other words, one provision may not thwart another. Consistency can also mean more than one policy not being a roadblock for another; it can also mean that policies of a comprehensive plan, for instance, must work together in a coordinated fashion to achieve a common goal. [*WSDF I, 4316,* FDO, p. 27]
- Comprehensive plans must be consistent with county-wide planning policies. [*Vashon-Maury, 5308c,* FDO, p. 34]
- RCW 36.70A.100 does not apply to development regulations. [*Children's I, 5311,* 5/17/95 Order, p. 6]
- A development regulation must be internally consistent and all development regulations must be consistent with each other. [*WSDF II, 5340,* FDO, p. 7]
- Consistency can mean that one policy cannot be a roadblock for another; it can also mean that the policies of a comprehensive plan, must work together in a coordinated fashion to achieve a common goal. [*Alberg, 5341c,* FDO, p. 17]
- The Act imposes five major consistency requirements on a jurisdiction undertaking adoption of comprehensive plans and development regulations under the Act: (1) a comprehensive plan must be internally consistent (RCW 36.70A.070); (2) comprehensive plans of one jurisdiction must be consistent with comprehensive plans of cities and counties with common borders or related regional issues (RCW 36.70A.100); (3) development regulations must be consistent with the comprehensive plan (RCW 36.70A.040); (4) a development regulation must be internally consistent; and (5) a development regulation must be consistent with other relevant development regulations. [*Alberg, 5341c,* FDO, p. 17]
- A development regulation must be internally consistent; and all development regulations must be consistent with each other. A development regulation must be consistent with other relevant development regulations. [*Alberg, 5341c,* FDO, p. 26]
- Comprehensive plans of cities and counties must be consistent with adopted CPPs. [*Anderson Creek, 5353c,* FDO, p. 22]

- Internal consistency involves the consistency of the provisions within one document rather than between the provisions of two different documents. [*Anderson Creek, 5353c,* FDO, p. 29]
- The burden rests on a petitioner to identify those provisions of the challenged comprehensive plan that are uncoordinated or inconsistent. To do this, petitioners must identify the provision in the challenged plan and explain how it is uncoordinated with or inconsistent with a provision in another jurisdiction's comprehensive plan. [*Hensley III, 6331*, FDO, p. 13]
- RCW 36.70A.100 requires that comprehensive plans be coordinated and consistent; this does not require a jurisdiction's comprehensive plan to be coordinated with the desires of citizens living adjacent to the jurisdiction. [*Hensley III,* FDO, p. 13]
- Interim designations and implementing regulations may be altered at the time of comprehensive plan adoption if and to the extent that such alteration is necessary to insure consistency with the comprehensive plan and its implementing development regulations. [*Sky Valley, 5368c,* FDO, p. 115]
- So long as the failure to complete an optional element or innovative land use technique does not create an internal inconsistency in the Plan, or constitute a failure to comply with the mandatory requirements of the Act, such failure is not a violation of the Act. [*Sky Valley, 5368c,* FDO, p. 119]
- Just as a failure to complete an optional element of a comprehensive plan does not constitute a violation of the Act, a failure to adopt implementing development regulations for such an optional element is not a violation. However, at such time as the Plan is amended to incorporate such an optional element, the requirement to adopt implementing development regulations must be met. [*Sky Valley, 5368c,* FDO, p. 120]
- A city may choose to undertake optional neighborhood planning, pursuant to RCW 36.70A.080; however, those neighborhood plans must comply with the Plan and the requirements of the GMA. Conversely, a city cannot "pick and choose" – to adopt some and not other neighborhood plans under the authority of the GMA. [*Benaroya I, 5372c,* FDO, p. 22]
- The ultimate designation of any property remains in the local jurisdiction's discretion so long as the designation complies with the requirements of the Act and is internally consistent. [*Hapsmith I, 5375c,* FDO, p. 25]
- RCW 36.70A.100 requires comprehensive plans of cities and counties to be coordinated with and consistent with, the comprehensive plans or the counties or cities with which the county or city has common borders or related regional issues. [*Buckles, 6322c,* FDO, p. 22]
- RCW 36.70A.100 requires that comprehensive plans be coordinated and consistent; this does not require a jurisdiction's comprehensive plan to be coordinated with the desires of citizens living adjacent to the jurisdiction. [*Hensley III, 6331,* FDO, p. 13]
- The burden rests on a petitioner to identify those provisions of the challenged comprehensive plan that are uncoordinated or inconsistent. To do this, petitioners must identify the provision in the challenged plan and explain how it is uncoordinated with or inconsistent with a provision in another jurisdiction's comprehensive plan. [*Hensley III, 6331,* FDO, p. 13]
- External plan consistency may be best exemplified by plan-to-plan comparisons. [*Hensley III, 6331,* FDO, p. 13]
- The Department of Ecology's approval of an amendment to a SMP for a shoreline of state-wide significance is not subject to the consistency requirements of the GMA. The requirement to achieve consistency among a city's comprehensive plan elements is the city's duty, not Ecology's. Instead, Ecology's action must be reviewed for consistency with the policy of RCW 90.58.020 and the applicable guidelines. [*Gilpin, 7303,* FDO, pp. 6-7]
- The Board will review the challenged enactments to "determine whether [they] achieve the legislature's intended results: consistency with the planning goals of the Act." In other words, to show substantive noncompliance with a planning goal, a petitioner must identify that portion of the

challenged enactment that is not consistent with, or thwarts, the planning goal, and explain why the identified portion does not comply with that goal. Citing: *Rural Residents, 3310,* FDO. [*Rabie, 8305c,* FDO, p. 6]

- [Delayed implementation of a Plan, by failure to enact consistent zoning regulations, is not a violation of RCW 36.70A.070, which governs mandatory elements. The appropriate challenge on this issue is to compliance with RCW 36.70A.040.] [*Rabie, 8305c,* FDO, p. 14]
- [Where the language of a Plan's amended goals, policies and text is ambiguous, the Board may interpret the ambiguity consistently with the goals and requirements of the Act, and remand the ambiguous amendatory language for clarification that is consistent with the goals and requirements of the GMA.] [*LMI/Chevron, 8312,* FDO, pp. 37-38]
- RCW 36.70A.070 provides that a comprehensive plan "shall be an internally consistent document." Amendments to a plan are not exempt from this requirement and must not result in an internally inconsistent plan. *See* RCW 36.70A.130(1). For internal consistency challenges pursuant to RCW 36.70A.070(preamble), it is appropriate and necessary for the Board to review plan amendments for consistency with preexisting plan provisions. [*LMI/Chevron, 8312,* FDO, p. 39]
- The GMA requires that comprehensive plans, as a whole, be consistent with CPPs and MPPs. Amendments to a comprehensive plan may not cause the comprehensive plan to be inconsistent with CPPs and MPPs. [*LMI/Chevron, 8312,* FDO, p. 44]
- To determine consistency of a Plan, as amended, with the CPPs and MPPs, the Board will examine the challenged amendments to determine, if on their face, the amendments are consistent with the CPPs and MPPs identified. If the challenged amendments are consistent with the identified CPPs and MPPs, the challenge fails. If a challenged amendment is facially inconsistent, the Board will examine the challenged amendment in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the CPPs and MPPs identified. [*LMI/Chevron, 8312,* FDO, p. 44]
- In evaluating plans of adjacent jurisdictions for consistency, the Board will examine the challenged amendments to determine if, on their face, the amendments are inconsistent with [thwart] the adjacent jurisdictions provisions identified. If the challenged amendments are consistent with the identified policies, the challenge fails. If the challenged amendments are facially inconsistent, the Board will examine the challenged amendments in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the identified adjacent jurisdiction policies. [*LMI/Chevron, 8312,* FDO, p. 48]
- When a plan revision amends one of the mandatory elements set forth in RCW 36.70A.070, the element, as amended, must comply with the requirements of RCW 36.70A.070. [*LMI/Chevron, 8312,* FDO, pp. 50-51]
- Subarea plan refinements must be consistent with the jurisdiction's comprehensive plan and comply with the goals and requirements of the Act. Where the subarea plan modifies only portions of a jurisdiction's comprehensive plan for the subarea, the unaffected provisions of the comprehensive plan continue to apply and govern in the subarea. [*LMI/Chevron, 8312,* FDO, p. 51]
- RCW 36.70A.100 and .210 refer to consistency of Plans with adjacent jurisdictions; they do not relate to the application of a Plan within a jurisdiction. [*Sky Valley,* 5368c, 4/22/99 Order, at 12]
- Implicit in the remand was the assumption that the [designation] criteria would remain unchanged. Consistency between the Plan text and map is what the GMA and the Board's FDO required. Nothing in the [FDO] restricts the County's ability to achieve compliance with the GMA through means other than those discussed in the Board's Order. [*Screen II, 9312,* FDO, at 6.]
- [If more than one zoning designation implements a plan designation, a change from one implementing zoning designation to another does not create an inconsistency with the plan.] [*MacAngus, 9317,* FDO, at 10.]

- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c,* FDO, at 10.]
- The Board rejects the argument that, in the case of internal plan inconsistency, the most recent policy prevails. While there may be circumstances wherein a local government chooses to cure such an inconsistency by amending the older, rather than the newer policy, it is unsupportable to suggest that previously adopted policies must yield to newer ones. [*Radabaugh, 0302,* FDO, at 8.]
- In order to maintain consistency between its plan and implementing development regulations, as required by RCW 36.70A.040, the County correctly considered the [Plan and implementing regulation] amendments concurrently. [In a footnote, the Board noted that some development regulation amendments implement existing Plan policies and do not necessitate a reciprocal amendment to the Comprehensive Plan. Here, however, the proposal required both a Plan and development regulation amendment, thereby calling for concurrent consideration of both proposed amendments to maintain consistency, as required by RCW 36.70A.040.] [*McVittie V, 0316*, FDO, at 7.]
- [The consistency requirement of RCW 36.70A.210(1)] requires that the policies from the two documents – a CPP and Plan policy – be compatible; a policy in one document may not thwart the other. [*Hensley IV, 1304c*, FDO, at 20.]
- The internal consistency requirement [of RCW 36.70A.070(preamble)] means that the policies within a Plan – one document – be compatible; one Plan policy may not thwart another. [*Hensley IV, 1304c*, FDO, at 20.]
- [Challenging whether a jurisdiction has adopted development regulations that implement its Plan or whether the jurisdiction is performing its planning activities and making capital budget decisions in conformity with its Plan are appropriately brought by challenging compliance with RCW 36.70A.040(3) or .120, not through a challenge to the consistency provisions of RCW 36.70A.210(1) or .070(preamble).] [*Hensley IV, 1304c*, FDO, at 20.]
- *See also*: **Interjurisdictional** [*Shoreline II, 1313*]
- [The Board's conclusion that only periodic reviews, not continuous update, are required by the GMA] does not insulate the County from a UGA challenge based upon whether development regulations implement the Plan and are consistent with the Plan and Goals of the Act. [*Master Builders Association, 1316*, FDO, at 13.]
- Given that Edgewood's interim plan was a Pre-GMA document, its basis for evoking a coordination and consistency challenge against Sumner per .100 is without merit. [*Edgewood, 1318*, FDO, at 9.]

CONSOLIDATION/COORDINATION

- No entries

COUNTY-WIDE PLANNING POLICIES – CPPS

- No provision of the GMA prohibits or restricts amendment of the county-wide planning policies (unlike comprehensive plans that can be amended no more frequently than once every year). [*Snoqualmie, 2304c,* 11/4/92 Order, p. 5]
- The CPP "framework" of .210(1) is to ensure the consistency (required by .100) of the comprehensive plans of cities and counties that have common borders or related regional issues. [*Snoqualmie, 2304c,* FDO, p. 8]

- A long-term purpose of county-wide planning policies is to facilitate the transformation of local governance in the urban growth area so that urban governmental services are provided by cities and rural and regional services are provided by counties. [*Snoqualmie, 2304c,* FDO, p. 9]
- CPPs can only be as directive as they are clear. [*Snoqualmie, 2304c,* FDO, p. 13]
- The CPPs provide substantive direction not to development regulations, but rather to the comprehensive plans of cities and counties. Thus, the consistency required by RCW 36.70A.100 and RCW 36.70A.210 is an external consistency between comprehensive plans. The CPPs do NOT speak directly to the implementing land use regulations of cities and counties. [*Snoqualmie, 2304c,* FDO, p. 16]
- CPPs [county-wide planning policies] are part of a hierarchy of substantive and directive policy. Direction flows first from the CPPs to the comprehensive plans of cities and counties, which in turn provide substantive direction to the content of local land use regulations, which govern the exercise of local land use powers, including, zoning, permitting and enforcement. [*Snoqualmie, 2304c,* FDO, p. 17]
- Interlocal agreements are a satisfactory mechanism for "establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy." RCW 36.70A.210(2)(a). [*Snoqualmie, 2304c,* FDO, p. 23]
- County wide planning policies are policy documents that have both a procedural and a substantive effect on the comprehensive plans of cities and the county. The immediate purpose of the CPPs is to achieve consistency between and among the plans of cities and the county on regional matters. A long-term purpose of the CPPs is to facilitate the transformation of local governance in urban growth areas so that cities become the primary providers of urban governmental services and counties become the providers of regional and rural services and the makers of regional policies. [*Poulsbo, 2309c,* FDO, p. 23]
- Another long-term purpose of the CPPs is to direct urban development to urban areas and to reduce sprawl. [*Edmonds, 3305c,* FDO, p. 25]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, p. 6]
- Comprehensive plans must be consistent with county-wide planning policies. [*Vashon-Maury, 5308c,* FDO, p. 34]
- On reconsideration, the Board now concludes that the CPP did not "make the county do it" with respect to the Bear Creek island UGA. [*Vashon-Maury, 5308c*, 12/1/95 Order, p. 8]
- A local jurisdiction's comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities. [*Children's I, 5311,* 5/17/95 Order, p. 12]
- The County's intention to conserve agricultural lands does not prohibit the County from establishing policies for the conversion of some agricultural lands to other uses, when the CPPs mandate such conversion policies. [*Gig Harbor, 5316c,* FDO, p. 33]
- The land capacity analysis should be related to the CTED models, other accepted models, or the methodology, if any, established in the CPPs. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 17]

- Comprehensive plans of cities and counties must be consistent with adopted CPPs. [*Anderson Creek, 5353c,* FDO, p. 22]
- Cities are required to plan under both the GMA mandate for comprehensive plans and must also follow the mandates of the CPPs applicable to its jurisdiction. [*Benaroya I, 5372c,* FDO, p. 25]
- Nothing in the GMA or the CPPs requires a jurisdiction to show a detailed plan as to how affordable housing policies will be achieved. There is nothing in the Plan or in the record that suggests the housing affordability policies are not capable of being carried out. [*Benaroya I, 5372c,* FDO, p. 26]
- A city or county cannot rely on an unfinished process of another jurisdiction to meet the Act's requirements. However, a city or county can, if it elects or is required to by county-wide planning policy to do so, utilize the completed process of another jurisdiction to meet the requirements of RCW 36.70A.200(1). [*Hapsmith I, 5375c,* FDO, p. 38]
- The Act requires interjurisdictional planning for public facilities that are of a county or statewide nature, through the development of CPPs. [*Hapsmith I, 5375c,* 2/13/97 Order, p. 8]
- RCW 36.70A.210(6) permits only a city or the governor to appeal an adopted county-wide planning policy. [*Sundquist, 6301,* 2/21/96 Order, p. 3]
- CPPs are not a subset of comprehensive plans. If the legislature intended county-side planning policies to be included within the definition of comprehensive plans, it would have done so. [*Sundquist, 6301,* 2/21/96 Order, p. 4]
- RCW 36.70A.210(6) is specific to CPPs, therefore it controls over the more general language of RCW 36.70A.280(1)(a) and (2). [*Sundquist, 6301,* 2/21/96 Order, p. 4]
- If a County adopts annexation policies as part of its CPPs or if annexation policies are included in an adopted comprehensive plan, the Board would have jurisdiction to review such annexation policies. [*Lake Forest Park, 6336,* 2/14/97 Order, p. 4]
- A city incorporated subsequent to adoption of a county's CPPs must comply with those CPPs. [*Renton, 7326,* FDO, p. 6]
- As important as the affordable housing policy is, CPPs can only be as directive as they are clear. [*Renton, 7326,* FDO, p. 7]
- Having CPPs that encourage cities to identify PAAs is a reasonable method to promote "contiguous and orderly development" and to prepare cities to provide services to this development. [*Renton, 7326,* FDO, p. 10]
- A jurisdiction which creates overlap or conflict with a CPP should not benefit from its disregard of the law. [*Renton, 7326,* FDO, p. 10]
- The County must adhere to the plan amendment process set forth in its CPPs. If the CPPs are not clear, the Board will defer to the County's reasonable interpretation of its CPPs. Citing *King County v. Friends of the Law,* Wash. App. ___ (1998). [*Fircrest, 8302*, 3/27/98 Order, p. 4]
- County-wide planning policies (CPPs) may provide substantive direction to city and county comprehensive plans if it: (1) meets a legitimate regional objective; (2) is limited to providing substantive direction to the provisions of the comprehensive plan without directly affecting the provisions of an implementing regulation or other exercise of the police power; and (3) is consistent with other relevant provisions of the Growth Management Act. *King County v. Central Puget Sound Growth Management Hearings Board,* __ Wn. App. __, 951 P.2d 1151, 1158 (1998) (citing and adopting three-part test articulated in *Snoqualmie v. King County*, CPSGMHB Case No. 93-3-0004c, Final Decision and Order (Mar. 1, 1993), at 62-63). [*Burien, 8310,* FDO, p. 16]
- The GMA requires that comprehensive plans, as a whole, be consistent with CPPs and MPPs. Amendments to a comprehensive plan may not cause the comprehensive plan to be inconsistent with CPPs and MPPs. [*LMI/Chevron, 8312,* FDO, p. 44]
- To determine consistency of a Plan, as amended, with the CPPs and MPPs, the Board will examine the challenged amendments to determine if, on their face, the amendments are consistent with the

CPPs and MPPs identified. If the challenged amendments are consistent with the identified CPPs and MPPs, the challenge fails. If a challenged amendment is facially inconsistent, the Board will examine the challenged amendment in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the CPPs and MPPs identified. [*LMI/Chevron, 8312,* FDO, p. 44]

- Notwithstanding the CPPs, the County's selection of the 2012 population target is a discretionary choice of the County's, so long as it is within the OFM population range and encourages development in urban areas. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 38]
- RCW 36.70A.100 and .210 refer to consistency of Plans with adjacent jurisdictions; they do not relate to the application of a Plan within a jurisdiction. [*Sky Valley,* 5368c, 4/22/99 Order, at 12]
- The Supreme Court stated, "Upon a determination that the [UGA] provision violates the GMA, it should be stricken from both the comprehensive plan <u>and the CPPs</u>. The Board has determined that the County's UGA provision for Bear Creek violates the GMA. Therefore, by operation of law, the urban designation has effectively been stricken from both the plan and CPP. A CPP that directs an unlawful outcome is inoperative. [*Bear Creek, 3508c*, 11/3/00 Order, at 11-12.]
- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c,* FDO, at 10.]
- A city cannot . . . reject the siting of an essential public facility on the grounds that other jurisdictions have not taken an equitable share of such facilities. (Citation omitted.) [Jurisdictions may not rely upon their own independent interpretations of "fair share" as the basis for EPF siting decisions.] The Board disagrees with Tacoma's [concession and] assertion that future changes to EPF siting based upon "fair share" may only be accomplished by the Legislature. [Through its CPPs, a county and the cities within that county, in conjunction with relevant state agencies,] could conceivably establish a process or procedure for the equitable distribution of EPFs within the County and among the cities within the County, absent involvement of the Legislature. [*DOC/DSHS, 0307,* FDO, at 12.]
- [The buildable lands review requirement of RCW 36.70A.215 requires certain counties "to adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program." The first review and evaluation must be completed no later than September 1, 2002. A challenge to compliance with the requirements of .215 is only timely after a jurisdiction adopts its .215 CPP or after September 1, 2002.] [*Kitsap Citizens, 0319c*, FDO, at 11-12.]
- [A County's CPPs typically establish the scope and extent of interjurisdictional coordination and joint planning required between or among potentially affected jurisdictions.] [*Kitsap Citizens, 0319c*, FDO, at 24.]
- The Board is aware that the "first in time, first in right" result may not always achieve the best public policy outcome. However, "first in time, first in right" must be the result here, under the present facts and absent the sort of multi-lateral dialogue advocated by Chevron or direct regional oversight of the MUGA process by the County. If such a dialogue is to take place, it must be initiated by the parties, for the Board cannot require it. [*Shoreline II, 1313*, FDO, at 11.]
- [Pierce County CPP requires joint planning between cities and the County in unincorporated UGAs. Joint planning between cities in other circumstances is permissive, if the jurisdictions agree it would be beneficial. Joint planning was not required here since the area in question was within Sumner's city limits, not the unincorporated UGA, and both cities had not agreed that such planning would be beneficial.] [*Edgewood, 1318*, FDO, at 10-11.]

COURT DECISIONS – *SEE:* APPENDIX C - COURT DECISIONS (GMA)

CRITICAL AREAS - CAS

- The GMA's definition of "critical areas" at RCW 36.70A.030(5) is not exclusive and prescriptive: local governments must consider, but are not bound by, that definition and the definitions used in the minimum guidelines developed by CTED. Local governments also have the authority to modify existing definitions or adopt their own to meet local requirements as long as those definitions comply with the GMA. [*Tracy, 2301,* FDO, p. 23]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, p. 9]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, p. 79]
- Whether a county or city elects to include critical areas maps that it has prepared in other documents within its comprehensive plan is left to the jurisdiction's discretion. Counties are not precluded from including designated critical areas within UGAs, so long as they protect them as required by RCW 36.70A.060. [*Gig Harbor, 5316c,* FDO, p. 28]
- Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." [*Bremerton, 5339c,* FDO, p. 31]
- The Act requires local governments to designate all lands within their jurisdiction which meet the definition of critical areas. Any exemptions, exclusions, limitations on applicability or other regulatory provisions which result in not designating all critical areas, are prohibited. The requirement to designate may be met by designating or mapping known critical areas now or by adopting a process to designate or map them as information becomes available. [*Pilchuck II, 5347c,* FDO, p. 19]

- All lands that are designated critical areas pursuant to RCW 36.70A.170 must be protected by critical area development regulations adopted pursuant to RCW 36.70A.060, and such lands may not be exempted or excluded from protection. However, not all critical areas must be protected in the same manner or to the same degree. [*Pilchuck II, 5347c,* FDO, p. 19]
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c,* FDO, p. 20]
- It is the structure, value and functions of critical areas that are inviolate, not the critical areas themselves. The "protect critical areas" mandate does not equate to "do not alter or negatively impact critical areas in any way." While the preservation of the structure, value and functions of wetlands, for example, is of paramount importance, the Act does not flatly prohibit any alteration of or negative impacts to such critical areas. [*Pilchuck II, 5347c,* FDO, p. 20]
- The Act's requirement to protect critical areas means that the structure, value and functions of such natural systems are inviolate. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in a net loss of the structure, value and functions of such natural systems within a watershed or other functional catchment area. [*Pilchuck II, 5347c,* FDO, p. 21]
- The GMA requires designation and protection of critical areas and makes no qualifying statement that, for example, urban wetlands are any less important or deserving of protection than rural ones. As a practical matter, past development practices may have eliminated and degraded wetlands in urban areas to a greater degree than rural areas, but the Board rejects the reasoning that this provides a GMA rationale for not protecting what is left. [*Pilchuck II, 5347c,* FDO, p. 23]
- The requirement that critical areas are to be protected in the urban area is not inconsistent with the Act's predilection for compact urban development. [*Pilchuck II, 5347c,* FDO, p. 24]
- The legislature required cities and counties to designate fish and wildlife habitat conservation areas only; the legislature did not mandate that cities and counties designate every parcel of land that constitutes fish and wildlife habitat. [*Pilchuck II, 5347c,* FDO, p. 31]
- RCW 36.70A.170 and .060 require cities and counties to designate fish and wildlife habitat conservation areas and adopt development regulations to protect them for all species of fish and wildlife found within them. [*Pilchuck II, 5347c,* FDO, p. 32]
- The Act's mandate for protection requires either a buffer, or a functionally equivalent protection for all wetlands, including category 4 wetlands. It may well be that some or even most category 4 wetlands can be protected by means other than a buffer. However, . . . some mechanism is needed to protect these areas. [*Pilchuck II, 5347c,* FDO, p. 35]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, pp. 41-42]
- The fact that a portion of a parcel of land contains critical areas does not preclude any development whatsoever on the parcel. Instead, the Act requires that critical areas be protected. As long as that mandate is met, other, non-critical portions of land can be developed as appropriate under the applicable land use designation and zoning requirements. Furthermore, development of critical areas is not absolutely prohibited as long as those areas are adequately protected. [*Anderson Creek, 5353c,* FDO, p. 19]

- The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide adequate justification for residential densities under 4 du/acre within a UGA. [*Benaroya I, 5372c, 3/13/97, Order,* p. 13]
- Neither goal (1) and (2) nor *Anderson Creek* establish a GMA duty that precludes a jurisdiction from limiting the scope and magnitude of development in critical areas or environmentally sensitive areas. [*Litowitz, 6305,* FDO, p. 9]
- When environmentally sensitive systems are large in scope (e.g., a watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may also choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre. Such designation must be supported by adequate justification. [*Litowitz, 6305,* FDO, p. 12]
- RCW 36.70A.172 does not impose a requirement that cities and counties adopt policies to protect critical areas; therefore, the Board does not have jurisdiction to hear an appeal of the City's resolution adopting such policies. Such a requirement cannot be implied by RCW 36.70A.170 or .060. [*HEAL, 6312,* FDO, p. 15]
- Amendments to a previously adopted critical areas ordinance, after the effective date of a legislative amendment (BAS – RCW 36.70A.172) of the GMA, are subject to the best available science requirement of RCW 36.70A.172(1). [*HEAL, 6312,* FDO, p. 17]
- The Act's requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the ~~structure,~~ values and functions of such ~~natural~~ ecosystems ~~are inviolate~~ must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ ecosystems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, p. 11, amending a holding in *Pilchuck II*, FDO 5347, pursuant to a Superior Court remand]
- Local governments have the flexibility to adopt critical area development regulations that would permit the reduction of the geographic extent of, for example, a wetland. This could result in the loss of all or a portion of an individual site-specific critical area, so long as the values and functions of the ecosystem in which the critical area is located is not diminished. [*Tulalip, 6329,* FDO, p. 11]
- Certain critical areas, such as wetlands and fish and wildlife habitat areas, constitute ecosystems that transcend the boundaries of individual properties and jurisdictions, and that it is therefore necessary to address certain critical area issues on a watershed level. [*Tulalip, 6329,* FDO, pp. 11-12]
- The GMA requires jurisdictions to adopt development regulations that protect critical areas; jurisdictions have the authority to supplement the GMA's mandated regulatory protection of critical areas with non-regulatory programs. [*Tulalip, 6329,* FDO, p. 12]
- RCW 36.70A.050, .170, and .172 provide the required analytical rigor and scientific scrutiny for identifying, designating and protecting critical areas. While local governments have some discretion in identifying, designating and protecting critical areas they may not [use alternative means or] ignore the critical areas requirements (RCW 36.70A.050, .060, .170 and .172) of the GMA. [*LMI/Chevron, 8312,* FDO, p. 17]
- Application of the GMA's scientific and analytic critical areas process may, in certain limited instances, provide information to justify supplementary use of land use designations on the Plan's future land use map as an additional layer of critical areas protection. [*LMI/Chevron, 8312,* FDO, p. 17]
- When critical areas are large in scope, with a high rank order value and are complex in structure and function, a city may use its future land use map designations to afford a higher level of critical areas protection than is available through its regulations to protect critical areas. In these limited

circumstances, the resulting residential density will be deemed an appropriate urban density. [*LMI/Chevron, 8312,* FDO, p. 25]

- [Absent the requisite environmental attributes of a critical area that is large in scope, of high rank order value and is complex in structure and function, [a city's] future land use map density designations must permit appropriate urban densities. [*LMI/Chevron, 8312,* FDO, p. 26]
- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 31]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]
- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]
- Under the sequencing scheme of the GMA, the land does speak first; but, on the rare occasion, as is the case here, where the land may speak late – it will be heard. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 35]
- [The Tribe] has raised important and provocative questions about the responsibility of a city to protect fish habitat in view of the recent federal listings of Chinook salmon, bull trout, and other species. The GMA contains specific requirements for local governments to designate and protect critical areas, including fish and wildlife habitat. . . . Significantly, the Tribes insist that they are not challenging the City's critical areas regulations adopted pursuant to {the GMA]. They instead assert that the City' [adoption of a Subarea Plan] violates the GMA because the Subarea Plan and critical areas regulations are inextricably intertwined. [*Tulalip II, 9313*, 1/28/00 Order, at 4.]
- When any local government in the Central Puget Sound region adopts amendments to policies and regulations that purport to protect critical areas pursuant to RCW 36.70A.060(2), those enactments will be subject to meeting the best available science requirements of RCW 36.70A.172 and the potential of appeal to this Board pursuant to RCW 36.70A.280. [*Tulalip II, 9313*, 1/28/00 Order, at 4.]
- The critical area scheme set out by the GMA for [jurisdictions] is: (1) designate critical areas by September 1, 1991; (2) adopt development regulations to protect these designated critical areas by September 1, 1991; and (3) when adopting a comprehensive plan by the July 1, 1994 deadline, review the critical area designations and protective development regulations. In other words, the requirement of RCW 36.70A.060(3) applies to the adoption of the <u>initial</u> comprehensive plan required by RCW 36.70A.040; nothing in RCW 36.70A.060(3) creates a duty for the [jurisdiction] to review its critical area designations and development regulations upon adoption of a subsequent subarea plan. [*Tulalip II, 9313*, 1/28/00 Order, at 10.]
- [Respondent asserted that RCW 36.70A.172 only applies to critical area regulations and argued] "A Comprehensive Plan is a policy statement, and therefore any critical area policies are not subject to Board review." [Citing the Court of Appeals in the HEAL case, the Board concluded] Respondent is wrong on the law. [*Lewis, 1320*, FDO, at 14.]
- [Petitioner cited to science in the record from the City's Surface Water Management Plan, recommending regulation based upon the 500-year flood plain. Yet the City designated the 100-year flood plain as its frequently flooded area.] Although there may well be a scientific basis to support this designation, Edgewood fails to cite to a scientific basis for this 100-year flood plain designation. Consequently, the Board concludes that Edgewood's Plan declaration and designation of the 100-

year flood plain, as its frequently flooded area – critical area, does not comply with the requirements of RCW 36.70A.172. [*Lewis, 1320*, FDO, at 15.]

DECLARATORY RULING

- *Overton, 6301pdr*
- *Renton, 7301pdr*
- *Alpine/Posten, 8301pdr*
- *Shoreline, 0301pdr*
- [The Board has authority to issue declaratory rulings.] [*Shoreline pdr, 0301pdr*, at 3.]
- [Declaratory rulings] enables the Boards to provide clarification as to whether the GMA, and related rules, *apply* to a given situation. Although this *discretionary* authority exists, the Boards have seldom been called upon to apply it. However, the question posed by Shoreline does not ask about the *applicability* of the GMA to a given situation – it is undisputed that Snohomish County, Shoreline and Woodway are GMA planning jurisdictions subject to the provisions of the GMA. Rather, Shoreline asks the Board to declare *its* own plan not only valid but also binding on Snohomish County cities. Answering this question is beyond the scope of what the Board deems an appropriate use of a declaratory ruling – clarifying the applicability of laws within the Board's purview to certain circumstances, not determining compliance. [*Shoreline pdr, 0301pdr*, at 3.]
- While the Board clearly has authority to hear and determine *compliance* with the GMA, here we lack the circumstances to do so. Absent a properly framed legal issue, couched in a timely PFR, the Board has no means to reach Shoreline's questions. Lacking such a PFR, the Board cannot evaluate whether Shoreline's Plan (or Woodway's 1994 Plan, Snohomish County's Plan or the County's County-wide Planning Policies) comply with the goals and requirements of the Act; nor address the Plan's validity or binding effect, if any, beyond its corporate limits. For these reasons, the lack of an appropriate PFR and an inappropriate question for a PDR, the While the Board clearly has authority to hear and determine *compliance* with the GMA; here we lack the circumstances to do so. Absent a properly framed legal issue, couched in a timely PFR, the Board has no means to reach Shoreline's questions. Lacking such a PFR, the Board cannot evaluate whether Shoreline's Plan (or Woodway's 1994 Plan, Snohomish County's Plan or the County's County-wide Planning Policies) comply with the goals and requirements of the Act; nor address the Plan's validity or binding effect, if any, beyond its corporate limits. For these reasons, the lack of an appropriate PFR and an inappropriate question for a PDR, the Board declines to issue a declaratory ruling in this matter. [*Shoreline pdr, 0301pdr*, at 3.]
- *Bidwell, 0302pdr*.

DEFAULT

- Motion to dismiss for lack of prosecution was granted; petitioner failed to appear at the prehearing conference, therefore defaulting. [*Bigford, 5348,* 8/7/95 Order, p. 2]

DEFERENCE

- The legislative bodies of counties and cities enjoy broad discretion; however, choices are now made within the framework of GMA mandates and are subject to diminished deference. [*Rural Residents, 3310,* FDO, p. 14]
- Counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion

in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act. [*Tacoma, 4301,* FDO, p. 10]

- Although a county has discretion in determining the physical size of a UGA, it does not have discretion in how much population it should plan for. OFM's twenty-year population projection is the exclusive number to use when designating UGAs. [*Tacoma, 4301,* FDO, p. 25]
- A county can delegate the responsibility to negotiate an agreement with each city on the location of UGAs to whomever it decides is best suited for the task. However, only the legislative body of the county can make the ultimate decision to adopt UGAs as required by the Act. [*Tacoma, 4301,* FDO, pp. 45-46]
- Cities enjoy broad discretion in comprehensive plan making, both in terms of the subjective criteria used and the range of specific choices selected. [*Aagaard, 4311c,* FDO, p. 8]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, p. 9]
- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, p. 60]
- If a local legislative body wishes to make changes to the draft of a proposed comprehensive plan that, to that point, has ostensibly satisfied the public participation requirements of RCW 36.70A.020(11) and .140, it has the discretion to do so. However, if the changes the legislative body wishes to make are substantially different from the recommendations received, its discretion is contingent on two conditions: (1) that there is sufficient information and/or analysis in the record to support the Council's new choice (e.g., SEPA disclosure was given, or the requisite financial analysis was done to meet the Act's concurrency requirements); and (2) that the public has had a reasonable opportunity to review and comment upon the contemplated change. If the first condition does not exist, additional work is first required to support the Council's subsequent exercise of discretion. If the second condition does not exist, effective public notice and reasonable time to review and comment upon the substantial changes must be afforded to the public in order to meet the Act's requirements for "early and continuous" public participation pursuant to RCW 36.70A.140. [*WSDF I, 4316,* FDO, pp. 76-77]
- Local governments cannot use verbatim GMA language and assign it a different meaning. [*Robison, 4325c,* FDO, p. 32]

- Determining how to distribute projected population growth among existing cities falls within the ultimate discretion of counties, subject to the requirements of RCW 36.70A.110(2) to attempt to reach agreement with cities. The Act does not require proportionate distributions. [*Vashon-Maury, 5308c,* FDO, p. 34]
- While it is not the Board's responsibility to identify each and every development regulation which would be necessary to achieve full implementation of the Plan, the Board can and will conclude that, lacking a comprehensive zoning code or its functional equivalent, a county has not adopted implementing development regulations that "work together in a coordinated fashion to achieve a common goal." [*Hensley II, 5343,* 11/3/95 Order, p. 7]
- The Board rejects the theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas and the Act's explicit prohibition of urban growth outside the UGAs. [*Sky Valley, 5368c,* FDO, p. 45]
- The establishment of nonconforming use regulations is a historic part of land use planning in the State of Washington. However, with the passage of the GMA, the discretion of local jurisdictions to craft nonconforming use provisions has been limited, at least in areas outside of designated UGAs. [*PNA II, 5371,* FDO, p. 27]
- The GMA creates multiple duties which local governments must meet, and these duties are sometimes in tension if not outright conflict; the Act also reserves significant discretion to local governments to determine specifically how they will meet their multiple obligations. [*Benaroya I, 5372c,* 8/13/97, FOC, p. 9]
- So long as local governments do not breach any of their duties, local governments are free to reflect local circumstances and priorities in the choices they embody in their comprehensive plans. [*Benaroya I, 5372c,* 8/13/97, FOC, p. 9]
- By whatever name (e.g., neighborhood plan, community plan, business district plan, specific plan, master plan, etc.) a land use policy plan that is adopted after the effective date of the GMA and purports to guide land use decision-making in a portion of a city or a county, is a subarea plan within the meaning of RCW 36.70A.080. While a city or a county has discretion whether or not to adopt such optional enactment, once it does so, the subarea plan is subject to the goals and requirements of the Act and must be consistent with the comprehensive plan. [*WSDF III, 5373,* FDO, p. 25]
- The discretion conferred upon cities and counties by RCW 36.70A.080(2) is the discretion to undertake new detailed subarea land use policy plans. If they do so, such plans must be adopted as part of the comprehensive plan; the GMA has removed the discretion of cities and counties to undertake new localized land use policy exercises disconnected from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan. [*WSDF III, 5373,* FDO, p. 26]
- The ultimate designation of any property remains in the local jurisdiction's discretion so long as the designation complies with the requirements of the Act and is internally consistent. [*Hapsmith I, 5375c,* FDO, p. 25]
- General discussion of the Board's treatment of plans and local discretion. [*Litowitz, 6305,* FDO, pp. 3-5]
- Nothing in the Act suggests that either the planning goal [housing .020(4)] or the housing element requirements [.070(20(c) and (d), specifically] are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions suggests that the above cited provision provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-side level. Thus, the Board construes these sections to read, in effect: ". . . identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction*...". [*Litowitz, 6305,* FDO, p. 19**]**

- The discretion of cities, as recognized by the Board in *Aagaard*, also applies to counties; counties enjoy the same broad discretion to make many specific choices about how growth is to be accommodated within UGAs. [*Cole, 6309c,* FDO, p. 15]
- The GMA requires the Board to give deference to a local government's choice of scientific data. [*HEAL, 6312,* FDO, p. 21]
- When a local government includes a self-imposed duty in its plan, such as a deadline, the consistency requirements of RCW 36.70A.070 and .120 oblige it to meet that duty; however, it retains the discretion to amend its plan, including the revision or deletion of such self-imposed duty, provided that it does so pursuant to the authority and requirements of RCW 36.70A.130. [*COPAC, 313c,* FDO, pp. 12-13]
- The Act's requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the ~~structure,~~ values and functions of such ~~natural~~ ecosystems ~~are inviolate~~ must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ ecosystems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, p. 11, amending a holding in *Pilchuck II*, FDO 5347, pursuant to a Superior Court remand]
- Local governments have the flexibility to adopt critical area development regulations that would permit the reduction of the geographic extent of, for example, a wetland. This could result in the loss of all or a portion of an individual site-specific critical area, so long as the values and functions of the ecosystem in which the critical area is located is not diminished. [*Tulalip, 6329,* FDO, p. 11]
- Each local government has discretion in establishing and designing its .130 plan amendment process. [*LMI/Chevron, 8312,* FDO, p. 12]
- RCW 36.70A.050, .170, and .172 provide the required analytical rigor and scientific scrutiny for identifying, designating and protecting critical areas. While local governments have some discretion in identifying, designating and protecting critical areas they may not [use alternative means or] ignore the critical areas requirements (RCW 36.70A.050, .060, .170 and .172) of the GMA. [*LMI/Chevron, 8312,* FDO, p. 17]
- "Front-end loading" of population [in the CFP] is not a GMA violation. . . . Neither the GMA nor the Procedural Criteria requires or suggests that the OFM population be evenly distributed over the planning period. The County clearly has discretion to distribute the population over the planning horizon as it sees fit, so long as the urban growth is accommodated. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 75]
- [The locational criteria adopted by the County apply specifically to UGAs, not FCC designations. The County's Policy on locational criteria include the .110 FCC "exception."] . . . Since the Legislature, not the County, created the FCC "exception" in RCW 36.70A.110, it is not necessary for the County to justify, explain, or provide a rationale for, why the FCC "exception" is included in its Plan Policies. [*Bear Creek, 5803c*, 6/15/00 Order, at 26-27.]
- To suggest that the legislature has "expressly directed" the granting of "considerable" deference is wrong. The word "considerable" does not appear in the statute, nor was it used by the *Manke* Court, as cited by the County in its brief. To characterize the degree of deference that attaches to the clearly erroneous standard codified at RCW 36.70A.320(2) the law simply uses the relative term "more" in reference to the earlier "preponderance of the evidence standard of review. [*Burrow, 9318,* FDO, at 5.]

DEFINITIONS

- The GMA's definition of "critical areas" at RCW 36.70A.030(5) is not exclusive and prescriptive: local governments must consider, but are not bound by, that definition and the definitions used in the minimum guidelines developed by CTED. Local governments also have the authority to modify existing definitions or adopt their own to meet local requirements as long as those definitions comply with the GMA. [*Tracy, 2301,* FDO, p. 23]
- Cities and counties planning under the Act must consider the planning goals listed at RCW 36.70A.020 before adopting comprehensive plans and development regulations. (The easiest way to show that a jurisdiction has "considered" planning goals is to acknowledge their existence in writing.) [*Gutschmidt, 2306,* FDO, pp. 14-15]
- The Act's definition of "long-term commercial significance" at RCW 36.70A.030(10) has two components: the physical characteristics of the land and the human element (i.e., the land's proximity to population areas, and the possibility of more intense uses of the land). [*Twin Falls, 3303c,* FDO, p. 32]
- The phrase "uses legally existing on any parcel" means activities or improvements that actually exist on the land, as opposed to legal use rights. [*Twin Falls, 3303c,* FDO, p. 41]
- "Take into account public input" means "consider public input." "Consider public input" means "to think seriously about" or "to bear in mind" public input; "consider public input" does not mean "agree with" or "obey" public input. [*Twin Falls, 3303c,* FDO, p. 77]
- "Nonurban lands" includes all natural resource lands, whether designated as such pursuant to RCW 36.70A.170 or not, and rural lands. [*Rural Residents, 3310,* FDO, p. 41]
- The Board treats the language "regarding the matter" narrowly to mean the specific matter before the local government. It does not mean the general subject matter such as land use planning or the GMA. [*FOTL I, 4303,* 4/22/94 Order, p. 11]
- For purposes of conducting the inventory required by RCW 36.70A.070(3)(a), "public facilities" as defined at RCW 36.70A.030(13) are synonymous with "capital facilities owned by public entities." [*WSDF I, 4316,* FDO, p. 45]
- The phrase "existing needs" from RCW 36.70A.070(3)(e) refers not only to the construction of new or expanded capital facilities that can be currently identified as needed, but also the maintenance of existing capital facilities. . . . Determining the appropriate level of maintenance for capital facilities falls within the local government's discretion. [*WSDF I, 4316,* FDO, p. 47]
- City comprehensive plans must contain an assessment of its impact on adjacent jurisdictions. . . . At the very least, a plan must indicate which jurisdictions are adjacent to the city, what the present traffic volumes and system capacities of major arterials in those jurisdiction connected to the city's are, and an analysis of what impact, if any, the city's transportation plan will have on those neighboring jurisdictions. [*WSDF I, 4316,* FDO, p. 68]
- Cities and counties are required to undertake "early and continuous" public participation in the development and amendment of comprehensive plans and development regulations, and that while the requirement to consider public comment does not require elected officials to agree with or obey such comment, local government does have a duty to be clear and consistent in informing the public about the authority, scope and purpose of proposed planning enactments. [*WSDF I, 4316,* FDO, p. 71]
- In RCW 36.70A.140, the Act envisions a "response" to public comments and "open discussion" to occur within a variety of forums including vision workshops, open houses, focus groups, opinion surveys, charettes, committee meetings and public hearings. It does not entitle citizens to a face-to-face confrontation and verbal exchange with elected officials about the Plan. [*Robison, 4325c,* FDO, p. 30]

- Local governments cannot use verbatim GMA language and assign it a different meaning. [*Robison, 4325c,* FDO, p. 32]
- The reference in RCW 36.70A.070(1) to "timber production" is not synonymous with "forest lands." The latter is a term of art unique to the GMA, for which specific requirements have been adopted, particularly RCW 36.70A.060 and .170. In contrast, the former, "timber production," is used within the definition of the phrase "forest lands." "Forest lands" are a subset of broader category of lands, those devoted to timber production. [*Sky Valley, 5368c,* FDO, p. 103]
- Just because land is available for timber production does not mean that it constitutes "forest lands" as defined by the Act for which the designations specified at RCW 36.70A.170 and development regulations specified at RCW 36.70A.060 must be adopted. [*Sky Valley, 5368c,* FDO, p. 104]
- The Board reversed its holding in the FDO to the extent that it was based upon the determination that the Benaroya and Cosmos properties were not agricultural land within the meaning of that term in RCW 36.70A.030(2). [*Benaroya I, 5372c,* 12/31/98 Order – Court Remand, p. 4]
- CPPs are not a subset of comprehensive plans. If the legislature intended county-wide planning policies to be included within the definition of comprehensive plans, it would have done so. [*Sundquist, 6301,* 2/21/96 Order, p. 4]
- Nothing in the Act suggests that either the planning goal [housing .020(4)] or the housing element requirements [.070(20(c) and (d), specifically] are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions suggests that the above cited provision provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-side level. Thus, the Board construes these sections to read, in effect: ". . . identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction*...". [*Litowitz, 6305,* FDO, p. 19]
- Use of the word "should" in a Plan does not create a GMA duty; on the contrary, it provides for non-compulsory guidance, and establishes that the jurisdiction has some discretion in making decisions.] [*Green Valley, 8308c,* FDO, p. 11]
- The GMA does not list the goals in any rank order; it is also true that there is no conflict between Goals 8 and 9 in the abstract, or where they are applied to different parcels of land. The conflict arises when they are both invoked as the goal rationale for a specific land use on a single parcel. In such an instance, it is notable that, by their very choice of words, Goals 8 and 9 do not convey an equal level of guidance. Comparing the active verbs, we find that Goals 9 conveys that local governments are to *encourage* the development of recreational opportunities while Goal 8 conveys that local governments are to *maintain and enhance* resource-based industries. It is plain that less directive and specific language, such as *encourage,* must yield to more specific and directive language, such as *maintain and enhance.* [*Green Valley, 8308c,* FDO, p.16]
- [For purposes of analyzing challenges to RCW 36.70A.020(6),] a clearly erroneous action is not necessarily an arbitrary action. "Arbitrary" means to be determined by whim or caprice. Washington's courts have further defined "arbitrary or capricious" action to mean willful and unreasoning action taken without regard to or consideration of the facts and circumstances surrounding the action. Citing cases. [*LMI/Chevron, 8312,* FDO, p. 31]
- RCW 36.70A.030 defines terms used in the GMA. Definitions, by themselves, do not create GMA duties. The substantive significance of the definition section of the GMA is to give meaning to words and terms used within the GMA. [A definition cannot be violated.] [*Hanson, 8315c,* FDO, p. 10]
- The Act is unambiguous: the Goals of the GMA, RCW 36.70A.020, are to guide the adoption of development regulations as well as comprehensive plans. [*Hanson, 8315c,* FDO, p.12]
- [T]he most appropriate definition of "respond" within the context of RCW 36.70A.140 is "to react in response." Applying this definition does not mean that jurisdictions must react in response to all

citizens questions or comments; applying this definition means only that citizens comments and questions must be considered and, where appropriate, jurisdictions must take action in response to those comments and questions. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 24]

- "Response" may, but need not, take the form of an action, either a modification to the proposal under consideration, or an oral or written response to the [citizen] comment or question. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 24]
- The Washington Supreme Court has determined that land is devoted to agricultural use under the GMA "if it is an area where the land is actually used or capable of being used for agricultural production. *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.* 136 Wn.2d 38, 56 (1998). It is irrelevant that a parcel has not been farmed for 25 years. The question is whether the land is actually used or capable of being used for agriculture. [*Sky Valley,* 5368c, 4/22/99 Order, at 8-9]
- [The Act's definitions of "urban growth' and "characterized by urban growth'] used in the context of designating urban growth areas, pursuant to the locational criteria [of RCW 36.70A.110(1)], do not contemplate prospective urban development. [*Bear Creek, 5803c*, 6/15/00 Order, at 10.]
- The GMA, unfortunately, does not define "new fully contained community." The WACs define an FCC as "a development proposed for location outside of the existing designated urban growth area which is characterized by urban densities, uses and services and meets the criteria of RCW 36.70A.350." WAC 365-195-210. However, this definition provides little guidance on what "fully contained" means, other than compliance with .350. It may well be that *if* the undefined concept of "fully contained" is interpreted to mean "total independence or complete self-sufficiency" it is a misnomer, especially in the interdependent Central Puget Sound region. [*Bear Creek, 5803c*, 6/15/00 Order, at 20.]
- [The County defines what it believes "fully contained" means in its Plan.] To paraphrase, it does not mean that interaction between the FCC site and adjacent lands is prohibited; it means that the impacts of the FCC should be confined to the site and limited off-site. It means that containment should be achieved through permit conditions that do not increase pressure for urban development on adjacent lands. It does not mean that all public facilities and services be borne by and accommodated within the FCC. . . . The Board does not find the County's interpretation and definition of "fully contained" to be unreasonable in the context of this case. [*Bear Creek, 5803c*, 6/15/00 Order, at 20-21.]
- The Act's definitions (RCW 36.70A.030(17)) expressly state that development within LAMIRDs is not urban. The Act does not put an explicit limit on the absolute residential density permitted in LAMIRDs. The limit is unique to each LAMIRD and is established by the conditions that existed on July 1, 1990. [*Burrow, 9318,* FDO, at 19.]
- There are two criteria for local governments to [use when designating] agricultural resource lands. 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. [*Grubb, 0304,* FDO, at 11.]
- [The Washington Supreme Court has held that] land is "devoted to" agricultural use under RCW 36.70A.030 if it is in an area where the land is actually used or capable of being used for agricultural production. (Citation omitted). [*Grubb, 0304,* FDO, at 11.]
- [There are two components to "lands of long-term commercial significance."] The first addresses the viability of the lands as a function of intrinsic attributes, i.e., "growing capacity" and "productivity" which in turn are largely a function of the suitability of the soils for growing agricultural products. The second involves consideration of the off-site factors and some degree of judgment about how those factors affect the long-term viability of agriculture. [*Grubb, 0304*, FDO, at 9.]

- The term "lands" in the definition of "long-term commercial significance," means more than an individual parcel – it means the patterns of contiguous parcels, regardless of jurisdictional boundaries, that are "devoted to" agriculture. [Several parcels that are immediately adjacent to King County's agricultural production districts are visually, functionally and effectively a part of these lands with long-term commercial significance. [*Grubb, 0304,* FDO, at 13.]
- The Board has interpreted "preclude" to mean: render impossible or impracticable; "impracticable" has been interpreted to mean: not practicable, incapable of being performed or accomplished by the means employed or at command. (Citation omitted). [*DOC/DSHS, 0307*, FDO, at 6.]
- "Dismiss with prejudice," means a removal from the docket in such a way that petitioner is foreclosed from filing a suit again on the same claim or claims. (Citation omitted.) Within the context of a PFR before the Board, a new "claim" may arise from any new "action" by the State, a County or City. For example, the enactment of a Comprehensive Plan [development regulation] or Plan [or development regulation] amendment would constitute a new action within the Board's jurisdiction to review. [*Gawenka, 0311*, 10/10/00 Order, at 3.]
- The Board here coins the term "delineation" rather than "designation" to recognize that the process set forth at RCW 36.70A.350 is unique in the GMA. It is a two-step process, which is very different from the "designations" done for "resource lands" pursuant to RCW 36.70A.170 or the "Future land use map designations" done pursuant to RCW 36.70A.070. The initial "designation" (or what we call here "delineation") of an FCC on the Future land use map does not create rights for urban uses. Rather, that initial "delineation" is simply the precedent to a potential second step, which is the subsequent processing and issuance of an "FCC permit." If and when such FCC permit is issued, the subject property becomes urban by operation of law and at that point is appropriately "designated" as urban. [*FOTL VI, 1310*, FDO, at 7, footnote 4.]
- The term "de-designated," rather than simply "re-designated" was first used by the Board in *Grubb* [0314, FDO]. Under the GMA all lands are either: (1) *urban* lands (i.e. within urban growth areas); (2) *rural* lands; or *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as either urban or rural. In contrast, a "**de**-designation" of lands from resource land to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction. [*Forster Woods, 1308c*, FDO, at 14, footnote 4.]

DENSITY – *SEE:* RURAL DENSITIES AND URBAN DENSITIES

DESIGN

- Specific design standards and scale of development within a city are not legitimate regional issues that should be addressed by the CPPs. Instead, they should be left to the discretion of the individual cities. [*Snoqualmie*, 2304, FDO, at. 31.]
- The Board notes that the Department of Community Development, in its Procedural Criteria at WAC 365-195-345(3)(d), strongly recommends inclusion of a comprehensive plan design element. Every community has characteristics that are the product of its unique physical setting and human history. The future to which a community aspires could build upon those existing characteristics or consciously impose a thematic affectation. In either case, defining community character and selecting design strategies for enhancing or changing that character are local prerogatives. [*Snoqualmie*, 2304, FDO, at 31, fn. 20]

- The history of human settlement and the literature of city and regional planning is replete with clustered development as an organizing principle. The Board takes official notice of *The Design of Cities,* Edmund N. Bacon, Penguin Books, New York, 1967; *Design with Nature*, Ian L. McHarg, Natural History Press, Philadelphia, Pa. 1969; and *Rural by Design,* Randall Arendt, Planners Press, Chicago, 1994. Traditional objectives of such innovative techniques, such as the protection and conservation of natural resources, have been augmented by more recent public policy priorities such as housing affordability, air quality and transportation goals. [*KCRP I*, *4305*, FDO, at 18, fn. 15]
- "Compact urban development" does not require that the urban environment be exclusively a built environment, nor that the built environment be of a homogenous intensity, form or character. Other provisions of the Act will require that the urban landscape be interspersed with natural systems, passive and active open space and a variety of public facilities. For example, UGAs must include "greenbelts and open space areas" (RCW 36.70A.110(2)), and critical areas must be protected (RCW 36.70A.060), regardless of whether they are inside or outside of the UGA. [*Rural Residents*, *3310*, FDO, at 19]
- Frank Lloyd Wright's design for Broadacre City is an accurate prediction of post - World War II suburban sprawl. The GMA intends to reduce, rather than perpetuate sprawl, no matter how well designed. [*Aagaard*, *4311c*, FDO, at 8, fn. 7]
- [A] city enjoys broad discretion in its comprehensive plan to make many specific choices about how growth is to be accommodated. These choices include the specific location of particular land uses and development intensities, community character and design, spending priorities, level of service standards, financing mechanisms, site development standards and the like. [*Aagaard*, *4311c*, FDO at 9.]
- As society and technology have changed over time, so too have communities and residential neighborhoods changed. This has been reflected in changes in statute and case law at both the federal and state levels. In the GMA, there are a number of specific references that address housing and residential land uses, some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population. [*Children's Alliance I*, FDO, 7/25/95, at 5, footnote omitted]
- "[R]ural character" has . . . a visual component [which] describes the visual attributes of the traditional rural landscape. If the visual character of the rural landscape is unduly disrupted or altered by a proposed use, then that use is also incompatible with "such lands." Site and building design and development have a great deal to do with the degree to which any given use blends in with the rural landscape rather than sticks out. [*Vashon-Maury*, *5308c*, FDO, at 68, footnotes omitted]
- The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. Neither this vision nor this reality are new to Western civilization. It describes two millennia of European growth and most of the past two centuries of North American growth. As this country has moved from an agrarian economy to an industrial to a post-industrial economy, the technological reasons that development located in central places have been superseded in the latter half of this century by equally compelling environmental, societal and public finance rationales for compact urban development. [*Bremerton*, *5339c*, FDO, at 29, footnote omitted]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in *visual character*. [*Burrow, 9318,* FDO, at 18.]

- The Act requires the LOB [Logical Outer Boundary] to minimize and contain the existing areas of commercial development. The [challenged] LOB goes beyond the existing area creating a commercial strip – the "infill" goes beyond the existing development, it is not limited . . . the County does attempt to justify a change to the FLUM for this strip commercial infill area, but this justification does not comply with the requirements of .070(5) for including the area in a LAMIRD . . . . [*Hensley IV, 1304,* FDO, at 2]
- The "character" of these neighborhoods will inevitably change over time, and the City's policy of having new industrial uses as a part (not the whole) of that character is not inconsistent with preserving a residential character for the remaining two-thirds of the area. Because "character" is largely a matter of the scale and design of specific projects, the GMA policy objective of ensuring that future growth that is "in character" with an existing residential neighborhood must be the focus for the specific development regulations that the City has yet to adopt. [*LIHI I*, *0317*, FDO, at 13.]

DEVELOPMENT REGULATIONS – *SEE:* ZONING

- The GMA's enhanced public participation requirements, as specified in RCW 36.70A.140, do not apply to the process for adopting development regulations pursuant to RCW 36.70A.060. [*Tracy, 2301,* FDO, p. 13]
- The CPPs provide substantive direction not to development regulations, but rather to the comprehensive plans of cities and counties. Thus, the consistency required by RCW 36.70A.100 and RCW 36.70A.210 is an external consistency between comprehensive plans. The CPPs do NOT speak directly to the implementing land use regulations of cities and counties. [*Snoqualmie, 2304c,* FDO, p. 16]
- No provision of the GMA bars a city from requiring individuals to bear the cost of preparing reports and surveys, and it is a common expectation that permit applicants will bear the costs of technical studies necessitated by their development proposals. [*Gutschmidt, 2306,* FDO, p. 23]
- A development regulation, whether interim or implementing, must be a binding legislative enactment. The Board is not ruling that a resolution or motion can never be used to comply with GMA critical areas and natural resource lands requirements. The test is whether the public has advance notice providing the opportunity to comment before the matter is adopted; whether a public hearing is held; whether the legislative action has the force and effect of law; and whether notice of adoption is published – regardless whether the enactment took place by way of ordinance, motion or resolution. [*FOTL I, 4303,* 4/22/94 Order, pp. 20-21]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, p. 6]
- The Board rejects the argument that because RCW 36.70A.070(2)(c) requires jurisdictions to identify "sufficient land for housing" in their comprehensive plans, that their development regulations must also do so. The sufficiency of land supply required by RCW 36.70A.070(2)(c) is a mandate that the city, as a matter of policy, identify sufficient land for this purpose. Development regulations are to then impose controls to assure that the land identified in the plan for housing is available for that purpose. Because development regulations must be consistent with the comprehensive plan, they cannot decrease the land supply available for housing. RCW 36.70A.040(3). [*Children's I, 5311,* 5/17/95 Order, p. 6]

- RCW 36.70A.100 does not apply to development regulations. [*Children's I, 5311,* 5/17/95 Order, p. 6]
- RCW 36.70A.200(1) does not apply to development regulations, while (2) does. [*Children's I, 5311,* 5/17/95 Order, p. 7]
- RCW 36.70A.210 does not apply to development regulations. [*Children's I, 5311,* 5/17/95 Order, p. 7]
- Procedural criteria are recommendations; they are advisory only and do not impose a GMA duty or requirement on any local jurisdiction. [*Children's I, 5311,* 5/17/95 Order, p. 12]
- A local jurisdiction's comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities. [*Children's I, 5311,* 5/17/95 Order, p. 12]
- Any development regulations that attempt to implement such a fully noncomplying comprehensive plan cannot stand as a matter of law during the period that the plan fails to comply with the Act. Regulations that attempt to implement and be consistent with a fatally flawed comprehensive plan are in turn poisoned by the plan's defects. [*Bremerton, 5339c,* FDO, p. 82]
- When portions of a comprehensive plan have been remanded with instructions to bring those provisions into compliance with the Act, and when other portions of the plan have been found to comply with the Act, the Board must determine on a <u>case-by-case basis</u> whether the contested portions of implementing development regulations comply with the GMA. [*WSDF II, 5340,* 6/16/95 Order, p. 6]
- A development regulation must be internally consistent and all development regulations must be consistent with each other. [*WSDF II, 5340,* FDO, p. 7]
- Planning jurisdictions may adopt contingent implementing development regulations that do not take effect until some future amendment to a comprehensive plan has been formally adopted. [*WSDF II, 5340,* FDO, p. 17]
- The Act imposes five major consistency requirements on a jurisdiction undertaking adoption of comprehensive plans and development regulations under the Act: (1) a comprehensive plan must be internally consistent (RCW 36.70A.070); (2) comprehensive plans of one jurisdiction must be consistent with comprehensive plans of cities and counties with common borders or related regional issues (RCW 36.70A.100); (3) development regulations must be consistent with the comprehensive plan (RCW 36.70A.040); (4) a development regulation must be internally consistent; and (5) a development regulation must be consistent with other relevant development regulations. [*Alberg, 5341c,* FDO, p. 17]
- A development regulation must be internally consistent; and all development regulations must be consistent with each other. A development regulation must be consistent with other relevant development regulations. [*Alberg, 5341c,* FDO, p. 26]
- A county cannot adopt development regulations that are consistent with and implement its comprehensive plan until that plan itself is adopted under the GMA. [*Hensley II, 5343,* 6/9/95 Order, p. 5]
- Development regulations adopted pursuant to RCW 36.70A.060 must be adopted by ordinance, not by resolution. [*AFT, 5356,* FDO, p. 13]
- Interim designations and implementing regulations may be altered at the time of comprehensive plan adoption if and to the extent that such alteration is necessary to insure consistency with the comprehensive plan and its implementing development regulations. [*Sky Valley, 5368c,* FDO, p. 115]

- Just as a failure to complete an optional element of a comprehensive plan does not constitute a violation of the Act, a failure to adopt implementing development regulations for such an optional element is not a violation. However, at such time as the Plan is amended to incorporate such an optional element, the requirement to adopt implementing development regulations must be met. [*Sky Valley, 5368c,* FDO, p. 120]
- A petitioner is not precluded from challenging development regulations that implement a certain comprehensive plan policy, even though the petitioner did not challenge the specific policies in the plan (assuming the petitioner otherwise meets the standing and timely petition filing requirements of the Act). [*PNA II, 5371,* FDO, p. 23]
- There is no GMA prohibition from a jurisdiction using its pre-GMA zoning designations a starting point or a benchmark in the development of its GMA-required comprehensive plan. [*Litowitz, 6305,* FDO, p. 13]
- The alleged violations of GMA requirements (RCW 36.70A.070) do not apply to development regulations. The challenged ordinance amends development regulations; the issues framed in the prehearing order challenge the Plan. The Board's authority to issue opinions is limited to the statement of the issues. [*Keesling II, 7327*, FDO, p. 4]
- RCW 36.70A.160 does not require regulating to protect open space corridors; it does not provide that mere identification is protection of an open space corridor, nor does it provide an independent source of authority for regulating land use activities within an open space corridor. Any authorized land uses, or limitation, restriction, or prohibition of land uses that a jurisdiction might choose to employ within an identified open space corridor must be grounded in separate legal authority, not RCW 36.70A.160. [*LMI/Chevron, 8312,* FDO, p. 54]
- A development regulation subject to Board review does not include a decision to approve a project permit. *See* RCW 36.70A.030(7). [*Hanson, 8315c,* 9/28/98 Order, p. 4]
- RCW 36.70A.280(1) does not confer jurisdiction upon the Board to review a land use project permit decision, including but not limited to, conditional use permits. This Board has no authority or jurisdiction to review land use project permit decisions of a local government. [*Hanson, 8315c,* 9/28/98 Order, p. 5]
- The explicit language of RCW 36.70A.070 sets forth the mandatory elements to be included in a jurisdictions comprehensive plan, not its implementing development regulations. RCW 36.70A.070 applies to comprehensive plans and amendments thereto, not development regulations. [*Hanson, 8315c,* FDO, pp. 7-8 and 9]
- While there is an important directive linkage between them, policies (i.e. plans) and regulations are distinct GMA creatures. The Acts consistency requirements give plans directive effect over regulations, however this does not convert policy documents into land use controls. Simply put, plans are not regulations. [The City's critical areas regulations are not before the Board.] [*Tulalip II, 9313*, 1/28/00 Order, at 4.]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]
- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public

participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]

- RCW 36.70A.070 does not apply to development regulations. [*MacAngus, 9317,* FDO, at 9.]
- [RCW 36.70A.070(preamble)] emphasizes the importance of public participation in adopting and amending comprehensive plans. A plan cannot be adopted or amended without providing the opportunity for public participation. This section specifically emphasizes the application of .140 for adopting and amending comprehensive plans. This section of the Act does not apply to development regulations. [*McVittie V, 0316*, FDO, at 18.]
- [The requirements of RCW 36.70A.070(preamble), .070(1) and .110(3)] apply to comprehensive plans and UGA designations; they do not apply to development regulations – *i.e.* rezones. [The Board dismissed these issues *sua sponte*.] [*Forster Woods, 1308c*, FDO, at 29.]
- In order to maintain consistency between its plan and implementing development regulations, as required by RCW 36.70A.040, the County correctly considered the [Plan and implementing regulation] amendments concurrently. [In a footnote, the Board noted that some development regulation amendments implement existing Plan policies and do not necessitate a reciprocal amendment to the Comprehensive Plan. Here, however, the proposal required both a Plan and development regulation amendment, thereby calling for concurrent consideration of both proposed amendments to maintain consistency, as required by RCW 36.70A.040.] [*McVittie V, 0316*, FDO, at 7.]
- The GMA 20-year plan is a guiding light; it is a long-term vision for [a jurisdiction, it is generally] not something that you need to change on an emergency basis. However, development regulations may need to be changed on an emergency, but temporary, basis to respond to unforeseen circumstances. [Once a jurisdiction enacts] temporary controls or a moratorium, the jurisdiction should proceed through the [amendment or] docketing process to make the regulations permanent, if necessary, and to amend the plan if necessary. [This is a very reasonable approach that is consistent with the decision-making regime of the GMA.] [*McVittie V, 0316*, FDO, at 15.]

DISCOVERY

- No entries

DISCRETION (OF LOCAL GOVERNMENT)

- The legislative bodies of counties and cities enjoy broad discretion; however, choices are now made within the framework of GMA mandates and are subject to diminished deference. [*Rural Residents, 3310,* FDO, p. 14]
- Counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act. [*Tacoma, 4301,* FDO, p. 10]
- Although a county has discretion in determining the physical size of a UGA, it does not have discretion in how much population it should plan for. OFM's twenty-year population projection is the exclusive number to use when designating UGAs. [*Tacoma, 4301,* FDO, p. 25]
- A county can delegate the responsibility to negotiate an agreement with each city on the location of UGAs to whomever it decides is bested suited for the task. However, only the legislative body of

the county can make the ultimate decision to adopt UGAs as required by the Act. [*Tacoma, 4301,* FDO, pp. 45-46]

- Cities enjoy broad discretion in comprehensive plan-making, both in terms of the subjective criteria used and the range of specific choices selected. [*Aagaard, 4311c,* FDO, p. 8]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, p. 9]
- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, p. 60]
- If a local legislative body wishes to make changes to the draft of a proposed comprehensive plan that, to that point, has ostensibly satisfied the public participation requirements of RCW 36.70A.020(11) and .140, it has the discretion to do so. However, if the changes the legislative body wishes to make are substantially different from the recommendations received, its discretion is contingent on two conditions: (1) that there is sufficient information and/or analysis in the record to support the Council's new choice (e.g., SEPA disclosure was given, or the requisite financial analysis was done to meet the Act's concurrency requirements); and (2) that the public has had a reasonable opportunity to review and comment upon the contemplated change. If the first condition does not exist, additional work is first required to support the Council's subsequent exercise of discretion. If the second condition does not exist, effective public notice and reasonable time to review and comment upon the substantial changes must be afforded to the public in order to meet the Act's requirements for "early and continuous" public participation pursuant to RCW 36.70A.140. [*WSDF I, 4316,* FDO, pp. 76-77]
- Local governments cannot use verbatim GMA language and assign it a different meaning. [*Robison, 4325c,* FDO, p. 32]
- Determining how to distribute projected population growth among existing cities falls within the ultimate discretion of counties, subject to the requirements of RCW 36.70A.110(2) to attempt to reach agreement with cities. The Act does not require proportionate distributions. [*Vashon-Maury, 5308c,* FDO, p. 34]
- The Board acknowledges the problem inherent in not designating all sites with mineral resources, and, as a result, zoning each site as Mineral use in the implementing regulations. Those properties not zoned as Mineral are not afforded the protection available to sites with Mineral zoning. (A

county may exercise discretion in including some but not all mineral resource lands in a Mineral zoning designation.) [*Alberg, 5341c,* FDO, p. 41]

- While it is not the Board's responsibility to identify each and every development regulation which would be necessary to achieve full implementation of the Plan, the Board can and will conclude that, lacking a comprehensive zoning code or its functional equivalent, a county has not adopted implementing development regulations that "work together in a coordinated fashion to achieve a common goal." [*Hensley II, 5343,* 11/3/95 Order, p. 7]
- The Board rejects the theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas and the Act's explicit prohibition of urban growth outside the UGAs. [*Sky Valley, 5368c,* FDO, p. 45]
- The establishment of nonconforming use regulations is a historic part of land use planning in the State of Washington. However, with the passage of the GMA, the discretion of local jurisdictions to craft nonconforming use provisions has been limited, at least in areas outside of designated UGAs. [*PNA II, 5371,* FDO, p. 27]
- The GMA creates multiple duties which local governments must meet, and these duties are sometimes in tension if not outright conflict, the Act also reserves significant discretion to local governments to determine specifically how they will meet their multiple obligations. [*Benaroya I, 5372c*, 3/13/97 Order, p. 9]
- So long as local governments do not breach any of their duties, local governments are free to reflect local circumstances and priorities in the choices they embody in their comprehensive plans. [*Benaroya I, 5372c,* 3/13/97 Order, p. 9]
- By whatever name (e.g., neighborhood plan, community plan, business district plan, specific plan, master plan, etc.) a land use policy plan that is adopted after the effective date of the GMA and purports to guide land use decision-making in a portion of a city or a county, is a subarea plan within the meaning of RCW 36.70A.080. While a city or a county has discretion whether or not to adopt such optional enactment, once it does so, the subarea plan is subject to the goals and requirements of the Act and must be consistent with the comprehensive plan. [*WSDF III, 5373,* FDO, p. 25]
- The discretion conferred upon cities and counties by RCW 36.70A.080(2) is the discretion to undertake new detailed subarea land use policy plans. If they do so, such plans must be adopted as part of the comprehensive plan; the GMA has removed the discretion of cities and counties to undertake new localized land use policy exercises disconnected from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan. [*WSDF III, 5373,* FDO, p. 26]
- The ultimate designation of any property remains in the local jurisdiction's discretion so long as the designation complies with the requirements of the Act and is internally consistent. [*Hapsmith I, 5375c,* FDO, p. 25]
- General discussion of the Board's treatment of plans and local discretion. [*Litowitz, 6305,* FDO, pp. 3-5]
- Nothing in the Act suggests that either the planning goal [housing .020(4)] or the housing element requirements [.070(20(c) and (d), specifically] are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions suggests that the above cited provision provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-side level. Thus, the Board construes these sections to read, in effect: ". . . identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction*...". [*Litowitz, 6305,* FDO, p. 19]
- The discretion of cities, as recognized by the Board in *Aagaard*, also applies to counties; counties enjoy the same broad discretion to make many specific choices about how growth is to be accommodated within UGAs. [*Cole, 6309c,* FDO, p. 15]

- When a local government includes a self-imposed duty in its plan, such as a deadline, the consistency requirements of RCW 36.70A.070 and .120 oblige it to meet that duty; however, it retains the discretion to amend its plan, including the revision or deletion of such self-imposed duty, provided that it does so pursuant to the authority and requirements of RCW 36.70A.130. [*COPAC, 6313c,* FDO, p. 12-13]
- The Act's requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the ~~structure,~~ values and functions of such ~~natural~~ ecosystems ~~are inviolate~~ must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ ecosystems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, p. 11, amending a holding in *Pilchuck II*, FDO 5347, pursuant to a Superior Court remand]
- Local governments have the flexibility to adopt critical area development regulations that would permit the reduction of the geographic extent of, for example, a wetland. This could result in the loss of all or a portion of an individual site-specific critical area, so long as the values and functions of the ecosystem in which the critical area is located is not diminished. [*Tulalip, 6329,* FDO, p. 11]
- Each local government has discretion in establishing and designing its .130 plan amendment process. [*LMI/Chevron, 8312,* FDO, p. 12]
- RCW 36.70A.050, .170, and .172 provide the required analytical rigor and scientific scrutiny for identifying, designating and protecting critical areas. While local governments have some discretion in identifying, designating and protecting critical areas they may not [use alternative means or] ignore the critical areas requirements (RCW 36.70A.050, .060, .170 and .172) of the GMA. [*LMI/Chevron, 8312,* FDO, p. 17]
- "Front-end loading" of population [in the CFP] is not a GMA violation. . . . Neither the GMA nor the Procedural Criteria requires or suggests that the OFM population be evenly distributed over the planning period. The County clearly has discretion to distribute the population over the planning horizon as it sees fit, so long as the urban growth is accommodated. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 75]
- The City Council has exercised its discretion and adopted (portions of the neighborhood plan) which is distinct and separate from the unadopted (neighborhood plan). The City is also clear that it recognizes . . . that the unadopted (neighborhood plan) represents "the *wishes* of the citizens of the University Community," and that the (unadopted neighborhood plan) provides the basis for "a *desired* work program . . . for the neighborhood." However, the City has explicitly chosen **not** to include the neighborhood's . . . planning document, including the work program . . ., as part of the City-wide Comprehensive Plan. It is the City-wide Comprehensive Plan that the City must use to guide land use decision-making in the University Community Plan area. [*Montlake, 9302c,* FDO, at 8.]
- Cities are not regional decision-making bodies under the GMA and thus do not make decisions regarding system location or design of regional essential public facilities; nevertheless, the Act does contemplate a collaborative role for cities in making and implementing regional decisions. Before a regional decision is made, a city may attempt to influence that choice by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the essential public facility, and the exercise of its land use powers may only impose reasonable conditions and mitigations that will not effectively preclude the essential public facility by rendering it impracticable. [*Sound Transit, 9303,* FDO, at 6-7]

- Sound Transit is the authority vested with the responsibility to make routing and system design decisions for regional light-rail service. [Cities have a duty not to preclude the light-rail alignment or system design selected by Sound Transit.] [*Sound Transit, 9303,* FDO, at 7.]
- Where comprehensive plan policies and development regulations allow [a jurisdiction] a range of discretion in their application, from lawful to unlawful, the Board cannot assume the [jurisdiction] will elect to act unlawfully. "Instead, the Board will assume that prospective governmental actions will be taken in good faith in an effort to comply with the Act." *Pilchuck, 5347,* FDO, at 38. [*Sound Transit, 9303,* FDO, at 7.]
- Until a regional decision is made, the City may lobby Sound Transit to adopt the City's favored alignment and, to the extent that its comprehensive plan expresses the City's aspiration for its future development, Tukwila may express its preferences in its plan. However, once that regional decision is made, the City has a duty not to preclude the light-rail alignment and system design selected by Sound Transit. [*Sound Transit, 9303,* FDO, at 7-8.]
- RCW 36.70A.110 provides a statutory *exception* for FCCs from the UGA locational criteria contained in .110. . . . [T]he locational criteria contained in .110 of the Act do not apply to the identification and designation of potential FCC areas. . . . [T]he Act does not contain any explicit locational requirements for FCCs, other than those factors enumerated in .350(1), including .350(1)(g) "containment" which could affect location. . . . [A] jurisdiction has discretion to adopt its own locational criteria or constraints for identifying and designating potential FCC areas. [*Bear Creek, 5803c*, 6/15/00 Order, at 24.]
- It is important to recognize that local government may use various regulatory techniques to avoid the situation where funding shortfalls occur. However, once local action is forced by a probable funding shortfall, a local government has numerous options to consider in reassessing and reevaluating its plan. In reassessing or reevaluating its plan, a local government is not automatically required to revise its land use element. There are other options that may be considered to meet identified capital facility needs and maintain plan consistency. [Options include: reducing standard of service (LOS); increase revenue; reduce average cost of the capital facility; reduce demand – reallocate or redirect population within the jurisdiction; reduce consumption; combinations of these options.] [*McVittie, 9316c, FDO, at* 26-27.]
- Goal 12 enables local governments to exercise their discretion in making the reasoned determination of which public facilities and services are necessary to support development within the jurisdiction. (Concurring with the Western Washington Growth Management Hearings Board's decision in *Taxpayers for Responsible Growth v. City of Oak Harbor*, WWGMHB Case No. 96-2-0002, Final Decision and Order (Jul. 16, 1996), at 10-11.) [*McVittie, 9316c, FDO, at* 28.]
- Goal 12 requires enforcement and, just as it allows discretion in identifying necessary facilities to support development, it allows local discretion in developing the type of enforcement mechanism or programs to ensure public facilities are adequate and available to support development. These enforcement mechanisms and programs . . . may involve the use of existing regulatory techniques that are authorized, or even required, by other statutory authority. (Footnote omitted.) [*McVittie, 9316c, FDO, at* 30.]
- [For capital facilities, adoption of a concurrency ordinance is not required, but it is not prohibited; such action is within local discretion. In any case, an enforcement mechanism is required.] [*McVittie, 9316c, FDO, at* 30.]
- To suggest that the legislature has "expressly directed" the granting of "considerable" deference is wrong. The word "considerable" does not appear in the statute, nor was it used by the *Manke* Court, as cited by the County in its brief. To characterize the degree of deference that attaches to the clearly erroneous standard codified at RCW 36.70A.320(2) the law simply uses the relative term "more" in reference to the earlier "preponderance of the evidence standard of review. [*Burrow, 9318,* FDO, at 5.]

- The Board has previously determined that it is within a city's sound discretion to adopt as part of its comprehensive plan optional elements such as sub-area plans. [It is correct] that neither the Act, nor the [City's Plan itself, contain standards, or even generalized parameters, for the boundaries of an urban village or neighborhood plan. The Board holds that decisions about the geographic extent or shape of such sub-areas, absent explicit direction elsewhere in the plan, are also within the sound discretion of the City. [*Radabaugh, 0302,* FDO, at 5.]
- [In *Green Valley, 8308c*] the Board examined and rejected the argument that the discretion that the GMA affords to local governments to "balance the goals of the Act" somehow elevates recreational uses to an equal with agricultural uses. [*Grubb, 0304,* FDO, at 9.]
- The choice of what is funded during a six-year financing plan cycle is a discretionary choice of the County. It is not for Petitioner to decide which projects are to be funded in a six-year cycle. So long as the needs identified in the CFE are reflected in the capital improvement program, the scheduling of their implementation, including the delay of project to later years, is a discretionary choice of the County. However, the County should be mindful that those needs identified in the 20-year Plan (CFE), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan. [*McVittie IV*, *0306c*, at 14-15.]
- [Jurisdictions] should be aware that those needs identified in the 20-year Plan (transportation element ending in 2012), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan i.e. by 2012. If these needs are not met by 2012, at a minimum, the [jurisdiction] will be noncompliant in meeting the funding requirements of RCW 36.70A.070(6). [*McVittie IV*, *0306c*, at 21.]
- The Board found the *County's* action . . .noncompliant and invalid. Consequently, the Board directed the *County to take legislative action*, not merely rely upon the Board's determination of invalidity, to bring the Plan and development regulations (zoning) into compliance. . . .How the County chooses to comply with the Board's FDO [and the Act] is left to the County's discretion; however, providing effective notice and the opportunity for public participation for the citizens of Snohomish County on the County's chosen legislative action to comply with the Board's FDO is not a meaningless act. [*McVittie V, 0316*, 5/4/01 Order, at 2-3.]
- The conversion of up to one third [of the land area in two neighborhoods] to industrial uses is strong, albeit necessary, medicine. Had it been in a larger dosage, the Board would have seriously questioned whether these areas could remain viable as residential neighborhoods. [LIHI's concern was focused on the City's willingness to follow through on the commitments made in the Plan, the subject of a subsequent proceeding.] [*LIHI I*, *0317*, FDO, at 4.]
- The Board rejects the argument that the 1994 designation of the . . .parcel as forest resource lands was a "mistake." The record supporting that prior designation is not before the Board and the time to challenge the GMA sufficiency of that designation has long since passed. [The Board notes that the original property owner did not characterize the prior resource lands designation as a "discrepancy" or "mistake" in 1994, nor in 1995 when it sold the property with that designation intact. Nor did Intervenor characterize the prior designation as a "mistake" until after the property was logged in reliance upon that resource land designation. To advance such argument at this time is ironic, if not disingenuous.] [*Forster Woods, 1308c*, FDO, at 16 and footnote 5.]

DISCRIMINATION

- RCW 36.70A.210 does not apply to development regulations. [*Children's I, 5311,* 5/17/95 Order, p. 7]
- "Residential structure occupied by persons with handicaps" means the use to which the structure is put, rather than the building itself. In other words, RCW 36.70A.410 addresses the individuals

occupying the residential structure, and under what circumstances they are doing so. . . . The Board will interpret the phrase broadly so that it operates prospectively, covering residential structures that are someday intended to be occupied by handicapped persons, not just residences that may already be occupied by handicapped persons. [*Children's I, 5311,* FDO, p. 11]

- Jurisdictions are free to designate areas that are subject to additional or more detailed planning such as "special planning areas" (innovative techniques); such specialized planning does not automatically constitute discriminatory action. [*Hapsmith I, 5375c,* FDO, p. 46]
- GMA counties and cities may not treat structures that house handicapped people differently than structures that house anyone else. [*Children's II, 6323,* FDO, p. 5]
- A person with "special needs" is not synonymous with a "handicapped" person. A person is handicapped if he or she fits within one of the three criterion of 42 U.S.C. 3602(h). "Special needs" includes handicapped people as well as people who do not meet the statutory definition of handicapped. [*Children's II, 6323,* FDO, p. 7]
- [Designating localized special planning areas [Subarea Plan areas] does not constitute discriminatory action.] [*LMI/Chevron, 8312,* FDO, p. 31]

DISPOSITIVE MOTION

- Although a dispositive motion before a board and a motion for summary judgment before a superior court may be similar, the Board is not constrained by CR 56 time limits or case law interpretation of that rule. [*Twin Falls, 3303c,* 6/11/93 Order, p. 19]
- [Filing motions (dispositive or to supplement the record) are untimely if filed after the deadline established in the prehearing order, unless written permission is granted by the Board.] [*WRECO, 8335,* FDO, at 2-3]
- The purpose of a dispositive motion is to expedite the process of having a legal issue considered by the Board. [citation omitted] In the situation where there are essentially legal issues, a limited record and uncontested facts, a dispositive motion may be an appropriate means of expediting the review process. However, here, the County and Petitioners dispute the implications of [the ordinance] and offer reasonable, but differing interpretations. Their arguments go to the heart of the effects of the financing program adopted by [the ordinance], an issue of first impression to this Board. Yet, the record before the Board at this point in these proceedings is limited. Additionally, material facts regarding how the County's Plan is organized and what the challenged ordinance amends are unclear and disputed. Given these facts and circumstances, it is not appropriate for the Board to dismiss any of the Legal Issues in a dispositive manner. [*McVittie,9316c,* 10/25/99 Order, at 3.]
- [Given the facts and circumstances, scant and untimely argument presented, the] Board will reserve its judgment on the question of Petitioner's participation standing [and will rule on the issue in the FDO.] [*Ramey Remand, 9302*, 11/11/00 Order, at 15.]
- The heart of this case revolves around the scope of GMA public participation as set forth in several sections of the Act as they apply to the County's action. The Board will address the scope of the GMA's public participation requirements, in the context of the present case, after briefing and oral argument at the hearing on the merits. [The motion to address this issue in a dispositive manner was denied.] [*McVittie V, 0316*, 1/22/01 Order, at 2.]
- The heart of this case revolves around the scope of GMA public participation as set forth in several sections of the Act as they apply to the County's action. The Board will address the scope of the GMA's public participation requirements, in the context of the present case, after briefing and oral argument at the hearing on the merits. [The motion to address this issue in a dispositive manner was denied.] [*McVittie V, 0316*, 1/22/01 Order, at 2.]

- There is nothing in the GMA nor the Board's rules to suggest that the City waived its rights to bring a dispositive motion simply because it did not, at the time of the prehearing conference, declare its intention to file such a motion. [*Mesher, 1307*, 8/2/01 Order, at 9.]

DISSENTING OPINIONS

- *WSDF I, 4316c,* FDO, Tovar dissenting.
- *Vashon-Maury, 5308,* FDO, Tovar dissenting.
- *Vashon-Maury, 5308,* 12/1/95 Order, Tovar dissenting and Towne dissenting.
- *Bremerton, 5339c,* 6/5/95 Order, Philley dissenting.
- *Pilchuck, 5347c,* 6/18/96 Order, Tovar dissenting.
- *Hapsmith I, 5375c,* FDO, Philley dissenting (and concurring).
- *Buckles, 6322c,* FDO, Tovar dissenting.
- *Sky Valley, 5368c,* 10/2/97 Order, McGuire dissenting.
- *Green Valley, 8308c,* FDO, McGuire dissenting
- *Bear Creek, 5308c,* 6/15/00 Order, Tovar dissenting.
- *Shoreline pdr, 0301pdr,* North dissenting.
- *Harvey Airport, 0308,* 7/13/00 Order, North dissenting.
- *McVittie, 0316,* 12/4/00 Order, North dissenting.
- *Shoreline II, 1313,* FDO, Mc Guire dissenting.
- *Shoreline II, 1313,* 12/28/01 Order, Mc Guire dissenting (and concurring).

DRAINAGE

- No entries

DUTIES

- At the time of the compliance hearing, for the purposes of determining whether the state agency, county or city is in compliance with the requirements of the Act, the respondent jurisdiction must comply not just with the statutory language but also with the Board's final decision and order, however specific it might be. The Board nonetheless notes that the final decision and order itself must comply with the requirements of the Act. [*Tacoma, 4301,* 1/18/94 FOC, p. 7]
- As a matter of law, any jurisdiction planning under the Act and within the Board's jurisdiction must comply with the current requirements of the Act and this Board's decisions, unless the latter have been reversed upon judicial review. [*FOTL II, 4309,* 11/8/94 Order, p. 8]
- Cities and counties are required to undertake "early and continuous" public participation in the development and amendment of comprehensive plans and development regulations, and that while the requirement to consider public comment does not require elected officials to agree with or obey such comment, local government does have a duty to be clear and consistent in informing the public about the authority, scope and purpose of proposed planning enactments. [*WSDF I, 4316,* FDO, p. 71]
- A petitioner must first show that the Act imposes a duty upon a local jurisdiction to undertake a particular action and then show by a preponderance of the evidence how the local jurisdiction has breached that duty. Conclusory statements that the Act imposes a duty are insufficient to carry the petitioner's burden of proof. [*Robison, 4325c,* FDO, p. 10]
- Local governments cannot use verbatim GMA language and assign it a different meaning. [*Robison, 4325c,* FDO, p. 32]

- All cities and towns planning under the Act must comply with RCW 36.70A.440 [Development permit applications – Notice to applicant] whether or not they have already adopted their GMA comprehensive plans and implementing development regulations. [*Slatten, 4328,* 2/21/95 Order, p. 7]
- Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place "at the time development is available for occupancy and use" and second, adequacy is measured by "locally established minimum standards." [*Gig Harbor, 5316c,* FDO, p. 13]
- The Act creates an ongoing duty for Washington's communities to plan for future growth, including preservation of the flexibility to increase the UGA land supply at a date beyond the immediate twenty-year planning horizon. [*Gig Harbor, 5316c,* FDO, p. 56]
- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 41]
- It is the County's duty to establish UGA boundaries. The City's role in that process is limited to a consultative one. [*AFT, 5356,* FDO, p. 10]
- RCW 36.70A.110(2) applies only to counties; it does not impose that requirement [to *include* greenbelt and open space areas when it designates UGAs] on cities. [*AFT, 5356,* FDO, p. 17]
- The requirement to *identify* open space corridors imposed by RCW 36.70A.160 applies to both counties and cities. [*AFT, 5356,* FDO, p. 17]
- In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development, the duty to accommodate the population and employment that is allocated to them by a county, the duty to accommodate a county allocation and reflect it in both a city's comprehensive plan land use designations and capital facility plans, the Act imposes a duty on cities to encourage urban growth within UGAs. [*Benaroya I, 5372c,* 3/13/97 Order, p. 8]
- The GMA imposes an affirmative duty upon cities to give support to, foster and stimulate (encourage) urban growth throughout the jurisdictions' UGAs within the twenty-year life of their comprehensive plans. [*Benaroya I, 5372c*, 3/13/97 Order, p. 8]
- The duty to encourage urban growth throughout the jurisdictions' UGA does not direct a specific outcome as to all parcels of land within a city. [*Benaroya I, 5372c,* 3/13/97 Order, p. 8]
- The GMA creates multiple duties which local governments must meet, and these duties are sometimes in tension if not outright conflict, the Act also reserves significant discretion to local governments to determine specifically how they will meet their multiple obligations. [*Benaroya I, 5372c,* 3/13/97 Order, p. 9]
- So long as local governments do not breach any of their duties, local governments are free to reflect local circumstances and priorities in the choices they embody in their comprehensive plans. [*Benaroya I, 5372c,* 3/13/97 Order, p. 9]
- To successfully challenge a local government's GMA actions, a petitioner must first demonstrate that the local government had a duty to act under the GMA and then must show, by a preponderance of the evidence, how the city violated that duty. [*Litowitz, 6305,* FDO, p. 5]
- A Board holding in a prior case does not impose in a subsequent case a duty separate from a GMA duty. [*Litowitz, 6305,* FDO, p. 9]
- Neither goal (1) and (2) nor *Anderson Creek,* establish a GMA duty that precludes a jurisdiction from limiting the scope and magnitude of development in critical areas or environmentally sensitive areas. [*Litowitz, 6305,* FDO, p. 9]

- RCW 36.70A.010 is not a substantive or even a procedural requirement of the Act, and it creates no specific local government duty for compliance apart from the subsequent goals and requirements of the Act. Neither RCW 36.70A.010 nor Board decisions in prior cases impose a duty on a jurisdiction to avoid the use of previous plans and regulations in preparing its GMA plan. [*Litowitz, 6305,* FDO, p. 14]
- Jurisdictions are required to comply both with GMA-imposed duties and with self-imposed duties. [*COPAC, 6313c,* FDO, p. 12]
- When a local government includes a self-imposed duty in its plan, such as a deadline, the consistency requirements of RCW 36.70A.070 and .120 oblige it to meet that duty; however, it retains the discretion to amend its plan, including the revision or deletion of such self-imposed duty, provided that it does so pursuant to the authority and requirements of RCW 36.70A.130. [*COPAC, 6313c,* FDO, p. 12-13]
- RCW 36.70A.070(2)(a) does not require a jurisdiction to include in its planning goals, policies and objectives for each and every neighborhood within its jurisdiction. No such GMA duty exists. [*Buckles, 6322c,* FDO, p. 21]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban portion of the twenty years of county-wide population growth. The county, as to the unincorporated portion of the UGA, and the cities, as to their respective portions of the UGA, have a duty to adopt comprehensive plans that accommodate that allocated growth over the twenty-year life of their plans, including provision of public facilities and services. [*Hensley III, 6331,* FDO, p. 8]
- The Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. [*Hensley III, 6331,* FDO, p. 9]
- The Act does not impose a duty or requirement upon local governments to eliminate or substantially reduce capital facilities maintenance backlogs, nor to guarantee the funding or financing of capital facilities maintenance projects. [*WSDF IV, 6333,* FDO, p. 31]
- The Department of Ecology's approval of an amendment to a SMP for a shoreline of state-wide significance is not subject to the consistency requirements of the GMA. The requirement to achieve consistency among a city's comprehensive plan elements is the city's duty, not Ecology's. Instead, Ecology's action must be reviewed for consistency with the policy of RCW 90.58.020 and the applicable guidelines. [*Gilpin, 7303,* FDO, pp. 6-7]
- There are two duties imposed by RCW 36.70A.200: a duty to adopt, in the plan, a process for siting essential public facilities (EPFs); and a duty not to preclude the siting of EPFs in a plan or implementing development regulations. [*Port of Seattle, 7314,* FDO, p. 7]
- The GMA duty for cities and counties not to preclude the siting of essential public facilities encompasses: new EPFs; existing EPFs; the expansion of existing EPFs; and necessary support activities for expansion of an EPF. [*Port of Seattle, 7314,* FDO, p. 7]
- RCW 36.70A.200 imposes a duty on cities and counties not to preclude EPFs, even when the decision regarding the EPF was made subsequent to the initial adoption of the jurisdiction's plan. In other words, if a decision regarding an EPF follows the adoption of the plan, and if the plan violates the .200 duty 'not to preclude', the jurisdiction has a duty to amend its plan. [*Port of Seattle, 7314,* FDO, p. 8]

- [T]he regional decision regarding STIA [an EPF] triggered Des Moines' duty to review its Plan for preclusive policies and amend its Plan to eliminate the preclusive effect of any of its policies. [*Port of Seattle, 7314*, 5/26/98 Order, p. 1]
- Because the City is under a continuing duty, imposed by RCW 36.70A.200, not to preclude EPFs, any and all Plan policies that direct the City to use them to preclude EPFs, such as the expansion of STIA, even if not specifically identified above, are not in compliance with the GMA and the City must amend them. [*Port of Seattle, 7314,* 5/26/98 Order, p. 6]
- Based upon the Board's prior decisions and the assertions of the parties in this case, it is undisputed that the County was not required to adopt the City's proposed amendment to the County Plan; and the County's rejection of the City's proposal did not violate any GMA duty to amend its comprehensive plan. [*Fircrest*, *8302*, 3/27/98 Order, p. 4]
- RCW 36.70A.020(8), .060, and .170, when read together, create an agricultural conservation imperative that imposes an affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry. [*Green Valley, 8308c,* FDO, p. 16]
- For recreation there is no statutory duty to adopt and apply regulations to provide and conserve active recreation sites and facilities. [RCW 36.70A.020(9), 150 and .160 does not create a similar recreation imperative.] [*Green Valley, 8308c,* FDO, p. 17]
- The location-specific and directive duty of RCW 36.70A.020(8), .060 and .170 to designate and conserve agricultural lands clearly trumps the non-directive, non-site specific guidance and inventory requirements for open space and recreation of .020(9), .150 and .160. [*Green Valley, 8308c,* FDO, p. 17]
- The principal legal theory underlying the issues raised in this case is that the GMA establishes a duty upon the City of SeaTac to provide for mitigation of the impacts of STIA activities, in its Plan or development regulations, for its neighboring jurisdictions. Petitioners attempt to construct a duty to mitigate from the provisions of RCW 36.70A.100 and .210. The attempt to create a GMA duty on jurisdictions to provide for mitigation of impacts on surrounding communities, in their plans and development regulations fails. [*Burien, 8310,* FDO, pp. 5-6]
- RCW 36.70A.020(7), .470, and 130, read individually or collectively, [do not] establish a duty [for jurisdictions] to consider specific plan amendments on an annual basis. [*LMI/Chevron, 8312,* FDO, p. 12]
- The GMA [does not] establish some extraordinary standard of fairness for legislative actions above that already required by law. [The appearance of fairness doctrine does not apply to legislative actions.] [*LMI/Chevron, 8312,* FDO, p. 13]
- RCW 36.70A.050, .170, and .172 provide the required analytical rigor and scientific scrutiny for identifying, designating and protecting critical areas. While local governments have some discretion in identifying, designating and protecting critical areas they may not [use alternative means or] ignore the critical areas requirements (RCW 36.70A.050, .060, .170 and .172) of the GMA. [*LMI/Chevron, 8312,* FDO, p. 17]
- [Pursuant to RCW 36.70A.110(1), all cities are included in UGAs. Pursuant to RCW 36.70A.110(2), each UGA must permit urban densities. Therefore, the GMA imposes a duty upon all cities to designate lands within their city limits (UGA) to permit urban densities.] The GMA requires every city to designate lands within its jurisdiction at appropriate urban densities. [*LMI/Chevron, 8312,* FDO, p. 23]
- [The GMA does not compel redevelopment of existing developed parcels, but it does require that the plans that govern new development or redevelopment allow compact urban development at appropriate urban densities in order to be consistent with the goals of the GMA.] [*LMI/Chevron, 8312,* FDO, p. 37]

- The Board has generally upheld local government in the situation where a petitioner has proposed a Plan amendment to a local government and the local government had declined to adopt the proposed amendment. . . . The GMA, pursuant to RCW 36.70A.130, requires local governments to have a process for amending their Plans. However, the Act does not require local government to adopt a particular proposed amendment offered by a petitioner, absent an explicit non-discretionary GMA duty compelling such amendment. [*AFT, 9302,* 6/18/99 Order, at 4.]
- Cities are not regional decision-making bodies under the GMA and thus do not make decisions regarding system location or design of regional essential public facilities; nevertheless, the Act does contemplate a collaborative role for cities in making and implementing regional decisions. Before a regional decision is made, a city may attempt to influence that choice by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the essential public facility, and the exercise of its land use powers may only impose reasonable conditions and mitigations that will not effectively preclude the essential public facility by rendering it impracticable. [*Sound Transit, 9303,* FDO, at 6-7]
- Sound Transit is the authority vested with the responsibility to make routing and system design decisions for regional light-rail service. [Cities have a duty not to preclude the light-rail alignment or system design selected by Sound Transit.] [*Sound Transit, 9303,* FDO, at 7.]
- Where comprehensive plan policies and development regulations allow [a jurisdiction] a range of discretion in their application, from lawful to unlawful, the Board cannot assume the [jurisdiction] will elect to act unlawfully. "Instead, the Board will assume that prospective governmental actions will be taken in good faith in an effort to comply with the Act." *Pilchuck, 5347,* FDO, at 38. [*Sound Transit, 9303,* FDO, at 7.]
- Until a regional decision is made, the City may lobby Sound Transit to adopt the City's favored alignment and, to the extent that its comprehensive plan expresses the City's aspiration for its future development, Tukwila may express its preferences in its plan. However, once that regional decision is made, the City has a duty not to preclude the light-rail alignment and system design selected by Sound Transit. [*Sound Transit, 9303,* FDO, at 7-8.]
- RCW 36.70A.090 does not create a GMA duty; it simply encourages local jurisdictions to include "innovative land use techniques" in their comprehensive plans. [*Tulalip II, 9313*, 1/28/00 Order, at 6.]
- Unlike the transportation element, the capital facilities element does not use the phrase "concurrent with development" and does not specify an enforcement procedure. [However, read in light of Goal 12] a local government is obligated to take steps to ensure that those facilities and services it has identified as being necessary to support development are adequate and available to serve development. [*McVittie, 9316c, FDO, at* 29.]
- [A jurisdiction] is under no GMA duty to adopt the amendments proposed [by petitioners]. [*Tacoma II, 9323c*, 3/10/00 Order, at 2]
- [A] local government is obligated to take steps to ensure that those facilities and services it has identified as being necessary to support development are adequate and available to serve development. [*McVittie, 9316c, FDO, at* 29.]
- [A jurisdiction] is under no GMA duty to adopt the amendments proposed [by petitioners]. [*Tacoma II, 9323c*, 3/10/00 Order, at 2]
- [Sidewalks are a critical component of successful compact urban development. However,] the Board cannot, with the facts and argument presented in this case, discern a GMA duty that would oblige the City to adopt "levels of service" for sidewalks in urban villages nor subject projects in urban villages to a "concurrency" requirement for the installation of such facilities. [*Radabaugh, 0302,* FDO, at 14.]

- The Board has interpreted the Act to acknowledge the paramount importance of the designation, conservation and protection of agricultural lands. It is a duty local government should not take lightly. [*Grubb, 0304,* FDO, at 9.]
- The choice of what is funded during a six-year financing plan cycle is a discretionary choice of the County. It is not for Petitioner to decide which projects are to be funded in a six-year cycle. So long as the needs identified in the CFE are reflected in the capital improvement program, the scheduling of their implementation, including the delay of project to later years, is a discretionary choice of the County. However, the County should be mindful that those needs identified in the 20-year Plan (CFE), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan. [*McVittie IV*, *0306c*, at 14-15.]
- [Jurisdictions] should be aware that those needs identified in the 20-year Plan (transportation element ending in 2012), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan i.e. by 2012. If these needs are not met by 2012, at a minimum, the [jurisdiction] will be noncompliant in meeting the funding requirements of RCW 36.70A.070(6). [*McVittie IV*, *0306c*, at 21.]
- [Petitioners attempt to distinguish this case from *Agriculture for Tomorrow* and *Cole* by arguing that it is more like *Port of Seattle II, 7314*.] In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Poet wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]
- The salient facts in the Bidwell case are indistinguishable from the facts before the Board in the AFT, 9304, case. [The City has no duty to docket or adopt the proposed amendment.] [*Bidwell, 0309,* 7/14/00 Order, at pp. 3-4.]
- RCW 36.70A.010 contain the legislative findings that support the goals and requirements established in the remainder of the GMA. These legislative findings, standing alone, impose no duty on a jurisdiction. The Board's review focuses on a local government' compliance with the goals and requirements of the Act, in the context of these findings. [*Edgewood, 1318*, FDO, at 8.]

ECONOMIC DEVELOPMENT ELEMENT

- *See also:* **Affordable Housing** [*LIHI I, 0317*]
- *See also:* **GMA Planning** [*LIHI I, 0317*, 2/21/02 Order]

EMERGENCY

- The question of emergency ordinances, since repealed and replaced by interim ordinances, are moot; the Board will not hear and decide moot issue. [*Hayes, 5381,* 4/23/96 Order, p. 4]
- RCW 36.70A.130(2) requires local governments to establish a public participation process and procedure for plan amendments. The Board's jurisdiction extends only to determining compliance with that requirement, not to reviewing the circumstances, situations or events that may precipitate a proposed amendment. [*Wallock I, 6325,* FDO, p. 10]

- Nowhere in the GMA is "emergency" defined, nor is there a requirement for a jurisdiction to define emergency in its plan. More directly on point, RCW 36.70A.130(2)(b) does not address the procedures for declaring an emergency, nor confer jurisdiction upon the Board to review such a declaration. [*Wallock I, 6325,* FDO, p. 10]
- The public participation requirements of RCW 36.70A.140 do not apply to plan amendments adopted in response to emergencies. [*Wallock I, 6325,* FDO, p. 12]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]
- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5]
- [I]t is axiomatic that the Board has jurisdiction to review legislative actions that adopt or amend a jurisdiction's GMA comprehensive plan or implementing development regulations, regardless of the vehicle (emergency ordinance, ordinance, resolution or motion) chosen by the jurisdiction to accomplish such action. [*McVittie V, 0316*, 1/22/01 Order, at 4.]
- [In *Wallock I*], the Board did conclude, "it does *not have jurisdiction* to review the [jurisdiction's] *declaration* of emergency as it relates to the adoption of the [challenged ordinance]." (Citation omitted.) The Board also stated it did not have jurisdiction to review "the circumstances, situations, or events that may precipitate a proposed [emergency] amendment." (Citation omitted.) The Board reaffirms this conclusion. . . . Petitioner fails to cite to any authority in the GMA, authorizing the Board to review the facts, circumstances, situations or events that underlie a jurisdiction's basis for *declaring* an emergency. [*McVittie V, 0316*, 1/22/01 Order, at 5.]
- General discussion and overview of the difference between Plans and regulations and the importance of public participation in the processes. [*McVittie V, 0316*, FDO, at 13-15.]
- The GMA 20-year plan is a guiding light; it is a long-term vision for [a jurisdiction, it is generally] not something that you need to change on an emergency basis. However, development regulations may need to be changed on an emergency, but temporary, basis to respond to unforeseen circumstances. [Once a jurisdiction enacts] temporary controls or a moratorium, the jurisdiction should proceed through the [amendment or] docketing process to make the regulations permanent, if necessary, and to amend the plan if necessary. [This is a very reasonable approach that is consistent with the decision-making regime of the GMA.] [*McVittie V, 0316*, FDO, at 15.]

- [RCW 36.70A.390] does not apply to plan amendments. It does not apply to permanent changes in development regulations or controls. It applies only to the adoption or amendment of temporary controls or development regulations, those measures that are adopted for an interim period – generally six-months. This section of the Act is unique in that it permits a deviation from the norm of providing the opportunity for public participation prior to action; here a jurisdiction can act or adopt first, then provide the opportunity for public participation after adoption. However, this post-adoption opportunity for public participation must occur within 60-days of adoption. [*McVittie V, 0316*, FDO, at 20.]
- [Plan] Amendments precipitated by emergencies are clearly governed by .130(2)(b), not .140 or even .130(2)(a). Within the confines of the goals and requirements of the Act, local governments have discretion to determine what "appropriate public participation" to provide before they take action on emergency plan amendments. The word "after" [in .130(2)(b)'s phrase "after appropriate public participation] evidences the clear and explicit Legislative intent to prohibit adoption of a plan amendment until "after" (behind in place or order, subsequent in time, late in time than, following) (citation omitted) appropriate public participation takes place. [*McVittie V, 0316*, FDO, at 23-24.]
- [A jurisdiction] has discretion to define "appropriate," but deciding to provide "zero" opportunity for public participation is not "appropriate" and an abuse of that discretion and contrary to the Act. [Providing no notice or opportunity for public participation before the adoption of the emergency plan amendment emasculates the GMA. [It is irreconcilable with the public participation requirements and renders the GMA's public participation provisions absolutely meaningless. [*McVittie V, 0316*, FDO, at 24.]
- *See also:* **Public Participation** [*McVittie V, 0316*]

ESSENTIAL PUBLIC FACILITIES – EPFS

- Proposed uses that meet the definition of urban growth will be prohibited in rural areas unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility. [*Vashon-Maury, 5308c,* FDO, p. 69]
- RCW 36.70A.200(1) does not apply to development regulations, while (2) does. [*Children's I, 5311,* 5/17/95 Order, p. 7]
- "Essential state public facilities" are a subset of "essential public facilities." [*Children's I, 5311,* FDO, p. 8]
- Essential public facilities need not be listed by OFM in order to be considered an essential public facility under the Act. The Board reads the last sentence of 200(2) independently, as if it were a third subsection. [*Children's I, 5311,* FDO, p. 17]
- A city or county cannot rely on an unfinished process of another jurisdiction to meet the Act's requirements. However, a city or county can, if it elects or is required to by county-wide planning policy to do so, utilize the completed process of another jurisdiction to meet the requirements of RCW 36.70A.200(1). [*Hapsmith I, 5375c,* FDO, p. 38]
- Any railroads with facilities, such as trackage, rail yards and intermodal centers, that serve the region or state, as a matter of law, constitute state or regional transportation facilities and therefore are essential public facilities. [*Hapsmith I, 5375c,* FDO, p. 39]
- A city does not have authority to set binding legislative policy outside its city limits. Although a city is fee to acknowledge and discuss the difficulty in siting essential public facilities, it cannot require other jurisdictions to make a '"special effort" to distribute EPFs equitably throughout the region. More importantly, a city cannot utilize such policy to reject the siting of an essential public facility

on the grounds that other jurisdictions have not taken an equitable share of such facilities. [*Hapsmith I, 5375c,* FDO, p. 40]

- Jurisdictions are free to designate areas that are subject to additional or more detailed planning such as "special planning areas" (innovative techniques); such specialized planning does not automatically constitute discriminatory action. [*Hapsmith I, 5375c,* FDO, p. 46]
- The Act requires the comprehensive plans of counties and cities to include a process for siting EPFs, and prohibits provisions in local plans or development regulations that would render impossible or impractical the siting of EPFs. [*Hapsmith I, 5375c,* 5/10/96 Order, p. 7]
- The Act requires interjurisdictional planning for public facilities that are of a county or statewide nature, through the development of CPPs. [*Hapsmith I, 5375c,* Order, p. 8]
- It is not inappropriate for a process for siting EPFs to require that policies (not sites), pertaining to the regional or state EPF, be included within a state or regional plan. [*Hapsmith I, 5375c,* 5/10/96 Order, p. 8.] *See also:* 4/24/98 Order.
- It is not inappropriate for a process for siting EPFs to require that a financing strategy for mitigation use (including but not limited to) non-local sources. [*Hapsmith I, 5375c,* 5/10/96 Order, p. 8.]
- It is not inappropriate for a process for siting EPFs to require a mitigation measures (not incentives) to protect the jurisdiction from adverse effects of a proposed EPF. [*Hapsmith I, 5375c,* 5/10/96 Order, p. 9.]
- There are two duties imposed by RCW 36.70A.200: a duty to adopt, in the plan, a process for siting essential public facilities (EPFs); and a duty not to preclude the siting of EPFs in a plan or implementing development regulations. [*Port of Seattle, 7314,* FDO, p. 7]
- The GMA duty for cities and counties not to preclude the siting of essential public facilities encompasses: new EPFs; existing EPFs; the expansion of existing EPFs; and necessary support activities for expansion of an EPF. [*Port of Seattle, 7314,* FDO, p. 7]
- A local government plan, through policies or strategy directives, cannot effectively make the siting or expansion of an EPF, or its support activities, incapable of being accomplished by means available to the EPF proponent. [*Port of Seattle, 7314,* FDO, p. 8]
- RCW 36.70A.200 imposes a duty on cities and counties not to preclude EPFs, even when the decision regarding the EPF was made subsequent to the initial adoption of the jurisdiction's plan. In other words, if a decision regarding an EPF follows the adoption of the plan, and if the plan violates the .200 duty 'not to preclude', the jurisdiction has a duty to amend its plan. [*Port of Seattle, 7314,* FDO, p. 8]
- [T]he regional decision regarding STIA [an EPF] triggered Des Moines' duty to review its Plan for preclusive policies and amend its Plan to eliminate the preclusive effect of any of its policies. [*Port of Seattle, 7314*, 5/26/98 Order, p. 1]
- If certain conditions are not met, the "mitigation" language obligates the City to oppose airport-related projects and to deny certain permits. The inescapable conclusion is that opposition . . . and denial of certain permits can result in preclusion of STIA expansion or some other EPF. There is no Plan provision excluding EPF's from these preclusive requirements. [*Port of Seattle, 7314,* 5/26/98 Order, p. 3]
- Because the City is under a continuing duty, imposed by RCW 36.70A.200, not to preclude EPFs, any and all Plan policies that direct the City to use them to preclude EPFs, such as the expansion of STIA, even if not specifically identified above, are not in compliance with the GMA and the City must amend them. [*Port of Seattle, 7314*, 5/26/98 Order, p. 6]
- In light of the facts presently before the Board, Sound Transit's challenge under RCW 36.70A.200 fails for two reasons: (1) no regional decision has yet been made selecting the alignment of light-rail through Tukwila and (2) no amended plan policy of zoning regulation expressly requires the City to

preclude any of the light-rail alignments presently being considered by Sound Transit. [*Sound Transit, 9303,* FDO, at 6]

- Cities are not regional decision-making bodies under the GMA and thus do not make decisions regarding system location or design of regional essential public facilities; nevertheless, the Act does contemplate a collaborative role for cities in making and implementing regional decisions. Before a regional decision is made, a city may attempt to influence that choice by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the essential public facility, and the exercise of its land use powers may only impose reasonable conditions and mitigations that will not effectively preclude the essential public facility by rendering it impracticable. [*Sound Transit, 9303,* FDO, at 6-7]
- Sound Transit is the authority vested with the responsibility to make routing and system design decisions for regional light-rail service. [Cities have a duty not to preclude the light-rail alignment or system design selected by Sound Transit.] [*Sound Transit, 9303,* FDO, at 7.]
- Until a regional decision is made, the City may lobby Sound Transit to adopt the City's favored alignment and, to the extent that its comprehensive plan expresses the City's aspiration for its future development, Tukwila may express its preferences in its plan. However, once that regional decision is made, the City has a duty not to preclude the light-rail alignment and system design selected by Sound Transit. [*Sound Transit, 9303,* FDO, at 7-8.]
- The Board has interpreted "preclude" to mean: render impossible or impracticable; "impracticable" has been interpreted to mean: not practicable, incapable of being performed or accomplished by the means employed or at command. (Citation omitted). [*DOC/DSHS, 0307*, FDO, at 6.]
- It is undisputed that work release centers or facilities [and juvenile community facilities] are essential public facilities subject to the provisions of RCW 36.70A.200. [*DOC/DSHS, 0307,* FDO, at 6.]
- [DOC challenged provisions in the City's ordinance pertaining to: 1) excluding work release facilities from all areas of the City except the Heavy Industry designation; 2) a 1000' foot restrictive buffer from ten sensitive areas – including residential zones; 3) a 16 bed capacity limitation; 4) internal staffing requirements; 5) resident eligibility restrictions; 6) internal security plan provisions; 7) provisions to demonstrate need; and 8) "fair-share" provisions. The City conceded that items 3-6 were preempted by the DOC's authority to govern its internal workings of its own facilities, but urged DOC to abide by its own internal regulations. The City did not respond to item 7. In essence, the City conceded noncompliance on these issues. Consequently, the Board only addressed items 1, 2 and 8.] [*DOC/DSHS, 0307,* FDO, at 6-7.]
- [The Board agreed with DOC that the M-3 district had limited access to needed resources for work release facilities, and available land for such facilities in the M-3 district was limited.] Limiting work release facilities to the M-3 zoning designation where the availability of non-developed, non-contaminated sites is problematic precludes the siting of work release facilities from being located within the City of Tacoma. [*DOC/DSHS, 0307,* FDO, at 8-9.]
- Regarding Tacoma's "grand-fathering" of [existing] work release facilities, the Board notes that prior to [adoption of] the present Ordinance, work release facilities were allowed in various zones, but under the Ordinance they are prohibited from *all zones* except the M-3 district. But for the new prohibitions of the Ordinance, the "grand-fathering" of existing work release facilities within their present zoning districts would not be necessary. The City should be aware that RCW 36.70A.200 prohibits the City from not allowing the expansion of existing essential public facilities as well as precluding new essential public facilities. [*DOC/DSHS, 0307,* FDO, at 9.]
- The only supporting evidence for a 1000' buffer that Tacoma cites seems to be statements based on perception, unsubstantiated fear or community displeasure. [DOC showed that there was no evidence indicating that work release facilities increase criminal activity, or that recidivism tends to

occur within 1000' of a facility itself. DOC provided substantial evidence to the City regarding its work release program, success rates, number of [local] offenders, escapes from work release facilities and crimes related to escapes.] [*DOC/DSHS, 0307*, FDO, at 10.]

- A city cannot . . . reject the siting of an essential public facility on the grounds that other jurisdictions have not taken an equitable share of such facilities. (Citation omitted.) [Jurisdictions may not rely upon their own independent interpretations of "fair share" as the basis for EPF siting decisions.] The Board disagrees with Tacoma's [concession and] assertion that future changes to EPF siting based upon "fair share" may only be accomplished by the Legislature. [Through its CPPs, a county and the cities within that county, in conjunction with relevant state agencies,] could conceivably establish a process or procedure for the equitable distribution of EPFs within the County and among the cities within the County, absent involvement of the Legislature. [*DOC/DSHS, 0307,* FDO, at 12.]
- [Petitioner tried to distinguish this case from *AFT, 9304*, and *Cole, 6309c*, arguing that it is more like *Port of Seattle II, 7314*. In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Poet wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]
- [The Board's jurisdiction was recently addressed by the Supreme Court, which held that the Boards do not have jurisdiction to hear a petition that does not involve a comprehensive plan or development regulation under the GMA.] The PFR . . . challenges [the jurisdiction's] approval of a project permit application (a conditional use permit authorizing a multi-family mental health housing facility); the PFR does not challenge a comprehensive plan or development regulation, or amendment thereto. Consequently, RCW 36.70A.280(1) does not confer jurisdiction upon this Board to review such land use project permit decisions. [*Petersville Road Residents, 0313*, at 4-5.]
- The Board has defined "preclude" as "render impossible or impracticable." (Citations omitted). The Board has also defined "impracticable." "Impracticable" is defined as "not practicable: incapable of being performed or accomplished by the means employed or at command." (Citations omitted). DOC argues that the [challenged amendatory] Ordinance "still does not *provide a practicable opportunity* to site work release facilities." However, this is not the measure of preclusion as defined above. [*DOC/DSHS, 0307*, 5/30/01 Order, at 4.]
- While DOC's analysis and inventory may be construed as going to the *practicable opportunity* for siting work release facilities, it does not demonstrate preclusion. The DOC analysis employed not only the requirements of the Ordinance, but other factors that are not required by the Ordinance. Nonetheless, DOC identified 40 parcels where work release facilities could be sited in the City of Tacoma. DOC is not incapable of siting work release facilities in the City of Tacoma under the terms [of the Ordinance]. [The Ordinance does not preclude the siting of essential public facilities – work release facilities – and complies with the requirements of .200.] [*DOC/DSHS, 0307*, 5/30/01 Order, at 5.]

EVIDENCE – *SEE:* EXHIBITS AND RECORD

EXHAUSTION

- The phrase "judicial review" in RCW 43.21C.075(4) refers to both review by courts and by this quasi-judicial growth planning hearings board. Thus, the doctrine of exhaustion of administrative remedies applies to petitions before the Board. [*Rural Residents, 3310,* 2/16/94 Order, p. 6]
- A four-part test for determining whether the exhaustion requirement bars a SEPA claim is: (1) whether administrative remedies were exhausted; (2) whether an adequate remedy was available; (3) whether adequate notice of the appeals procedure was given; and (4) whether exhaustion would have been futile. [*WSDF I, 4316,* 12/30/94 Order, p. 11]
- [To challenge a jurisdiction's action under SEPA before this Board] [t]his Board has consistently followed the direction of the courts and has consistently required petitioners to exhaust a local jurisdiction's administrative appeal process before seeking SEPA review before this Board (citations omitted). [*Tulalip II, 9313*, 1/28/00 Order, at 5.]

EXHIBITS

- A jurisdiction is required to include as part of the record of its development of its [critical areas regulations or amendments] the scientific information that was developed by the jurisdiction and presented to the jurisdiction by others during its development of its regulations. The City included the best available science when it developed its amendments to its critical areas regulations, and did not violate RCW 36.70A.172. [*HEAL, 6312,* FDO, p. 21]
- Each GMA case is a discrete entity and the entire record before the Board in a prior case does not automatically become part of the record before the Board in a subsequent case. A party wishing to have the Board consider an exhibit from the record in a prior case must file a motion to supplement the record pursuant to WAC 242-02-540 and attach a copy of the proposed exhibit to the motion. [*COPAC, 6313c,* FDO, p. 5]
- A jurisdiction's Index to the Record need not be organized topically. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 25]
- Copies of the exhibits proposed for supplementing the record must accompany the motion to supplement. [*Ramey Remand, 9302*, 11/11/00 Order, at 5, 8-9.]
- [There is] a burden on the respondent jurisdiction to compile and Index that documents the proceeding undertaken by the jurisdiction. The Index should contain information obtained by the jurisdiction in its proceedings, that it used in reaching the decision that is the subject of the GMA challenge before the Board. . . . The Board does not direct the contents of the jurisdiction's Index, it accepts it as a good faith effort by the jurisdiction to document the record of the proceedings and the materials used by the jurisdiction in taking to the GMA action. Amendments to the Index, by the jurisdiction, or motions to supplement the record are the means to finalize the record for Board review. [*Ramey Remand, 9302*, 11/11/00 Order, at 9.]
- The purpose of an exhibit list is to identify those documents listed in the Index that the party intends to use as an exhibit. (Citation omitted.) It may not contain exhibits that are not listed in the Index or exhibits that have not been admitted as supplemental evidence by the Board. [*Ramey Remand, 9302*, 11/11/00 Order, at11.]
- If in Petitioner's prehearing opening brief, Petitioner attaches as an exhibit and relies upon the recently admitted exhibits [declarations] to support argument in the opening brief; then the City may include rebuttal declarations along with its prehearing response brief and move the Board to supplement the record with such new City declarations. [*Ramey Remand, 9302*, 12/15/00 Order, at 2.]

EXISTING USES

- The phrase "uses legally existing on any parcel" means activities or improvements that actually exist on the land, as opposed to legal use rights. [*Twin Falls, 3303c,* FDO, p. 41]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in visual character. The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New England towns that Pope and Talbot used as templates for their company town. The Board finds that Port Gamble's mix of uses and physical forms clearly qualify as a "village," a "hamlet" or a "rural activity" center within the meaning of RCW 36.70A.070(5)(d)(i). [*Burrow, 9318,* FDO, at 18-19.]
- As to the question of range of permitted uses. . . the GMA's focus is on the *types* of uses in existence on July 1, 1990, rather than on specific businesses. Therefore, the limitations imposed are upon the types of uses (i.e., office, or residential, or commercial) that existed on July 1, 1990, not on the specific businesses that can be documented. . . . In future cases, with a smaller scale development and a narrower range of historical uses, the Board may be compelled to more closely examine the actual businesses or uses to determine what the appropriate range of uses might be. [*Burrow, 9318,* FDO, at 19-20.]

EXTENSIONS

- *Morris, 7329c,* [2 extensions]
- *Rabie, 8305c,* [2 extensions]
- *LMI/Chevron, 8312,* [1 extension]
- *RBI/Andrus, 8330c,* [1 extension]
- *URBPA, 8334,* [1 extension]
- *Carkeek, 8336,* [7 extensions]
- *Housing Partners, 9310,* [10 extensions]
- *Westcot, 9311,* [3 extensions]
- *McVittie V, 0316,* [1 extension]
- *Kenyon, 9320,* [4 extensions]
- *Kenyon II, 1301,* [4 extensions – pending]
- *Nelson, 1309,* [4 extensions – pending]
- *DOC II, 1315,* [3 extensions – pending]
- *WHIP II, 1326,* [1 extension – pending]
- *Crofut, 1327,* [1 extension – pending]

FAILURE TO ACT

- As a matter of law, when a local jurisdiction has failed to act, any person who resides or owns property within that jurisdiction has standing to bring a "failure to act" challenge. [*FOTL I, 4303,* 4/22/94 Order, p. 19]
- Challenges to non-GMA actions taken after GMA deadlines have passed, and alleging failure to comply with the requirements of the Act, must be brought before a superior court, unless the legislature subsequently expands the Board's jurisdictional authority. [*KCRP, 4305,* 7/27/94 Order, p. 14]

- Until a jurisdiction complies with the Act's procedural requirements, a failure to act challenge can be brought at any time. Once the Act's procedural requirements are met, substantive challenges to an enactment must be brought within the sixty-day statute of limitations. [*KCRP, 4305,* 7/27/94 Order, p. 19]
- The Board has jurisdiction over both adopted GMA enactments and failures to adopt specifically mandated GMA enactments. [*CCSV, 5344,* 6/14/95 Order, p. 6]
- [A failure to act challenge may be brought at any time after the deadline has passed. WAC 242-02-220(5).] If a city or county failed to take any action relating to a GMA deadline, a petitioner may challenge the failure of that city or county to act by that deadline. On the other hand, if a city or county has taken some action relating to a GMA deadline, and published notice of that action, a challenge to that action must be filed within sixty days after publication. [*Gain, 9319*, 1/28/00 Order, at 4.]
- The record is clear that the County designated GMA forest lands and adopted development regulations. The County did not "fail to act." Petitioner's disagreement with the County's actions at this late date cannot re-open review of the County's action. [*Gain, 9319*, 1/28/00 Order, at 6.]
- [The City requested, and CTED granted, the six-month extension described in RCW 36.70A.040(3)(d). The City failed to meet this deadline. The City failed to act in compliance with the requirements of the Act.] [*LIHI I*, *0317*, FDO, at 5-6.]

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

- *See also:* **Critical Areas**
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c,* FDO, p. 20]
- The legislature required cities and counties to designate fish and wildlife habitat conservation areas only; the legislature did not mandate that cities and counties designate every parcel of land that constitutes fish and wildlife habitat. [*Pilchuck II, 5347c,* FDO, p. 31]
- RCW 36.70A.170 and .060 require cities and counties to designate fish and wildlife habitat conservation areas and adopt development regulations to protect them for all species of fish and wildlife found within them. [*Pilchuck II, 5347c,* FDO, p. 32]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, pp. 41-42]
- The Act's requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the ~~structure,~~ values and functions of such ~~natural~~ ecosystems ~~are inviolate~~ must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ ecosystems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, p. 11, amending a holding in *Pilchuck II*, *5347c*, FDO 5347, pursuant to a Superior Court remand]
- Certain critical areas, such as wetlands and fish and wildlife habitat areas, constitute ecosystems that transcend the boundaries of individual properties and jurisdictions, and that it is therefore necessary to address certain critical area issues on a watershed level. [*Tulalip, 6329,* FDO, pp. 11-12]

- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c*, FDO, p. 31]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c*, FDO, p. 32]
- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]
- [The Tribe] has raised important and provocative questions about the responsibility of a city to protect fish habitat in view of the recent federal listings of Chinook salmon, bull trout, and other species. The GMA contains specific requirements for local governments to designate and protect critical areas, including fish and wildlife habitat. . . . Significantly, the Tribes insist that they are not challenging the City's critical areas regulations adopted pursuant to {the GMA]. They instead assert that the City' [adoption of a Subarea Plan] violates the GMA because the Subarea Plan and critical areas regulations are inextricably intertwined. [*Tulalip II, 9313*, 1/28/00 Order, at 4.]

FOREST LANDS

- *See also:* **Natural Resource Lands**
- The mere possibility of more intense uses of the lands does not preclude land from being classified as forest land. [*Twin Falls, 3303c,* FDO, p. 33]
- The fact that land is generally used by the timber industry does not necessarily mean that it meets the Act's definition of "forest land" that must be designated. [*Sky Valley, 5368c,* FDO, p. 83]
- As a matter of law pursuant to Section 1 of ESSB 6228 and RCW 36.70A.060(3), all cities and counties that had not adopted comprehensive plans by the effective date of ESSB 6228 were required to re-evaluate whether their prior (interim) forest land designations and development regulations complied with the 1994 definition of the phrase "forest lands" and remained consistent with their newly adopted comprehensive plans. [*Sky Valley, 5368c,* FDO, p. 88]
- A county or city does not per se violate the Act simply because its final forest land designations approved at the time of comprehensive plan adoption include lesser acreage than the preliminary, interim forest land designations. [*Sky Valley, 5368c,* FDO, p. 88]
- RCW 36.70A.170(1)(b) requires counties and cities to designate all lands that meet the definition of forest lands and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all these designated forest lands unless the forest lands would fall within a UGA. [*Sky Valley, 5368c,* FDO, p. 89]
- Cities and counties can adopt development regulations for designated forest lands that regulate these lands differently (in manner or degree) as long as adopted development regulations assure the conservation of forest lands. [*Sky Valley, 5368c,* FDO, p. 101]
- Although the Act requires that all lands that meet the definition of forest lands be designated, unless they are located within a UGA, cities and counties retain discretion as to the degree and manner of conservation afforded designated forest lands by adopted development regulations. As long as the adopted development regulations assure the conservation of designated forest lands, these regulations may control designated forest lands in a different manner or degree. [*Sky Valley, 5368c,* FDO, p. 101]
- The reference in RCW 36.70A.070(1) to "timber production" is not synonymous with "forest lands." The latter is a term of art unique to the GMA, for which specific requirements have been adopted,

particularly RCW 36.70A.060 and .170. In contrast, the former, "timber production," is used within the definition of the phrase "forest lands." "Forest lands" are a subset of broader category of lands, those devoted to timber production. [*Sky Valley, 5368c,* FDO, p. 103]

- Just because land is available for timber production does not mean that it constitutes "forest lands" as defined by the Act for which the designations specified at RCW 36.70A.170 and development regulations specified at RCW 36.70A.060 must be adopted. [*Sky Valley, 5368c,* FDO, p. 104]
- RCW 36.70A.170 is unequivocal: a county has a duty to designate, where appropriate, forest lands of long-term commercial significance. A County is compelled to decide whether it has such lands and if so, to designate them. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 35]
- Under the sequencing scheme of the GMA, the land does speak first; but, on the rare occasion, as is the case here, where the land may speak late – it will be heard. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 35]
- The record supports the County's determination that the [property] is forested in character. Petitioners have not shown that the County's portrayal of the property as "forested in character" was clearly erroneous. [*Screen II, 9312,* FDO, at 8.]
- Where land meets the criteria for more than one land use designation, the County has the discretion to determine the designation to be applied to that land. [*Screen I, 9306c*, 10/11/99 Order, at 21.]
- The record is clear that the County designated GMA forest lands and adopted development regulations. The County did not "fail to act." Petitioner's disagreement with the County's actions at this late date cannot re-open review of the County's action. [*Gain, 9319*, 1/28/00 Order, at 6.]
- [One of the criterion used by the County to designate forest lands was that such lands could not be designated as forestry if they fell within one-mile of existing commercial or industrial property.] The one-mile criterion was used for the initial identification and designation of forest lands only. It has no applicability beyond the initial designation of such lands; it is not a de facto exclusion zone [precluding a UGA and urban uses within one-mile of designated forest lands.] [*Kitsap Citizens, 0319c*, FDO, at 22.]
- The term "de-designated," rather than simply "re-designated" was first used by the Board in *Grubb* [0314, FDO]. Under the GMA all lands are either: (1) *urban* lands (i.e. within urban growth areas); (2) *rural* lands; or *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as either urban or rural. In contrast, a "**de**-designation" of lands from resource land to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction. [*Forster Woods, 1308c*, FDO, at 14, footnote 4.]
- The Board rejects the argument that the 1994 designation of the . . .parcel as forest resource lands was a "mistake." The record supporting that prior designation is not before the Board and the time to challenge the GMA sufficiency of that designation has long since passed. [The Board notes that the original property owner did not characterize the prior resource lands designation as a "discrepancy" or "mistake" in 1994, nor in 1995 when it sold the property with that designation intact. Nor did Intervenor characterize the prior designation as a "mistake" until after the property was logged in reliance upon that resource land designation. To advance such argument at this time is ironic, if not disingenuous.] [*Forster Woods, 1308c*, FDO, at 16 and footnote 5.]
- General discussion of the Grubb and Green Valley cases as they relate to resource lands. [*Forster Woods, 1308c*, FDO, at 16-18.]

FRAMEWORK

- The CPP "framework" of .210(1) is to ensure the consistency (required by .100) of the comprehensive plans of cities and counties that have common borders or related regional issues. [*Snoqualmie, 2304c,* FDO, p. 8]

FREQUENTLY FLOODED AREAS

- *See also:* **Critical Areas**
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c,* FDO, p. 20]
- The Act's requirement to protect critical areas means that the structure, value and functions of such natural systems are inviolate. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in a net loss of the structure, value and functions of such natural systems within a watershed or other functional catchment area. [*Pilchuck II, 5347c,* FDO, p. 21]
- The requirement that critical areas are to be protected in the urban area is not inconsistent with the Act's predilection for compact urban development. [*Pilchuck II, 5347c,* FDO, p. 24]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, p. 41-42]
- The Act's requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the ~~structure,~~ values and functions of such ~~natural~~ ecosystems ~~are inviolate~~ must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ ecosystems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, p. 11, amending a holding in *Pilchuck II*, FDO 5347, pursuant to a Superior Court remand]
- Certain critical areas, such as wetlands and fish and wildlife habitat areas, constitute ecosystems that transcend the boundaries of individual properties and jurisdictions, and that it is therefore necessary to address certain critical area issues on a watershed level. [*Tulalip, 6329,* FDO, pp. 11-12]
- The GMA requires jurisdictions to adopt development regulations that protect critical areas; jurisdictions have the authority to supplement the GMA's mandated regulatory protection of critical areas with non-regulatory programs. [*Tulalip, 6329,* FDO, p. 12]
- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 31]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]

- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]
- [Petitioner cited to science in the record from the City's Surface Water Management Plan, recommending regulation based upon the 500-year flood plain. Yet the City designated the 100-year flood plain as its frequently flooded area.] Although there may well be a scientific basis to support this designation, Edgewood fails to cite to a scientific basis for this 100-year flood plain designation. Consequently, the Board concludes that Edgewood's Plan declaration and designation of the 100-year flood plain, as its frequently flooded area – critical area, does not comply with the requirements of RCW 36.70A.172. [*Lewis, 1320*, FDO, at 15.]

FULLY CONTAINED COMMUNITIES - FCCS

- The Bear Creek MPDs are within the County's "island" UGA. The Superior Court included the Bear Creek properties in the UGA. Therefore, in this unique situation, to respond to the Board's Order, the County need not have resorted to using the FCC designation process, as set forth in RCW 36.70A.350, to address the Bear Creek MPDs inclusion in the UGA. [*Buckles, 6322c,* FDO, p. 30]
- [A]ll UGAs need not contain a city, but lands to be included in such UGAs must be lands that are: (1) already characterized by urban growth; (2) adjacent to lands already characterized by urban growth; or (3) designated as a new FCC pursuant to the requirements of RCW 36.70A.350. [*Bear Creek, 5803c*, 6/15/00 Order, at 9.]
- [The Act's definitions of "urban growth' and "characterized by urban growth'] used in the context of designating urban growth areas, pursuant to the locational criteria [of RCW 36.70A.110(1)], do not contemplate prospective urban development. [*Bear Creek, 5803c*, 6/15/00 Order, at 10.]
- [The Bear Creek island is not characterized by urban growth nor adjacent to lands characterized by urban growth, it therefore does not meet the locational criteria of RCW 36.70A.110(1)]. [*Bear Creek, 5803c*, 6/15/00 Order, at 11.]
- RCW 36.70A.110 cross references RCW 36.70A.350. Read together, RCW 36.70A.110 and RCW 36.70A.350 provide that lands that do not have urban growth characterized by urban growth may become UGAs if the satisfy the FCC requirements of .350. [*Bear Creek, 5803c*, 6/15/00 Order, at 12.]
- The Bear Creek island is *located outside of the initially designated urban growth area*. Consequently, it is eligible for consideration as an FCC pursuant to .350. [*Bear Creek, 5803c*, 6/15/00 Order, at 15.]
- [T]he County reserved a portion of the twenty-year population projection and offset the UGA accordingly [as required by .350]. [*Bear Creek, 5803c*, 6/15/00 Order, at 16.]
- [The County adopted FCC the review criteria as required by RCW 36.70A.350(1)(a-i).] [*Bear Creek, 5803c*, 6/15/00 Order, at 16-18.]
- [The assertion that rural zoning designations in areas adjacent to an FCC would not contain the FCC – rural zoning does not hold – is unsubstantiated.] [*Bear Creek, 5803c*, 6/15/00 Order, at 20.]
- WACs define an FCC as "a development proposed for location outside of the existing designated urban growth area which is characterized by urban densities, uses and services and meets the criteria of RCW 36.70A.350." WAC 365-195-210. However, this definition provides little guidance on what "fully contained" means, other than compliance with .350. It may well be that *if* the undefined concept of "fully contained" is interpreted to mean "total independence or complete self-sufficiency" it is a misnomer, especially in the interdependent Central Puget Sound region. [*Bear Creek, 5803c*, 6/15/00 Order, at 20.]

- [The County defines what it believes "fully contained" means in its Plan.] To paraphrase, it does not mean that interaction between the FCC site and adjacent lands is prohibited; it means that the impacts of the FCC should be confined to the site and limited off-site. It means that containment should be achieved through permit conditions that do not increase pressure for urban development on adjacent lands. It does not mean that all public facilities and services be borne by and accommodated within the FCC. . . . The Board does not find the County's interpretation and definition of "fully contained" to be unreasonable in the context of this case. [*Bear Creek, 5803c*, 6/15/00 Order, at 20-21.]
- If the county approves an FCC proposal pursuant to RCW 36.70A.350(2), the approved FCC becomes a UGA by operation of law. Therefore, all the "containment" protections associated with UGAs attach. These include, for example, rural zoning, prohibition of urban growth outside the UGA, limitations on extending urban governmental facilities and services, and in King County the four-to-one program. [*Bear Creek, 5803c*, 6/15/00 Order, at 22.]
- RCW 36.70A.110 provides a statutory *exception* for FCCs from the UGA locational criteria contained in .110. . . . [T]he locational criteria contained in .110 of the Act do not apply to the identification and designation of potential FCC areas. . . . [T]he Act does not contain any explicit locational requirements for FCCs, other than those factors enumerated in .350(1), including .350(1)(g) "containment" which could affect location. . . . [A] jurisdiction has discretion to adopt its own locational criteria or constraints for identifying and designating potential FCC areas. [*Bear Creek, 5803c*, 6/15/00 Order, at 24.]
- [The locational criteria adopted by the County apply specifically to UGAs, not FCC designations. The County's Policy on locational criteria include the .110 FCC "exception."] . . . Since the Legislature, not the County, created the FCC "exception" in RCW 36.70A.110, it is not necessary for the County to justify, explain, or provide a rationale for, why the FCC "exception" is included in its Plan Policies. [*Bear Creek, 5803c*, 6/15/00 Order, at 26-27.]
- Designation of UGAs pursuant to RCW36.70A.110 is a legislative act. The County designated UGAs when it adopted its Plan in 1994. Among the UGAs designated by the County was the Comprehensive Urban Growth Area (CUGA). It was a legislative act to designate the UGAs, including the CUGA. Cascadia [FCC] is located within a UGA; specifically, it is located within the County's CUGA. Any subsequent project specific decision cannot alter the Plan designation of this area as a UGA. [*Gain, 9319*, 1/28/00 Order, at 7-8.]
- Because the proposed Cascadia [FCC] development is located within a designated UGA, the CUGA, the provisions of RCW 36.70A.350 do not apply. [RCW 36.70A.350 applies to FCCs located outside of the initially designated urban growth areas.] [*Gain, 9319*, 1/28/00 Order, at 8.]
- General discussion, summary and history of the Bear Creek island UGA issue. [*FOTL VI, 1310*, FDO, Appendix A.]
- FOTL's assertion that Blakely Ridge and the Panhandle are precluded from <u>ever</u> developing as urban because Redmond Ridge has received an FCC permit is incorrect. However, also incorrect is the County's assertion that nothing more needs to be done to urbanize Blakely Ridge and the Panhandle because they fall within the previously designated FCC. [*FOTL VI, 1310*, FDO, at 6-7.]
- It is undisputed that the County's original **delineation** of the FCC boundaries included [Blakely Ridge and the Panhandle.] However, delineating the boundaries of an FCC is not the same as delineating the boundaries of a UGA and establishing a UGA. Once a UGA is established, the delineated area is "pre-approved" for urban development. Not so with the delineation of an FCC. A delineated FCC is *potentially* urban, but it may not be developed as such until a specific proposal for an FCC development is reviewed, pursuant to the criteria of .350, and approved. [*FOTL VI, 1310*, FDO, at 7.]

- The Board here coins the term "delineation" rather than "designation" to recognize that the process set forth at RCW 36.70A.350 is unique in the GMA. It is a two-step process, which is very different from the "designations" done for "resource lands" pursuant to RCW 36.70A.170 or the "Future land use map designations" done pursuant to RCW 36.70A.070. The initial "designation" (or what we call here "delineation") of an FCC on the Future land use map does not create rights for urban uses. Rather, that initial "delineation" is simply the precedent to a potential second step, which is the subsequent processing and issuance of an "FCC permit." If and when such FCC permit is issued, the subject property becomes urban by operation of law and at that point is appropriately "designated" as urban. [*FOTL VI, 1310*, FDO, at 7, footnote 4.]
- [The two areas are within the County's delineation of the FCC. Neither the Court nor the County altered the FCC delineation. However, there was no application for an FCC permit filed on either the Blakely Ridge or the Panhandle properties.] Thus, these lands have not been subject to the FCC review process, including applicable notice and review for compliance with the requirements of RCW 36.70A.350(1). These areas therefore cannot be designated as UGA and developed as urban, unless and until such time as they obtain approval of an FCC permit, subject to appropriate notice and review pursuant to .350(1). [*FOTL VI, 1310*, FDO, at 8.]
- Potential UPD [urban planned developments] urban developments may occur only within established UGAs; potential FCC urban developments may only occur within delineated FCCs after the approval of, and subject to the conditions of, an FCC permit. [Prior to adoption of the challenged ordinance, the properties were not within established UGAs, they were rural [nonurban] as required by the GMA and Board Order.] Consequently, to urbanize property within the delineated FCC area, review and approval pursuant to the GMA [.350] criteria (and the County's own Plan Policy) is required. [*FOTL VI, 1310*, FDO, at 8-9.]
- It is undisputed that the area *outside* the FCC delineation must be maintained as nonurban (i.e. designated and shown on the Future land use map and zoning map as either resource lands or rural). However, the real question here is whether the land *inside* a delineated FCC area, but not yet reviewed and approved pursuant to .350, must also be maintained as nonurban. The Board answers in the affirmative. [*FOTL VI, 1310*, FDO, at 9.]
- The Board conclusion is based on the need to protect such areas [areas delineated within an FCC] from urban development until and unless an FCC permit has been reviewed and approved pursuant to the .350 FCC review process. The approval of [the adjacent] Redmond Ridge FCC [permit] carries with it a requirement that "urban growth will not occur in adjacent nonurban lands." RCW 36.70A.350(1)(g). . . .RCW 36.70A.350(1)(g) precludes Blakely Ridge and the Panhandle [adjacent nonurban lands prior to the challenged ordinance] from being a UGA and being developed as urban, notwithstanding their inclusion within an FCC *delineation* or their arguably intertwined infrastructure, until such time as proposals for urban development for these sites are reviewed and an FCC permit is approved pursuant to the County's and GMA's .350 FCC review and approval process. If and when such FCC permit approval occurs, those areas subject to the FCC permit would be included as a UGA as a matter of law and only then could be developed as urban. [*FOTL VI, 1310*, FDO, at 9.]
- The County has chosen to use the FCC procedures of RCW 36.70A.350 to address the potential urbanization of this area. Having taken this road, the County cannot now also designate the Blakely Ridge and Panhandle area as a UGA pursuant to RCW 36.70A.110. To do so would ignore the additional .350 criteria and review process. [*FOTL VI, 1310*, FDO, at 9.]
- [Having concluded that for the area to develop as urban it must proceed through the County and GMA's FCC (.350) review process, the Board did not address whether the area complied with the UGA locational requirements of RCW 36.70A.110, was consistent with King County CPP and Plan policies. [*FOTL VI, 1310*, FDO, at 10-14.]

GENERAL DISCUSSION

- General discussion of Board powers. [*Twin Falls, 3303c,* 6/11/93 Order, p. 7]
- General Discussion of sanctions. [*FOTL I, 4303,* 5/18/94 Order , p. 5-6]
- The GMA requires communities to manage change and to change to manage – general discussion. [*Children's I, 5311,* FDO, p. 4]
- Discussion of UGAs in other states – evaluation. [*Gig Harbor, 5316c,* FDO, p. 55]
- General discussion of GMA and summary of prior Board holdings. [*Bremerton, 5339c,* FDO, pp. 20-24]
- Compact Urban Development vs. Sprawl – general discussion of the literature. [*Bremerton, 5339c,* FDO, pp. 24-32]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, p. 28]
- Determining size and shape of UGAs – general discussion of prior Board decisions. [*Bremerton, 5339c,* FDO, pp. 32-42]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, pp. 44-48]
- Synopsis of seven CPSGMHB County Cases dealing with the Rural Element. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, pp. 21-25]
- General discussion of the indispensable party rule. [*Alberg, 5341c,* FDO, pp. 29-36]
- General discussion and recap of Board's subject matter jurisdiction. [*South Bellevue, 5355,* 11/30/95, pp. 3-6]
- General discussion and recap of the quasi-judicial nature of the Board, jurisdictional issues and the APA. [*Sky Valley, 5368c,* FDO, p. 6-20]
- General discussion of prior holdings and issues with subarea plans. [*WSDF III, 5373,* FDO, pp. 22-28]
- General discussion of standing requirements. [*Hapsmith I, 5375c,* FDO, pp. 12-18]
- General discussion of transportation coordination with adjacent jurisdictions. [*Hapsmith I, 5375c,* FDO, pp. 32-34]
- General discussion of the Board's treatment of plans and local discretion. [*Litowitz, 6305,* FDO, pp. 3-5]
- The WSDF quartet is summarized for context. [*WSDF IV, 6333,* FDO, p. 8]
- General discussion and interpretation of RCW 36.70A.177 by the Majority and Dissent. [*Green Valley, 8308c,* FDO, pp. 17-18 and 24-25]
- General Discussion of the Board's treatment of challenges to goals and consistency analysis. [*LMI/Chevron, 8312,* FDO, p. 21]
- General Discussion of the relationship between the neighborhood plans adopted by the City; and the unadopted neighborhood plans that represent the wishes of the citizens of the neighborhoods. [*Montlake, 9302c,* FDO, at 6-8.]

- General Discussion of Pre-GMA planning, UGAs under the GMA and FCCs. [*Bear Creek, 5803c*, 6/15/00 Order, at 6-8.]
- General Discussion of LAMIRDs. [*Burrow, 9318,* FDO, at 18-20.]
- General discussion of agricultural lands designation and the agricultural conservation imperative. [*Grubb, 0304, FDO, at* 8-12.]
- General discussion, summary and history of the Bear Creek island UGA issue. [*FOTL VI, 1310*, FDO, Appendix A.]
- General Discussion of the GMA's public participation goals and requirements. [*McVittie V, 0316*, FDO, at 16-21.]
- General discussion of the Grubb and Green Valley cases as they relate to resource lands. [*Forster Woods, 1308c*, FDO, at 16-18.]

GEOLOGICALLY HAZARDOUS AREAS

- *See also:* **Critical Areas**
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c,* FDO, p. 20]
- The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide adequate justification for residential densities under 4 du/acre within a UGA. [*Benaroya I, 5372c,* 3/13/97 Order, p. 13]
- [The question before the Board was whether Seattle's policy preference for preventing harm to steep slopes by minimizing disturbance and maintaining and enhancing existing ground cover was developed and derived from a process where the evidence of best available science was in the record and was considered substantively – was it discussed, deliberated upon and balanced with other factors? The Board found BAS was included in the record and considered substantively in developing the policy preference.] [*HEAL, 6312*, 10/4/01 Remand Order, at 4-7.]

GMA PLANNING

- Comprehensive planning is an interactive and iterative deliberation process that weighs a variety of inputs prior to taking action. This methodology is described in many texts. The Board takes official notice of *Urban Design within the Comprehensive Planning Process*, M. Wolfe and D. Shinn, University of Washington Press, Seattle, 1970. This reference sets forth the sequential stages of the comprehensive planning process as: (1) **Recognition** Stage wherein existing policies, permitting actions, regulations and visual form and character are inventoried; (2) **Specification** Stage wherein Goals and Priorities are set forth; (3) **Proposal** Stage wherein a variety of alternative concepts are generated at the city, sector and project scales; (4) **Evaluation** Stage wherein the alternatives are scored against adopted criteria, including public review; (5) **Decision** Stage wherein a specific choice is made, developed and/or modified; and (6) **Effectuation** Stage wherein the selected alternative(s) are implemented via revisions to the land use, circulation, and facilities plans, regulatory measures and capital programs. M. Wolfe and D. Shinn, at 37. [*Twin Falls*, *3303c*, FDO, at 78, fn. 27]
- [T]he decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive

plans to development regulations, capital budget decisions and other activities of cities and counties. *See* RCW 36.70A.120. [*Aagaard*, *4311c*, FDO, at 6]

- Under the GMA **all** lands are either: (1) *urban* lands (i.e., within urban growth areas), (2) *rural* lands or (3) *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being either within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as either urban or rural. In contrast, a "**de**-designation" of lands from resource lands to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction. [*Forster Woods*, *1308c,* FDO, at 14, fn. 4]
- General discussion and overview of the difference between Plans and regulations and the importance of public participation in the processes. [*McVittie V, 0316*, FDO, at 13-15.]
- The GMA 20-year plan is a guiding light; it is a long-term vision for [a jurisdiction, it is generally] not something that you need to change on an emergency basis. However, development regulations may need to be changed on an emergency, but temporary, basis to respond to unforeseen circumstances. [Once a jurisdiction enacts] temporary controls or a moratorium, the jurisdiction should proceed through the [amendment or] docketing process to make the regulations permanent, if necessary, and to amend the plan if necessary. [This is a very reasonable approach that is consistent with the decision-making regime of the GMA.] [*McVittie V, 0316*, FDO, at 15.]
- [To provide context for the Board's decision, the Board described the nature of plans and the relationship of plans to regulations.] [*LIHI I, 0317*, 2/21/02 Order, at 4-6.]
- The mandatory and optional elements of a comprehensive plan must be consistent; the policies within the various Plan elements must work together, in harmony, and must not thwart each other. Although the Plan identifies and designates future land uses, the Plan itself does not *directly regulate* land use. However, the Plan is required to be implemented. The Plan is implemented through various methods, such as development regulations (*e.g.* zoning maps and code and other land development controls), and other implementing techniques, such as fiscal measures contained in a jurisdiction's capital expenditure program for infrastructure or road improvements or land acquisitions. Within many Plan elements an inventory and assessment of present conditions and needs must be discussed and identified. The ways to meet the identified needs must then be expressed in the form of map designations and policy statements. These policy statements and goals establish the jurisdiction's strategy and specific actions to be taken to meet the identified needs. The Plan describes, graphically and in policy statements, a desired future outcome for a planning city or county. The Plan also establishes, through map designations and policy statements, the basis and direction to achieve that desired future outcome. The Plan's future land use map designations indicate *where* certain land uses outcomes are desired, the Plan's policy statements, objectives and goals indicate *how* those outcomes are to be achieved. [*LIHI I, 0317*, 2/21/02 Order, at 5-6.]

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- The Board acknowledges concomitant agreements have a long history in this state and have been upheld by our Courts in the pre-GMA *zoning* context (Footnote omitted); however, concomitant agreements do not readily transfer to the GMA context. GMA planning contains numerous requirements not found in pre-GMA planning. These requirements include, for example: ongoing and extensive public participation, designated and documented UGAs, state articulated goals provide guidance to plans and implementing regulations, required (not optional) comprehensive planning, plans must contain certain elements, plan elements must be consistent, and development regulations must be implemented consistently with the plans – through regulations (*i.e.* zoning) and capital investments. UGA expansion and amendment to a plan [future land use map – FLUM] designation involve broader issues of public concern and interest than the use of an individual parcel of property. Concomitant "zoning" agreements for a parcel of property cannot be the controlling factor in issues of UGA expansion or comprehensive plan [FLUM] designation. [*Hensley IV, 1304c*, FDO, at 32.]
- The term "de-designated," rather than simply "re-designated" was first used by the Board in *Grubb* [0314, FDO]. Under the GMA all lands are either: (1) *urban* lands (i.e. within urban growth areas); (2) *rural* lands; or *resource* lands. These are the three fundamental building blocks of land use planning under the GMA. While "re-designation" or "rezoning" of land is somewhat common within urban or rural areas, such changes take place within the context of being within a UGA or a rural area. Appropriate "re-designations" do not change the fundamental nature of those lands as either urban or rural. In contrast, a "**de**-designation" of lands from resource land to either urban or rural is a change of the most fundamental and paramount kind. The term "de-designation" was coined to reflect this distinction. [*Forster Woods, 1308c*, FDO, at 14, footnote 4.]
- The Board rejects the argument that the 1994 designation of the . . .parcel as forest resource lands was a "mistake." The record supporting that prior designation is not before the Board and the time to challenge the GMA sufficiency of that designation has long since passed. [The Board notes that the original property owner did not characterize the prior resource lands designation as a "discrepancy" or "mistake" in 1994, nor in 1995 when it sold the property with that designation intact. Nor did Intervenor characterize the prior designation as a "mistake" until after the property was logged in reliance upon that resource land designation. To advance such argument at this time is ironic, if not disingenuous.] [*Forster Woods, 1308c*, FDO, at 16 and footnote 5.]
- General discussion of the Grubb and Green Valley cases as they relate to resource lands. [*Forster Woods, 1308c*, FDO, at 16-18.]
- The Board holds that, when RCW 36.70A.020(8), .060 and .170 are read together, they create a *forest resource conservation imperative* that imposes an affirmative duty on local government to designate and conserve forest resource lands in order to assure the maintenance and enhancement of the forest resource industry. If a petitioner demonstrates that a de-designation has occurred, the respondent local government, in order to avoid a Board finding of error, must conclusively show how the circumstances have changed and why the designation criteria, including the definition at RCW 36.70A.030(8), no longer apply. [*Forster Woods, 1308c*, FDO, at 18.]
- [After applying the *Grubb* de-designation analysis] the Board concludes that the [164 acre] parcel is no longer viable for long-term commercial forestry primarily because it is severed from the larger pattern of forest land uses to the south. Reasonable minds can differ over how large a stand-alone "island" must be in order to remain commercially viable for long-term forestry. The Board finds it significant that in this case the County has measured the isolated 164-acre . . .parcel against an

adopted County policy that calls for large blocks of forest land. Having done so, the County concluded that the . . .parcel was no longer viable as long-term commercial forestry. In this case, with these facts, the Board agrees that such a decision was within the County's sound discretion. [*Forster Woods, 1308c*, FDO, at 19.]

- [The de-designation of the property to rural is consistent with the County's policies regarding rural character] because the property lies between and buffers the Forster Woods [residential] development and the adjacent Rattlesnake Mountain Scenic Recreational Area. [*Forster Woods, 1308c*, FDO, at 23.]
- Based upon the arguments presented, the Board construes the crux of the dispute in this [issue] to be a question of: whether the County had a GMA duty to update its [UGA capacity analysis] (a new showing of work) when it adopted the amendments to the PRD regulations. In reviewing the question, the Board agrees with the County and affirms its prior holding in *Kelly* [*7312*, FDO] that the GMA creates no duty to continuously update UGA land capacity analysis every time development regulations are amended. [*Master Builders Association, 1316*, FDO, at 10.]
- The GMA promotes the spirit of interjurisdictional cooperation and coordination and should guide planning even between existing and newly incorporated cities. In its argument, Edgewood focuses on the alleged lack of coordination and cooperation in reaching the amendment decision. Edgewood acknowledges that the final decision [regarding the amendment] is Sumner's, but is concerned about the lack of a coordination process rather than the consistency of the resulting amendments. [The Board found numerous cooperative and coordinative actions between the cities and found compliance with RCW 36.70A.100.] [*Edgewood, 1318*, FDO, at 9.]

GOALS

- Cities and counties planning under the Act must consider the planning goals listed at RCW 36.70A.020 before adopting comprehensive plans and development regulations. (The easiest way to show that a jurisdiction has "considered" planning goals is to acknowledge their existence in writing.) [*Gutschmidt, 2306,* FDO, pp. 14-15]
- Prior to GMA, plans were voluntary and advisory and there was no requirement that plans be guided by state goals or be consistent with the plans of others. Under GMA, plans are now mandatory (RCW 36.70A.040) and directive. RCW 36.70A.100, .103 and .120. Plans must now be guided by planning goals (RCW 36.70A.020) and be mutually consistent. RCW 36.70A.110 and .210. [*Rural Residents, 3310,* FDO, p. 17]
- A major purpose of UGAs is to serve Planning Goal 1 and Planning Goal 2. [*Rural Residents, 3310,* FDO, p. 17]
- Compact urban development is the antithesis of sprawl. [*Rural Residents, 3310,* FDO, p. 19]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.

4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, p. 9]

- The Act requires cities and counties to preserve existing housing while promoting affordable housing and a variety of residential densities and housing types. No jurisdiction is required to reconcile these seemingly inconsistent requirements by totally focusing on one requirement, for instance preserving existing housing, to the exclusion of other requirements, such as encouraging more affordable housing. Instead, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them. [*WSDF I, 4316,* FDO, p. 30]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, p. 79]
- The property rights goal, while an important cornerstone of the GMA, is not supreme among the 13 goals. The Act requires local governments to balance all 13 goals and to consider the process recommendations of the Attorney General's Office. [*Vashon-Maury, 5308c,* FDO, p. 89]
- While the preamble to RCW 36.70A.020 clarifies that the goals are not listed in any order of priority, a close examination of the 13 goals reveals that there are some important distinctions that can be drawn among them. Unlike the other ten, three planning goals [(1) urban growth; (2) reduce sprawl; and (8) natural resource industries] operate as organizing principles at the county-wide level. Thus, they have not only a procedural dimension, but they also direct a tangible and measurable outcome. In contrast, Goal 6, regarding property rights, and Goal 11, regarding public participation, do not specifically or implicitly describe the physical form or configuration of the region that should evolve. Rather, they address how local government is obligated to undertake the comprehensive planning and implementing actions that will shape the region (i.e., without taking private property and with enhanced public participation). [*Bremerton, 5339c,* FDO, p. 25]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, p. 28]
- RCW 36.70A.020(4) does not prohibit the demolition of existing housing structures. Instead, cities and counties must balance the Act's requirements to "encourage preservation of existing housing stock" with the demand to "encourage the availability of affordable housing" and the promotion of a "variety of residential densities and housing types." . . . It does not mandate that single-family residences be preserved at the expense of every other housing type. [*WSDF II, 5340,* FDO, p. 25]
- RCW 36.70A.320 requires the Board to presume that a comprehensive plan and development regulations are valid. It does not condition this presumption on the record containing an explicit statement by the local government that it considered the Act's planning goals. Instead, substantive

compliance with those goals remains a requirement of the Act that all jurisdictions are presumed to have met unless and until a petitioner proves otherwise. [*Alberg, 5341c,* FDO, p. 13]

- The Board rejects the argument that Goal 6 (Property Rights) must be interpreted to mean that the imposition of zoning which limits the uses on a property gives rise to the County's duty to compensate for the uses which are not allowed. [*Alberg, 5341c,* FDO, p. 45]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c,* FDO, p. 46]
- Counties are required to be guided by the goals set forth at RCW 36.70A.020, and that the requirement has both a procedural and a substantive component. RCW 36.70A.280 gives the Board jurisdiction over that requirement; RCW 36.70A.300 directs the Board to determine whether compliance with that requirement has occurred. [*Sky Valley, 5368c,* FDO, p. 124]
- In order for petitioners to prevail in this type of challenge, they must prove that the action taken by a city or county is both arbitrary and discriminatory. Showing either an arbitrary or discriminatory action is insufficient to overcome the presumption of validity that actions of cities and counties are granted by the Act. [*Shulman, 5376,* FDO, p. 12]
- Where a petition alleges noncompliance with both the public participation goal and the specific public participation requirement of the Act, the Board will scrutinize only the latter. [*Litowitz, 6305,* FDO, p. 7]
- Neither goal (1) and (2) nor *Anderson Creek,* establish a GMA duty that precludes a jurisdiction from limiting the scope and magnitude of development in critical areas or environmentally sensitive areas. [*Litowitz, 6305,* FDO, p. 9]
- Nothing in the Act suggests that either the planning goal [housing .020(4)] or the housing element requirements [.070(20(c) and (d), specifically] are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions suggests that the above cited provision provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-side level. Thus, the Board construes these sections to read, in effect: ". . . identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction*...". [*Litowitz, 6305,* FDO, p. 19]
- The Board has jurisdiction to determine a challenged local government action's compliance with the goals *and* requirements of the Act. [*Cole, 6309c,* FDO, p. 11-13]
- The GMA's planning goals guide the development and adoption of comprehensive plans, and guide the adoption of amendments to comprehensive plans. [*Cole, 6309c,* FDO, p. 15]
- RCW 36.70A.070(2)(a) does not require a jurisdiction to include in its planning goals, policies and objectives for each and every neighborhood within its jurisdiction. No such GMA duty exists. [*Buckles, 6322c,* FDO, p. 21]
- Where a petition alleges noncompliance with both the housing goal and the specific housing element requirement of the Act, the Board will scrutinize only the latter. [*Children's II, 6323,* FDO, p. 9]
- There are no specific GMA requirements that implement goals RCW 36.70A.020(8) and (9) – Natural Resource Industries and Open Space and Recreation. [*Tulalip, 6329,* FDO, p. 15]

- The Board will review the challenged enactments to "determine whether [they] achieve the legislature's intended results: consistency with the planning goals of the Act." In other words, to show substantive noncompliance with a planning goal, a petitioner must identify that portion of the challenged enactment that is not consistent with, or thwarts, the planning goal, and explain why the identified portion does not comply with that goal. Citing *Rural Residents, 3310,* FDO. [*Rabie, 8305c,* FDO, p. 6]
- The GMA does not list the goals in any rank order; it is also true that there is no conflict between Goals 8 and 9 in the abstract, or where they are applied to different parcels of land. The conflict arises when they are both invoked as the goal rationale for a specific land use on a single parcel. In such an instance, it is notable that, by their very choice of words, Goals 8 and 9 do not convey an equal level of guidance. Comparing the active verbs, we find that Goals 9 conveys that local governments are to *encourage* the development of recreational opportunities while Goal 8 conveys that local governments are to *maintain and enhance* resource-based industries. It is plain that less directive and specific language, such as *encourage,* must yield to more specific and directive language, such as *maintain and enhance.* [*Green Valley, 8308c,* FDO, p. 16]
- [RCW 36.70A.020(7) provides guidance for processing applications for permits not plan amendments]. [*LMI/Chevron, 8312,* FDO, p. 9]
- RCW 36.70A.020(7), .470, and 130, read individually or collectively, [do not] establish a duty [for jurisdictions] to consider specific plan amendments on an annual basis. [*LMI/Chevron, 8312,* FDO, p. 12]
- General discussion of the Board's treatment of challenges to goals and consistency analysis. [*LMI/Chevron, 8312,* FDO, p. 21]
- Fundamental to a city's complying with Goals 1 and 2 is that its land use element, including its future land use map, permits appropriate urban densities throughout its jurisdiction**.** [*LMI/Chevron, 8312,* FDO, p. 24]
- [A plan, or subarea plan, policy that seeks to protect and maintain the large lot, low density, residential character of a city without encouraging urban growth at appropriate urban densities or reducing the conversion of undeveloped land to low density development is inconsistent with, thwarts, and does not comply with Goals 1 and 2 (RCW 36.70A.020(1) and (2).] [*LMI/Chevron, 8312,* FDO, p. 28]
- RCW 36.70A.020(3) does not require that each and every land use designation of a jurisdiction permit residential densities that support all modes of transportation. [Reliance on urban density designations alone is not enough to demonstrate noncompliance with Goal 3.] [*LMI/Chevron, 8312,* FDO, p. 29]
- [RCW 36.70A.020(4) does not require that each and every land use designation of a jurisdiction provide for affordable housing. [*LMI/Chevron, 8312,* FDO, p. 29]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, p. 30]
- [For purposes of analyzing challenges to RCW 36.70A.020(6),] a clearly erroneous action is not necessarily an arbitrary action. "Arbitrary" means to be determined by whim or caprice. Washington's courts have further defined "arbitrary or capricious" action to mean willful and unreasoning action taken without regard to or consideration of the facts and circumstances surrounding the action. Citing cases. [*LMI/Chevron, 8312,* FDO, p. 31]
- [The GMA does not compel redevelopment of existing developed parcels, but it does require that the plans that govern new development or redevelopment allow compact urban development at appropriate urban densities in order to be consistent with the goals of the GMA.] [*LMI/Chevron, 8312,* FDO, p. 37]

- The GMA [goal 3] does not explicitly identify the regional transportation priorities. However, these priorities may be identified by reference to other statutes. Chapters 81.104 RCW and 81.112 RCW give substance to RCW 36.70A.020(3). [*Sound Transit, 9303,* FDO, at 9.]
- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c, FDO, at* 13.]
- [To provide the guidance requested by the parties, regarding the interrelationship of Goal 12 (RCW 36.70A.020(12)) with other requirements sections of the GMA, the Board fashioned four questions – which it subsequently answered.] [*McVittie, 9316c, FDO, at* 22.]
- While Board review of a challenge to RCW 36.70A.070(3) or (6) focuses on the specific requirements of the section, the Board's review must be done in light of Goal 12, not in lieu of Goal 12. [*McVittie, 9316c, FDO, at* 22.]
- The answer to question 1 – Does Goal 12 create a duty beyond the capital facility planning that is required by RCW 36.70A.070(3)? – is yes. Goal 12's reach extends to compliance with RCW 36.70A.070(6). Additionally, Goal 12 may go beyond a challenge to compliance with the requirements of RCW 36.70A.070(3) or (6). Goal 12 also requires substantive compliance. Other plan or development regulation provisions of the local government may not thwart its provisions. [*McVittie, 9316c, FDO, at* 23.]
- [R]eading RCW 36.70A.070(3) in light of Goal 12, the Board concludes that the CFE must include locally established minimum standards, a baseline, for included public facilities, so that an objective measurement test of need and system performance is available. [*McVittie, 9316c, FDO, at* 25.]
- The answer to question 2 – Does Goal 12 require the designation of a single Level of Service (LOS) standard for the facilities and services contained in the CFE? – is yes. Goal 12 gives context to RCW 36.70A.070(3). Goal 12 requires a locally established single minimum (level of service) standard to provide the basis for objective measurement of need and system performance for those facilities locally identified as necessary. The minimum standard must be clearly indicated as the baseline standard, below which the jurisdiction will not allow service to fall. The minimum standard may be the lowest point indicated within a range of service standards for a type of facility. [*McVittie, 9316c, FDO, at* 25.]
- Goal 12 explicitly provides an action-forcing requirement [trigger mechanism] if public facilities cannot support development without decreasing levels of service below the locally established minimums. [*McVittie, 9316c, FDO, at* 23.]
- The answer to question 3 – Does Goal 12 require an enforcement mechanism or "trigger" that forces a reassessment action or implement concurrency by a jurisdiction? – is yes. The GMA is to work as an integrated whole. RCW 36.70A.070(3) and (6) operate to achieve and implement Goal 12. These provisions require a "trigger mechanism" to compel reevaluation. However, local governments have numerous options to consider during reassessment. Also, if reassessment action is "triggered" the responsive action must occur in compliance with the public participation provisions of the GMA. [*McVittie, 9316c, FDO, at* 27.]
- Goal 12 enables local governments to exercise their discretion in making the reasoned determination of which public facilities and services are necessary to support development within the jurisdiction. (Concurring with the Western Washington Growth Management Hearings Board's decision in *Taxpayers for Responsible Growth v. City of Oak Harbor*, WWGMHB Case No. 96-2-0002, Final Decision and Order (Jul. 16, 1996), at 10-11.) [*McVittie, 9316c, FDO, at* 28.]
- Unlike the transportation element, the capital facilities element does not use the phrase "concurrent with development" and does not specify an enforcement procedure. [However, read in light of Goal 12] a local government is obligated to take steps to ensure that those facilities and services it has

identified as being necessary to support development are adequate and available to serve development. [*McVittie, 9316c, FDO, at* 29.]

- Goal 12 requires enforcement and, just as it allows discretion in identifying necessary facilities to support development, it allows local discretion in developing the type of enforcement mechanism or programs to ensure public facilities are adequate and available to support development. These enforcement mechanisms and programs . . . may involve the use of existing regulatory techniques that are authorized, or even required, by other statutory authority. (Footnote omitted.) [*McVittie, 9316c, FDO, at* 30.]
- The answer to question 4 – Does Goal 12 require "concurrency" for all public facilities and services, beyond the explicit concurrency requirement of RCW 36.70A.070(6)(b) for transportation" is no. Goal 12 does not require a development-prohibiting concurrency ordinance for non-transportation facilities and services. Goal 12 allows local governments to determine what facilities and services are necessary to support development and develop an enforcement mechanism for ensuring that identified necessary facilities and services for development are adequate and available. [*McVittie, 9316c, FDO, at* 30.]
- [In *Green Valley, 8308c*] the Board examined and rejected the argument that the discretion that the GMA affords to local governments to "balance the goals of the Act" somehow elevates recreational uses to an equal with agricultural uses. [*Grubb, 0304,* FDO, at 9.]
- [Petitioner makes no independent argument regarding compliance with the goals of the Act. The challenges to the goals are argued in the context of non-compliance with various requirements of the Act; therefore, they are addressed in the Board's analysis of the various requirements of the Act.] [*McVittie IV, 0306c*, at 11.]
- [DOC sought a determination of invalidity, which requires the Board to find substantial interference with the goals of the Act. There is no GMA goal that explicitly addresses EPFs. DOC argued, but the Board rejected the argument that] RCW 36.70A.020(12) implicitly encompasses the non-preclusionary requirements of RCW 36.70A.200. [To make this case, the Board would have to see evidence that the jurisdiction had identified work release and juvenile community facilities as necessary to support development and that the jurisdiction had established minimum standards for such facilities.] However, the Board is concerned that the City ensures coordination between communities and jurisdictions, including DOC, to reconcile conflicts [RCW 36.70A.020(11).] [*DOC/DSHS, 0307,* FDO, at 16-17.]
- [The public participation goal RCW 36.70A.020(11)] provides an umbrella under which all the GMA public participation requirements fit. It articulates a premium on involving citizens in the entire GMA planning process; and specifically emphasizes the importance of public participation for comprehensive plans and development regulations. [*McVittie V, 0316*, FDO, at 16.]
- *See also:* **Affordable Housing** [*LIHI I, 0317*]
- [If a challenge cites goals of the Act and the specific requirements section of the Act that relate to those goals], the Board looks first to the requirements sections of the Act to determine compliance. Review is done in light of the goals of the Act, not in lieu of the goals. If the Board finds noncompliance with a requirement section of the Act, it then returns to review the goals to determine whether substantial interference has occurred and whether invalidity should be impose. [*Kitsap Citizens, 0319c*, FDO, at 10.]
- One of [the Board's] fundamental conclusions was the Board review of a challenge to RCW 36.70A.020(3) or (6) must be done "in light of Goal 12, not in lieu of Goal 12. [*McVittie VI*, *1302*, FDO, at 11.]
- [In McVittie I, 9316c, FDO, 23-30.] [T]he Board reached four other basic conclusions about the cumulative effect of Goal 12 and the capital facilities requirements of the Act: (1) Goal 12 creates a duty beyond the capital facility planning that is required by RCW 36.70A.070(3) and requires

substantive, as well as procedural compliance; (2) Goal 12 requires the designation of a locally established single Level of Service (LOS) standard for the facilities and services contained in the Capital Facilities Element, below which the jurisdiction will not allow service to fall; (3) Goal 12 operating through RCW 36.70A.070(3) and (6), requires an enforcement mechanism or "trigger" to compel either concurrency implementation or reevaluation of numerous options; and (4) Goal 12 does **not** require a development-prohibiting concurrency ordinance for non-transportation facilities and services, rather, it allows local governments to determine what facilities and services are necessary to support development and the enforcement mechanism for ensuring that identified necessary facilities and services for development are adequate and available. (Footnotes omitted). [*McVittie VI*, *1302*, FDO, at 11-12.]

- The Board notes that while Plan provisions must be guided by and consistent with the Goals of the Act, it is conceivable that an unchallenged plan policy (now time barred from challenge) may not be guided by a goal. Consequently, in that situation, a challenge to an implementing regulation (which must also be consistent with the goals as well as implement the Plan) could be consistent with one and not the other. [*Master Builders Association, 1316*, FDO, at 18, footnote 16.]
- [Petitioner argued that] there appears to be a serious disconnect between transportation plans and improvements done by the County and the State. [Therefore] the spirit of Goals 3 and 12 [must apply because they] would demand a better degree of coordination and consistency between the plans and actions of State and County government. Even the County laments the timing of State improvement, to say nothing of the timing of the adoption of State LOS standards. Nevertheless, the Board must conclude that neither Goals 3 and 12, indeed **none** of the goals listed in RCW 36.70A.020 apply to the State because the preamble to that section unequivocally states the goals "shall be used *exclusively* for the purpose of guiding the development of comprehensive plans and development regulations." This is an unfortunate but inescapable conclusion, because to truly achieve managed growth there must be a better linkage between local efforts and state efforts. [*McVittie VIII, 1317*, FDO, at 10.]
- Petitioners cite to no authority for its ["necessary linkage" assertion that the Board must determine the constitutionality of a action to determine compliance with Goal 6.] [The Board agrees with the City] the Board does not have to 'necessarily' determine the constitutionality of a city's action when reviewing a challenge under Goal 6. Under Goal 6, the requirement to find both arbitrary and discriminatory action is not the same as finding a violation of a constitutional provision. [The Board has jurisdiction to review an action for whether it complies with Goal 6, but not for whether it is constitutional.] [*HBA II, 1319*, 10/18/01 Order, at 2-3.]

GROUP HOMES

- "Residential structure occupied by persons with handicaps" means the use to which the structure is put, rather than the building itself. In other words, RCW 36.70A.410 addresses the individuals occupying the residential structure, and under what circumstances they are doing so. . . . The Board will interpret the phrase broadly so that it operates prospectively, covering residential structures that are someday intended to be occupied by handicapped persons, not just residences that may already be occupied by handicapped persons. [*Children's I, 5311,* FDO, p. 11]
- GMA counties and cities may not treat structures that house handicapped people differently than structures that house anyone else. [*Children's II, 6323,* FDO, p. 5]
- A person with "special needs" is not synonymous with a "handicapped" person. A person is handicapped if he or she fits within one of the three criterion of 42 U.S.C. 3602(h). "Special needs" includes handicapped people as well as people who do not meet the statutory definition of handicapped. [*Children's II, 6323,* FDO, p. 7]

- It is undisputed that work release centers or facilities [and juvenile community facilities] are essential public facilities subject to the provisions of RCW 36.70A.200. [*DOC/DSHS, 0307*, FDO, at 6.]
- [The Board's jurisdiction was recently addressed by the Supreme Court, which held that the Boards do not have jurisdiction to hear a petition that does not involve a comprehensive plan or development regulation under the GMA.] The PFR . . . challenges [the jurisdiction's] approval of a project permit application (a conditional use permit authorizing a multi-family mental health housing facility); the PFR does not challenge a comprehensive plan or development regulation, or amendment thereto. Consequently, RCW 36.70A.280(1) does not confer jurisdiction upon this Board to review such land use project permit decisions. [*Petersville Road Residents, 0313*, at 4-5.]

HIERARCHY

- CPPs [county-wide planning policies] are part of a hierarchy of substantive and directive policy. Direction flows first from the CPPs to the comprehensive plans of cities and counties, which in turn provide substantive direction to the content of local land use regulations, which govern the exercise of local land use powers, including, zoning, permitting and enforcement. [*Snoqualmie, 2304c,* FDO, p. 17]
- The GMA consists of a hierarchy of policy that provides direction to implementing actions by state and local governments. [*Rural Residents, 3310,* FDO, p. 13]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, p. 6]
- A local jurisdiction's comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities. [*Children's I, 5311,* 5/17/95 Order, p. 12]
- [The argument that the LAMIRD designations authorized in 1997 are simply smaller and more limited rural centers than those included in its pre-1997 rural designations (RACs and RNCs) is a flawed perception.] The County's RACs and RNCs were designated before the legislature created the specific template for how such rural centers were to be designated and limited. RCW 36.70A.070(5)(d)(iv) establishes the exclusive means for designating RACs and RNCs and other rural centers. The range of uses and scale of rural commercial centers allowed in a RAID [LAMIRD] is governed by this section of the GMA, not the County's preexisting RAC and RNC provisions. [*Tacoma II, 9323c*, FDO, at 7.]
- The County's hierarchy of rural centers provides that RACs be located no closer than five miles from a UGA; and that RNCs be located no closer than two miles from a UGA. Without explanation as to UGA proximity requirements, this RAID [LAMIRD] is located within 360 feet of the UGA, which is the present city limits for the City of Tacoma. Designation of a RAID [LAMIRD in this location fosters the low-density sprawl that RAIDS [LAMIRDs] are required to avoid. Proximity to the UGA alone suggests to the Board that if the area were to be urban, adjustments to the UGA would be a more appropriate means of accomplishing this objective. [*Tacoma II, 9323c,* FDO, at 8.]

HOUSING ELEMENT

- The Act requires cities and counties to preserve existing housing while promoting affordable housing and a variety of residential densities and housing types. No jurisdiction is required to reconcile these seemingly inconsistent requirements by totally focusing on one requirement, for instance preserving existing housing, to the exclusion of other requirements, such as encouraging more affordable housing. Instead, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them. [*WSDF I, 4316,* FDO, p. 30]
- The Board rejects the argument that because RCW 36.70A.070(2)(c) requires jurisdictions to identify "sufficient land for housing" in their comprehensive plans, that their development regulations must also do so. The sufficiency of land supply required by RCW 36.70A.070(2)(c) is a mandate that the city, as a matter of policy, identify sufficient land for this purpose. Development regulations are to then impose controls to assure that the land identified in the plan for housing is available for that purpose. Because development regulations must be consistent with the comprehensive plan, they cannot decrease the land supply available for housing. RCW 36.70A.040(3). [*Children's I, 5311,* 5/17/95 Order, p. 6]
- In the GMA, there are a number of specific references that address housing and residential land uses, some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population. [*Children's I, 5311,* FDO, p. 5]
- Growth is more than simply a quantitative increase in the numbers of people living in a community and the addition of "more of the same" to the built environment. Rather, it encompasses the related and important dynamic of change. Because the characteristics of our population have changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup, the GMA requires that housing policies and residential land use regulations must follow suit. This transformation in our society must be reflected in the plans and implementing measures adopted to manage growth and change. [*Children's I, 5311,* FDO, p. 9]
- RCW 36.70A.020(4) does not prohibit the demolition of existing housing structures. Instead, cities and counties must balance the Act's requirements to "encourage preservation of existing housing stock" with the demand to "encourage the availability of affordable housing" and the promotion of a "variety of residential densities and housing types." . . . It does not mandate that single-family residences be preserved at the expense of every other housing type. [*WSDF II, 5340,* FDO, p. 25]
- The requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas – while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." [*Benaroya I, 5372c,* FDO, p. 21]
- Nothing in the GMA or the CPPs requires a jurisdiction to show a detailed plan as to how affordable housing policies will be achieved. There is nothing in the Plan or in the record that suggests the housing affordability policies are not capable of being carried out. [*Benaroya I, 5372c,* FDO, p. 26]
- Nothing in the Act suggests that either the planning goal [housing .020(4)] or the housing element requirements [.070(20(c) and (d), specifically] are determinative of a specific land use outcome as to any given parcel of property. Rather, the broad discretion that the Act reserves to local governments to make site-specific land use decisions suggests that the above cited provision provide direction that is to be addressed at a larger scale, such as the community or jurisdiction-side level. Thus, the Board construes these sections to read, in effect: ". . . identify sufficient land *within your jurisdiction*"; or "make adequate provisions *within your jurisdiction*...". [*Litowitz, 6305,* FDO, p. 19]

- RCW 36.70A.070(2)(a) requires a jurisdiction to evaluate or survey existing and projected housing needs, and to separate the results of the inventory into basic principles to determine the nature of housing within the jurisdiction. The Act does not require a jurisdiction to analyze each house within its jurisdiction. [*Buckles, 6322c,* FDO, p. 20]
- RCW 36.70A.070(2)(a) does not require a jurisdiction to include in its planning goals, policies and objectives for each and every neighborhood within its jurisdiction. No such GMA duty exists. [*Buckles, 6322c,* FDO, p. 21]
- GMA counties and cities may not treat structures that house handicapped people differently than structures that house anyone else. [*Children's II, 6323,* FDO, p. 5]
- A person with "special needs" is not synonymous with a "handicapped" person. A person is handicapped if he or she fits within one of the three criterion of 42 U.S.C. 3602(h). "Special needs" includes handicapped people as well as people who do not meet the statutory definition of handicapped. [*Children's II, 6323,* FDO, p. 7]
- Where a petition alleges noncompliance with both the housing goal and the specific housing element requirement of the Act, the Board will scrutinize only the latter. [*Children's II, 6323,* FDO, p. 9]
- As important as the affordable housing policy is, CPPs can only be as directive as they are clear. [*Renton, 7326,* FDO, p. 7]
- [RCW 36.70A.020(4) does not require that each and every land use designation of a jurisdiction provide for affordable housing. [*LMI/Chevron, 8312,* FDO, p. 29]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, p. 30]
- *See also:* **Affordable Housing** [*LIHI I, 0317*]

IMPACT FEES

- Although respondent city did not specifically raise a subject matter jurisdiction defense in this case, the Board is bound by its own precedent. The Board cannot determine in one case (i.e., *Bainbridge Island*) that it does not have jurisdiction over challenges to Chapter 82.02 RCW, and then ignore that decision in another case where the jurisdictional defense was not specifically raised. [*Slatten, 4328,* 2/24/95 Order, p. 2]
- When a jurisdiction that owns and/or operates a specified capital facility cooperates with the county and discloses information pertaining to location or financing (RCW 36.70A.070(3)(c-d), the county may include such information in its CFE. Indeed, aside from being sound growth management and public policy, it may be a necessary prerequisite to access a new funding source – e.g., impact fees. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 39]
- The Board does not have jurisdiction over Chapter 82.02 RCW. [*Anderson Creek, 5353c,* 10/18/95, p. 10]
- The Board does not have jurisdiction to review petitions for review that allege that a state agency, county or city action fails to comply with Chapter 82.02, or other chapters in the RCW besides Chapters 36.70A or 43.21C RCW. [*South Bellevue, 5355,* 11/30/95 Order, p. 8]

IMPLEMENTING ACTIONS

- [If more than one zoning designation implements a plan designation, a change from one implementing zoning designation to another does not create an inconsistency with the plan.] [*MacAngus, 9317,* FDO, at 10.]

- In order to maintain consistency between its plan and implementing development regulations, as required by RCW 36.70A.040, the County correctly considered the [Plan and implementing regulation] amendments concurrently. [In a footnote, the Board noted that some development regulation amendments implement existing Plan policies and do not necessitate a reciprocal amendment to the Comprehensive Plan. Here, however, the proposal required both a Plan and development regulation amendment, thereby calling for concurrent consideration of both proposed amendments to maintain consistency, as required by RCW 36.70A.040.] [*McVittie V, 0316*, FDO, at 7.]
- *See also*: **GMA Planning** [*LIHI I, 0317*, 2/21/02 Order]
- [Challenging whether a jurisdiction has adopted development regulations that implement its Plan or whether the jurisdiction is performing its planning activities and making capital budget decisions in conformity with its Plan are appropriately brought by challenging compliance with RCW 36.70A.040(3) or .120, not through a challenge to the consistency provisions of RCW 36.70A.210(1) or .070(preamble).] [*Hensley IV, 1304c*, FDO, at 20.]
- [The County amended its definition of "shall" to modify its imperative and nondiscretionary meaning that compels the County to make decisions based upon what a policy says to do. The phrase "subject to funding and budgetary constraints which may not allow for implementation of the policy, and subject to the provisions of the annual budget."] The Board recognizes that budgetary constraints reflect a reality in the State and the Puget Sound region. However, the amendatory language could be interpreted to relieve the County from GMA responsibilities and duties it has to address during a period of limited budgets. In some situations, the GMA forces action, not inaction, when budgetary constraints come into play. For example, the GMA *requires* the County to *take action* when funding falls short of meeting existing needs for capital facilities or transportation facilities. RCW 36.70A.070(3)(e) and (6)(iv)(C). Both these sections of the act are guided by the direction of RCW 36.70A.120. The County cannot place potential caveats or limitations on these GMA requirements. [*FOTL VI, 1310*, FDO, at 17.]
- The adoption of a permanent development regulation, or amendment thereto, would be a "planning activity" as that term is used in RCW 36.70A.120. However, the adoption of a temporary/interim regulation to be in place for a limited six-month period to maintain the *status quo* while perceived concerns with the existing Plan and development review occurs does not rise to the status of a "planning activity." Indeed, the very nature of moratoria is that they are an attempt to "buy time" to enable the jurisdiction to undertake that very "planning activity" (*i.e.*, developing and implementing long-term, permanent policies and regulations). . . .Nevertheless, at some point the rote, rather than the reasoned, extension of six-month moratoria with no reasonable end point in sight very well could constitute a "planning activity" that falls within the ambit of .120. [*SHAG, 1314*, 8/3/01 Order, at 10.]
- [The Board's conclusion that only periodic reviews, not continuous update, are required by the GMA] does not insulate the County from a UGA challenge based upon whether development regulations implement the Plan and are consistent with the Plan and Goals of the Act. [*Master Builders Association, 1316*, FDO, at 13.]
- [Edgewood challenged whether the Plan amendments adopted by Sumner met Sumner's own criteria for amending its Plan. Edgewood claimed there were no inconsistencies to be resolved and no changed circumstances. The Board was persuaded by the record and argument that Sumner's conclusions on these questions were not in error and found compliance with .040(3), .070, .120, and .130] [*Edgewood, 1318*, FDO, at 11-18.]
- The changing land use pattern and transportation picture in the valley are an ample basis to demonstrate changed circumstances since the 1994 residential designation occurred. It is not inappropriate for the City to reevaluate, amend and modify its Plan as planned uses are ultimately realized and developed. [*Edgewood, 1318*, FDO, at 18.]

INCENTIVES

- The Board surmises that the Urban Village strategy is intended to be realized through various implementation approaches, including not only the traditional regulatory-zoning reclassifications, but also including targeted or focused City capital investment as an incentive to private investment, and various administrative incentives. [*WSDF IV, 6333,* FDO, pp. 20-21]

INCORPORATION

- The eventual and logical culmination of 'cities as the primary providers of urban services requires that annexation and incorporation occur rather than service agreements sufficing as more than a transitional device. [*Poulsbo, 2309c,* FDO, p. 26]
- A city incorporated subsequent to adoption of a county's CPPs must comply with those CPPs. [*Renton, 7326,* FDO, p. 6]
- [Cities that incorporate in Central Puget Sound are subject to the GMA and must comply with its goals and requirements. Such cities are within the Board's jurisdiction.] [*WHIP, 0312*, 11/6/00 Order, at 4-7.]
- Covington [a newly incorporated city] is a jurisdiction within a county (King) that is required to plan under the GMA. The Board understands the City's argument that, because it incorporated in 1997, its deadline to adopt a GMA plan is not until August of 2001. An unspoken, but not implausible implication of Covington's argument is that, until that deadline, it is free to adopt plans and regulations, adopt capital budgets and issue permits that are completely contrary to the guidance and requirements of the Growth Management Act. The Board disagrees that the legislature contemplated such an outcome. The Board concludes that Covington has erroneously interpreted its duty under the Act to adopt plans and development regulations. The August 2001 date upon which the City relies is simply the date by which the City <u>must</u> have such an outcome. The Board concludes that Covington has erroneously interpreted its duty under the Act to adopt plans and development regulations. The August 2001 date upon which the City relies is simply the date by which the City <u>must</u> have adopted a GMA Plan and development regulations. It is not license to adopt plans and regulations totally detached from the goals and requirements of the Act. [*WHIP, 0312*, 11/6/00 Order, at 6.]
- The City of Covington is a GMA planning jurisdiction. It was under no obligation to adopt any amendments the GMA plan and regulations that it adopted in 1997 as its own – having chosen to do so, the City must comply with the goals and requirements of the GMA. Because it has chosen to do so by adopting the challenged ordinances, it has taken actions that are subject to the goals and requirements of the GMA. Therefore, the Board concludes, that pursuant to RCW 36.70A.280, it has jurisdiction to hear and decide the PFR. [*WHIP, 0312*, 11/6/00 Order, at 7.]

INCORPORATION BY REFERENCE

- Cities and counties are not required to incorporate by reference in their adopted comprehensive plans documents prepared pursuant to SEPA nor must documentation supporting adopted county-wide planning policies be so incorporated into comprehensive plans. [*Vashon-Maury, 5308c,* FDO, p. 16]
- The land use capacity analysis for designated UGAs is not required to be in the comprehensive plan; however, showing of work must be done somewhere in the record. Technical Appendix D is not required to be incorporated into the Plan. [*Vashon-Maury, 5308c,* FDO, p. 16]

- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 41]
- Pre-GMA sub-area plans need not be adopted as GMA enactments in order to continue to have useful application in local land use decision-making. However, such pre-GMA sub-area plans may not be used to satisfy a GMA requirement unless they are specifically incorporated by reference and adopted for that purpose pursuant to the requirements of the Act; nor may they supersede any specific policy or regulatory directive contained in a GMA enactment. [*Sky Valley, 5368c,* FDO, p. 55]
- Any provision or policy of a neighborhood plan that purports to guide land use decision-making (including subarea or neighborhood plans including land use, capital facilities and transportation planning) must be incorporated into the jurisdiction's comprehensive plan to be implemented pursuant to Chapter 36.70A RCW. Conversely, provisions or policies of a neighborhood plan or program that will not be used to guide land use decision-making, and therefore will not be implemented pursuant to Chapter 36.70A RCW, need not be incorporated into a jurisdiction's comprehensive plan. [*WSDF IV, 6333,* FDO, p. 11]
- The results or conclusions of a jurisdiction's capital facilities needs analysis (i.e., determinations of adequacy, or identification, location, capacity and six-year financing or new or expanded facilities) must be contained directly in the plan or incorporated CIP. Additionally, the Plan must also cite, reference or otherwise identify and indicate the source document(s) containing the required capital facilities needs analysis. [*WSDF IV, 6333,* FDO, p. 28]
- Any acreage designated by a county as a non-traditional UGA must be justified and accounted for in its plan. [*Johnson II, 7302,* FDO, p. 12]

INDISPENSABLE PARTY

- General discussion of the indispensable party rule. [*Alberg, 5341c,* FDO, p. 29-36]
- The indispensable party doctrine does not apply to cases before the Board. [*Alberg, 5341c,* FDO, p. 32]

INDUSTRIAL LAND BANKS/INDUSTRIAL DEVELOPMENT

- No entries

INFRASTRUCTURE

- Although urban growth should be located where there is adequate infrastructure to support it, the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. [*Robison, 4325c,* FDO, pp. 20-21]

- The Act does not require a city to designate a specific property for the highest intensity uses simply because infrastructure already may exist that is capable of supporting urban growth. [*Benaroya I, 5372c,* FDO, p. 37]
- The GMA does not require cities to designate for the highest intensity uses every parcel of property with infrastructure adequate to support urban development. Just because infrastructure may be available to support intense development does not mean the land must be designated for intense development. [*Litowitz, 6305,* FDO, p. 20]
- The GMA does not require a jurisdiction to designate property with urban infrastructure for a particular intensity of use. [*Litowitz, 6305,* FDO, p. 20]
- Although an Interlocal Agreement may address the timing of, and allocation of responsibility for, infrastructure planning in a UGA, the requirements of the GMA govern infrastructure planning within a UGA. [*Johnson II, 7302,* FDO, pp. 19-20]
- [Although] the GMA does not designate a specific six-year period for CFE planning, it is illogical, and contrary to one of the bedrock purposes of the GMA – *planning* to manage *future* growth – to suggest that the CFE's six-year financing *plan* can be, in whole or in part, an historical report of capital facility financing for prior years. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 77]
- The "at least six-year plan" period [of RCW 36.70A.070(3)(d)] begins with the date of the adopted Plan. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 77]
- RCW 36.70A.070(5)(d)(iv) requires existing areas (LAMIRDs) to be minimized and contained. [Physical constraints can minimize and constrain a LAMIRD, but nothing in the act mandates the exclusive use of such physical features; nor must a LAMIRD contain only homes of a certain historic vintage. The extent of existing infrastructure and service area can be used to set the logical outer boundary that minimizes and contains the LAMIRD.] [*Burrow, 9318,* FDO, at 23.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, at 6.]

INNOVATIVE TECHNIQUES

- Optional features of a comprehensive plan do not have to be complete at the time of plan adoption, provided that the adopted portions otherwise comply with the Act's requirements. [*WSDF I, 4316,* FDO, p. 14]
- A comprehensive plan, including both mandatory elements and optional elements or features, must be internally consistent. [*WSDF I, 4316,* FDO, p. 14]
- The Act does not mandate that jurisdictions include concepts like Seattle's urban villages strategy in a comprehensive plan. Instead, that strategy appears to most fairly fall into the classification of an "innovative land use technique" as discussed in RCW 36.70A.090. [*WSDF I, 4316,* FDO, p. 19]
- The Four-to-One program is the type of innovative land use management technique that the Act encourages. [*Vashon-Maury, 5308c,* FDO, p. 46]
- So long as the failure to complete an optional element or innovative land use technique does not create an internal inconsistency in the Plan, or constitute a failure to comply with the mandatory requirements of the Act, such failure is not a violation of the Act. [*Sky Valley, 5368c,* FDO, p. 119]
- Just as a failure to complete an optional element of a comprehensive plan does not constitute a violation of the Act, a failure to adopt implementing development regulations for such an optional

element is not a violation. However, at such time as the Plan is amended to incorporate such an optional element, the requirement to adopt implementing development regulations must be met. [*Sky Valley, 5368c,* FDO, p. 120]

- Jurisdictions are free to designate areas that are subject to additional or more detailed planning such as "special planning areas" (innovative techniques); such specialized planning does not automatically constitute discriminatory action. [*Hapsmith I, 5375c,* FDO, p. 46]
- The Board surmises that the Urban Village strategy is intended to be realized through various implementation approaches, including not only the traditional regulatory-zoning reclassifications, but also including targeted or focused City capital investment as an incentive to private investment, and various administrative incentives. [*WSDF IV, 6333,* FDO, pp. 20-21]
- RCW 36.70A.090 does not create a GMA duty; it simply encourages local jurisdictions to include "innovative land use techniques" in their comprehensive plans. [*Tulalip II, 9313*, 1/28/00 Order, at 6.]

INTERIM

- Just as a comprehensive plan must be internally consistent (see first paragraph of RCW 36.70A.070), so too does this Board hold that interim development regulations must be internally consistent. [*Tracy, 2301,* FDO, p. 27]
- Planning jurisdictions may adopt contingent implementing development regulations that do not take effect until some future amendment to a comprehensive plan has been formally adopted. [*WSDF II, 5340,* FDO, p. 17]
- Interim designations and implementing regulations may be altered at the time of comprehensive plan adoption if and to the extent that such alteration is necessary to insure consistency with the comprehensive plan and its implementing development regulations. [*Sky Valley, 5368c,* FDO, p. 115]
- [Interim Rural Forestry – IRF] is not an invalid land use designation and Petitioners have not shown that it is not an appropriate designation for their property. However the continued application of the term "interim" can lead to confusion in the GMA context. As used here by the County, "interim" is meant to notify the public that the County intends to revisit this rural designation now that it has designated its GMA forest lands. The County may revisit any of its land use designations during its annual plan amendment cycle, regardless of whether the term "interim" is attached to any given designation. [*Screen II, 9312,* FDO, at 9.]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]
- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation

that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]

- [An interim ordinance may not continue in force and effect in perpetuity.] By the explicit terms of RCW 36.70A.390, "a legislative enactment 'adopted under this section' may be effective for not longer than six months. . ." [*Bear Creek, 3508c*, 11/3/00 Order, at 11.]
- [RCW 36.70A.390] does not apply to plan amendments. It does not apply to permanent changes in development regulations or controls. It applies only to the adoption or amendment of temporary controls or development regulations, those measures that are adopted for an interim period – generally six-months. This section of the Act is unique in that it permits a deviation from the norm of providing the opportunity for public participation prior to action; here a jurisdiction can act or adopt first, then provide the opportunity for public participation after adoption. However, this post-adoption opportunity for public participation must occur within 60-days of adoption. [*McVittie V, 0316*, FDO, at 20.]
- *See also:* **Public Participation** [*McVittie V, 0316*]
- RCW 36.70A.390 falls squarely within this Board's subject matter jurisdiction; the Board has clear authority to determine whether its provisions have been met. This section [of the GMA] is unique in the GMA context; it is a blunt instrument within a statute containing very detailed and refined requirements. It allows for temporary, interim or stopgap measures to manage development activity while appropriate analysis and planning can occur. This section also explicitly authorizes local jurisdictions to undertake the rather draconian measure of placing a freeze on development, i.e. to maintain the status quo while it undertakes the necessary planning to analyze and address the perceived issue(s). However, to successfully impose such a moratorium, the jurisdiction must adhere to the section's procedural provisions. [*SHAG, 1314*, 8/3/01 Order, at 5.]
- If a jurisdiction chooses to impose a moratorium pursuant to .390, it must adopt findings of fact justifying its action and hold a public hearing on the moratorium. The public hearing may occur either at the adoption hearing or no later than sixty-days thereafter. If the jurisdiction did not adopt findings of fact supporting its action at adoption, or prior to the public hearing, it must do so immediately after the [within 60-day] public hearing. [*SHAG, 1314*, 8/3/01 Order, at 6.]
- [Failure to adopt additional findings of fact at a subsequent public hearing (within 60-days) after adopting findings of fact at the initial adoption of the moratorium is not a failure to comply with the requirements of RCW 36.70A.390. [*SHAG, 1314*, 8/3/01 Order, at 8.]
- The adoption of a permanent development regulation, or amendment thereto, would be a "planning activity" as that term is used in RCW 36.70A.120. However, the adoption of a temporary/interim regulation to be in place for a limited six-month period to maintain the *status quo* while perceived concerns with the existing Plan and development review occurs does not rise to the status of a "planning activity." Indeed, the very nature of moratoria is that they are an attempt to "buy time" to enable the jurisdiction to undertake that very "planning activity" (*i.e.*, developing and implementing long-term, permanent policies and regulations). . . .Nevertheless, at some point the rote, rather than the reasoned, extension of six-month moratoria with no reasonable end point in sight very well could constitute a "planning activity" that falls within the ambit of .120. [*SHAG, 1314*, 8/3/01 Order, at 10.]

INTERIM URBAN GROWTH AREAS - IUGAS

- IUGAs must be guided by the planning goals of RCW 36.70A.020. [*Rural Residents, 3310,* 2/16/94 Order, pp. 2-3]
- IUGAs and FUGAs are policy documents. [*Rural Residents, 3310,* FDO, p. 16]

- Counties will be held to a lesser standard of compliance with the Act's planning goals when adopting IUGAs than when adopting comprehensive plans and implementing development regulations, since IUGAs are only temporary. However, on the spectrum of compliance, with strict compliance required for comprehensive plans and implementing development regulations, and lowest compliance required for interim critical areas and natural resource lands development regulations, IUGAs fall closer to the high end of the range. [*Rural Residents, 3310,* FDO, p. 28]
- The regulatory effect of IUGAs ceases upon adoption of the FUGA boundary with regard to annexations, and upon adoption of implementing regulations with regard to prohibiting urban development beyond the boundary. [*Rural Residents, 3310,* FDO, p. 15]
- If a county elects to utilize tiering within its UGAs, it is best served at the FUGA stage, when the capital facilities plan element of the comprehensive plan has been prepared. It is premature to require tiering at the IUGA level. [*Tacoma, 4301,* FDO, p. 35]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, p. 6]

INTERJURISDICTIONAL

- A city is not authorized by the GMA to designate lands outside its corporate boundaries, whether as agricultural resource lands or for other uses, and it therefore has no duty to do so; any actions it has taken on such lands do not constitute land use designations. [*AFT, 5356,* FDO, p. 8]
- A county does not have the authority to regulate lands within a city's corporate limits by designating natural resource lands there. Conversely, the City does not have the authority to regulate lands outside its corporate limits by designating natural resource lands in the unincorporated portion of its UGA. [*AFT, 5356,* FDO, p. 8]
- Where a city has planned for an area not included in its UGA, such planning activities, including land use designations have no effect. [*AFT, 5356,* FDO, p. 20]
- General discussion of transportation coordination with adjacent jurisdictions. [*Hapsmith I, 5375c,* FDO, pp. 32-34]
- A city or county cannot rely on an unfinished process of another jurisdiction to meet the Act's requirements. However, a city or county can, if it elects or is required to by county-wide planning policy to do so, utilize the completed process of another jurisdiction to meet the requirements of RCW 36.70A.200(1). [*Hapsmith I, 5375c,* FDO, p. 38]
- The Act requires the comprehensive plans of counties and cities to include a process for siting EPFs, and prohibits provisions in local plans or development regulations that would render impossible or impractical the siting of EPFs. [*Hapsmith I, 5375c,* 2/13/97 Order, p. 7]
- The Act requires interjurisdictional planning for public facilities that are of a county or statewide nature, through the development of CPPs. [*Hapsmith I, 5375c,* 2/13/97 Order, p. 8]
- [A County's CPPs typically establish the scope and extent of interjurisdictional coordination and joint planning required between or among potentially affected jurisdictions.] [*Kitsap Citizens, 0319c*, FDO, at 24.]
- The Board notes that there is no legal authority under the GMA's cooperative provisions that mandates that the County must abide by the City's stated policy preferences. [*Forster Woods, 1308c*, FDO, at 23.]

- [Shoreline (a city in King County) previously designated the Point Wells area (an area lying within unincorporated Snohomish County) as a potential annexation area (**PAA**) in its Plan. The Town of Woodway (a city in Snohomish County) amended its Plan to also express its intent to annex the area.] Contrary to Shoreline's inference, this Board lacks authority to resolve a "dispute between Shoreline and Woodway regarding which of the two municipalities should ultimately annex and provide urban services to Point Wells." (Citations omitted.) Contrary to the County's fears, a Board finding for Shoreline would not "transfer jurisdiction [of Point Wells] to either city," nor would it "import King County CPPs into Snohomish County." (Citations omitted.) [*Shoreline II, 1313*, FDO, at 9-10.]
- The question before the Board is simply this: Did Woodway's plan amendment designating Point Wells as a "Woodway PAA" create an inconsistency because Shoreline's plan previously designated Point Wells as a "Shoreline PAA," and did Woodway thereby violate the requirements of RCW 36.70A.100? The Board concludes the answer is "yes." [*Shoreline II, 1313*, FDO, at10.]
- [Woodway's Plan policy stating "Point Wells is a potential annexation area (PAA) for the Town of Woodway."] created the inconsistency with Shoreline's prior PAA designation. What Woodway and the County characterize as a benign "overlap" is in fact an explicit conflict. It is difficult to imagine a more direct inconsistency between the plans of two adjacent cities. [Woodway's prior expression of interest in annexing the Point Wells area did not use] the phrase "Potential Annexation Area" with respect to Point Wells. [*Shoreline II, 1313*, FDO, at 10-11.]
- While the "first in time, first in right" doctrine set forth in *Ruston*, and cited by Shoreline (Citations omitted.) is illuminating, it is not the controlling factor in this case. Nor is the [Board's] *Renton* [*7326*, FDO] decision on point, because the King County CPPs are not in play. All that the Board has before it is the clear statutory language of RCW 36.70A.100 that directs that the "plans" of cities that share "common borders" . . . **shall be consistent**." The most logical and equitable reading of this provision is that the burden of *removing* such an inter-jurisdictional inconsistency must rest on the jurisdiction that *created* that inconsistency. In the present case, the facts support the conclusion that the Town of Woodway created the inconsistency and therefore must bear the burden of curing it. [*Shoreline II, 1313*, FDO, at 11.]
- The Board is aware that the "first in time, first in right" result may not always achieve the best public policy outcome. However, "first in time, first in right" must be the result here, under the present facts and absent the sort of multi-lateral dialogue advocated by Chevron or direct regional oversight of the MUGA process by the County. If such a dialogue is to take place, it must be initiated by the parties, for the Board cannot require it. [*Shoreline II, 1313*, FDO, at 11.]
- [Petitioner argued that] there appears to be a serious disconnect between transportation plans and improvements done by the County and the State. [Therefore] the spirit of Goals 3 and 12 [must apply because they] would demand a better degree of coordination and consistency between the plans and actions of State and County government. Even the County laments the timing of State improvement, to say nothing of the timing of the adoption of State LOS standards. Nevertheless, the Board must conclude that neither Goals 3 and 12, indeed **none** of the goals listed in RCW 36.70A.020 apply to the State because the preamble to that section unequivocally states the goals "shall be used *exclusively* for the purpose of guiding the development of comprehensive plans and development regulations." This is an unfortunate but inescapable conclusion, because to truly achieve managed growth there must be a better linkage between local efforts and state efforts. [*McVittie VIII, 1317*, FDO, at 10.]
- [This is a case of first impression for the Board.] The City of Edgewood, a newly incorporated city, is challenging a Plan amendment and zoning change to a geographic area that lies *entirely within the city limits of the City of Sumner*, but adjacent to Edgewood's city limits. [*Edgewood, 1318*, FDO, at 4.]

- Given that Edgewood's interim plan was a Pre-GMA document, its basis for evoking a coordination and consistency challenge against Sumner per .100 is without merit. [*Edgewood, 1318*, FDO, at 9.]
- The GMA promotes the spirit of interjurisdictional cooperation and coordination and should guide planning even between existing and newly incorporated cities. In its argument, Edgewood focuses on the alleged lack of coordination and cooperation in reaching the amendment decision. Edgewood acknowledges that the final decision [regarding the amendment] is Sumner's, but is concerned about the lack of a coordination process rather than the consistency of the resulting amendments. [The Board found numerous cooperative and coordinative actions between the cities and found compliance with RCW 36.70A.100.] [*Edgewood, 1318*, FDO, at 9.]
- [Pierce County CPP requires joint planning between cities and the County in unincorporated UGAs. Joint planning between cities in other circumstances is permissive, if the jurisdictions agree it would be beneficial. Joint planning was not required here since the area in question was within Sumner's city limits, not the unincorporated UGA, and both cities had not agreed that such planning would be beneficial.] [*Edgewood, 1318*, FDO, at 10-11.]

INTERLOCAL AGREEMENTS - ILAS

- Interlocal agreements are a satisfactory mechanism for "establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy." RCW 36.70A.210(2)(a). [*Snoqualmie, 2304c,* FDO, p. 23]
- The amount of growth a city plans for in its comprehensive plan must be consistent with the CPPs, including a population allocation, if any, and any interlocal agreement the city may have reached with the county or counties, and must meet the external consistency requirements of RCW 36.70A.100 and internal consistency requirements of RCW 36.70A.070. [*Aagaard, 4311c,* FDO, pp. 14-15]
- Although an Interlocal Agreement may address the timing of, and allocation of responsibility for, infrastructure planning in a UGA, the requirements of the GMA govern infrastructure planning within a UGA. [*Johnson II, 7302,* FDO, pp. 19-20]
- A county may take precautions (i.e., requiring interlocal agreements) regarding the allocation of responsibility for services, and the process of transfer of jurisdiction, especially where the potential annexing city lies outside that county. [*Kelly, 7312c,* FDO, pp. 12 -13]
- Although the purchase of [certain parcels or property] was linked to subsequent Plan and development regulation amendments, the purchase itself is not a GMA action and thus not subject to RCW 36.70A.140. (*See also* Footnote 4, [T]he Board recognizes that local government must undertake many steps, internal communications and activities prior to the development of a proposed amendment to a GMA plan or regulation, at least some of which actions are not GMA actions. The Board has not previously articulated, and does not here articulate, a standard for when such local government steps, communications and activities arise to the status of a "proposed GMA amendment" that would be subject to the requirements of RCW 36.70A.140 or other provisions of the Act.) [*Green Valley, 8308c,* FDO, p. 10]
- The negotiation and execution of an Interlocal Agreement, that is a non-GMA action, is not subject to the public participation requirements of the GMA over which the Board has jurisdiction. [*Burien, 8310,* FDO, p. 9]
- Provisions of an ILA, if any, that are included as Plan or zoning code amendments are subject to the provisions of RCW 36.70A.140 during the plan or zoning code amendment process. [*Burien, 8310,* FDO, p. 9]

INTERVENTION

- The Board's Rules of Practice and Procedure require that, as part of a petition for review, a petitioner must show standing. WAC 242-02-210(d). However, no such requirement exists for an intervenor. [*Benaroya I, 5372c,* 1/9/96 Order, p. 6]
- In determining whether a person qualifies as an intervenor, the presiding officer shall apply the applicable superior court rules (CR) of this state. [*Benaroya I, 5372c,* 1/9/96 Order, p. 6]
- [When intervention is granted after the deadline for filing motions, and a motion is filed by an intervenor, the Board's Rules require approval of the Presiding Officer for consideration of the motion; if granted, consideration may be deferred until the hearing on the merits – WAC 242-02-532(2) and (3).]

INVALIDITY

- *Vashon-Maury, 5308,* FDO. [Rescinded]
- *Bremerton, 5339c,* FDO; and *Bremerton/Port Gamble, 5339c/7324c, 9/8/97* Order. [Rescinded]
- *Kelly, 7312,* FDO. [Rescinded]
- *Port of Seattle, 7314,* FDO. [Rescinded]
- *Green Valley, 8308c,* FDO. [Rescinded]
- *Grubb, 0304,* FDO. [Rescinded]
- *WHIP, 0312,* 11/6/00 Order. [Rescinded]
- *Homebuilders, 0314,* FDO. [Rescinded]
- *McVittie V, 0316,* FDO. [Rescinded]
- *Hensley IV, 1304c,* FDO [Maltby portion]. [*Stayed – Pending*]
- *Forster Woods, 1308c,* FDO. [Rescinded]
- *FOTL VI, 1310,* FDO [Partial Bear Creek portion]. [*Stayed – Pending*]
- For the Board to invalidate an enactment, it must find that substantial interference will occur with the fulfillment of the goals of the GMA, set forth at RCW 36.70A.020. [*Children's I, 5311,* 2/2/96 Order, p. 5]
- Any development regulations that attempt to implement such a fully noncomplying comprehensive plan cannot stand as a matter of law during the period that the plan fails to comply with the Act. Regulations that attempt to implement and be consistent with a fatally flawed comprehensive plan are in turn poisoned by the plan's defects. [*Bremerton, 5339c,* FDO, p. 82]
- [The Board's first analysis and determination of invalidity.] [*Bremerton, 5339c,* FDO, pp. 83-89]
- As to invalidation, the jurisdiction has the burden of demonstrating that the [legislative action] taken in response to the Board's finding of invalidity no longer substantially interferes with the fulfillment of the [specified] goals of the GMA. [*Port of Seattle, 7314,* 5/26/98 Order, p. 2]
- [Although the Board's Determination of Invalidity has been rescinded, the Board must inquire as to whether these remanded provisions comply with the goals and requirements of the Act.] [*Bremerton/Alpine, 5339c/8332c,* FDO, pp. 21-22]
- [As stated in the July 30, 1997 FDO] what the Board found noncompliant with the public participation requirements of the GMA was the erroneous notice regarding the [property]. The Board never addressed the substance of the redesignation of the property. However, since the notice was in error, the public participation process consequently failed to comply with the GMA, and that amendment adopted pursuant to the defective notice was found invalid. [*Kelly, 7312c,* 3/31/99 Order, p. 5]
- The County's decision to attempt to comply with the FDO and address the land use of the [property] in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy.

The time and effort expended on the present process illustrate the difficulty and complexity of developing an optional Lake Stevens UGA subarea plan. The Board does not want to dissuade the County from subarea planning and notes that neither the substance or the Lake Stevens subarea plan nor the appropriateness of that public process is presently before the Board. Unfortunately, the action needed for the County to address the Board's finding that the notice was defective for the County's amendment to 33.7 acres in Ordinance No. 96-074 had been needlessly enmeshed in the subarea planning process. The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan. Further, the County's Lake Stevens UGA subarea plan process had interjected broader GMA and subarea planning issues into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance No. 96-074. [The Board directed the County to repeal those portions of Ordinance 96-074 that were invalidated due to defective notice.] [*Kelly, 7312c,* 3/31/99 Order, pp. 6-7]

- Nowhere in RCW 36.70A.280 is the Board explicitly or implicitly delegated the authority to determine compliance with Chapter 81.112 RCW or with the law of agency. Tukwila has not identified any authority establishing Board jurisdiction over these matters. [*Sound Transit, 9303,* 6/18/99 Order, at 2]
- [DOC sought a determination of invalidity, which requires the Board to find substantial interference with the goals of the Act. There is no GMA goal that explicitly addresses EPFs. DOC argued, but the Board rejected the argument that] RCW 36.70A.020(12) implicitly encompasses the non-preclusionary requirements of RCW 36.70A.200. [To make this case, the Board would have to see evidence that the jurisdiction had identified work release and juvenile community facilities as necessary to support development and that the jurisdiction had established minimum standards for such facilities.] However, the Board is concerned that the City ensures coordination between communities and jurisdictions, including DOC, to reconcile conflicts [RCW 36.70A.020(11).] [*DOC/DSHS, 0307,* FDO, at 16-17.]
- The Board found the *County's* action . . .noncompliant and invalid. Consequently, the Board directed the *County to take legislative action*, not merely rely upon the Board's determination of invalidity, to bring the Plan and development regulations (zoning) into compliance. . . .How the County chooses to comply with the Board's FDO [and the Act] is left to the County's discretion; however, providing effective notice and the opportunity for public participation for the citizens of Snohomish County on the County's chosen legislative action to comply with the Board's FDO is not a meaningless act. [*McVittie V, 0316*, 5/4/01 Order, at 2-3.]
- The severability/savings clauses in [the Ordinances], by operation of law, effectively repeal the ordinances found to be invalid by the Board, and revive the prior plan and zoning designations for the area. The Board has previously found that [prior plan and zoning designations] complied with the provisions of the GMA. (Citations omitted.) Therefore, pursuant to RCW 36.70A.302(4), the Board concludes that the prior plan designation and zoning designation were valid during the remand period – commencing on [the date of the FDO invalidating the Ordinances]. [*McVittie V, 0316*, 8/16/01 Order, at 4.]
- [If a challenge cites goals of the Act and the specific requirements section of the Act that relate to those goals], the Board looks first to the requirements sections of the Act to determine compliance. Review is done in light of the goals of the Act, not in lieu of the goals. If the Board finds noncompliance with a requirement section of the Act, it then returns to review the goals to determine whether substantial interference has occurred and whether invalidity should be impose. [*Kitsap Citizens, 0319c*, FDO, at 10.]

JURISDICTION – *SEE:* SUBJECT MATTER JURISDICTION – SMJ

LAND CAPACITY ANALYSIS – *SEE:* UGAS – SIZE

LAND USE ELEMENT

- Land use designations within a UGA must allow for urban development regardless of the rural character a parcel of land may have today. [*Aagaard, 4311c,* FDO, p. 17]
- If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed must be included in the Plan. [*WSDF I, 4316,* FDO, p. 65]
- All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. (Citations omitted) A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning. [*Bremerton, 5339c,* FDO, p. 77]
- The lack of a fully completed capital facilities plan is more than a conceptual shortcoming – it is a fatal legal defect in a comprehensive plan. It alone is sufficient cause for the Board to find that the land use element and every other component of a plan violates the requirements of the Act. [*Bremerton, 5339c,* FDO, p. 77]
- The future land use map must depict UGAs and reference the location of maps of appropriate scale to discern the actual location of the UGA boundaries. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 17]
- When environmentally sensitive systems are large in scope (e.g., a watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may also choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre. Such designation must be supported by adequate justification. [*Litowitz, 6305,* FDO, p. 12]
- A jurisdiction must provide in its land use element an indication that it has reviewed drainage, flooding and stormwater run-off in the area and nearby jurisdictions. [*Hensley III, 6331,* FDO, p. 7]
- The Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. [*Hensley III, 6331,* FDO, p. 9]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban portion of the twenty years of county-wide population growth. The county, as to the unincorporated portion of the UGA, and the cities, as to their respective portions of the UGA, have a duty to adopt comprehensive plans that accommodate that allocated growth over the twenty-year life of their plans, including provision of public facilities and services. [*Hensley III, 6331,* FDO, p. 8]
- In the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the GMA. [*WSDF IV, 6333,* FDO, p. 11]
- Some very fundamental issues have been resolved by virtue of the UGA designation: (1) the land use will be urban; (2) the land use designations reflect population and employment allocations made

by the County; and (3) urban services provided within the UGA should be primarily provided by cities. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 48]

- Application of the GMA's scientific and analytic critical areas process may, in certain limited instances, provide information to justify supplementary use of land use designations on the Plan's future land use map as an additional layer of critical areas protection. [*LMI/Chevron, 8312,* FDO, p. 17]
- Fundamental to a city's complying with Goals 1 and 2 is that its land use element, including its future land use map, permits appropriate urban densities throughout its jurisdiction. [*LMI/Chevron, 8312,* FDO, p. 24]
- [A future land use map designation for residential development that permits 4 du/ac within city limits (UGA) is an appropriate urban density.] [*LMI/Chevron, 8312,* FDO, p. 24]
- [A future land use map designation for residential development that permits only 1 du/2 ac within city limits (UGA) is not an appropriate urban density and constitutes sprawling low-density development.] [*LMI/Chevron, 8312,* FDO, p. 24]
- When critical areas are large in scope, with a high rank order value and are complex in structure and function, a city may use its future land use map designations to afford a higher level of critical areas protection than is available through its regulations to protect critical areas. In these limited circumstances, the resulting residential density will be deemed an appropriate urban density. [*LMI/Chevron, 8312,* FDO, p. 25]
- [A]bsent the requisite environmental attributes of a critical area that is large in scope, of high rank order value and is complex in structure and function, [a city's] future land use map density designations must permit appropriate urban densities. [*LMI/Chevron, 8312,* FDO, p. 26]
- RCW 36.70A.020(3) does not require that each and every land use designation of a jurisdiction permit residential densities that support all modes of transportation. [Reliance on urban density designations alone is not enough to demonstrate noncompliance with Goal 3.] [*LMI/Chevron, 8312,* FDO, p. 29]
- [RCW 36.70A.020(4) does not require that each and every land use designation of a jurisdiction provide for affordable housing. [*LMI/Chevron, 8312,* FDO, p. 29]
- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, p. 30]
- [I]f certain land is bordered by commercial property on which more intense uses are permitted, then that certain land must be designated for similar commercial uses. Such reasoning is clearly contrary to the GMA. . . . Such proximity to more intense uses cannot alone dictate the designation of land. [*Sky Valley,* 5368c, 4/22/99 Order, at 11]
- It is absurd to argue that the presence of roads, even an interstate highway, automatically prohibits designation of land as agriculture. [*Sky Valley,* 5368c, 4/22/99 Order, at 11]
- [As stated in the July 30, 1997 FDO] what the Board found noncompliant with the public participation requirements of the GMA was the erroneous notice regarding the [property]. The Board never addressed the substance of the redesignation of the property. However, since the notice was in error, the public participation process consequently failed to comply with the GMA, and that amendment adopted pursuant to the defective notice was found invalid. [*Kelly, 7312c,* 3/31/99 Order, p. 5]
- The County's decision to attempt to comply with the FDO and address the land use of the [property] in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy. The time and effort expended on the present process illustrate the difficulty and complexity of developing an optional Lake Stevens UGA subarea plan. The Board does not want to dissuade the County from subarea planning and notes that neither the substance or the Lake Stevens subarea plan

nor the appropriateness of that public process is presently before the Board. Unfortunately, the action needed for the County to address the Board's finding that the notice was defective for the County's amendment to 33.7 acres in Ordinance No. 96-074 had been needlessly enmeshed in the subarea planning process. The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan. Further, the County's Lake Stevens UGA subarea plan process had interjected broader GMA and subarea planning issues into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance No. 96-074. [The Board directed the County to repeal those portions of Ordinance 96-074 that were invalidated due to defective notice.] [*Kelly, 7312c,* 3/31/99 Order, pp. 6-7]

- Where land meets the criteria for more than one land use designation, the County has the discretion to determine the designation to be applied to that land. [*Screen I, 9306c*, 10/11/99 Order, at 21.]
- It is important to recognize that local government may use various regulatory techniques to avoid the situation where funding shortfalls occur. However, once local action is forced by a probable funding shortfall, a local government has numerous options to consider in reassessing and reevaluating its plan. In reassessing or reevaluating its plan, a local government is not automatically required to revise its land use element. There are other options that may be considered to meet identified capital facility needs and maintain plan consistency. [Options include: reducing standard of service (LOS); increase revenue; reduce average cost of the capital facility; reduce demand – reallocate or redirect population within the jurisdiction; reduce consumption; combinations of these options.] [*McVittie, 9316c, FDO, at* 26-27.]
- [A] challenge to a 1999 adoption of a subarea plan is an action that, if timely filed, is subject to the GMA appeal procedures. [However, adoption of a subarea plan, that does not alter a land use designation originally adopted in a prior GMA plan, does not open the original designation to challenge. The challenge to the original designation is untimely.] [*MacAngus, 9317,* FDO, at 7.]
- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317,* FDO, at 7-8.]
- The adoption of [a subarea plan] is a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to [an unchanged plan designation.] [A jurisdiction's decision to maintain an existing designation does not reopen the appeal period of that unchanged designation.] [*MacAngus, 9317,* FDO, at 8.]
- In adopting the Tulalip Subarea Plan, the County did not change, re-adopt, or re-affirm the [agricultural] designation; it merely maintained the existing designation. Additionally, the County's action was not taken in response to a statutory requirement, such as RCW 36.70A.215, which may require the County to change, re-adopt, or re-affirm its comprehensive plan or development regulations. [*MacAngus, 9317,* FDO, at 8-9.]
- [Petitioner wants the County to explain why it disagreed with them. While the Act requires a jurisdiction to respond to public testimony, it] does not require the kind of response demanded by Petitioner. The County action of maintaining the [agricultural] designation as it relates to Petitioner's property is ample "response" that speaks for itself. [*MacAngus, 9317,* FDO, at 12.]

LAND USE PATTERN

- For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider "such lands" to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity. [*Vashon-Maury, 5308c,* FDO, p. 68]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, p. 79]
- The Board declines the invitation to establish a minimum lot size for agricultural parcel sizes. [*Gig Harbor, 5316c,* FDO, p. 31]
- A pattern of 1- and 2.5-acre lots meets the Act's definition of urban growth. . . . However, a pattern of 1- or 2.5-acre lots is not an appropriate urban density either. . . . An urban land use pattern of 1- or 2.5-acre parcels would constitute sprawl; such a development pattern within the rural area would also constitute sprawl. [*Bremerton, 5339c,* FDO, p. 49]
- Generally, any residential pattern of four net dwelling units per acre, or higher, is compact urban development and satisfies the low end of the range required by the Act. Any larger urban lots will be subject to increased scrutiny. [*Bremerton, 5339c,* FDO, p. 50]
- The advent of the GMA changed land use law in this state in a profound way, changing the land use patterns that counties may permit in rural areas. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 25]
- Pre-existing parcelization cannot be undone; however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 25]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c,* FDO, p. 46]
- The designation of 7,822 acres (approximately twelve square miles) – which permits 2.3-acre lots, creates an impermissible pattern (number, location and configuration of lots) of urban growth in the rural area. (3,400 lots of 2.3 acres, astride the North Fork of the Stillaguamish River, east, west and south of the Darrington UGA.) This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern. [*Sky Valley, 5368c,* 10/2/97 Order, p. 13-14]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in visual character. The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New

England towns that Pope and Talbot used as templates for their company town. The Board finds that Port Gamble's mix of uses and physical forms clearly qualify as a "village," a "hamlet" or a "rural activity" center within the meaning of RCW 36.70A.070(5)(d)(i). [*Burrow, 9318,* FDO, at 18.]

- A pattern of more intensive rural development, as allowed within a valid LAMIRD, does not constitute "urban" development. [*Burrow, 9318,* FDO, at 24.]
- The changing land use pattern and transportation picture in the valley are an ample basis to demonstrate changed circumstances since the 1994 residential designation occurred. It is not inappropriate for the City to reevaluate, amend and modify its Plan as planned uses are ultimately realized and developed. [*Edgewood, 1318*, FDO, at 18.]

LAND USE POWERS

- [U]nequivocal and directive language that, on its face, imposes conditions precedent to city annexations in urban growth areas . . . fail to comply with RCW 36.70A.110. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 48]
- Once a UGA has been designated, the provisions of a county plan may not condition or limit the exercise of a city's annexation land use power. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 48]

LANDS USEFUL FOR PUBLIC PURPOSES - LUPP

- Counties and cities must complete the identification process specified in RCW 36.70A.150 [lands useful for public purposes] by the time of adoption of the comprehensive plans. [*Sky Valley, 5368c,* FDO, p. 62]
- After a county has identified lands that may be useful for public purposes and after it has worked with the state and cities to identify those areas of shared need, a county must prioritize the lands necessary to accommodate those public uses it will provide. [*Sky Valley, 5368c,* FDO, p. 62]

LEGISLATIVE INTENT

- The State Court of Appeals for Division One recently clarified the Legislature's intended meaning of the word "matter" in [RCW 36.70A.280(2)(b)]. The Court stated: "We conclude that [the Legislature] intended the word 'matter' to refer to a subject or topic of concern or controversy." (Citation omitted.) [Also, to determine whether a petitioner has participation standing, the Court affirmed the CPSGMHB reasonable relationship test adopted in *Alpine, 8332c*, 10/7/98 Order, at 8.] [*Ramey Remand, 9302*, 12/15/00 Order, at 3.]

LEVELS OF SERVICE - LOS

- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, p. 60]
- Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place "at the time

development is available for occupancy and use" and second, adequacy is measured by "locally established minimum standards." [*Gig Harbor, 5316c,* FDO, p. 13]

- [The City's "screenline" LOS methodology and Concurrency Regulations were adopted in 1994. The Ordinance challenged here, which adopted the Plan amendments, did not amend the LOS provisions of the Transportation Element or Concurrency Regulations as adopted in 1994. Petitioner cannot now challenge these provisions.] [*Montlake, 9302c,* FDO, at 10-12.]
- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c, FDO, at* 13.]
- The GMA requires local governments to establish a single LOS standard for transportation facilities. [In a footnote, the Board acknowledges that screenline methodologies comply.] [*McVittie, 9316c, FDO, at* 23.]
- [R]eading RCW 36.70A.070(3) in light of Goal 12, the Board concludes that the CFE must include locally established minimum standards, a baseline, for included public facilities, so that an objective measurement test of need and system performance is available. [*McVittie, 9316c, FDO, at* 25.]
- The answer to question 2 – Does Goal 12 require the designation of a single Level of Service (LOS) standard for the facilities and services contained in the CFE? – is yes. Goal 12 gives context to RCW 36.70A.070(3). Goal 12 requires a locally established single minimum (level of service) standard to provide the basis for objective measurement of need and system performance for those facilities locally identified as necessary. The minimum standard must be clearly indicated as the baseline standard, below which the jurisdiction will not allow service to fall. The minimum standard may be the lowest point indicated within a range of service standards for a type of facility. [*McVittie, 9316c, FDO, at* 25.]
- The transportation element requires a local government to adopt a "concurrency" ordinance that will prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan. (Footnote omitted.) [*McVittie, 9316c, FDO, at* 29.]
- If a local jurisdiction develops a "range" of service standards, the locally established minimum standard that provides the basis for objective measurement of need and facility performance must be clearly indicated. If the "minimum" standard is not clearly identified, it must be assumed that the "minimum" standard is the lowest point indicated within the range of service standards. Given Snohomish County's use of guideline ranges, the Board finds that the low end of each of the County's established service guideline ranges is the County's minimum standard for that facility or service. [*McVittie, 9316c*, 2/9/00 Order, at 4.]
- [Sidewalks are a critical component of successful compact urban development. However,] the Board cannot, with the facts and argument presented in this case, discern a GMA duty that would oblige the City to adopt "levels of service" for sidewalks in urban villages nor subject projects in urban villages to a "concurrency" requirement for the installation of such facilities. [*Radabaugh, 0302,* FDO, at 14.]
- To clarify, the Board did not intend that the degree of detail of the notice mimic the actual ordinance. The "reasonable notice" standard or .035 presumes that the County will exercise some judgment about what the essential features of the Ordinance are that require summarization in the notice. The example provided by the County would meet the reasonably calculated standard because it alerts the citizens to the nature of the change (a lowering of the standard) and the likely consequence (approval of more development that would otherwise be allowed). This would be more meaningful to the lay public than a technically precise phrase such as "the change in LOS will be from .076 V/C to .074 V/C." However, to the extent that the changes contemplated in LOS can be expressed with

commonly used terminology (e.g. a change from LOS "C" to LOS "D" it would be appropriate to include such information in the notice. [*McVittie VI, 1302*, 10/11/01 Order, at 4.]

- The Board holds that effective notice of an amendment to a Capital Facilities Element involving the addition or subtraction of facilities deemed to be "necessary for development" or a change in a level of service (LOS) for a listed facility must clearly and concisely describe the nature or magnitude of modifications being considered. Likewise, if a jurisdiction wishes to consider amending a previously adopted standard, by increasing or decreasing a level of service, by revising the methods used to measure performance, or by deletion of the standard altogether, it must explicitly say so in its notice. It is not sufficient for a notice to simply say that the jurisdiction is considering updating or changing previously adopted facilities, standards or methods. It must give a clear indication of WHAT, HOW and, if applicable, HOW MUCH the facility, standard or method might be changed. [*McVittie VI*, *1302*, FDO, at 9-10.]
- [In McVittie I, 9316c, FDO, 23-30.] [T]he Board reached four other basic conclusions about the cumulative effect of Goal 12 and the capital facilities requirements of the Act: (1) Goal 12 creates a duty beyond the capital facility planning that is required by RCW 36.70A.070(3) and requires substantive, as well as procedural compliance; (2) Goal 12 requires the designation of a locally established single Level of Service (LOS) standard for the facilities and services contained in the Capital Facilities Element, below which the jurisdiction will not allow service to fall; (3) Goal 12 operating through RCW 36.70A.070(3) and (6), requires an enforcement mechanism or "trigger" to compel either concurrency implementation or reevaluation of numerous options; and (4) Goal 12 does **not** require a development-prohibiting concurrency ordinance for non-transportation facilities and services, rather, it allows local governments to determine what facilities and services are necessary to support development and the enforcement mechanism for ensuring that identified necessary facilities and services for development are adequate and available. (Footnotes omitted). [*McVittie VI*, *1302*, FDO, at 11-12.]
- [The County adopted level of service (LOS) "objectives" for state highways.] The fact that the State has not yet adopted "standards" placed the County in a difficult situation, in view of the GMA mandate that the County adopt something by December of 2000. Relying upon the guidance of the [Puget Sound Regional Council] to adopt the [Washington State Department of Transportation] "objectives" in the County Plan was not unreasonable. In fact, for the County to have described as a standard that which the State described as an "objective" would have been more than misleading, it would have been flatly incorrect. [*McVittie VIII, 1317*, FDO, at 9.]
- [Petitioner argued that] there appears to be a serious disconnect between transportation plans and improvements done by the County and the State. [Therefore] the spirit of Goals 3 and 12 [must apply because they] would demand a better degree of coordination and consistency between the plans and actions of State and County government. Even the County laments the timing of State improvement, to say nothing of the timing of the adoption of State LOS standards. Nevertheless, the Board must conclude that neither Goals 3 and 12, indeed **none** of the goals listed in RCW 36.70A.020 apply to the State because the preamble to that section unequivocally states the goals "shall be used *exclusively* for the purpose of guiding the development of comprehensive plans and development regulations." This is an unfortunate but inescapable conclusion, because to truly achieve managed growth there must be a better linkage between local efforts and state efforts. [*McVittie VIII, 1317*, FDO, at 10.]
- As provided in the statute [RCW 36.70A.070(6)(a)(iii)(C)], the purpose for including state LOS standards at the local level is for monitoring, evaluating and facilitating coordination between the state and local plans. Providing information to the state for its further analysis and assessment is the driver behind this section of the GMA. As discussed in [elsewhere], there is no financing or implementation "hook" for binding the state to undertake any given state road project, critical or otherwise. [*McVittie VIII, 1317*, FDO, at 14.]

- The County's Notice was reasonably calculated to reach the affected and interested individuals. Not only was the Notice extensive and widely distributed [but] it was also accurate. The County Notice accurately conveyed that the LOS objectives provided by WSDOT and recommended by PSRC were not standards. [*McVittie VIII, 1317*, FDO, at 19.]
- The Board notes that it is WSDOT [Washington State Department of Transportation], not cities or counties, that designates LOS standards on state highways, and Meridian *is* a state highway. [*Lewis, 1320*, FDO, at 19.]

LIMITED AREAS OF MORE INTENSIVE RURAL DEVELOPMENT - LAMIRDS

- The two fundamental components of LAMIRDs are: (1) the land use intensity permitted within a LAMIRD and (2) the logical outer boundary of a LAMIRD. [*Burrow, 9318,* FDO, at 13.]
- General Discussion of LAMIRDs. [*Burrow, 9318,* FDO, at 18-20.]
- Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl. The Act's lengthy definitions and requirements regarding urban growth areas and natural resource lands also date to 1990. However, the Act's initial description of future rural uses and development patterns was spare. While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. [*Burrow, 9318,* FDO, at 18.]
- LAMIRDs are neither urban growth, nor are they to be the predominant pattern of future rural development. [LAMIRDs are not quite urban, but not quite rural.] LAMIRDs are settlements that existed on July 1, 1990 in some land use pattern or form more intensive than what might typically bed found in a rural area. LAMIRDs are "characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." In essence, they are *compact forms of rural development*. [*Burrow, 9318,* FDO, at 18.]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in visual character. The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New England towns that Pope and Talbot used as templates for their company town. The Board finds that Port Gamble's mix of uses and physical form clearly qualifies as a "village," a "hamlet" or a "rural activity" center within the meaning of RCW 36.70A.070(5)(d)(i). [*Burrow, 9318,* FDO, at 18.]
- The Act's definitions (RCW 36.70A.030(17)) expressly state that development within LAMIRDs is not urban. The Act does not put an explicit limit on the absolute residential density permitted in LAMIRDs. The limit is unique to each LAMIRD and is established by the conditions that existed on July 1, 1990. [*Burrow, 9318*, FDO, at 19.]
- As to the question of range of permitted uses. . . the GMA's focus is on the *types* of uses in existence on July 1, 1990, rather than on specific businesses. Therefore, the limitations imposed are upon the types of uses (i.e., office, or residential, or commercial) that existed on July 1, 1990, not on the specific businesses that can be documented. . . . In future cases, with a smaller scale development and a narrower range of historical uses, the Board may be compelled to more closely examine the actual businesses or uses to determine what the appropriate range of uses might be. [*Burrow, 9318,* FDO, at 19-20.]

- RCW 36.70A.070(5)(d)(iv) requires existing areas (LAMIRDs) to be minimized and contained. [Physical constraints can minimize and constrain a LAMIRD, but nothing in the act mandates the exclusive use of such physical features; nor must a LAMIRD contain only homes of a certain historic vintage. The extent of existing infrastructure and service area can be used to set the logical outer boundary that minimizes and contains the LAMIRD.] [*Burrow, 9318,* FDO, at 23.]
- A pattern of more intensive rural development, as allowed within a valid LAMIRD, does not constitute "urban" development. [*Burrow, 9318,* FDO, at 24.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, at 6.]
- The County's argument about the propriety of its RAID designation evidence several fundamental misapprehensions. What the Act contemplates is flexibility for counties, in certain circumstances and subject to careful restrictions, to "round off" with logical outer boundaries "limited areas of more intensive rural development" [LAMIRDs]. However, simply because an unincorporated parcel was urbanized as of July 1, 1990, does not mean that it is appropriate to designated it as a LAMIRD. The County's spacing criteria for rural activity centers (RACs) and rural neighborhood centers (RNCs) indicates that it grasps the concept of a "central place," the idea that a commercial center serves a surrounding hinterland. The placement of its RAID less than 400 feet from the UGA flies in the face of this "central place" theory. The location of the [property] immediately adjacent to the UGA makes it a candidate not for LAMIRD designation, but potentially for UGA expansion. [*Tacoma II, 9323c,* FDO, at 7.]
- [The argument that the LAMIRD designations authorized in 1997 are simply smaller and more limited rural centers than those included in its pre-1997 rural designations (RACs and RNCs) is a flawed perception.] The County's RACs and RNCs were designated before the legislature created the specific template for how such rural centers were to be designated and limited. RCW 36.70A.070(5)(d)(iv) establishes the exclusive means for designating RACs and RNCs and other rural centers. The range of uses and scale of rural commercial centers allowed in a RAID [LAMIRD] is governed by this section of the GMA, not the County's preexisting RAC and RNC provisions. [*Tacoma II, 9323c,* FDO, at 7.]
- The types of uses in a RAID [LAMIRD] must have been among the types of uses in existence within the RAID [LAMIRD] on July 1, 1990. . . .Uses permitted in RACs [or RNCs] are irrelevant to uses permitted in RAIDs [LAMIRDs]. [*Tacoma II, 9323c,* FDO, at 7-8.]
- The County's hierarchy of rural centers provides that RACs be located no closer than five miles from a UGA; and that RNCs be located no closer than two miles from a UGA. Without explanation as to UGA proximity requirements, this RAID [LAMIRD] is located within 360 feet of the UGA, which is the present city limits for the City of Tacoma. Designation of a RAID [LAMIRD in this location fosters the low-density sprawl that RAIDS [LAMIRDs] are required to avoid. Proximity to the UGA alone suggests to the Board that if the area were to be urban, adjustments to the UGA would be a more appropriate means of accomplishing this objective. [*Tacoma II, 9323c,* FDO, at 8.]
- [Designation of LAMIRDs in subarea plans must comply with the requirements of RCW 36.70A.070(5)(d); requirements for their designation are not discretionary.] [*Tacoma II, 9323c,* FDO, at 9.]
- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the

rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c,* FDO, at 10.]

- Existing sewer service in the "rural area" is a reality in some areas that must be acknowledged. However, the mere presence of existing sewer service does not guarantee that the area will be included within a RAID [LAMIRD] designation. [*Tacoma II, 9323c,* FDO, at 10.]
- Providing sewer service to RAIDs [LAMIRDs] is explicitly permitted by the GMA. [*Tacoma II, 9323c,* FDO, at 11.]
- An initial step in creating a LAMIRD is the clear identification of the area's logical outer boundary (LOB). The LOB requirements of [RCW 36.70A.070(5)(d)(iv)] apply only to LAMIRDs designated pursuant to [RCW 36.70A.070(5)(d)(i)] (Citation omitted), for "development consisting of the *infill, development, or redevelopment of existing* commercial, industrial, residential or mixed-use *areas*." The area(s) to be contained by the LOB are the "existing areas" as defined in [RCW 36.70A.070(5)(d)(v)]. These existing areas are those areas containing manmade structures in place (built) by July 1, 1990 (Citation omitted). [*Hensley IV, 1304c*, FDO, at 11-12.]
- The Act requires the LOB to minimize and contain the existing areas of commercial development. The record . . .supports Petitioners' contention that the LOB goes beyond the existing area creating a commercial strip – the "infill" goes beyond the existing development, it is not limited. The County's own findings and conclusions regarding the LAMIRD designation do not support the delineation of the Clearview LAMIRD as commercial strip. [The findings and conclusions describe two commercial nodes.] The County concludes that including 27 acres of infill between the two existing commercial nodes is not as bad as the original proposal to include 103 acres of infill between them. A smaller version of a noncompliant designation creating a commercial strip does not change the nature of the noncompliant action. The LAMIRD designation is not limited to the existing area. [*Hensley IV, 1304c*, FDO, at 13-16.]
- [If the LAMIRD designation does not comply with the requirements of the Act, it follows that the Plan policies that support the LAMIRD designation do not comply with the requirements of the Act.] [*Hensley IV, 1304c*, FDO, at 16.]
- The UGA designation requirements of RCW 36.70A.110 are not applicable to the [designation of a LAMIRD]. [*Hensley IV, 1304c*, FDO, at 18.]

LOCALIZED ANALYSIS

- Where a large percentage of population and employment growth is concentrated by a city's comprehensive planning process, specific capital facilities analysis is necessary. [*WSDF I, 4316,* FDO, pp. 44-45]
- [Where a large percentage of population and employment growth is concentrated by a city's comprehensive planning process, a city's comprehensive plan must at least discuss what impact its concentrated population growth strategy will have on future traffic forecasts.] [*WSDF I, 4316,* FDO, p. 63]

MANDATORY ELEMENTS

- Local jurisdictions are required to meet both the preamble and subsequently specified elements of RCW 36.70A.070. [*Aagaard, 4311c,* FDO, p. 13]
- Upon initial adoption of a comprehensive plan, jurisdictions planning under the Act must have fully completed all the mandatory requirements of RCW 36.70A.070. [*WSDF I, 4316,* FDO, p. 12]
- A comprehensive plan, including both mandatory elements and optional elements or features, must be internally consistent. [*WSDF I, 4316,* FDO, p. 14]

- The Act does not mandate that jurisdictions include concepts like Seattle's urban villages strategy in a comprehensive plan. Instead, that strategy appears to most fairly fall into the classification of an "innovative land use technique" as discussed in RCW 36.70A.090. [*WSDF I, 4316,* FDO, p. 19]
- The Act requires cities and counties to preserve existing housing while promoting affordable housing and a variety of residential densities and housing types. No jurisdiction is required to reconcile these seemingly inconsistent requirements by totally focusing on one requirement, for instance preserving existing housing, to the exclusion of other requirements, such as encouraging more affordable housing. Instead, jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them. [*WSDF I, 4316,* FDO, p. 30]
- The Board rejects the argument that because RCW 36.70A.070(2)(c) requires jurisdictions to identify "sufficient land for housing" in their comprehensive plans, that their development regulations must also do so. The sufficiency of land supply required by RCW 36.70A.070(2)(c) is a mandate that the city, as a matter of policy, identify sufficient land for this purpose. Development regulations are to then impose controls to assure that the land identified in the plan for housing is available for that purpose. Because development regulations must be consistent with the comprehensive plan, they cannot decrease the land supply available for housing. RCW 36.70A.040(3). [*Children's I, 5311,* 5/17/95, p. 6]
- All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. (Citations omitted) A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning. [*Bremerton, 5339c,* FDO, p. 77]
- The lack of a fully completed capital facilities plan is more than a conceptual shortcoming – it is a fatal legal defect in a comprehensive plan. It alone is sufficient cause for the Board to find that the land use element and every other component of a plan violates the requirements of the Act. [*Bremerton, 5339c,* FDO, p. 77]
- So long as the failure to complete an optional element or innovative land use technique does not create an internal inconsistency in the Plan, or constitute a failure to comply with the mandatory requirements of the Act, such failure is not a violation of the Act. [*Sky Valley, 5368c,* FDO, p. 119]
- "Show your work" has been applied to the documentation of factors and data used in the accounting exercise of counties in sizing UGAs as required by RCW 36.70A.110; it does not apply to the mandatory plan elements of RCW 36.70A.070. [*Litowitz, 6305,* FDO, p. 17]
- The alleged violations of GMA requirements (RCW 36.70A.070) do not apply to development regulations. The challenged ordinance amends development regulations; the issues framed in the prehearing order challenge the Plan. The Board's authority to issue opinions is limited to the statement of the issues. [*Keesling II, 7327,* FDO, p. 4]
- When a plan revision amends one of the mandatory elements set forth in RCW 36.70A.070, the element, as amended, must comply with the requirements of RCW 36.70A.070. [*LMI/Chevron, 8312,* FDO, p. 50-51]
- When a subarea plan refines one of the mandatory elements of the jurisdiction's comprehensive plan the requirements set forth in RCW 36.70A.070 apply to that subarea plan. [*LMI/Chevron, 8312,* FDO, p. 51]
- The explicit language of RCW 36.70A.070 sets forth the mandatory elements to be included in a jurisdictions comprehensive plan, not its implementing development regulations. RCW 36.70A.070 applies to comprehensive plans and amendments thereto, not development regulations. [*Hanson, 8315c,* FDO, p. 7-8 and 9]

- Neither RCW 36.70A.130(1) nor *WSDF III* stand for the proposition that subarea plans must contain, in every case, each of the mandatory comprehensive plan elements set out in RCW 36.70A.070 (footnote pertaining to *LMI* omitted). [*Tulalip II, 9313*, 1/28/00 Order, at 11.]
- RCW 36.70A.070 does not apply to development regulations. [*MacAngus, 9317,* FDO, at 9.]
- [Show your work applies to sizing UGAs, it has not been required to demonstrate compliance with the mandatory elements requirements of the Act.] [*MacAngus, 9317,* FDO, at 11.]
- *See also*: **GMA Planning** [*LIHI I, 0317*, 2/21/02 Order]

MAJOR INDUSTRIAL DEVELOPMENTS – MIDS

- No entries

MAPS

- *See also*: **GMA Planning** [*LIHI I, 0317*, 2/21/02 Order]
- There is no language in [the CPP or Plan policy] that indicates that "commercial land" means anything other than what is designated on the FLUM or Zoning maps. The concomitant agreement does not alter this fact. Therefore, the inescapable conclusion is that expanding the [UGA to include the area as] "urban commercial" is commercial land falling within the purview of [the controlling CPP and Plan policy.] [*Hensley IV, 1304c*, FDO, at 33.]

MARKET FACTOR

- Counties must specify the market factor they utilize either directly in an adopted comprehensive plan or in the supporting documentation incorporated by reference in the plan. Post-adoption rationalization in a response brief to the Board is insufficient, however accurate it may be. [*Gig Harbor, 5316c,* FDO, p. 46]
- Where counties adopt a land supply market factor between 1 and 1.25 (i.e., of 25 percent), the Board will presume that the factor is reasonable. In evaluating allegations that a county has used an unreasonable land supply market factor, the Board will give increased scrutiny to those cases where the factor exceeds the 25 percent bright line. In determining whether the county's choice was reasonable, the Board shall consider three general questions: (1) What is the magnitude of the "land supply market factor" beyond the 25 percent bright line? (2) Is there other evidence to suggest that the land supply market factor is not reasonable? (3) Has the county also availed itself of other approaches, such as continuously monitoring land supply and making necessary adjustments over the life of the plans for the county and its cities? [*Bremerton, 5339c,* FDO, p. 42-44]
- Although the Board does not reject a 75 percent market factor out of hand, it cannot conclude that it is reasonable without adequate justification. [*Bremerton, 5339c,* FDO, p. 65]

MASTER PLANNED RESORT - MPRS

- The legislature recognized that MPRs are urban growth outside of UGAs. The GMA permits the urban growth of an MPR if the County's regulations do not permit other urban or suburban growth in the vicinity of the MPR. [Urban growth in MPRs is recognized by, not prohibited by the Act.] [*Gain, 9319*, at 8.]

MEDIATION – *SEE:* EXTENSIONS

MINERAL LANDS

- *See also:* **Natural Resource Lands**
- The Board acknowledges the problem inherent in not designating all sites with mineral resources, and, as a result, zoning each site as Mineral use in the implementing regulations. Those properties not zoned as Mineral are not afforded the protection available to sites with Mineral zoning. (A county may exercise discretion in including some but not all mineral resource lands in a Mineral zoning designation.) [*Alberg, 5341c,* FDO, p. 41]
- A map symbol of notation on an informational map in the comprehensive plan does not affect any individual owner's property rights. Likewise, the removal of such notation does not affect any individual owner's property rights. [*Green Valley, 8308c*, 4/17/98 Order, pp. 2-4]
- [Where a jurisdiction has an administrative process for determining an individual's status regarding legal nonconforming (**LNC**) uses,] [t]he presence or absence of a parcel's LNC status on a mineral resource map does not affect the individual property interests of the owner of that parcel. [*Green Valley, 8308c,* FDO, p. 7]

MINIMUM GUIDELINES

- [The CTED] Minimum Guidelines are advisory only, to be considered by counties when classifying and designating natural resource lands. [*Twin Falls, 3303c,* FDO, p. 21]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, pp. 41-42]
- When both the statutory definition [RCW 36.70A.030(10)] and the factors set forth in the Department's regulations [the Department of Community, Trade and Economic Developments – WAC 365-190-050(1)] are considered, it is apparent that [generally,] the Northern Sammamish Valley no longer has long-term commercial significance for agricultural production. [*Grubb, 0304,* FDO, at 7.]

MOOTNESS

- [Anticipated, but not yet achieved, compliance with a remand order in a previous case cannot moot issues in a subsequent case in which the Board's statutory deadline for filing its final order precedes the compliance deadline of the prior case.] [*PNA II, 5371,* FDO, p. 6-8]
- The question of emergency ordinances, since repealed and replaced by interim ordinances, are moot; the Board will not hear and decide moot issue. [*Hayes, 5381,* 4/17/98 Order, p. 4]
- In prior cases, the Board has discussed the question of mootness and applied this doctrine of judicial economy. [Here] the Board can no longer provide the relief sought by Petitioner. [The City] has changed the original Plan provisions Petitioner seeks to have implemented; therefore, [the] PFR is moot. [*Parsons, 9308,* 8/30/99 Order, at 2.]
- Respondent argued that the Board [nor a court] could not grant the "ultimate relief" [free from the impacts of development] sought by Petitioners therefore the case was moot. The Board stated, whatever the "ultimate relief" sought by [Petitioners], the relief sought before this Board is a finding of non-compliance and a determination of invalidity. [*Bear Creek, 5308c*, 4/4/00 Order, at 3.]

- [In *Orwick v. Seattle*, 103 Wn 2d 249 (1984), the court stated, "A case is moot if a court can no longer provide effective relief." The *Orwick* court also recognized an exception to moot cases involving "matters of continuing and substantial public interest." The Board adheres to the reasoning in *Orwick*.] [*McVittie, 9316c, FDO, at* 13-14.]
- [Notwithstanding possible mootness, in this case, the County asked the Board for guidance "with regards to the capital facility element and the idea of the level of service standards being tied to a type of concurrency enforcement mechanism." Petitioners also ask the Board to address the "reassessment provision" of the CFE.] [*McVittie, 9316c, FDO, at* 13.]
- [Where a jurisdiction's challenged six-year financing program has been repealed and superceded by a more current six-year financing program, the Board cannot provide effective relief; therefore, issues relating to compliance with the capital facilities element, inconsistency and whether capital budget decisions in compliance with the comprehensive plan are moot.] [*McVittie, 9316c, FDO, at* 14.]
- The record before the Board does not make clear whether the "Sidewalk Inventory" map was produced, or available, during the pendency of the adoption of the Greenwood/Phinney Ridge Urban Village. Even if the Board were to agree with Petitioner that the necessary inventory was not available during that process, the fact that it presently exists arguably renders legal issue 4 [alleging no inventory of sidewalks] moot. [*Radabaugh, 0302,* FDO, at 11.]
- The repeal of the ordinance renders Petitioner's appeal moot because there is no currently effective legislative action to challenge. [*Gawenka, 0311*, 10/10/00 Order, at 3.]
- [There is] interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. The Growth Boards have jurisdiction to determine compliance with the GMA, including UGA designations. UGA designation enables city annexations, since cities are prohibited from annexing areas beyond designated UGAs. Boundary Review Board decisions must be consistent with provisions of the GMA, including the UGA provisions. This system is consistent and coordinated and yields certainty in situations where UGAs have been found by the Board to comply with the Act, or where UGA designations have not been challenged. However, this system yields uncertainty where the UGA designation has been challenged, but not resolved as the annexation process proceeds. It is a situation that the Legislature has not, to date, addressed. [This uncertainty is prevalent in this case. In this case, the Board cannot, and will not, address the effect of the annexation, nor will it speculate on the outcome of pending litigation. However, the Board must carry out its mandated responsibilities.] Determining compliance with the goals and requirements of the GMA is the primary responsibility of the Board; it cannot shirk this duty. The Board must determine whether the challenged UGA designation complies with the goals and requirements of the Act. [*Kitsap Citizens, 0319c*, 2/16/01 Order, at 9-11.]
- The Board finds that the public participation questions(s) posed in this case [related to emergency ordinances] are a matter of continuing and substantial interest, that if left unresolved, are likely to recur in the future. [Finding an appropriate exception to the mootness doctrine.] [*McVittie V, 0316*, FDO, at 9-10.]

MOTIONS – *SEE:* DISPOSITIVE MOTIONS

MULTI-COUNTY PLANNING POLICIES - MPPS

- [In the Puget Sound Region, the Puget Sound Regional Council's (PSRC) "Vision 2020" is the growth management, economic and transportation strategy for the Central Puget Sound region.

Vision 2020 includes Multi-county Planning Policies (MPPs) for the region, as provided for in RCW 36.70A.210(7). The PSRC has the authority and responsibility to develop the regional transportation plan (RTP) for the Central Puget Sound area. The RTP includes some of the Vision 2020 MPPs; the amendment to the RTP authorizing the planning for the third runway is not an MPP.] [*Burien, 8310,* FDO, p. 14]

- The GMA requires that comprehensive plans, as a whole, be consistent with CPPs and MPPs. Amendments to a comprehensive plan may not cause the comprehensive plan to be inconsistent with CPPs and MPPs. [*LMI/Chevron, 8312,* FDO, p. 44]
- To determine consistency of a Plan, as amended, with the CPPs and MPPs, the Board will examine the challenged amendments to determine, if on their face, the amendments are consistent with the CPPs and MPPs identified. If the challenged amendments are consistent with the identified CPPs and MPPs, the challenge fails. If a challenged amendment is facially inconsistent, the Board will examine the challenged amendment in the context of the entire Plan (identified provisions) to determine if the amendment causes the Plan to be inconsistent with the CPPs and MPPs identified. [*LMI/Chevron, 8312,* FDO, p. 44]

NATURAL RESOURCE LANDS - NRLS

- *See also:* **Agricultural Lands**, **Forest Lands** and **Mineral Lands**
- [The CTED] Minimum Guidelines are advisory only; to be considered by counties when classifying and designating natural resource lands. [*Twin Falls, 3303c,* FDO, p. 21]
- The Act's definition of "long-term commercial significance" at RCW 36.70A.030(10) has two components: the physical characteristics of the land and the human element (i.e., the land's proximity to population areas, and the possibility of more intense uses of the land). [*Twin Falls, 3303c,* FDO, p. 32]
- "Nonurban lands" includes all natural resource lands, whether designated as such pursuant to RCW 36.70A.170 or not, and rural lands. [*Rural Residents, 3310,* FDO, p. 41]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, p. 9]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, p. 79]

- The Board declines the invitation to establish a minimum lot size for agricultural parcel sizes. [*Gig Harbor, 5316c,* FDO, p. 31]
- Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." [*Bremerton, 5339c,* FDO, p. 31]
- "Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource base activities." *Vision 2020 – 1995 Update, at 27.* This description of rural land accurately describes the intensity and character of new residential activity and development that the Act permits in rural areas. [*Bremerton, 5339c,* FDO, p. 51]
- Pursuant to RCW 36.70A.070(5), rural lands must exclude designated agricultural, forest and mineral resource lands. A county cannot designate these natural resource lands within its rural element. [*Bremerton, 5339c,* FDO, p. 73]
- The Board acknowledges the problem inherent in not designating all sites with mineral resources, and, as a result, zoning each site as Mineral use in the implementing regulations. Those properties not zoned as Mineral are not afforded the protection available to sites with Mineral zoning. (A county may exercise discretion in including some but not all mineral resource lands in a Mineral zoning designation.) [*Alberg, 5341c,* FDO, p. 41]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c,* FDO, p. 46]
- The fact that land is generally used by the timber industry does not necessarily mean that it meets the Act's definition of "forest land" that must be designated. [*Sky Valley, 5368c,* FDO, p. 83]
- As a matter of law pursuant to Section 1 of ESSB 6228 and RCW 36.70A.060(3), all cities and counties that had not adopted comprehensive plans by the effective date of ESSB 6228 were required to re-evaluate whether their prior (interim) forest land designations and development regulations complied with the 1994 definition of the phrase "forest lands" and remained consistent with their newly adopted comprehensive plans. [*Sky Valley, 5368c,* FDO, p. 88]
- A county or city does not per se violate the Act simply because its final forest land designations approved at the time of comprehensive plan adoption include lesser acreage than the preliminary, interim forest land designations. [*Sky Valley, 5368c,* FDO, p. 88]
- RCW 36.70A.170(1)(b) requires counties and cities to designate all lands that meet the definition of forest lands and that RCW 36.70A.060(1) requires that counties and cities adopt development

regulations to assure the conservation of all these designated forest lands unless the forest lands would fall within a UGA. [*Sky Valley, 5368c,* FDO, p. 89]

- Cities and counties can adopt development regulations for designated forest lands that regulate these lands differently (in manner or degree) as long as adopted development regulations assure the conservation of forest lands. [*Sky Valley, 5368c,* FDO, p. 101]
- Although the Act requires that all lands that meet the definition of forest lands be designated, unless they are located within a UGA, cities and counties retain discretion as to the degree and manner of conservation afforded designated forest lands by adopted development regulations. As long as the adopted development regulations assure the conservation of designated forest lands, these regulations may control designated forest lands in a different manner or degree. [*Sky Valley, 5368c,* FDO, p. 101]
- The reference in RCW 36.70A.070(1) to "timber production" is not synonymous with "forest lands." The latter is a term of art unique to the GMA, for which specific requirements have been adopted, particularly RCW 36.70A.060 and .170. In contrast, the former, "timber production," is used within the definition of the phrase "forest lands." "Forest lands" are a subset of broader category of lands, those devoted to timber production. [*Sky Valley, 5368c,* FDO, p. 103]
- Just because land is available for timber production does not mean that it constitutes "forest lands" as defined by the Act for which the designations specified at RCW 36.70A.170 and development regulations specified at RCW 36.70A.060 must be adopted. [*Sky Valley, 5368c,* FDO, p. 104]
- RCW 36.70A.170(1)(a) requires counties and cities to designate all lands that meet the definition of agricultural lands, unless the lands fall within a UGA lacking a program for purchase or transfer of development rights, and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all designated agricultural lands. [*Sky Valley, 5368c,* FDO, p. 113]
- Lands not receiving interim designation as agricultural lands may receive such a designation during the review required by RCW 36.70A.060(3). However, such a designation is predicated on the parcels in question meeting the definition of "agricultural lands." [*Sky Valley, 5368c,* FDO, p. 114]
- A county or city does not per se violate the Act simply because its final agricultural land designations approved at the time of comprehensive plan adoption include lesser acreage than the preliminary, interim agricultural land designations. [*Sky Valley, 5368c,* FDO, p. 114]
- A city is without authority to make any agricultural designations within a UGA prior to the enactment of a program authorizing a transfer or purchase of development rights pursuant to RCW 36.70A.060(4). Unless and until it adopts such a program, it is obliged to designate such properties for non-agricultural urban uses. [*Benaroya I, 5372c,* FDO, pp. 11-12]
- Open space is an inevitable byproduct of land being put to an agricultural use. However, this fact alone is insufficient grounds for a claim that agricultural designation by a local government requires development rights acquisition pursuant to RCW 36.70A.160. Only if a government restricts the use of designated agricultural lands solely to maintain or enhance the value of such lands as open space, must the City or County acquire a sufficient interest in the property. [*Benaroya I, 5372c,* FDO, p. 13]
- The Board reaffirmed its holding in the FDO that the City could not designate lands agriculture unless and until it adopted a program authorizing the transfer or development of development rights. [*Benaroya I, 5372c,* 12/31/98 Order-Court Remand, p. 3]
- The Board reversed its holding in the FDO to the extent that it was based upon the determination that the Benaroya and Cosmos properties were not agricultural land within the meaning of that term in RCW 36.70A.030(2). [*Benaroya I, 5372c,* 12/31/98 Order-Court Remand, p. 4]
- There are no specific GMA requirements that implement goals RCW 36.70A.020(8) and (9) – Natural Resource Industries and Open Space and Recreation. [*Tulalip, 6329,* FDO, p. 15]

- RCW 36.70A.020(8), .060, and .170, when read together, create an agricultural conservation imperative that imposes and affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry. [*Green Valley, 8308c,* FDO, p. 16]
- The location-specific and directive duty of RCW 36.70A.020(8), .060 and .170 to designate and conserve agricultural lands clearly trumps the non-directive, non-site specific guidance and inventory requirements for open space and recreation of .020(9), .150 and .160. [*Green Valley, 8308c,* FDO, p. 17]
- RCW 36.70A.177 does create an opportunity for land use and development techniques that are new and innovative, [but] the Board cannot read these provisions to be interpreted to allow the effective evisceration of agricultural lands conservation on a piecemeal basis. [*Green Valley, 8308c,* FDO, p. 18]
- Both experience and common sense indicate that conversion of agricultural resource lands to nonagricultural uses is a one-way ratchet. To suggest that designated agricultural resource lands, once given over to intensive uses demanded by an ever-increasing urban population, could ever be "retrieved" is simply not credible. [*Green Valley, 8308c,* FDO, p. 18]
- [RCW 36.70A.177] allows flexibility on a site or parcel basis to enable a portion of a parcel not suitable for agricultural purposes to have a non-agricultural use is within the scope of permissible; however, the County's amendments allow entire parcels to be given over to nonfarm and nonagricultural uses [thereby violating .177]. [*Green Valley, 8308c,* FDO, pp. 18-19]
- The Act requires conservation not just of the soil attributes that make agricultural lands productive and potentially subject to designation, but also of the agricultural use of that land, to the end that the resource-based industry is maintained and enhanced. [*Green Valley, 8308c,* FDO, p. 19]
- Land use plans and development regulations which allow parcels designated agricultural resource lands to be used for active recreation uses and supporting facilities does not assure the conservation of those lands for the maintenance and enhancement of the agricultural industry. [*Green Valley, 8308c,* FDO, p. 19]
- RCW 36.70A.170 is unequivocal: a county has a duty to designate, where appropriate, forest lands of long-term commercial significance. A County is compelled to decide whether it has such lands and if so, to designate them. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 35]
- Under the sequencing scheme of the GMA, the land does speak first; but, on the rare occasion, as is the case here, where the land may speak late – it will be heard. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 35]
- The Washington Supreme Court has determined that land is devoted to agricultural use under the GMA "if it is an area where the land is actually used or capable of being used for agricultural production. *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.* 136 Wn.2d 38, 56 (1998). It is irrelevant that a parcel has not been farmed for 25 years. The question is whether the land is actually used or capable of being used for agriculture. [*Sky Valley,* 5368c, 4/22/99 Order, at 8-9]
- The record supports the County's determination that the [property] is forested in character. Petitioners have not shown that the County's portrayal of the property as "forested in character" was clearly erroneous. [*Screen II, 9312,* FDO, at 8.]

NEIGHBORHOOD: *SEE:* AFFORDABLE HOUSING, HOUSING ELEMENT AND SUB AREA PLANS

NONCOMPLIANCE

- The GMA authorizes the Board to determine whether an enactment by a local jurisdiction is in compliance with the requirements of the act. In so doing, the Board will necessarily consider whether a local jurisdiction planning under the GMA has exceeded the requirements of that act. The Board will do this by examining whatever action was taken by the local jurisdiction and comparing it to the purposes, requirements and goals of the GMA as a whole. If the local action is consistent with the requirements of the GMA, this Board will find that the local government was in compliance with the GMA. Conversely, inconsistent actions will be remanded. [*Tracy, 2301,* FDO, p. 21]
- [While the Board may acknowledge a petitioner's skepticism], the Board presumes that the [jurisdiction] will act in good faith to comply with the requirements of the Board's Orders. [*Bear Creek, 3508c*, 11/3/00 Order, at 11.]

NONCONFORMING USES

- The phrase "uses legally existing on any parcel" means activities or improvements that actually exist on the land, as opposed to legal use rights. [*Twin Falls, 3303c,* FDO, p. 41]
- The establishment of nonconforming use regulations is a historic part of land use planning in the State of Washington. However, with the passage of the GMA, the discretion of local jurisdictions to craft nonconforming use provisions has been limited, at least in areas outside of designated UGAs. [*PNA II, 5371,* FDO, p. 27]
- [Where a jurisdiction has an administrative process for determining an individuals status regarding legal nonconforming **(LNC)** uses,] [t]he presence or absence of a parcel's LNC status on a mineral resource map does not affect the individual property interests of the owner of that parcel. [*Green Valley, 8308c,* FDO, p. 7]

NOTICE

- Notice must be sufficiently descriptive to alert a reader to the major issues at hand and the ways in which to further participate in the process. [*Tracy, 2301,* FDO, p. 19]
- The [advisory body] may exercise authority delegated to it to perform certain tasks such as establishing specific population and employment goals, but its work remains only recommendations unless and until the [legislative body] adopts them by amending the [jurisdiction's] CPPs [or other GMA documents]. The [advisory body's] actions alone have no binding effect. . . . The actions of the [legislative body] are controlling – the Board will review only the [legislative body's] actions for compliance with the GMA and not those of [an advisory body]. [*Snoqualmie, 2304,* FDO, p. 26]
- A development regulation, whether interim or implementing, must be a binding legislative enactment. The Board is not ruling that a resolution or motion can never be used to comply with GMA critical areas and natural resource lands requirements. The test is whether the public has advance notice providing the opportunity to comment before the matter is adopted; whether a public hearing is held; whether the legislative action has the force and effect of law; and whether notice of adoption is published – regardless whether the enactment took place by way of ordinance, motion or resolution. [*FOTL I, 4303,* 4/22/94 Order, pp. 20-21]
- The Act does not require a planning jurisdiction to submit any draft copies of proposed plans or regulations to CTED, much less a copy of each and every revision that a comprehensive plan or development regulation undergoes during the legislative process. All that the Act requires of a city proposing to adopt development regulations is that it provide notice of its intent to CTED. [*Children's I, 5311,* FDO, p. 21]

- RCW 36.70A.106 requires a jurisdiction to provide CTED notice of intent to adopt amendments. [*Children's II, 6323,* FDO, p. 14]
- Publication of notice of planning commission and council meetings and hearings referencing specific proposed changes to a classification satisfies the GMA's notice requirements. [*McGowan, 6327,* 9/5/96 Order, p. 9]
- When a plan or development regulation amendment involves the pending, or future, redesignation of specific geographic locations, the legal notice explaining the general purpose of the hearing must identify the location and proposed or future reclassification. [*Kelly, 7312c,* FDO, p. 9]
- [As stated in the July 30, 1997 FDO] what the Board found noncompliant with the public participation requirements of the GMA was the erroneous notice regarding the [property]. The Board never addressed the substance of the redesignation of the property. However, since the notice was in error, the public participation process consequently failed to comply with the GMA, and that amendment adopted pursuant to the defective notice was found invalid. . [*Kelly, 7312c,* 3/31/99 Order, p. 5]
- The GMA "[e]ncourage[s] the involvement of citizens in the planning process," RCW 36.70A.020(11). To achieve this goal, the Act requires cities and counties to have a public participation program that provides for "early and continuous public participation in the development and amendment of comprehensive land use plans" and for 'broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice." RCW 36.70A.140; *see also*, RCW 36.70A.070 (preamble) and RCW 36.70A.130(2)(a). It is axiomatic that without effective notice, the public does not have a reasonable opportunity to participate; therefore, the Act requires local jurisdictions' notice procedures to be "reasonably calculated to provide notice to property owners and other affected and interested individuals, ..." RCW 36.70A.035(1). [*Andrus, 8330,* FDO, pp. 6-7]
- When a change is proposed to an amendment to a comprehensive plan, the public must have an opportunity to review and comment on the proposed change before the legislative body votes on the proposed change. RCW 36.70A.035(2)(a), *but see* RCW 36.70A.035(2)(b)(i-iii) for exceptions. [*Andrus, 8330,* FDO, p. 7]
- [Given the facts of this case,] [a]t best the public was notified of the City's consideration of revisions to the [plan] . . . as early as six days and as late as one day prior to the April 16 public meeting. A citizen receiving all forms of notice published by the City would reasonably conclude that no comments would be accepted after the April 17 [published written comment] deadline. Although the April 16 meeting was continued, no explicit revision of the April 17 deadline for written comments was issued by the City, and the record does not show that the City indicated by any means that it would accept written comments during the time between the announced April 17 deadline and the May 21, 1998 adoption [date]. [*Andrus, 8330,* FDO, p. 9]
- Public notice is at the core of public participation. Effective notice is a necessary and essential ingredient in the public participation process. [*WRECO, 8335,* FDO, at 6.]
- Notice is reasonably related to public participation. Raising concerns about a local government's public participation process is sufficient to challenge the jurisdiction's notice procedures before this Board. [*WRECO, 8335,* FDO, at 6.]
- The City's notice provisions [mailed to adjacent property owners] fall woefully short of the required "broad dissemination" and "notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses and organizations [of RCW 36.70A.140 and .035(1)]." [*WRECO, 8335,* FDO, at 13.]
- [Where] the subject matter of a [planning commission's] public hearing includes the possible redesignation of property; "consideration" of a revision to a land use designation includes the possibility of not revising the designation. [*Screen II, 9312,* FDO, at 11.]

- These provisions [RCW 36.70A.035] require the opportunity for the public to review and comment on proposed amendments and changes to those proposed amendments. However, an additional opportunity for public review and comment is not required if the proposed change is within the scope of the alternatives available for public comment. RCW 36.70A.035(2)(b)(ii). In other words, if the public had the opportunity to review and comment on the changes to the proposed amendments, then the County is not required to provide an additional opportunity for public participation. There is no GMA requirement that the County must have prepared a document for public inspection specifically proposing all elements of the amendments ultimately adopted by the County; it is enough that the changes to the County-proposed amendments were within the scope of alternatives available for public comment. [*Burrow, 9318,* FDO, at 10.]
- The Board understands that the City wishes to provide non-urban village citizens with some assurances that capital facility investments can be made outside of designated urban village boundaries. However, such a policy choice would have implications for existing (city-wide) comprehensive plan policies. For this and other reasons, not the least of which is the public notice requirements of RCW 36.70A.035, the avenue to pursue that end would be in a proposed amendment to the adopted city-wide policy rather than incremental, ad-hoc amendment to thirty-seven individual neighborhood plans. [*Radabaugh, 0302,* FDO, at 10.]
- The Act mandates that the public must have an opportunity to be heard and comment before an "11th hour" change [that is not within the exceptions of RCW 36.70A.035(2)(b)] is adopted as part of comprehensive plan. [*Radabaugh, 0302,* FDO, at 16.]
- [Publication of the City Council Agenda, with the notation "Revision to Critical Areas Ordinance," without describing the nature of the proposed changes is insufficient notice.] It would be difficult for a potentially interested member of the public at large to ascertain what the pending ordinance was proposing. [*Homebuilders, 0314,* FDO, at 10-11.]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5]
- Simply because posting [notice on a site] is a common practice for quasi-judicial actions does not mean that it will never be appropriate for a legislative action. [*Buckles*, *6322c*, 4/19/01 Order, at 9.]
- The map and narrative of the mailed notice were sufficient to provide reasonable notice to anyone who received it. The question then becomes one of the sufficiency of the mailing itself. Either the County meant to mail this notice to <u>all</u> property owners within 500 feet of the site **or** the County meant to mail this notice only to interested parties within 500 feet of the site. Significantly, in either event, the County's notice was insufficient. [*Buckles*, *6322c*, 4/19/01 Order, at 9.]
- It is contrary to the spirit and substance of .140 for local government to provide effective notice of a proposed GMA action to only those property owners whom it deems are "interested" by dint of having made some prior comment or their membership in a neighborhood association. Significantly, the ineffectiveness of the County's mailed notice would not have been fatal to the County's .140 compliance if the County had also employed another form effective form of notice (e.g. publishing in a newspaper or posting the site with an accurate notice, including sufficient locational and topical information). [*Buckles*, *6322c*, 4/19/01 Order, at 10.]
- At the heart of this issue is the question of whether the notices the County published told the general public what it needed to know about the pending County action to amend the standards in its CFP. The Board agrees with the County that a capital facility planning is a complex subject and that the notices it published did mention the general topics under discussion. The Board also presumes that the County has made a good faith attempt to engage the public in the capital facilities dialogue.

However, a notice that is *reasonably calculated* to reach the intended public must be measured against something more than the good faith intent of the local government publishing it. Rather, it must also be measured against whether it is *effective* in alerting the public to the key questions in play. It is this latter bar that the County's notices fail to clear. [*McVittie VI*, *1302*, FDO, at 9.]

- The Board holds that effective notice of an amendment to a Capital Facilities Element involving the addition or subtraction of facilities deemed to be "necessary for development" or a change in a level of service (LOS) for a listed facility must clearly and concisely describe the nature or magnitude of modifications being considered. Likewise, if a jurisdiction wishes to consider amending a previously adopted standard, by increasing or decreasing a level of service, by revising the methods used to measure performance, or by deletion of the standard altogether, it must explicitly say so in its notice. It is not sufficient for a notice to simply say that the jurisdiction is considering updating or changing previously adopted facilities, standards or methods. It must give a clear indication of WHAT, HOW and, if applicable, HOW MUCH the facility, standard or method might be changed. [*McVittie VI*, *1302*, FDO, at 9-10.]
- [RCW 36.70A.035] clarifies and emphasizes that effective notice is an essential and necessary part of the public participation requirements of the Act. It also applies to the entire GMA planning process [Note: This section did not apply to actions taken prior to July 27, 1997.] Effective notice precedes adoption. [*McVittie V, 0316*, FDO, at 17.]
- *See also:* **Public Participation** [*McVittie V, 0316*]
- A jurisdiction must provide notice and the opportunity for the public to participate prior to adopting any GMA plan or amendment to that plan. [*McVittie V, 0316*, FDO, at 25.]
- [RCW 36.70A.035] is unambiguous; it is not limited. It applies to *all* development regulation amendments, permanent, temporary or interim. [*McVittie V, 0316*, FDO, at 25.]
- At the heart of this issue is the question of whether the notices the County published told the general public what it needed to know about the pending County action to amend the standards in its CFP. The Board agrees with the County that a capital facility planning is a complex subject and that the notices it published did mention the general topics under discussion. The Board also presumes that the County has made a good faith attempt to engage the public in the capital facilities dialogue. However, a notice that is *reasonably calculated* to reach the intended public must be measured against something more than the good faith intend of the local government publishing it. Rather, it must also be measured against whether it is *effective* in alerting the public to the key questions in play. It is this latter bar that the County's notices fail to clear. [*McVittie VI*, *1302*, FDO, at 9.]
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- The County's notice, while lengthy and exhaustively detailed in some ways, misses the mark by not clearly conveying to the average citizen that the County proposed to distinguish in its CFP between certain public facilities as "necessary to support development" and others that are not, and to characterize "parks" as one of the latter. Such changes are too fundamental and persuasive in their effect to be excused by the "errors in exact compliance" language of .140. [*McVittie VI*, *1302*, FDO, at 10.]

- To clarify, the Board did not intend that the degree of detail of the notice mimic the actual ordinance. The "reasonable notice" standard or .035 presumes that the County will exercise some judgment about what the essential features of the Ordinance are that require summarization in the notice. The example provided by the County would meet the reasonably calculated standard because it alerts the citizens to the nature of the change (a lowering of the standard) and the likely consequence (approval of more development that would otherwise be allowed). This would be more meaningful to the lay public than a technically precise phrase such as "the change in LOS will be from .076 V/C to .074 V/C." However, to the extent that the changes contemplated in LOS can be expressed with commonly used terminology (e.g. a change from LOS "C" to LOS "D" it would be appropriate to include such information in the notice. [*McVittie VI, 1302*, 10/11/01 Order, at 4.]
- [During the amendment review and discussion process several proposed amendments were withdrawn and several of these were subsequently revived.] The amendments at issue arose during the County's lengthy public process of developing Comprehensive Plan amendments and were debated for six-months by proponents and opponents. The Board concurs [with the County] that notice for the public hearing . . .was adequate ant the County complied with the requirements of RCW 36.70A.035. The County provided reasonable opportunity for public participation and the County complied with the requirements of RCW 36.70A.140. [*Forster Woods, 1308c*, FDO, at 12.]
- The County's Notice was reasonably calculated to reach the affected and interested individuals. Not only was the Notice extensive and widely distributed [but] it was also accurate. The County Notice accurately conveyed that the LOS objectives provided by WSDOT and recommended by PSRC were not standards. [*McVittie VIII, 1317*, FDO, at 19.]
- [Amendments to the Plan considered at the adoption hearing were substantially different from prior designations in the draft Plan.] The question, then, is whether the means by which they were introduced afforded the public "a reasonable opportunity to comment." [The Board reviewed the issue in light of its prior FDO in Andrus, 8330 and concluded that Edgewood did not provide the public with a reasonable opportunity to comment.] [*Lewis, 1320*, FDO, at 7-9.]
- The Board holds that a public participation program under RCW 36.70A.140 must provide sufficient time to enable meaningful public review and comment. The amount of time provided must be commensurate with the complexity and magnitude of the material to be considered. [*Lewis, 1320*, FDO, at 10.]

OFFICIAL NOTICE

- No entries

OFM POPULATION

- The County may allocate population and employment to cities. [*Edmonds, 3305c,* FDO, p. 27]
- Counties must use <u>only</u> OFM's twenty-year population projection in adopting UGAs. [*Rural Residents, 3310,* FDO, p. 33]
- Counties must base their UGAs on only these projections. Counties cannot add their own calculations to nor deduct from OFM's projections. These projections are both a ceiling and a floor. [*Rural Residents, 3310,* FDO, p. 34]
- A county must base its UGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and specify the methods and assumptions used to support the IUGA

designation. In essence, a county must "show its work" so that anyone reviewing a UGAs ordinance, can ascertain precisely how the county developed the regulations it adopted. [*Tacoma, 4301,* FDO, p. 19]

- Although a county has discretion in determining the physical size of a UGA, it does not have discretion in how much population it should plan for. OFM's twenty-year population projection is the exclusive number to use when designating UGAs. [*Tacoma, 4301,* FDO, p. 25]
- It is not the purpose of planning population projections either to stimulate or depress the rate of growth. Rather, it is their purpose to foretell the likely twenty-year population that will result in each county from external factors such as economic, political and demographic trends, which tend to operate largely at the national, state, or regional level. [*Kitsap/OFM, 4314,* FDO, p. 7]
- The Act does not require, and the Board does not expect, that the plans of a county and its cities, based on the most objective data, credible assumptions and analytical methods will guarantee a specific population result twenty years hence. [*Kitsap/OFM, 4314,* FDO, p. 9]
- The preponderance of the evidence standard listed in the last sentence of RCW 36.70A.320 does apply to OFM's population projections. [*Kitsap/OFM, 4314,* FDO, p. 12]
- The statutory presumption of validity discussed in the first sentence of RCW 36.70A.320 does not apply to OFM's population projections. [*Kitsap/OFM, 4314,* FDO, p. 12]
- No statute of limitations exists for petitioning for adjustments of OFM's population projections. [*Kitsap/OFM, 4314,* FDO, p. 12]
- A twenty-year population planning projection, whether adjusted or not, is best described as an externally derived and imposed requirement rather than a locally derived policy choice. It is a foretelling of the likely future, expressed in terms of population, rather than a statement of a preferred future. [*Kitsap/OFM, 4314,* FDO, p. 13]
- The Board adopts a two-part test to be used to decide whether to approve a petition to adjust a planning population projection pursuant to RCW 36.70A.280(1)(b). Only if the Board can answer the first question in the affirmative, and the second question in the negative, will the adjustment be approved: (1) when compared to the OFM projection, can the county show by a preponderance of the evidence that its proposed adjusted population projection is supported by more objective data, credible assumptions and analytical methods? and (2) will the proposed adjustment thwart the goals or other requirements of the Act? [*Kitsap/OFM, 4314,* FDO, p. 13]
- A county may, as an optional and supplementary feature of its comprehensive plan, include a population projection for any year subsequent to 2012, provided that such supplementary projection is unrelated to the process of designating UGAs. It may be wise to look beyond the GMA-mandated twenty-year time horizon, in view of the fact that major capital investments, i.e., sewage treatment plants and transportation facilities such as roads, airports and rail lines, have well beyond a twenty-year life and the results of certain public policy decisions will likewise endure beyond twenty years. However, the land supply and density decisions that must be made in designating UGAs must accommodate only the demands of twenty years of growth. [*Kitsap/OFM, 4314,* FDO, p. 23]
- Although OFM's population projections and those used in county-wide planning policies tend to have a 20-year time frame, the Act at a minimum requires only a six year capital facilities plan. [*WSDF I, 4316,* FDO, p. 49]
- Unless a specific policy in the CPPs prohibits a city from planning for a greater population capacity than the allocation granted it by the county, the city may plan for more than the allocation. [*WSDF I, 4316,* FDO, p. 55]
- The 1995 legislative amendments that require OFM to prepare a range rather than a single population projection did not change the Board's holding in *Rural Residents* that the OFM projections are both a floor and a ceiling; the amendments simply removed the ceiling. [*Vashon-Maury, 5308c,* FDO, p. 12]

- The fact that a UGA can accommodate more residents than OFM projects for the next 20 years does not automatically mean that the UGA is invalid. [*Gig Harbor, 5316c,* FDO, p. 41]
- A city must comply with its county's population allocation and cannot unilaterally modify the persons-per-household assumptions upon which it was based. [*Benaroya I, 5372c,* FDO, p. 17]
- The Act requires that the County's 2012 population target fall within the range forecast by OFM. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 38]
- Notwithstanding the CPPs, the County's selection of the 2012 population target is a discretionary choice of the County's, so long as it is within the OFM population range and encourages development in urban areas. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 38]
- Some very fundamental issues have been resolved by virtue of the UGA designation: (1) the land use will be urban; (2) the land use designations reflect population and employment allocations made by the County; and (3) urban services provided within the UGA should be primarily provided by cities. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 48]
- "Front-end loading" of population [in the CFP] is not a GMA violation. . . . Neither the GMA nor the Procedural Criteria requires or suggests that the OFM population be evenly distributed over the planning period. The County clearly has discretion to distribute the population over the planning horizon as it sees fit, so long as the urban growth is accommodated. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 75]
- [Although] the GMA does not designate a specific six-year period for CFE planning, it is illogical, and contrary to one of the bedrock purposes of the GMA – *planning* to manage *future* growth – to suggest that the CFE's six-year financing *plan* can be, in whole or in part, an historical report of capital facility financing for prior years. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 77]
- The "at least six-year plan" period [of RCW 36.70A.070(3)(d)] begins with the date of the adopted Plan. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 77]
- [T]he County reserved a portion of the twenty-year population projection and offset the UGA accordingly [as required by .350]. [*Bear Creek, 5803c*, 6/15/00 Order, at 16.]
- A petition alleging 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 can be filed at any time. WAC 242-02-220(3). This provision addresses challenges to OFM's adoption of population projections; it does not address a county's allocation of its OFM population within the county. [*Gain, 9319*, 1/28/00 Order, at 9.]

OPEN SPACE/GREENBELTS

- RCW 36.70A.110(2) applies only to counties; it does not impose that requirement [to *include* greenbelt and open space areas when it designates UGAs] on cities. [*AFT, 5356,* FDO, p. 17]
- The requirement to *identify* open space corridors imposed by RCW 36.70A.160 applies to both counties and cities. [*AFT, 5356,* FDO, p. 17]
- Open space is an inevitable byproduct of land being put to an agricultural use. However, this fact alone is insufficient grounds for a claim that agricultural designation by a local government requires development rights acquisition pursuant to RCW 36.70A.160. Only if a government restricts the use of designated agricultural lands solely to maintain or enhance the value of such lands as open space, must the City or County acquire a sufficient interest in the property. [*Benaroya I, 5372c,* FDO, p. 13]
- There are no specific GMA requirements that implement goals RCW 36.70A.020(8) and (9) – Natural Resource Industries and Open Space and Recreation. [*Tulalip, 6329,* FDO, p. 15]

- For recreation there is no statutory duty to adopt and apply regulations to provide and conserve active recreation sites and facilities. [RCW 36.70A.020(9), 150 and .160 does not create a similar recreation imperative.] [*Green Valley, 8308c,* FDO, p. 17]
- The location-specific and directive duty of RCW 36.70A.020(8), .060 and .170 to designate and conserve agricultural lands clearly trumps the non-directive, non-site specific guidance and inventory requirements for open space and recreation of .020(9), .150 and .160. [*Green Valley, 8308c,* FDO, p. 17]
- RCW 36.70A.160 requires Woodway to identify open space corridors within and between urban growth areas. The open space corridors identified must include lands useful for recreation, wildlife habitat, trails and connections of designated critical areas. [*LMI/Chevron, 8312,* FDO, p. 54]
- RCW 36.70A.160 does not require regulating to protect open space corridors, it does not provide that mere identification is protection of an open space corridor, nor does it provide an independent source of authority for regulating land use activities within an open space corridor. Any authorized land uses, or limitation, restriction, or prohibition of land uses that a jurisdiction might choose to employ within an identified open space corridor must be grounded in separate legal authority, not RCW 36.70A.160. [*LMI/Chevron, 8312,* FDO, p. 54]
- [In *Green Valley, 8308c*] the Board examined and rejected the argument that the discretion that the GMA affords to local governments to "balance the goals of the Act" somehow elevates recreational uses to an equal with agricultural uses. [*Grubb, 0304,* FDO, at 9.]
- [The County's Plan language says active recreation *should not* be located within APDs. Petitioners contend this language carries an unspoken but implied modifier - "unless" and ask the Board to direct the County to change it to *shall not* for fear that the County may revisit the notion of placing active recreation on agricultural lands. The Board declined.] The Board reads the Supreme Court's decision as clear an unequivocal – the County's development regulations [which regulate the use of land] shall not permit active recreation on designated resource lands with prime soils for agriculture. Attempts to carve out loopholes, under the aegis of RCW 36.70A.177, are flatly prohibited by the Supreme Court's decision, notwithstanding any reading that the County chooses to give to [the Plan policy]. [*Green Valley, 8308c*, 11/21/01 Order, at 10.]
- [The de-designation of the property to rural is consistent with the County's policies regarding rural character] because the property lies between and buffers the Forster Woods [residential] development and the adjacent Rattlesnake Mountain Scenic Recreational Area. [*Forster Woods, 1308c*, FDO, at 23.]

OVERLAP

- A necessary implication of the Act is that UGAs must be distinguishable among cities. This implied requirement arises from RCW 36.70A.110(2) which provides that "each city shall propose the location of an UGA," and the necessity for a county to know, for each portion of the lands covered by the county's comprehensive plan, which city's comprehensive plan must be addressed to meet the consistency requirements of RCW 36.70A.100 and the joint planning requirements of RCW 36.70A.210(3)(f). [*Tacoma, 4301,* FDO, pp. 12-13]
- Having CPPs that encourage cities to identify PAAs is a reasonable method to promote "contiguous and orderly development" and to prepare cities to provide services to this development. [*Renton, 7326,* FDO, p. 10]
- A jurisdiction which creates overlap or conflict with a CPP should not benefit from its disregard of the law. [*Renton, 7326,* FDO, p. 10]
- [The Board has jurisdiction to review actions of the legislative bodies of cities and counties within the central Puget Sound region. The Snohomish County Council has not acted. The challenged

action] has been taken by Snohomish County Tomorrow, (SCT) an informal planning body with no governmental authority. [SCT's adoption of a Metropolitan urban growth area (MUGA) review process is not within the Board's jurisdiction to review.] [*Shoreline, 0310*, 9/5/00 Order, at 3-4.]

- *See also*: **Interjurisdictional** [*Shoreline II, 1313*]

PARTIES

- No entries

PETITION FOR REVIEW - PFR

- When a petition for review alleges that a local jurisdiction failed to comply with a statute other than one named in RCW 36.70A.280(1), the Board does not have jurisdiction to make a decision on the issue of compliance. [*Gutschmidt, 2306,* FDO, p. 8]
- Petitioners must describe their standing in the PFR. Petitioners can make the necessary showing by: (1) including a narrative in the PFR itself; (2) attaching a declaration or affidavit to the PFR; or (3) incorporating by reference exhibits from the record below. [*Pilchuck II, 5347c,* 8/17/95 Order, p. 3]
- The Board has never held, nor does the Act state, that the triggering event or action that conveys standing to a person must also describe the total scope of issues on which a person may subsequently request review. According to the Board's holdings and the Act, the scope of the Board's review is defined by the "detailed statement of issues" that a petitioner is required to include in its request for review. [*Sky Valley, 5368c,* FDO, p. 23]
- Petitioners must specify within their petitions for review which method of standing allows them to proceed with a case before the Board. For instance, petitions for review relying upon APA standing must either allege that the petitioners are within the zone of interest of the GMA and that they have been injured by the local government's GMA action, or they must cite to the specific GMA standing provision under which they qualify (i.e., RCW 36.70A.280(2)'s language "qualified pursuant to RCW 34.05.530"). However, although the petition should also contain information that supports these allegations, it need not contain such evidence. Instead, if the petitioner's alleged standing is challenged, the petitioner will be given the opportunity to provide additional evidence in response. [*Hapsmith I, 5375c,* FDO, p. 16]
- [The Board may refer to the Civil Rules for guidance, but it is not bound by them.] The Board is not a court; its jurisdiction and authority is prescribed by the Legislature. The explicit statutory filing period for a petition is sixty days yet [petitioner] asks that the Board in effect, extend it. . . . To allow the addition of [or substitution of] a new petitioner at this time and allow this change to relate back to [the original filing date of the PFR], would substantially expand the jurisdictional limits the Legislature established for the Boards. This the Board cannot do. [*Montlake, 9302c*, 4/23/99 Order, at 6.]
- Petitioner can allege standing [in their PFR] by either citing to RCW 36.70A.280(2)(a),(b),(c) or (d); or by alleging facts clearly indicating the basis for their standing. [*WRECO, 8335,* FDO, at 4.]
- The GMA does not mandate, nor has the Board ever required this degree of specificity [indicating whether the alleged participation was oral or written] in the standing allegations in a PFR. [*WRECO, 8335,* FDO, at 5]
- While the Board clearly has authority to hear and determine *compliance* with the GMA, here we lack the circumstances to do so. Absent a properly framed legal issue, couched in a timely PFR, the Board has no means to reach Shoreline's questions. Lacking such a PFR, the Board cannot evaluate whether Shoreline's Plan (or Woodway's 1994 Plan, Snohomish County's Plan or the County's County-wide Planning Policies) comply with the goals and requirements of the Act; nor address the

Plan's validity or binding effect, if any, beyond its corporate limits. For these reasons, the lack of an appropriate PFR and an inappropriate question for a PDR, the Board declines to issue a declaratory ruling in this matter. [*Shoreline pdr, 0301pdr*, at 3.]

- [Filing a PFR prior to publication is not a premature and invalid filing. PFRs may be filed from the date of legislative action until sixty-days after publication.] [McVittie IV, 0306c, 4/25/00 Order, at 4-5.]
- [The petition for review as reflected in the prehearing order challenged Woodway's compliance with the GMA "when it designated (an area) as a UGA." The adoption of UGAs is solely a county duty and requirement under the Act, not a duty or requirement for cities. Notwithstanding Woodway's choice of GMA jargon [PAAs or UGAs], it has no duty or authority to adopt UGAs. [*Shoreline II, 1313*, 8/9/01 Order, at 5-6.]

PLAN – *SEE:* COMPREHENSIVE PLAN

PLATTED LANDS

- No entries

PRECEDENT

- The CPSGMHB's jurisdiction is limited to the four-county Central Puget Sound region by RCW 36.70A.250. Thus, the precedential impact of this Board's decisions is limited to King, Pierce, Snohomish and Kitsap counties. This is consistent with the regional diversity that is one of the hallmarks of the Growth Management Act. [*Kitsap/OFM, 4314,* FDO, p. 5]
- Although respondent city did not specifically raise a subject matter jurisdiction defense in this case, the Board is bound by its own precedent. The Board cannot determine in one case (i.e., *Bainbridge Island*) that it does not have jurisdiction over challenges to Chapter 82.02 RCW, and then ignore that decision in another case where the jurisdictional defense was not specifically raised. [*Slatten, 4328,* 2/24/95 Order, p. 2]
- A Board holding in a prior case does not impose in a subsequent case a duty separate from a GMA duty. [*Litowitz, 6305,* FDO, p. 9]

PRE-GMA

- A pre-existing neighborhood or community plan does not automatically become a part of the GMA required comprehensive plan. If desired, the jurisdiction must explicitly make it so by subsequent legislative action. [*Northgate, 3309,* 11/8/93 Order, p. 17]
- Prior to GMA, plans were voluntary and advisory and there was no requirement that plans be guided by state goals or be consistent with the plans of others. Under GMA, plans are now mandatory (RCW 36.70A.040) and directive. RCW 36.70A.100, .103 and .120. Plans must now be guided by planning goals (RCW 36.70A.020) and be mutually consistent. RCW 36.70A.110 and .210. [*Rural Residents, 3310,* FDO, p. 17]
- The GMA acknowledged that the "old way of doing things" (i.e., non-GMA planning and decision-making) threatened the quality of life enjoyed by Washington's residents, and that in order to meet this threat, new and important steps needed to be taken. RCW 36.70A.010 (FN1) describes a legislatively preferred future for our state, just as the subsequent sections of the Act mandate that

communities manage the problems of growth and change in a new way. [*Children's I, 5311,* FDO, p. 4]

- In the GMA, there are a number of specific references that address housing and residential land uses, some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population. [*Children's I, 5311,* FDO, p. 5]
- Growth is more than simply a quantitative increase in the numbers of people living in a community and the addition of "more of the same" to the built environment. Rather, it encompasses the related and important dynamic of change. Because the characteristics of our population have changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup, the GMA requires that housing policies and residential land use regulations must follow suit. This transformation in our society must be reflected in the plans and implementing measures adopted to manage growth and change. [*Children's I, 5311,* FDO, p. 9]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, p. 28]
- The Act intends local governments to plan meaningfully for the future – to change the way land use planning has traditionally been done. . . . The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. [*Bremerton, 5339c,* FDO, pp. 28-29]
- In specifically rejecting the sprawl model for Washington State, the GMA asserts the importance of taking a balanced, long-term view and promoting and serving the broad public interest. When the GMA's substantive requirements for county plans and FUGAs are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community, that, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, pp. 51-52]
- A county cannot base its future planning for new growth on its past development practices if those past practices, as here, do not comply with the GMA. What was once permissible is no longer so. The GMA was passed to stop repeating past mistakes in the future. [*Bremerton, 5339c,* FDO, p. 71]
- All of the mandatory requirements of a comprehensive plan must be fully complete at the time of plan adoption. (citations omitted) A comprehensive plan's capital facility element is inextricably linked to the land use element. The two must be consistent. The linkage between the two elements is what makes planning under the GMA truly comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning. [*Bremerton, 5339c,* FDO, p. 77]
- The lack of a fully completed capital facilities plan is more than a conceptual shortcoming – it is a fatal legal defect in a comprehensive plan. It alone is sufficient cause for the Board to find that the land use element and every other component of a plan violates the requirements of the Act. [*Bremerton, 5339c,* FDO, p. 77]

- For sizing UGAs, the density assumption used cannot be based upon historic patterns that perpetuated low density sprawl, and must reflect the planned for urban densities. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 16]
- The advent of the GMA changed land use law in this state in a profound way, changing the land use patterns that counties may permit in rural areas. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 25]
- Pre-existing parcelization cannot be undone; however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 25]
- All jurisdictions in the Central Puget Sound region, regardless of size or local circumstances, are obliged to meet the procedural and substantive requirements of the GMA. [*CCSV, 5344,* 6/14/95 Order, p. 5]
- The Board has jurisdiction over both adopted GMA enactments <u>and</u> failures to adopt specifically mandated GMA enactments. [*CCSV, 5344,* Motions, p. 6]
- Pre-GMA sub-area plans need not be adopted as GMA enactments in order to continue to have useful application in local land use decision-making. However, such pre-GMA sub-area plans may not be used to satisfy a GMA requirement unless they are specifically incorporated by reference and adopted for that purpose pursuant to the requirements of the Act; nor may they supersede any specific policy or regulatory directive contained in a GMA enactment. [*Sky Valley, 5368c,* FDO, p. 55]
- Although counties cannot be expected to undo past land use practices, they cannot adopt regulations that fail to place appropriate conditions on growth outside UGAs to limit it to achieve conformance with requirements of RCW 36.70A.110. [*PNA II, 5371,* FDO, p. 13]
- The requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas – while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." [*Benaroya I, 5372c,* FDO, p. 21]
- There is no GMA prohibition from a jurisdiction using its pre-GMA zoning designations a starting point or a benchmark in the development of its GMA-required comprehensive plan. [*Litowitz, 6305,* FDO, p. 13]
- RCW 36.70A.010 is not a substantive or even a procedural requirement of the Act, and it creates no specific local government duty for compliance apart from the subsequent goals and requirements of the Act. Neither RCW 36.70A.010 nor Board decisions in prior cases impose a duty on a jurisdiction to avoid the use of previous plans and regulations in preparing its GMA plan. [*Litowitz, 6305,* FDO, p. 14]
- The legislative action of the Council was a vote on two ordinances that amended the county-wide comprehensive plan and amended the county-wide development regulations. Adoption of these ordinances affected property owners throughout the County. Quasi-judicial actions do not include the legislative actions of adopting, amending or revising comprehensive plans. [*Buckles, 6322c,* FDO, p. 25]
- Before the GMA was enacted, a jurisdiction considering [numerous] changes to its comprehensive plan or zoning code might take separate and discrete actions. Because of the narrow focus of such separate and discrete actions, characterization of the jurisdiction's action as quasi-judicial or legislative may have been difficult. However, it is an easier task to characterize a jurisdiction's action under the GMA. The Act generally limits a jurisdiction's ability to amend its comprehensive plan to more than once a year. In these annual amendment cycles, a jurisdiction must consider all proposals concurrently so that the cumulative effect of the various proposals can be ascertained.

Consequently, the proposals that, prior to GMA, may have been considered on a case-by-case basis, through separate actions by the jurisdiction must now be considered as a single bundle of proposals. Such consideration precludes a jurisdiction from functioning in a quasi-judicial manner, it amounts to broad policy making action by the jurisdiction. The pros and cons of individual proposals are weighed and considered in light of the cumulative effects of all proposals, and action on all proposals is combined into one vote. [*Buckles, 6322c,* FDO, pp. 25-26]

- In the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the GMA. [*WSDF IV, 6333,* FDO, p. 11]
- Covington [a newly incorporated city] is a jurisdiction within a county (King) that is required to plan under the GMA. The Board understands the City's argument that, because it incorporated in 1997, its deadline to adopt a GMA plan is not until August of 2001. An unspoken, but not implausible implication of Covington's argument is that, until that deadline, it is free to adopt plans and regulations, adopt capital budgets and issue permits that are completely contrary to the guidance and requirements of the Growth Management Act. The Board disagrees that the legislature contemplated such an outcome. The Board concludes that Covington has erroneously interpreted its duty under the Act to adopt plans and development regulations. The August 2001 date upon which the City relies is simply the date by which the City <u>must</u> have adopted a GMA Plan and development regulations. It is not license to adopt plans and regulations totally detached from the goals and requirements of the Act. [*WHIP, 0312*, 11/6/00 Order, at 6.]
- [Covington's reliance upon *Happy Valley, 3308c* and *Northgate, 3309*, is misplaced. The plans in these cases, were adopted, pursuant to pre-existing, non-GMA related planning.] When Covington was incorporated in 1997, the "pre-existing" planning authority could only have been GMA. Not only did Covington have King County's GMA documents [which it adopted upon incorporation] at its disposal, it also had several nearby, or comparative, municipalities to assist them in the "existing" world of GMA compliance. There is but one way to adopt land use plans in the Central Puget Sound region [pursuant to the GMA]. [*WHIP, 0312*, 11/6/00 Order, at 7.]
- Given that Edgewood's interim plan was a Pre-GMA document, its basis for evoking a coordination and consistency challenge against Sumner per .100 is without merit. [*Edgewood, 1318*, FDO, at 9.]

PREHEARING ORDER - PHO

- No entries

PRESUMPTION OF VALIDITY

- Formal actions taken by the legislative bodies of cities and counties to amend their comprehensive plans and/or development regulations in response to a Board remand order are entitled to the presumption of validity contained in RCW 36.70A.320(1). [*Vashon-Maury, 5308c,* 5/24/96 FOC, p. 8]
- The Board acknowledges that at a compliance hearing, the burden of proof has shifted to the respondent city or county to show that it has procedurally complied with the Board's order. Accordingly, this Board routinely requires a city or county whose GMA enactment was not in compliance with the Act to first indicate what actions it took to bring the enactment into compliance. Petitioners and intervenors are then given the opportunity to comment on the city or county's statement of compliance. Finally, the city or county is given the opportunity to reply to any responses that were filed. This shifting in the burden of proof does not, however, alter the presumption of validity to which the action of local government is entitled. [*Vashon-Maury, 5308c,* 5/24/96 FOC, p. 8]

- RCW 36.70A.320 requires the Board to presume that a comprehensive plan and development regulations are valid. It does not condition this presumption on the record containing an explicit statement by the local government that it considered the Act's planning goals. Instead, substantive compliance with those goals remains a requirement of the Act that all jurisdictions are presumed to have met unless and until a petitioner proves otherwise. [*Alberg, 5341c,* FDO, p. 13]
- A jurisdiction's action to achieve compliance with a remand is presumed valid upon adoption. [*Hapsmith I, 5375c,* 2/13/97 Order, p. 4]
- Pursuant to RCW 36.70A.320(1), a local government's actions [in adopting or amending comprehensive plans or development regulations] are presumed valid upon adoption. [*Burien, 8310,* FDO, p. 4]
- [The Board denied the motion because, absent the FDO, the County's action is presumed valid and Posten would be in the same position as after the FDO was issued. The Order did not address the timeliness issue nor the fact that numerous other parties besides Posten were affected by the FDO.] [*Alpine, 8332c,* 3/24/99 Order, p. 2]

PROCEDURAL CRITERIA

- Procedural criteria are recommendations; they are advisory only and do not impose a GMA duty or requirement on any local jurisdiction. [*Children's I, 5311,* 5/17/95 Order, p. 12]
- There is no GMA imposed duty that a local government comply with the standards set forth in Chapter 365-195 WAC. [*Cole, 6309c,* FDO, p. 22]
- While the Board is required to consider the criteria and standards adopted by [the Office of Community Development, formerly CTED], in prior cases, this Board has determined that the Procedural Criteria of Chapter 365-195 WAC are advisory only and that the GMA imposes no duty that local governments comply with the *recommendations* set forth in those guidelines. [*Master Builders Association, 1316*, FDO, at 7.]

PROPERTY RIGHTS

- The property rights goal, while an important cornerstone of the GMA, is not supreme among the 13 goals. The Act requires local governments to balance all 13 goals and to consider the process recommendations of the Attorney General's Office. [*Vashon-Maury, 5308c,* FDO, p. 89]
- While the preamble to RCW 36.70A.020 clarifies that the goals are not listed in any order of priority, a close examination of the 13 goals reveals that there are some important distinctions that can be drawn among them. Unlike the other ten, three planning goals [(1) urban growth; (2) reduce sprawl; and (8) natural resource industries] operate as organizing principles at the county-wide level. Thus, they have not only a procedural dimension, but they also direct a tangible and measurable outcome. In contrast, Goal 6, regarding property rights, and Goal 11, regarding public participation, do not specifically or implicitly describe the physical form or configuration of the region that should evolve. Rather, they address how local government is obligated to undertake the comprehensive planning and implementing actions that will shape the region (i.e., without taking private property and with enhanced public participation). [*Bremerton, 5339c,* FDO, p. 25]
- The Board rejects the argument that Goal 6 (Property Rights) must be interpreted to mean that the imposition of zoning which limits the uses on a property gives rise to the County's duty to compensate for the uses which are not allowed. [*Alberg, 5341c,* FDO, p. 45]
- A county or city need not affirmatively demonstrate that it has utilized the Attorney General's Process to meet the requirement of RCW 36.70A.370. [*Alberg, 5341c,* FDO, p. 47]

- Open space is an inevitable byproduct of land being put to an agricultural use. However, this fact alone is insufficient grounds for a claim that agricultural designation by a local government requires development rights acquisition pursuant to RCW 36. 70A.160. Only if a government restricts the use of designated agricultural lands solely to maintain or enhance the value of such lands as open space, must the City or County acquire a sufficient interest in the property. [*Benaroya I, 5372c,* FDO, p. 13]
- In order for petitioners to prevail in this type of challenge, they must prove that the action taken by a city or county is both arbitrary and discriminatory. Showing either an arbitrary or discriminatory action is insufficient to overcome the presumption of validity that actions of cities and counties are granted by the Act. [*Shulman, 5376,* FDO, p. 12]
- A private party is not granted the right to seek judicial relief for alleged noncompliance with RCW 36.70A.370 (Protection of private property). The Board does not have jurisdiction to determine whether there has been a violation of RCW 36.70A.370. [*Shulman, 5376,* FDO, p. 14]
- It is well-settled law that cities and counties have constitutional police powers that include the authority to regulate land use. [*Rabie, 8305c,* FDO, p. 11]
- A map symbol of notation on an informational map in the comprehensive plan does not affect any individual owner's property rights. Likewise, the removal of such notation does not affect any individual owner's property rights. [*Green Valley, 8308c,* 4/17/98 Order, pp. 2-4]
- Petitioners cite to no authority for its ["necessary linkage" assertion that the Board must determine the constitutionality of a action to determine compliance with Goal 6.] [The Board agrees with the City] the Board does not have to 'necessarily' determine the constitutionality of a city's action when reviewing a challenge under Goal 6. Under Goal 6, the requirement to find both arbitrary and discriminatory action is not the same as finding a violation of a constitutional provision. [The Board has jurisdiction to review an action for whether it complies with Goal 6, but not for whether it is constitutional.] [*HBA II, 1319*, 10/18/01 Order, at 2-3.]

PUBLICATION

- It is notice of publication of the Plan, not the date a SEPA document is prepared nor the date a hearing examiner issues a decision on an administrative appeal of that SEPA document(s), that triggers the sixty-day statute of limitations for bringing appeals to the Board. [*PNA, 5359,* FDO, p. 8]
- If the appeal period has lapsed, the organization cannot substitute an individual as petitioner in a petition for review. [*Banigan, 6316c,* 7/29/96 Order, p. 11]
- The Board does not have the authority to review petitions for review filed more than sixty days after publication of the jurisdiction's challenged action. The Board cannot create exceptions that expand this authority. [*Torrance, 6338,* 3/31/97 Order, p. 4]
- [The Board may refer to the Civil Rules for guidance, but it is not bound by them.] The Board is not a court; its jurisdiction and authority is prescribed by the Legislature. The explicit statutory filing period for a petition is sixty days yet [petitioner] asks that the Board in effect, extend it. . . . To allow the addition of [or substitution of] a new petitioner at this time and allow this change to relate back to [the original filing date of the PFR], would substantially expand the jurisdictional limits the Legislature established for the Boards. This the Board cannot do. [*Montlake, 9302c*, 4/23/99 Order, at 6.]
- [RCW 36.70A.290(2)] is unambiguous; if a petition is not filed within sixty days after publication, the Board is without authority to review the petition. [*Gain, 9319*, 1/28/00 Order, at 3.]
- [A failure to act challenge may be brought at any time after the deadline has passed. WAC 242-02-220(5).] If a city or county failed to take any action relating to a GMA deadline, a petitioner may

challenge the failure of that city or county to act by that deadline. On the other hand, if a city or county has taken some action relating to a GMA deadline, and published notice of that action, a challenge to that action must be filed within sixty days after publication. [*Gain, 9319*, 1/28/00 Order, at 4.]

- [Filing a PFR prior to publication is not a premature and invalid filing. PFRs may be filed from the date of legislative action until sixty-days after publication.] [*McVittie IV, 0306c*, 4/25/00 Order, at 4-5.]
- RCW 36.70A.290(2) limits the time within which a jurisdiction is exposed to a potential GMA challenge. However, it is the jurisdiction's legislative action of adopting or amending its Plan, development regulations or taking other GMA actions to implement its plan that "triggers" the possibility of challenge or opens the window for petitioning the Board. To close the window, RCW 36.70A.290(2) requires a jurisdiction to publish notice of its GMA action. Publication puts the public on notice that the opportunity to appeal will close in sixty-days. RCW 36.70A.290(2) enables a jurisdiction to establish a date certain, after which its GMA actions will not be subject to challenge. [*McVittie IV, 0306c*, 4/25/00 Order, at 4.]
- If notice of the GMA action is not published, there is no closure of the appeal period and no protection provided by RCW 36.70A.290(2). However, once published, the protection provided by RCW 36.70A.290(2) is available. That protection is a limitation on the appeal period. [*McVittie IV, 0306c*, 4/25/00 Order, at 4-5.]
- [The jurisdiction's] legislative action starts the clock for filing appeals to the Board. Publication by the [jurisdiction] of notice of its legislative action establishes the date the clock stops. [*McVittie IV, 0306c*, 4/25/00 Order, at 5.]
- [Withdrawal of publication, when there is no change in the legislative action, does not close the appeal period or remove it; the appeal period remains open until re-publication establishes the end of the sixty-day period.] [*McVittie IV, 0306c*, 4/25/00 Order, at 5.]

PUBLIC FACILITIES AND SERVICES – *SEE ALSO:* CFE

- For purposes of conducting the inventory required by RCW 36.70A.070(3)(a), "public facilities" as defined at RCW 36.70A.030(13) are synonymous with "capital facilities owned by public entities." [*WSDF I, 4316,* FDO, p. 45]
- The phrase "existing needs" from RCW 36.70A.070(3)(e) refers not only to the construction of new or expanded capital facilities that can be currently identified as needed, but also the maintenance of existing capital facilities. . . . Determining the appropriate level of maintenance for capital facilities falls within the local government's discretion. [*WSDF I, 4316,* FDO, p. 47]
- Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place "at the time development is available for occupancy and use" and second, adequacy is measured by "locally established minimum standards." [*Gig Harbor, 5316c,* FDO, p. 13]
- Regarding RCW 36.70A.070(3)(a-b), counties and cities must include an inventory and needs analysis of existing publicly-owned capital facilities, regardless of ownership, in their CFE. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 39]
- Regarding RCW 36.70A(3)(c-d), if a county does not own or operate a facility, it should not be required to include the locational or financing information in its CFE since these decisions are beyond its authority. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 39]
- When a jurisdiction that owns and/or operates a specified capital facility cooperates with the county and discloses information pertaining to location or financing (RCW 36.70A.070(3)(c-d), the county may include such information in its CFE. Indeed, aside from being sound growth management and

public policy, it may be a necessary prerequisite to access a new funding source – e.g., impact fees. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 39]

- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 41]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p.42]
- The Board interprets RCW 36.70A.070(3)(c) as if the phrase "owned or operated by the city or county" existed at the end [i.e., the capital facilities element shall contain the proposed locations and capacities of expanded or new capital facilities "owned or operated by the city or county"]. [*Sky Valley, 5368c,* FDO, p. 66]
- The Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. [*Hensley III, 6331,* FDO, p. 9]
- The public facilities required to be inventoried in a capital facilities element includes: parks and recreation facilities, domestic water supply systems, storm and sanitary sewer systems, and schools. [*WSDF IV, 6333,* FDO, p. 22]
- To determine whether existing capital facilities are adequate to meet the future needs of the projected population and employment growth, the Board looks to the language of the plan itself, its appendices, departmental letters, departmental functional plans and the capital improvement program. [*WSDF IV, 6333,* FDO, p. 24]
- The Act does not impose a duty or requirement upon local governments to eliminate or substantially reduce capital facilities maintenance backlogs, nor to guarantee the funding or financing of capital facilities maintenance projects. [*WSDF IV, 6333,* FDO, p. 31]
- The Act requires local jurisdictions to plan for and accommodate new growth – that projected by OFM and allocated by the County. There is no provision in the GMA to suggest that the Act allows a jurisdiction not to accommodate new growth because it has a capital facilities maintenance backlog or has not guaranteed funding to remove any maintenance backlog, or it is postponing indefinitely its duty to accommodate new growth until its maintenance backlog is removed or reduced. To do so would fly in the face of one of the cornerstones of the GMA. [*WSDF IV, 6333,* FDO, p. 32]

PUBLIC PARTICIPATION

- The GMA establishes public participation requirements separate from the SEPA. [*Tracy, 2301,* FDO, p. 11]
- The GMA's enhanced public participation requirements, as specified in RCW 36.70A.140, do not apply to the process for adopting development regulations pursuant to RCW 36.70A.060. [*Tracy, 2301,* FDO, p. 13]
- The [advisory body] may exercise authority delegated to it to perform certain tasks such as establishing specific population and employment goals, but its work remains only recommendations

unless and until the [legislative body] adopts them by amending the [jurisdiction's] CPPs [or other GMA documents]. The [advisory body's] actions alone have no binding effect. . . . The actions of the [legislative body] are controlling – the Board will review only the [legislative body's] actions for compliance with the GMA and not those of [an advisory body]. [*Snoqualmie, 2304,* FDO, p. 26]

- The "public participation" that is one of the hallmarks of the GMA, does not equate to "citizens decide." The ultimate decision-makers in land use matters under the GMA are the elected officials of cities and counties, not neighborhood activists or neighborhood organizations. [*Poulsbo, 2309c,* FDO, p. 36]
- "Take into account public input" means "consider public input." "Consider public input" means "to think seriously about" or "to bear in mind" public input; "consider public input" does not mean "agree with" or "obey" public input. [*Twin Falls, 3303c,* FDO, p. 77]
- Unlike GMA, the SEPA statute does not require "enhanced public participation"; absent legislative direction, the Board will not create an enhanced citizen participation requirement for SEPA. [*Rural Residents, 3310,* 2/16/94 Order, p. 12]
- Talking to local government staff or, in the case of elected officials, talking to them off the record (i.e., not at a public hearing or meeting), as opposed to communicating in writing to either or talking to elected officials on the record at a public hearing or meeting, does not constitute appearance. [*FOTL I, 4303,* 4/22/94 Order, p. 9]
- For purposes of enabling a representative organization or association such as FOTL to obtain standing, a member of the organization must appear and indicate that he or she represents that organization. Simply being a member of an organization and being in attendance at a public hearing without indicating that one represents the organization will not suffice to confer standing upon the organization. [*FOTL I, 4303,* 4/22/94 Order, p. 9]
- Cities and counties are required to undertake "early and continuous" public participation in the development and amendment of comprehensive plans and development regulations, and that while the requirement to consider public comment does not require elected officials to agree with or obey such comment, local government does have a duty to be clear and consistent in informing the public about the authority, scope and purpose of proposed planning enactments. [*WSDF I, 4316,* FDO, p. 71]
- For purposes of satisfying the requirements of RCW 36.70A.140, written comments carry just as much weight as oral comments. [*WSDF I, 4316,* FDO, pp. 75-76]
- If a local legislative body wishes to make changes to the draft of a proposed comprehensive plan that, to that point, has ostensibly satisfied the public participation requirements of RCW 36.70A.020(11) and .140, it has the discretion to do so. However, if the changes the legislative body wishes to make are substantially different from the recommendations received, its discretion is contingent on two conditions: (1) that there is sufficient information and/or analysis in the record to support the Council's new choice (e.g., SEPA disclosure was given, or the requisite financial analysis was done to meet the Act's concurrency requirements); and (2) that the public has had a reasonable opportunity to review and comment upon the contemplated change. If the first condition does not exist, additional work is first required to support the Council's subsequent exercise of discretion. If the second condition does not exist, effective public notice and reasonable time to review and comment upon the substantial changes must be afforded to the public in order to meet the Act's requirements for "early and continuous" public participation pursuant to RCW 36.70A.140. [*WSDF I, 4316,* FDO, pp. 76-77]
- In RCW 36.70A.140, the Act envisions a "response" to public comments and "open discussion" to occur within a variety of forums including vision workshops, open houses, focus groups, opinion surveys, charettes, committee meetings and public hearings. It does not entitle citizens to a face-to-

face confrontation and verbal exchange with elected officials about the Plan. [*Robison, 4325c,* FDO, p. 30]

- When a change [amendment] is substantially different from the prior designation, the public needs a reasonable opportunity to comment. [*Vashon-Maury, 5308c,* FDO, p. 58]
- While the preamble to RCW 36.70A.020 clarifies that the goals are not listed in any order of priority, a close examination of the 13 goals reveals that there are some important distinctions that can be drawn among them. Unlike the other ten, three planning goals [(1) urban growth; (2) reduce sprawl; and (8) natural resource industries] operate as organizing principles at the county-wide level. Thus, they have not only a procedural dimension, but they also direct a tangible and measurable outcome. In contrast, Goal 6, regarding property rights, and Goal 11, regarding public participation, do not specifically or implicitly describe the physical form or configuration of the region that should evolve. Rather, they address how local government is obligated to undertake the comprehensive planning and implementing actions that will shape the region (i.e., without taking private property and with enhanced public participation). [*Bremerton, 5339c,* FDO, p. 25]
- In order to raise issues before the Board, it is not necessary for participants and petitioners to have addressed those specific issues when they appeared before the county or city during the public participation process regarding the adoption of the comprehensive plan. [*Bremerton/Port Gamble, 5339/7324c,* 4/22/97 Order, p. 6]
- To have meaningful public participation and avoid "blind-siding" local governments, members of the public must explain their land use planning concerns to local government in sufficient detail to give the government the opportunity to consider these concerns as it weighs and balances its priorities and options under the GMA. [*Bremerton/Alpine 5339c/8332c,* 10/7/98 Order, p. 8]
- If the amendments to a draft that were included in the final Plan were within the range of options discussed in the EIS, considered by the Planning Commission, and/or raised at the Council's public hearings, and were presented with sufficient detail and analysis at a adequately publicized hearing, then the public has had an opportunity to review and comment. [*Sky Valley, 5368c,* FDO, p. 31]
- Citizen disappointment with a local government's choice does not equate to a violation of the process by the government if citizens have had a reasonable opportunity to comment. [*Sky Valley, 5368c,* FDO, p. 36]
- The Act does not permit a "neighborhood veto", whether *de jure* or *de facto*, and the policies challenged cannot achieve such an outcome. The ultimate decision-makers in land use matters under the GMA are the elected officials of cities and counties, not neighborhood activists or neighborhood organizations. [*Benaroya I, 5372c,* FDO, p. 22]
- In cases where a GMA enactment is remanded but not declared invalid, the following test will be applied to determine how much public participation was appropriate under the circumstances. The Board will apply the following factors to the facts:
    1) the general public's expectation of the public participation process that would apply on remand, based on: a) the locally established public participation program and ; b) actual past practice in conformance with that program;
    2) the amount of time given to a jurisdiction to comply;
    3) the scope of the remand;
    4) the nature of the corrective action that must be taken to bring an enactment into compliance; and
    5) the level of discretion afforded a jurisdiction in taking actions to bring an enactment into compliance. [*WSDF III, 5373,* FDO, p. 15]
- Where a petition alleges noncompliance with both the public participation goal and the specific public participation requirement of the Act, the Board will scrutinize only the latter. [*Litowitz, 6305,* FDO, p. 7]

- Consider public input does not mean agree with or obey public input. [*Buckles, 6322c,* FDO, p. 22]
- RCW 36.70A.130(2) requires local governments to establish a public participation process and procedure for plan amendments. The Board's jurisdiction extends only to determining compliance with that requirement, not to reviewing the circumstances, situations or events that may precipitate a proposed amendment. [*Wallock I, 6325,* FDO, p. 10]
- The public participation requirements of RCW 36.70A.140 do not apply to plan amendments adopted in response to emergencies. [*Wallock I, 6325,* FDO, p. 12]
- Although the purchase of [certain parcels or property] was linked to subsequent Plan and development regulation amendments, the purchase itself is not a GMA action and thus not subject to RCW 36.70A.140. (*See also* Footnote 4, [T]he Board recognizes that local government must undertake many steps, internal communications and activities prior to the development of a proposed amendment to a GMA plan or regulation, at least some of which actions are not GMA actions. The Board has not previously articulated, and does not here articulate, a standard for when such local government steps, communications and activities arise to the status of a "proposed GMA amendment" that would be subject to the requirements of RCW 36.70A.140 or other provisions of the Act. [*Green Valley, 8308c,* FDO, p. 10]
- The Act requires early and continuous public participation on proposed amendments of GMA plans and development regulations; the Act does not require public participation prior to the development and consideration of a proposal to amend the plan or development regulations. [*Green Valley, 8308c,* FDO, p. 10]
- The negotiation and execution of an Interlocal Agreement, that is a non-GMA action, is not subject to the public participation requirements of the GMA over which the Board has jurisdiction. [*Burien, 8310,* FDO, p. 9]
- The ultimate decision-makers in land use matters are the local elected legislative officials. As part of the decision-making process, an opportunity for public comment must be provided; however, the decsionmakers are not required to agree with or obey public comments. Nonetheless, they have a responsibility to educate and inform the public [including surrounding jurisdictions] about their pending actions, [including] ILAs and their implication for amendments to plans and development regulations. [*Burien, 8310,* FDO, p. 10]
- Citizen or surrounding community disappointment in local government decisions is not a violation of the public participation requirements of the GMA, so long as a reasonable opportunity to comment has been provided. [*Burien, 8310,* FDO, p. 11]
- [For purposes of analyzing challenges to RCW 36.70A.020(6),] a clearly erroneous action is not necessarily an arbitrary action. "Arbitrary" means to be determined by whim or caprice. Washington's courts have further defined "arbitrary or capricious" action to mean willful and unreasoning action taken without regard to or consideration of the facts and circumstances surrounding the action. Citing cases. [*LMI/Chevron, 8312,* FDO, p. 31]
- [T]he most appropriate definition of "respond" within the context of RCW 36.70A.140 is "to react in response." Applying this definition does not mean that jurisdictions must react in response to all citizens questions or comments; applying this definition means only that citizens comments and questions must be considered and, where appropriate, jurisdictions must take action in response to those comments and questions. [*Bremerton/Alpine, 5339c/8332c,* FDO, p.24]
- "Response" may, but need not, take the form of an action, either a modification to the proposal under consideration, or an oral or written response to the [citizen] comment or question. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 24]
- [Limiting the length of oral testimony and limiting the subject of oral testimony allowed at public hearings is fair and reasonable, so long as written testimony is accepted throughout the jurisdiction's process.] [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 26]

- Public participation requirements regarding changes made by the legislative body are contained in RCW 36.70A.035. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 27]
- As long as the amendments adopted by the legislative body are within the scope of alternatives available for public comment, additional opportunity for public notice and comment is not required. RCW 36.70A.035(2)(b)(ii). [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 27]
- [As stated in the July 30, 1997 FDO] what the Board found noncompliant with the public participation requirements of the GMA was the erroneous notice regarding the [property]. The Board never addressed the substance of the redesignation of the property. However, since the notice was in error, the public participation process consequently failed to comply with the GMA, and that amendment adopted pursuant to the defective notice was found invalid. . [*Kelly, 7312c,* 3/31/99 Order, p. 5]
- The GMA "[e]ncourage[s] the involvement of citizens in the planning process," RCW 36.70A.020(11). To achieve this goal, the Act requires cities and counties to have a public participation program that provides for "early and continuous public participation in the development and amendment of comprehensive land use plans" and for 'broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice." RCW 36.70A.140; *see also*, RCW 36.70A.070(preamble) and RCW 36.70A.130(2)(a). It is axiomatic that without effective notice, the public does not have a reasonable opportunity to participate; therefore, the Act requires local jurisdictions' notice procedures to be "reasonably calculated to provide notice to property owners and other affected and interested individuals, ..." RCW 36.70A.035(1). [*Andrus, 8330,* FDO, pp. 6-7]
- When a change is proposed to an amendment to a comprehensive plan, the public must have an opportunity to review and comment on the proposed change before the legislative body votes on the proposed change. RCW 36.70A.035(2)(a), *but see* RCW 36.70A.035(2)(b)(i-iii) for exceptions. [*Andrus, 8330,* FDO, p. 7]
- [Given the facts of this case,] [a]t best the public was notified of the City's consideration of revisions to the [plan] . . . as early as six days and as late as one day prior to the April 16 public meeting. A citizen receiving all forms of notice published by the City would reasonably conclude that no comments would be accepted after the April 17 [published written comment] deadline. Although the April 16 meeting was continued, no explicit revision of the April 17 deadline for written comments was issued by the City, and the record does not show that the City indicated by any means that it would accept written comments during the time between the announced April 17 deadline and the May 21, 1998 adoption [date]. [*Andrus, 8330,* FDO, p. 9]
- Review of the reasonableness of the opportunity provided for review and comment is measured against all the proposed revisions to the [plan]; it is not measured against only the proposed revisions to [one area or provision]. [*Andrus, 8330,* FDO, p. 10, *footnote 5*]
- Under the facts of this case, the Board concludes that the opportunity provided for public review and comment on the proposed revisions to the [plan] was not reasonable. [*Andrus, 8330,* FDO, p. 10]
- [RCW 36.70A.470] recognizes a distinction between specific project review [subject to RCW 36.70B] and comprehensive land use planning. The action challenged. . . was a legislative action involving comprehensive land use planning; the action was not a project review pursuant to Chapter 36.70B RCW. [*Andrus, 8330,* FDO, p.10]
- Petitioners make no attempt to explain how .470 precludes any citizen, including one with a pending development proposal, from commenting on proposed land use planning legislation; neither do petitioners explain how .470 prohibits the City from considering comments from all citizens when it considers a proposed legislative action. [*Andrus, 8330,* FDO, p. 11]
- The Legislature's scheme for broad and continuous public participation during the development and adoption of plans and regulations is distinct from the Legislature's scheme for appellate review of

GMA actions. Any person may participate in the local government's GMA plan development and adoption process. Persons who participated may file a PFR, but only under the Legislature's statutorily prescribed conditions set out at RCW 36.70A.280(2) and .290(2). [*Montlake, 9302c*, 4/23/99 Order, at 4.]

- Public notice is at the core of public participation. Effective notice is a necessary and essential ingredient in the public participation process. [*WRECO, 8335,* FDO, at 6.]
- Notice is reasonably related to public participation. Raising concerns about a local government's public participation process is sufficient to challenge the jurisdiction's notice procedures before this Board. [*WRECO, 8335,* FDO, at 6.]
- Local governments have discretion in designing and establishing their required RCW 36.70A.130 plan amendment procedures, including setting different submittal and review timeframes. However, the Act does require [the governing body] to consider all Plan amendments concurrently. It is during this final deliberative phase that the decision-makers must have all proposals before them, at the same time, in order to ascertain the cumulative effects of the various proposals and make their decisions. [*WRECO, 8335,* FDO, at 8-9.]
- The City's notice provisions [mailed to adjacent property owners] fall woefully short of the required "broad dissemination" and "notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses and organizations [of RCW 36.70A.140 and .035(1)]." [*WRECO, 8335,* FDO, at 13.]
- The City's decision to enable the Planning Agency to hold its public hearings on plan amendments without requiring a public hearing before the City Council is not clearly erroneous. [*WRECO, 8335,* FDO, at 14.]
- [S]ome cities have delegated to a Planning Commission (or planning agency) the responsibility for conducting public hearings on amendments to plans and regulatory codes. Others have chosen to have the legislative bodies themselves conduct such hearings, either in addition to or in place of those held by the planning commission. While neither might constitute a clear error of law under the GMA, taking either approach to extremes could have serious negative consequences. For example, consistently refusing to <u>ever</u> have a public hearing on plan amendments could undermine the public's faith in the accessibility and accountability of its elected officials. Conversely, <u>always</u> conducting duplicative hearings by the legislative body on actions already heard by the planning commission could erode the credibility and effectiveness of an important advisory body. [*WRECO, 8335,* FDO, footnote 7, at 13.]
- Petitioner's arguments regarding public participation amount to a disagreement with the City over the policy choices made by the City Council. Petitioner's dissatisfaction and disappointment with the decision made by the City does not mean that the public participation process used by the City for amending its Plan failed to comply with the requirements of RCW 36.70A.140. [*Montlake, 9302c,* FDO, at 9.]
- [Where] the subject matter of a [planning commission's] public hearing includes the possible redesignation of property; "consideration" of a revision to a land use designation includes the possibility of not revising the designation. [*Screen II, 9312,* FDO, at 11.]
- [Confusion on behalf of the public regarding the distinction between project specific approvals and plan redesignations does not necessarily result in a GMA public participation failure.] [*Screen II, 9312,* FDO, at 12.]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of

the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]

- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]
- If reassessment action [per .070(3) or (6)] is triggered, the local government's response must culminate in public action in the public forum. [pursuant to RCW 36.70A.020(11), .035, .130 and .140] This includes, but is not limited to, disclosure of the need for a reassessment, disclosure of options under consideration, and public participation prior to local legislative action. (Footnote omitted.) [*McVittie, 9316c, FDO, at* 27.]
- [Show your work applies to sizing UGAs, it has not been required to demonstrate compliance with the mandatory elements requirements of the Act.] [*MacAngus, 9317,* FDO, at 11.]
- The UGA-sizing requirements of RCW 36.70A.110 rely to a great extent on mathematical calculations (allocation of population growth, assumptions regarding numbers of persons per dwelling, land needs based on planned densities and market factors, etc.) Without a clear showing in the record of the mathematical calculations and assumptions, interested persons have no criteria against which to judge a county's UGA delineation. Such is not the case here. [Petitioner] disagrees with the land use designation of its property and wants the County to show or explain why it did not change the [agricultural] designation. This is not required since the record clearly shows the basis for the County's [designation. The county relied upon Soil Conservation Service Prime Farmland List for the County.] [*MacAngus, 9317,* FDO, at 11.]
- [Petitioner wants the County to explain why it disagreed with them. While the Act requires a jurisdiction to respond to public testimony, it] does not require the kind of response demanded by Petitioner. The County action of maintaining the [agricultural] designation as it relates to Petitioner's property is ample "response" that speaks for itself. [*MacAngus, 9317,* FDO, at 12.]
- These provisions [RCW 36.70A.035] require the opportunity for the public to review and comment on proposed amendments and changes to those proposed amendments. However, an additional opportunity for public review and comment is not required if the proposed change is within the scope of the alternatives available for public comment. RCW 36.70A.035(2)(b)(ii). In other words, if the public had the opportunity to review and comment on the changes to the proposed amendments, then the County is not required to provide an additional opportunity for public participation. There is no GMA requirement that the County must have prepared a document for public inspection specifically proposing all elements of the amendments ultimately adopted by the County; it is enough that the changes to the County-proposed amendments were within the scope of alternatives available for public comment. [*Burrow, 9318,* FDO, at 10.]
- The State Court of Appeals for Division One recently clarified the Legislature's intended meaning of the word "matter" in [RCW 36.70A.280(2)(b)]. The Court stated: "We conclude that [the Legislature] intended the word 'matter' to refer to a subject or topic of concern or controversy." (Citation omitted.) [Also, to determine whether a petitioner has participation standing, the Court affirmed the CPSGMHB reasonable relationship test adopted in *Alpine, 8332c*, 10/7/98 Order, at 8.] [*Ramey Remand, 9302*, 12/15/00 Order, at 3.]
- Off-the-record and informal conversations [and telephone conversations] with advisory board members and staff do not constitute 'meaningful' public participation with the local government

decision-makers since these concerns [raised in conversations] are not part of the decision record. [*Ramey Remand, 9302*, 12/15/00 Order, at 9-10.]

- The Act mandates that the public must have an opportunity to be heard and comment before an "11th hour" change [that is not within the exceptions of RCW 36.70A.035(2)(b)] is adopted as part of comprehensive plan. [*Radabaugh, 0302,* FDO, at 16.]
- [O]nce a shortfall is established and a reassessment precipitated, the GMA's public participation requirements come into play. [Conversely, if a shortfall is not established, and reassessment is unnecessary, public participation is not required.] [*McVittie IV*, *0306c*, at 23.]
- [Petitioner challenged the lack of GMA public participation in adoption of the challenged ordinances. The City's response was that it was under no statutory duty to do so, because adoption of these ordinances were not GMA actions; the ordinances were intended to pre-date the City's GMA Plan [2001 deadline]. Yet the City ignored the fact that in 1997 it adopted portions of King County's GMA Plan and regulations as they related to the newly incorporated city. The City never claimed to have complied with the public participation requirements of the GMA. The Board found noncompliance and entered a determination of invalidity.] [*WHIP, 0312*, 11/6/00 Order, at 8.]
- [Publication of the City Council Agenda, with the notation "Revision to Critical Areas Ordinance," without describing the nature of the proposed changes is insufficient notice.] It would be difficult for a potentially interested member of the public at large to ascertain what the pending ordinance was proposing. [*Homebuilders, 0314,* FDO, at 10-11.]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5]
- It is contrary to the spirit and substance of .140 for local government to provide effective notice of a proposed GMA action to only those property owners whom it deems are "interested" by dint of having made some prior comment or their membership in a neighborhood association. Significantly, the ineffectiveness of the County's mailed notice would not have been fatal to the County's .140 compliance if the County had also employed another form effective form of notice (e.g. publishing in a newspaper or posting the site with an accurate notice, including sufficient locational and topical information). [*Buckles*, *6322c*, 4/19/01 Order, at 10.]
- General Discussion of the GMA's public participation goals and requirements. [*McVittie V, 0316*, FDO, at 16-21.]
- [The County asserted that its Charter did not require public participation for emergency ordinances, and that its Charter supercedes special and general laws of the state.] A PFR has been filed with the Board challenging the County's compliance with the public participation requirements of the Act. This Board is obliged to reach a determination on this question. If that determination yields a conflict with the County's Charter, it is not for this Board to determine whether a general law of the state, such as the GMA, or the County Charter prevails. The Courts are the appropriate forums for addressing that question. [*McVittie V, 0316*, FDO, at 12-13.]
- [The public participation goal RCW 36.70A.020(11)] provides an umbrella under which all the GMA public participation requirements fit. It articulates a premium on involving citizens in the entire GMA planning process; and specifically emphasizes the importance of public participation for comprehensive plans and development regulations. [*McVittie V, 0316*, FDO, at 16.]
- RCW 36.70A.140 is the primary public participation requirement section of the Act. It directs local jurisdictions to provide early and continuous public participation in the development and amendment of comprehensive land use plans and implementing development regulations. Public participation is

part of the development process preceding adoption, continues after adoption through the development of amendments, and again precedes adoption of amendments. This early and continuous [*enhanced*] public participation process applies to comprehensive plans and development regulations, as well as, *both* the initial development *and* adoption and amendment of such plans and development regulations. [*McVittie V, 0316*, FDO, at 17.]

- [RCW 36.70A.035] clarifies and emphasizes that effective notice is an essential and necessary part of the public participation requirements of the Act. It also applies to the entire GMA planning process [Note: This section did not apply to actions taken prior to July 27, 1997.] Effective notice precedes adoption. [*McVittie V, 0316*, FDO, at 17.]
- [RCW 36.70A.070(preamble)] emphasizes the importance of public participation in adopting and amending comprehensive plans. A plan cannot be adopted or amended without providing the opportunity for public participation. This section specifically emphasizes the application of .140 for adopting and amending comprehensive plans. This section of the Act does not apply to development regulations. [*McVittie V, 0316*, FDO, at 18.]
- [RCW 36.70A.130] outlines the procedures for consideration and adoption of proposed plan amendments. This process *amplifies* and *refines* the broader .140 public participation process that applies to the adoption and amendment of plans and development regulations. Providing the opportunity for public participation is a condition precedent to adoption or amendment of a plan. Here, a special process for plan amendments is required. The limitation on considering proposed plan amendments "no more frequently than once every year," or annual concurrent review provision, necessitates the establishment of deadlines and schedules for filing and review of such amendments so they can be considered concurrently. Although this section provides exceptions to the annual concurrent plan review limitation, none of these exceptions are excused from public participation requirements. [*McVittie V, 0316*, FDO, at 19.]
- [RCW 36.70A.390] does not apply to plan amendments. It does not apply to permanent changes in development regulations or controls. It applies only to the adoption or amendment of temporary controls or development regulations, those measures that are adopted for an interim period – generally six-months. This section of the Act is unique in that it permits a deviation from the norm of providing the opportunity for public participation prior to action; here a jurisdiction can act or adopt first, then provide the opportunity for public participation after adoption. However, this post-adoption opportunity for public participation must occur within 60-days of adoption. [*McVittie V, 0316*, FDO, at 20.]
- [Plan] Amendments precipitated by emergencies are clearly governed by .130(2)(b), not .140 or even .130(2)(a). Within the confines of the goals and requirements of the Act, local governments have discretion to determine what "appropriate public participation" to provide before they take action on emergency plan amendments. The word "after" [in .130(2)(b)'s phrase "after appropriate public participation] evidences the clear and explicit Legislative intent to prohibit adoption of a plan amendment until "after" (behind in place or order, subsequent in time, late in time than, following) (citation omitted) appropriate public participation takes place. [*McVittie V, 0316*, FDO, at 23-24.]
- [A jurisdiction] has discretion to define "appropriate," but deciding to provide "zero" opportunity for public participation is not "appropriate" and an abuse of that discretion and contrary to the Act. [Providing no notice or opportunity for public participation before the adoption of the emergency plan amendment emasculates the GMA. [It is irreconcilable with the public participation requirements and renders the GMA's public participation provisions absolutely meaningless. [*McVittie V, 0316*, FDO, at 24.]
- A jurisdiction must provide notice and the opportunity for the public to participate prior to adopting any GMA plan or amendment to that plan. [*McVittie V, 0316*, FDO, at 25.]
- [RCW 36.70A.035] is unambiguous; it is not limited. It applies to *all* development regulation amendments, permanent, temporary or interim. [*McVittie V, 0316*, FDO, at 25.]

- Ignoring public participation may be permissible for [a jurisdiction] when it is *not* [adopting or] amending its GMA Plan, development regulations or other GMA required document; but it is impermissible and contrary to the spirit of the Act when GMA Plans regulations or other GMA documents are affected. [*McVittie V, 0316*, FDO, at 26.]
- A jurisdiction must provide notice and the opportunity for the public to participate prior to adopting any GMA development regulation or any amendment to that development regulation, unless an action is being taken pursuant to RCW 36.70A.390, in which case, notice and the opportunity for public participation may be provided after the GMA action is taken. [*McVittie V, 0316*, FDO, at 27.]
- The GMA requires a jurisdiction to provide notice and the opportunity for public participation, either prior to, or after, any GMA action – the adoption or amendment (permanent, temporary or interim) of comprehensive plans or implementing regulations. The GMA is clear; a jurisdiction must **always** provide the *opportunity* for public participation, including notice. [*McVittie V, 0316*, FDO, at 28.]
- A jurisdiction may not bar GMA public participation standing by not providing notice or the opportunity to participate at any time, either prior to, or after, adoption of an amendment to a GMA Plan, development regulation or other related GMA document. If no notice or opportunity for public participation is provided for a GMA action, a petitioner may assert GMA participation standing pursuant to RCW 36.70A.280(2)(b). [*McVittie V, 0316*, FDO, at 29.]

• GMA REQUIREMENTS FOR PUBLIC PARTICIPATION ON AMENDMENTS

RCW 36.70A.	.020(11)	.140	.035	.070	.130(2)	.390
Amendment to Plans						
Permanent/non-emergency	**X**[72]	X[73]	**X**	**X**	**X**	
Permanent/emergency	**X**	X	**X**		**X**b[74]	
Interim/non-emergency	**X**	X	**X**	**X**	**X**	
Interim/emergency	**X**	X	**X**		**X**b	
Amendment to Regulations						
Permanent/non-emergency	**X**	**X**	**X**			
Permanent/emergency	**X**	**X**	**X**			
Interim/non-emergency	**X**		**X**			**X**
Interim/emergency	**X**		**X**			**X**

The Table above is based on the following conclusions drawn by the Board in its analysis of the public participation requirements of the Act:

- The public participation **goal** provisions (RCW 36.70A.020(11) apply to the adoption of **all** plan and development regulation amendments regardless of duration or urgency.
- The public **notice** requirements (RCW 36.70A.035) apply to the adoption of **all** plan and development regulation amendments regardless of duration or urgency.
- Some degree of **public participation** (RCW 26.70A.130(2)(a) or (b)) is required **prior to** adoption of **any** plan amendment regardless of duration or urgency.
- Public participation (RCW 36.70A.140) is required **prior to** the adoption or amendment of **any** permanent development regulation.

[72] "**X**" means, the captioned public participation requirement applies.
[73] "X" means, generally .140 applies, but as amplified and refined by the jurisdiction's .130 annual review process.
[74] "**X**b" means, the provisions of .130(2)(**b**), "after appropriate public participation" applies.

- The **only** instance where **post adoption** public participation is allowed is when temporary or interim development regulations (RCW 36.70A.390) are adopted or amended.

[*McVittie V, 0316*, FDO, at 37 – Appendix B]

- If a jurisdiction chooses to impose a moratorium pursuant to .390, it must adopt findings of fact justifying its action and hold a public hearing on the moratorium. The public hearing may occur either at the adoption hearing or no later than sixty-days thereafter. If the jurisdiction did not adopt findings of fact supporting its action at adoption, or prior to the public hearing, it must do so immediately after the [within 60-day] public hearing. [*SHAG, 1314*, 8/3/01 Order, at 6.]
- [Failure to adopt additional findings of fact at a subsequent public hearing (within 60-days) after adopting findings of fact at the initial adoption of the moratorium is not a failure to comply with the requirements of RCW 36.70A.390. [*SHAG, 1314*, 8/3/01 Order, at 8.]
- [Amendments to the Plan considered at the adoption hearing were substantially different from prior designations in the draft Plan.] The question, then, is whether the means by which they were introduced afforded the public "a reasonable opportunity to comment." [The Board reviewed the issue in light of its prior FDO in Andrus, 8330 and concluded that Edgewood did not provide the public with a reasonable opportunity to comment.] [*Lewis, 1320*, FDO, at 7-9.]
- The Board holds that a public participation program under RCW 36.70A.140 must provide sufficient time to enable meaningful public review and comment. The amount of time provided must be commensurate with the complexity and magnitude of the material to be considered. [*Lewis, 1320*, FDO, at 10.]

QUASI-JUDICIAL

- The phrase "judicial review" in RCW 43.21C.075(4) refers to both review by courts and by this quasi-judicial growth planning hearings board. Thus, the doctrine of exhaustion of administrative remedies applies to petitions before the Board. [*Rural Residents, 3310,* Motions, p. 6]
- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, p. 60]
- General discussion and recap of the quasi-judicial nature of the Board, jurisdictional issues and the APA. [*Sky Valley, 5368c,* FDO, p. 6-20]
- The Board is authorized to review a jurisdiction's legislative action that is alleged not to comply with the Act. The Board will not review quasi-judicial actions of local jurisdictions. Simply because a person has requested that a designation be changed does not mean that the resulting action taken by the legislative body was quasi-judicial. [*Buckles, 6322c,* FDO, p. 24]
- The legislative action of the Council was a vote on two ordinances that amended the county-wide comprehensive plan and amended the county-wide development regulations. Adoption of these ordinances affected property owners throughout the County. Quasi-judicial actions do not include the legislative actions of adopting, amending or revising comprehensive plans. [*Buckles, 6322c,* FDO, p. 25]
- Before the GMA was enacted, a jurisdiction considering [numerous] changes to its comprehensive plan or zoning code might take separate and discrete actions. Because of the narrow focus of such separate and discrete actions, characterization of the jurisdiction's action as quasi-judicial or legislative may have been difficult. However, it is an easier task to characterize a jurisdiction's

action under the GMA. The Act generally limits a jurisdiction's ability to amend its comprehensive plan to more than once a year. In these annual amendment cycles, a jurisdiction must consider all proposals concurrently so that the cumulative effect of the various proposals can be ascertained. Consequently, the proposals that, prior to GMA, may have been considered on a case-by-case basis, through separate actions by the jurisdiction must now be considered as a single bundle of proposals. Such consideration precludes a jurisdiction from functioning in a quasi-judicial manner, it amounts to broad policy making action by the jurisdiction. The pros and cons of individual proposals are weighed and considered in light of the cumulative effects of all proposals, and action on all proposals is combined into one vote. [*Buckles, 6322c,* FDO, pp. 25-26]

RE-AFFIRM OR RE-EVALUATE – SEE: BUILDABLE LANDS

- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317,* FDO, at 7-8.]
- The adoption of [a subarea plan] is a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to [an unchanged plan designation.] [A jurisdiction's decision to maintain an existing designation does not reopen the appeal period of that unchanged designation.] [*MacAngus, 9317,* FDO, at 8.]
- In adopting the Tulalip Subarea Plan, the County did not change, re-adopt, or re-affirm the [agricultural] designation; it merely maintained the existing designation. Additionally, the County's action was not taken in response to a statutory requirement, such as RCW 36.70A.215, which may require the County to change, re-adopt, or re-affirm its comprehensive plan or development regulations. [*MacAngus, 9317,* FDO, at 8-9.]
- Although both RCW 36.70A.130 and .215 require counties and cities to systematically review their comprehensive plans, and to take action to amend them when appropriate, neither provision requires that amendment actually occur. Significantly, neither .130 nor .215 make explicit mention of reviewing or amending agricultural resource lands designations. More significantly, neither .170 nor .060 describe a process or criteria to amend or "de-designate" agricultural lands. Does the lack of an explicit GMA mention, much less mandate, to review and amend prior agricultural lands designations mean that ag lands may never be "de-designated"? [The Board answers this question in the negative.] [*Grubb, 0304,* FDO, at 10-11.]
- [Petitioner tried to distinguish this case from *AFT, 9304*, and *Cole, 6309c*, arguing that it is more like *Port of Seattle II, 7314*. In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Port wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]
- [The buildable lands review requirement of RCW 36.70A.215 requires certain counties "to adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation

program." The first review and evaluation must be completed no later than September 1, 2002. A challenge to compliance with the requirements of .215 is only timely after a jurisdiction adopts its .215 CPP or after September 1, 2002.] [*Kitsap Citizens, 0319c*, FDO, at 11-12.]

- Its review of challenges to initial UGA designations caused this Board to articulate a "show your work" requirement that compelled Counties to demonstrate the analytical rigor and accounting that supported the sizing and designations of UGAs. The "show your work" provision for sizing and designating UGAs has been applied to the four Puget Sound counties within this Board's geographic jurisdiction. Thus far, this Board has limited the application of the "show your work" requirement to the sizing of UGAs. (Citations omitted.) [*Master Builders Association, 1316*, FDO, at 8.]
- Based upon the arguments presented, the Board construes the crux of the dispute in this [issue] to be a question of: whether the County had a GMA duty to update its [UGA capacity analysis] (a new showing of work) when it adopted the amendments to the PRD regulations. In reviewing the question, the Board agrees with the County and affirms its prior holding in *Kelly* [*7312*, FDO] that the GMA creates no duty to continuously update UGA land capacity analysis every time development regulations are amended. [*Master Builders Association, 1316*, FDO, at 10.]
- The Board notes that RCW 36.70A.130(3) was amended in 1997 to provide: "The review required by this subsection *may be combined* with the review and evaluation required by RCW 36.70A.215." (Emphasis supplied.) RCW 36.70A.215 further supports the principle that *periodic* review and evaluation for UGA sizing and designation, *not continuous updates*. [*Master Builders Association, 1316*, FDO, at 10.]
- The GMA provides protections against the scenario painted by Petitioners [Once UGAs are set, densities can be increased or decreased without demonstrating consistency with the GMA until the five-year review are due. Thus yielding a five-year period where no rules are in effect.] If UGAs are altered and challenged, which is not the case here, this Board requires an accounting to support the alteration. (Citation omitted.) Additionally, the Act itself provides specific requirements that development regulations, and amendments thereto, be consistent and implement the Plan, including the UGAs. (Citations omitted.) Thus, any changes, *at any time*, to development regulations that increase or decrease densities within a UGA are required to be "consistent with and implement the Plan." Interested persons or groups would be free to challenge such amendments to development regulations as they occurred, within the GMA appeal period. . . .Absent an alteration to a UGA boundary, the GMA specifically requires periodic review and evaluation for UGAs (Citations omitted.) [*Master Builders Association, 1316*, FDO, at 12.]
- [The Board's conclusion that only periodic reviews, not continuous update, are required by the GMA] does not insulate the County from a UGA challenge based upon whether development regulations implement the Plan and are consistent with the Plan and Goals of the Act. [*Master Builders Association, 1316*, FDO, at 13.]

RECONSIDERATION

- A Board Order on Dispositive Motions is a final decision of the Board subject to reconsideration. [*Hanson, 8315c,* 10/15/98 Order, p. 2]
- [On reconsideration, the Board considered Petitioners' response brief, but affirmed its decision to dismiss the PFRs alleging the County failed to adopt the amendments proposed by Petitioners.] [*Tacoma, 9323c*, 3/27/00 Order, at 1-2.]

RECORD

- When this Board reviews supplemental evidence, it will only use that additional evidence to assist the Board in determining whether the underlying legislative action complies with the GMA; it will not substitute its judgment for that of a local legislative body based on supplemental evidence that, by its definition was not before the local legislative authority, to ascertain how the legislative action is applied to a particular parcel of property. The Board's use of supplemental evidence "as applied" evidence will be used merely to assist the Board in determining whether the legislative action taken by the local jurisdiction complies with the GMA. [*Twin Falls, 3303c,* FDO, p. 55]
- A jurisdiction is required to include as part of the record of its development of its [critical areas regulations or amendments] the scientific information that was developed by the jurisdiction and presented to the jurisdiction by others during its development of its regulations. The City included the best available science when it developed its amendments to its critical areas regulations, and did not violate RCW 36.70A.172. [*HEAL, 6312,* FDO, p. 21]
- Each GMA case is a discrete entity and the entire record before the Board in a prior case does not automatically become part of the record before the Board in a subsequent case. A party wishing to have the Board consider an exhibit from the record in a prior case must file a motion to supplement the record pursuant to WAC 242-02-540 and attach a copy of the proposed exhibit to the motion. [*COPAC, 6313c,* FDO, p. 5]
- [A jurisdiction's Index to the Record need not be organized topically.] [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 25]
- [Filing motions (dispositive or to supplement the record) are untimely if filed after the deadline established in the prehearing order, unless written permission is granted by the Board.] [*WRECO, 8335,* FDO, at 2-3]
- The record supports the County's determination that the [property] is forested in character. Petitioners have not shown that the County's portrayal of the property as "forested in character" was clearly erroneous. [*Screen II, 9312,* FDO, at 8.]
- Copies of the exhibits proposed for supplementing the record must accompany the motion to supplement. [*Ramey Remand, 9302*, 11/11/00 Order, at 5, 8-9.]
- [There is] a burden on the respondent jurisdiction to compile and Index that documents the proceeding undertaken by the jurisdiction. The Index should contain information obtained by the jurisdiction in its proceedings, that it used in reaching the decision that is the subject of the GMA challenge before the Board. . . . The Board does not direct the contents of the jurisdiction's Index, it accepts it as a good faith effort by the jurisdiction to document the record of the proceedings and the materials used by the jurisdiction in taking to the GMA action. Amendments to the Index, by the jurisdiction, or motions to supplement the record are the means to finalize the record for Board review. [*Ramey Remand, 9302*, 11/11/00 Order, at 9.]
- The purpose of an exhibit list is to identify those documents listed in the Index that the party intends to use as an exhibit. (Citation omitted.) It may not contain exhibits that are not listed in the Index or exhibits that have not been admitted as supplemental evidence by the Board. [*Ramey Remand, 9302*, 11/11/00 Order, at11.]
- If in Petitioner's prehearing opening brief, Petitioner attaches as an exhibit and relies upon the recently admitted exhibits [declarations] to support argument in the opening brief; then the City may include rebuttal declarations along with its prehearing response brief and move the Board to supplement the record with such new City declarations. [*Ramey Remand, 9302*, 12/15/00 Order, at 2.]
- Off-the-record and informal conversations [and telephone conversations] with advisory board members and staff do not constitute 'meaningful' public participation with the local government

decision-makers since these concerns [raised in conversations] are not part of the decision record. [*Ramey Remand, 9302*, 12/15/00 Order, at 9-10.]

- The only supporting evidence for a 1000' buffer that Tacoma cites seems to be statements based on perception, unsubstantiated fear or community displeasure. [DOC showed that there was no evidence indicating that work release facilities increase criminal activity, or that recidivism tends to occur within 1000' of a facility itself. DOC provided substantial evidence to the City regarding its work release program, success rates, number of [local] offenders, escapes from work release facilities and crimes related to escapes.] [*DOC/DSHS, 0307,* FDO, at 10.]

REGIONAL PLANNING

- Allocating growth (and its constituent parts, population and employment) is a regional policy exercise rather than a local regulatory exercise. [*Edmonds, 3305c,* FDO, p. 31]
- The Act's requirements for consistency and coordination oblige cities and counties to balance local interests with regional and state interests when implementing the GMA. [*Rural Residents, 3310,* FDO, p. 14]
- Counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act. [*Tacoma, 4301,* FDO, p. 10]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, p. 9]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, p. 28]
- The Act intends local governments to plan meaningfully for the future – to change the way land use planning has traditionally been done. . . . The regional physical form required by the Act is a

compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. [*Bremerton, 5339c,* FDO, pp. 28-29]

- The GMA's focus on regional diversity contemplates that the solutions that are necessary and appropriate for the Central Puget Sound region may not pertain to other parts of Washington. [*Bremerton, 5339c,* FDO, p. 29]
- In specifically rejecting the sprawl model for Washington State, the GMA asserts the importance of taking a balanced, long-term view and promoting and serving the broad public interest. When the GMA's substantive requirements for county plans and FUGAs are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community, that, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, pp. 51-52]
- The certification process of Chapter 47.80 RCW [Regional Transportation Planning Organizations] is completely separate from the GMA. The Board has jurisdiction under the GMA to determine compliance of a comprehensive plan's transportation element with the requirements of the Act. [*Sky Valley, 5368c,* FDO, p. 129]
- The Act requires the comprehensive plans of counties and cities to include a process for siting EPFs, and prohibits provisions in local plans or development regulations that would render impossible or impractical the siting of EPFs. [*Hapsmith I, 5375c,* 5/10/96 Order, p. 7 *See also* 4/24/98 Order.]
- The Act requires interjurisdictional planning for public facilities that are of a county or statewide nature, through the development of CPPs. [*Hapsmith I, 5375c,* 5/10/96 Order, p. 8]
- It is not inappropriate for a process for siting EPFs to require that policies (not sites), pertaining to the regional or state EPF, be included within a state or regional plan. [*Hapsmith I, 5375c,* 5/10/96 Order, p. 8.] *See also* 4/24/98 Order.
- It is not inappropriate for a process for siting EPFs to require that a financing strategy for mitigation use (including but not limited to) non-local sources. [*Hapsmith I, 5375c,* 5/10/96 Order, p. 8.] *See also* 4/24/98 Order.
- [T]he regional decision regarding STIA [an EPF] triggered Des Moines' duty to review its Plan for preclusive policies and amend its Plan to eliminate the preclusive effect of any of its policies. [*Port of Seattle, 7314,* 5/26/98 Order, p. 1]
- In light of the facts presently before the Board, Sound Transit's challenge under RCW 36.70A.200 fails for two reasons: (1) no regional decision has yet been made selecting the alignment of light-rail through Tukwila and (2) no amended plan policy of zoning regulation expressly requires the City to preclude any of the light-rail alignments presently being considered by Sound Transit. [*Sound Transit, 9303,* FDO, at 6]
- Cities are not regional decision-making bodies under the GMA and thus do not make decisions regarding system location or design of regional essential public facilities; nevertheless, the Act does contemplate a collaborative role for cities in making and implementing regional decisions. Before a regional decision is made, a city may attempt to influence that choice by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan. However, after the regional decision is made, the city then has a duty to accommodate the essential public facility, and the exercise of its land use powers may only impose reasonable conditions and mitigations that will not effectively preclude the essential public facility by rendering it impracticable. [*Sound Transit, 9303,* FDO, at 6-7]
- Sound Transit is the authority vested with the responsibility to make routing and system design decisions for regional light-rail service. [Cities have a duty not to preclude the light-rail alignment or system design selected by Sound Transit.] [*Sound Transit, 9303,* FDO, at 7.]

- Until a regional decision is made, the City may lobby Sound Transit to adopt the City's favored alignment and, to the extent that its comprehensive plan expresses the City's aspiration for its future development, Tukwila may express its preferences in its plan. However, once that regional decision is made, the City has a duty not to preclude the light-rail alignment and system design selected by Sound Transit. [*Sound Transit, 9303,* FDO, at 7-8.]
- Although possibly helpful in interpreting other GMA provisions, RCW 36.70A.420 does not impose GMA requirements subject to Board review. RCW 36.70A.420 does provide context for the application of RCW 36.70A.430. [This GMA requirement is imposed upon counties not cities.] [*Sound Transit, 9303,* FDO, at 12.]
- [Judged against these criteria and factors, the record shows that] Redmond's conclusion that [most of the] properties [in the Northern Sammamish Valley] no longer have long-term commercial significance is reasonable and supportable. Even if lands have prime soils, and have been historically farmed, it does not follow that they must remain designated as agricultural resource lands if a significant physical change has occurred to destroy the long-term viability of *those parcels* as agricultural land. Likewise, the fact that [certain parcels] are surrounded by incompatible residential uses and [are] severed from connection with a larger pattern of agricultural land makes them also untenable long-term as commercial agriculture. [These parcels no longer meet the definition of "long-term commercial significance."] [*Grubb, 0304,* FDO, *at* 13.]
- The [two] properties [within the city-limits that are referred to as] in the "Northern Sammamish Valley" are, in fact, the *southerly portion* of the much larger lands of the Sammamish River Valley. Thus, when Redmond argues that 80% of the "Northern Sammamish Valley" [within the city-limits] is irrevocably committed to non-agricultural uses, it is actually talking only about the relatively small piece of a much bigger picture – a picture that is overwhelmingly agricultural. [*Grubb, 0304,* FDO, at 13.]
- A city cannot . . . reject the siting of an essential public facility on the grounds that other jurisdictions have not taken an equitable share of such facilities. (Citation omitted.) [Jurisdictions may not rely upon their own independent interpretations of "fair share" as the basis for EPF siting decisions.] The Board disagrees with Tacoma's [concession and] assertion that future changes to EPF siting based upon "fair share" may only be accomplished by the Legislature. [Through its CPPs, a county and the cities within that county, in conjunction with relevant state agencies,] could conceivably establish a process or procedure for the equitable distribution of EPFs within the County and among the cities within the County, absent involvement of the Legislature. [*DOC/DSHS, 0307,* FDO, at 12.]
- [Petitioner tried to distinguish this case from *AFT, 9304*, and *Cole, 6309c*, arguing that it is more like *Port of Seattle II, 7314*. In Port of Seattle, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, and essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. (Citation omitted.) The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Poet wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. [In this case, there was no regional decision supporting the expansion of Harvey Airfield. The County was under no duty to adopt the amendments proposed by Petitioner.] [*Harvey Airfield, 0308*, 7/13/00 Order, at 2.]
- [The Board has jurisdiction to review actions of the legislative bodies of cities and counties within the central Puget Sound region. The Snohomish County Council has not acted. The challenged action] has been taken by Snohomish County Tomorrow, (SCT) an informal planning body with no governmental authority. [SCT's adoption of a Metropolitan urban growth area (MUGA) review process is not within the Board's jurisdiction to review.] [*Shoreline, 0310*, 9/5/00 Order, at 3-4.]

REMAND BY BOARD – *SEE:* TABLES [DISPOSITION OF CASES]

REMAND BY COURT – *SEE:* TABLES [CASES BY COUNTY AND CITY]

RETROACTIVE

- This Board has addressed the application of the 1997 amendment to the standard of review in several prior cases. All of these prior cases shared a common procedural posture: except for the issuance of the Board's final order, all events, including all briefing and oral argument, had occurred prior to the effective date of the amended standard of review (citations omitted). The Board's review and deliberation of whether the local government was in compliance with the GMA had already commenced prior to the effective date of the amended standard of review. Unlike these prior cases, the briefing of the substantive issues now on remand from the Supreme Court, the hearing on the merits, and the Board's review and deliberation have not yet begun. [*Bear Creek,* 5308c, 1/24/00 Order, at 3.]
- ESB6094 provided that most of the Legislature's 1997 GMA amendments "are prospective in effect and shall not effect the validity of actions taken or decisions made before the effective date of this section." 1997 Wash. Laws ch. 429 § 53 (emphasis added). The amendment to the standard of review clearly affects "action taken and decisions made" by the Board. There is nothing in RCW 36.70A.320(3), the codification of the amended standard of review that speaks to actions or decisions of the local governments. Consequently, the Board's deliberation and review in this case, where briefing, oral arguments, and the issuance of the Board's order will occur after the effective date of the 1997 amendment, the Board is obligated to apply the Legislature's amended standard of review – clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. [*Bear Creek,* 5308c, 1/24/00 Order, at 3.]
- [Except for the Board's standard of review] the Board will apply the provisions of the GMA that were in effect at the time the County took the challenged actions. [*Bear Creek,* 5308c, 1/24/00 Order, at 4.]

RULES OF EVIDENCE

- WAC 242-02-650 does not require the strict application of the Washington Rules of Evidence in hearings before the Board. [*Northgate, 3309,* 11/8/93 Order, p. 8]

RURAL CENTERS

- The Board can conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such a rural development proposal could constitute "compact rural development" rather than "urban growth." [*KCRP, 4305,* FDO, p. 15]
- RCW 36.70A.030(14)'s definition of urban growth focuses on the intensity of the use of land, specifically naming such physical improvements as "buildings, structures and impermeable surfaces." Thus, the net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted, or if it crosses the threshold into impermissible urban growth. [*Vashon-Maury, 5308c,* FDO, p. 67]

- Proposed uses that meet the definition of urban growth will be prohibited in rural areas unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility. [*Vashon-Maury, 5308c,* FDO, p. 69]
- "Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource base activities." *Vision 2020 – 1995 Update, at 27.* This description of rural land accurately describes the intensity and character of new residential activity and development that the Act permits in rural areas. [*Bremerton, 5339c,* FDO, p. 51]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, pp. 44-48]
- Synopsis of seven CPSGMHB County Cases dealing with the Rural Element . [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, pp. 21-25]
- The Board has recognized reasonable and necessary exceptions to the prohibition of urban growth in the rural areas. The Board has even construed the Act to permit compact rural development, under certain circumstances and if sufficiently limited in scope and character. The essence of the Board's decisions – that rural areas are to be very different from urban areas, while recognizing reasonable and necessary exceptions and flexibility for compact rural development, is reflected in ESB 6094, amending RCW 36.70A.070(5). [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 24]
- ESB 6094's amendments to RCW 36.70A.070(5) explicitly clarifies: the legislature's continuing intent to protect rural areas from low-density sprawl; and that while some accommodation may be made for infill of certain "existing areas" of more intense development in the rural area, that infill has to be "minimized" and "contained" within a "logical outer boundary." *With* such limitations and conditions, more intense rural development in areas where more intense development already exists could constitute permissible compact urban development; *without* such limitations and conditions more intense rural development would constitute an impermissible pattern of urban growth in the rural area. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 24]
- The GMA distinguishes shorelines as one area where higher density is allowed in a rural setting. The Act states that "the rural element *may* allow for limited areas of more intensive development [such as shoreline development]." RCW 36.70A.070(5)(d). However, the Act does not require that the rural element allow areas of more intensive development. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 71]

RURAL DENSITIES

- The Board can conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such a rural development proposal could constitute "compact rural development" rather than "urban growth." [*KCRP, 4305,* FDO, p. 15]
- For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider "such lands" to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity. [*Vashon-Maury, 5308c,* FDO, p. 68]

- Any residential pattern of 10 acre lots, or larger, is rural. [*Vashon-Maury, 5308c,* FDO, p. 79]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, p. 79]
- A density of one unit per ten acres is a rural density. [*Bremerton, 5339c,* FDO, p. 21]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, pp. 44-48]
- A pattern of 1- and 2.5-acre lots meets the Act's definition of urban growth. . . . However, a pattern of 1- or 2.5-acre lots is not an appropriate urban density either. . . . An urban land use pattern of 1- or 2.5-acre parcels would constitute sprawl; such a development pattern within the rural area would also constitute sprawl. [*Bremerton, 5339c,* FDO, p. 49]
- "Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource base activities." *Vision 2020 – 1995 Update, at 27.* This description of rural land accurately describes the intensity and character of new residential activity and development that the Act permits in rural areas. [*Bremerton, 5339c,* FDO, p. 51]
- Synopsis of seven CPSGMHB County Cases dealing with the Rural Element. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, pp. 21-25]
- One of the GMA's most fundamental principles is that urban areas are to be characterized by urban growth and rural areas are not. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 23]
- The Board has recognized reasonable and necessary exceptions to the prohibition of urban growth in the rural areas. The Board has even construed the Act to permit compact rural development, under certain circumstances and if sufficiently limited in scope and character. The essence of the Board's decisions – that rural areas are to be very different from urban areas, while recognizing reasonable and necessary exceptions and flexibility for compact rural development, is reflected in ESB 6094, amending RCW 36.70A.070(5). [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 24]
- ESB 6094's amendments to RCW 36.70A.070(5) explicitly clarifies: the legislature's continuing intent to protect rural areas from low-density sprawl; and that while some accommodation may be made for infill of certain "existing areas" of more intense development in the rural area, that infill has to be "minimized" and "contained" within a "logical outer boundary." *With* such limitations and conditions, more intense rural development in areas where more intense development already exists could constitute permissible compact urban development; *without* such limitations and conditions more intense rural development would constitute an impermissible pattern of urban growth in the rural area. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 24]
- The advent of the GMA changed land use law in this state in a profound way, changing the land use patterns that counties may permit in rural areas. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 25]
- Pre-existing parcelization cannot be undone, however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 25]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the

number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c,* FDO, p. 46]

- The designation of 7,822 acres (approximately twelve square miles) – which permits 2.3-acre lots, creates an impermissible pattern (number, location and configuration of lots) of urban growth in the rural area. (3,400 lots of 2.3 acres, astride the North Fork of the Stillaguamish River, east, west and south of the Darrington UGA.) This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern. [*Sky Valley, 5368c,* 10/2/97 Order, pp. 13-14]
- The GMA distinguishes shorelines as one area where higher density is allowed in a rural setting. The Act states that "the rural element *may* allow for limited areas of more intensive development [such as shoreline development]." RCW 36.70A.070(5)(d). However, the Act does not require that the rural element allow areas of more intensive development. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 71]
- The Board reads [RCW 36.70A.070(5)(a)] as requiring a written record in those instances where a county has considered local circumstances and has established a pattern of densities and uses that would not be considered rural absent the local circumstances (citations omitted). [Allowing 1 dwelling unit per 20 acres is clearly a rural land use designation. Here, the County did not rely on local circumstances to justify an "atypical" rural density or use.] [*Screen II, 9312,* FDO, at 10.]
- [The legend on the zoning map indicating urban densities, contradicts the "compliant" text of the zoning code making the area rural. The legend discrepancy, whether or not inadvertent, means the legend designation is non-compliant with the GMA. [*Bear Creek, 3508c*, 11/3/00 Order, at 12.]
- LAMIRDs are neither urban growth, nor are they to be the predominant patter of future rural development. [LAMIRDs are not quite urban, but not quite rural.] LAMIRDs are settlements that existed on July 1, 1990 in some land use pattern or form more intensive than what might typically bed found in a rural area. LAMIRDs are "characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." In essence, they are *compact forms of rural development*. [*Burrow, 9318,* FDO, at 18.]
- Port Gamble's challenged densities manifest a physical form that *appears* urban-like, because such is the visual character of compact rural settlements. While these 'more intensive' rural settlements are in the rural area, they are different from the surrounding rural area in the intensity and range of uses. It is logical that they would also be different in visual character. The broad range of uses, private and public spaces, scale and character of structures at Port Gamble evoke the small New England towns that Pope and Talbot used as templates for their company town. The Board finds that Port Gamble's mix of uses and physical forms clearly qualify as a "village," a "hamlet" or a "rural activity" center within the meaning of RCW 36.70A.070(5)(d)(i). [*Burrow, 9318,* FDO, at 18.]
- The Act's definitions (RCW 36.70A.030(17)) expressly state that development within LAMIRDs is not urban. The Act does not put an explicit limit on the absolute residential density permitted in LAMIRDs. The limit is unique to each LAMIRD and is established by the conditions that existed on July 1, 1990. [*Burrow, 9318,* FDO, at 19.]
- A pattern of more intensive rural development, as allowed within a valid LAMIRD, does not constitute "urban" development. [*Burrow, 9318,* FDO, at 24.]

RURAL ELEMENT

- Only after the actual capacity of cities to take this growth is definitively known, and it is determined how much of the forecasted growth could not be accommodated by cities, would it then be appropriate for the FUGA to include unincorporated lands that now have urban growth on them. Urban growth may be allocated to unincorporated areas that are not now characterized by urban growth only as a third rank order choice and only in unusual circumstances. [*Rural Residents, 3310,* FDO, p. 15]
- "Nonurban lands" includes all natural resource lands, whether designated as such pursuant to RCW 36.70A.170 or not, and rural lands. [*Rural Residents, 3310,* FDO, p. 41]
- A density of one unit per ten acres is a rural density. [*Bremerton, 5339c,* FDO, p. 21]
- The Board can conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such a rural development proposal could constitute "compact rural development" rather than "urban growth." [*KCRP, 4305,* FDO, p. 15]
- Land use designations within a UGA must allow for urban development regardless of the rural character a parcel of land may have today. [*Aagaard, 4311c,* FDO, p. 17]
- RCW 36.70A.070(5)'s requirement for "variety" and "compatibility with rural character" apply to non-residential uses as well as to residential uses. [*Vashon-Maury, 5308c,* FDO, p. 66]
- RCW 36.70A.030(14)'s definition of urban growth focuses on the intensity of the use of land, specifically naming such physical improvements as "buildings, structures and impermeable surfaces." Thus, the net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted, or if it crosses the threshold into impermissible urban growth. [*Vashon-Maury, 5308c,* FDO, p. 67]
- For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider "such lands" to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity. [*Vashon-Maury, 5308c,* FDO, p. 68]
- Proposed uses that meet the definition of urban growth will be prohibited in rural areas unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility. [*Vashon-Maury, 5308c,* FDO, p. 69]
- Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter. [*Vashon-Maury, 5308c,* FDO, p. 77]
- Any residential pattern of 10 acre lots, or larger, is rural. [*Vashon-Maury, 5308c,* FDO, p. 79]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, p. 79]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, pp. 44-48]
- New urban land uses may be located only within UGAs. [*Bremerton, 5339c,* FDO, p. 48]
- A pattern of 1- and 2.5-acre lots meets the Act's definition of urban growth. . . . However, a pattern of 1- or 2.5-acre lots is not an appropriate urban density either. . . . An urban land use pattern of 1-

or 2.5-acre parcels would constitute sprawl; such a development pattern within the rural area would also constitute sprawl. [*Bremerton, 5339c,* FDO, p. 49]

- "Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource base activities." *Vision 2020 – 1995 Update, at 27.* This description of rural land accurately describes the intensity and character of new residential activity and development that the Act permits in rural areas. [*Bremerton, 5339c,* FDO, p. 51]
- Pursuant to RCW 36.70A.070(5), rural lands must exclude designated agricultural, forest and mineral resource lands. A county cannot designate these natural resource lands within its rural element. [*Bremerton, 5339c,* FDO, p. 73]
- Synopsis of seven CPSGMHB County Cases dealing with the Rural Element. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, pp. 21-25]
- One of the GMA's most fundamental principles is that urban areas are to be characterized by urban growth and rural areas are not. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 23]
- The Board has recognized reasonable and necessary exceptions to the prohibition of urban growth in the rural areas. The Board has even construed the Act to permit compact rural development, under certain circumstances and if sufficiently limited in scope and character. The essence of the Board's decisions – that rural areas are to be very different from urban areas, while recognizing reasonable and necessary exceptions and flexibility for compact rural development, is reflected in ESB 6094, amending RCW 36.70A.070(5). [*Bremerton/Port Gamble, 533c/7324c,* 9/8/97 Order, p. 24]
- ESB 6094's amendments to RCW 36.70A.070(5) explicitly clarifies: the legislature's continuing intent to protect rural areas from low-density sprawl; and that while some accommodation may be made for infill of certain "existing areas" of more intense development in the rural area, that infill has to be "minimized" and "contained" within a "logical outer boundary." *With* such limitations and conditions, more intense rural development in areas where more intense development already exists could constitute permissible compact urban development; *without* such limitations and conditions more intense rural development would constitute an impermissible pattern of urban growth in the rural area. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 24]
- The advent of the GMA changed land use law in this state in a profound way, changing the land use patterns that counties may permit in rural areas. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 25]
- Pre-existing parcelization cannot be undone, however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change. [*Bremerton/Port Gamble, 5339c/7324c,* 9/8/97 Order, p. 25]
- The fact that property today is basically undeveloped property that has a "rural" character, does not mean that future-planning efforts must maintain that flavor. If that property is within a UGA, it must be planned for future urban development. Generally, designating property within a UGA for industrial uses is consistent with the Act. [*Anderson Creek, 5353c,* FDO, p. 21]
- The Board rejects the theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas and the Act's explicit prohibition of urban growth outside the UGAs. [*Sky Valley, 5368c,* FDO, p. 45]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an

undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c,* FDO, p. 46]

- The designation of 7,822 acres (approximately twelve square miles) – which permits 2.3-acre lots, creates an impermissible pattern (number, location and configuration of lots) of urban growth in the rural area. (3,400 lots of 2.3 acres, astride the North Fork of the Stillaguamish River, east, west and south of the Darrington UGA.) This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern. [*Sky Valley, 5368c,* 10/2/97 Order, p. 13-14]
- The GMA distinguishes shorelines as one area where higher density is allowed in a rural setting. The Act states that "the rural element *may* allow for limited areas of more intensive development [such as shoreline development]." RCW 36.70A.070(5)(d). However, the Act does not require that the rural element allow areas of more intensive development. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 71]
- RCW 36.70A.070(5)(d) was "designed to allow limited enclaves for existing development, not to open up hundreds of acres of farmland to commercial development. . . ." [*Sky Valley,* 5368c, 4/22/99 Order, at 12]
- The Board reads [RCW 36.70A.070(5)(a)] as requiring a written record in those instances where a county has considered local circumstances and has established a pattern of densities and uses that would not be considered rural absent the local circumstances (citations omitted). [Allowing 1 dwelling unit per 20 acres is clearly a rural land use designation. Here, the County did not rely on local circumstances to justify an "atypical" rural density or use.] [*Screen II, 9312,* FDO, at 10.]
- *See also:* **LAMIRDs** [*Burrow, 9318*
- LAMIRDs are neither urban growth, nor are they to be the predominant pattern of future rural development. [LAMIRDs are not quite urban, but not quite rural.] LAMIRDs are settlements that existed on July 1, 1990 in some land use pattern or form more intensive than what might typically bed found in a rural area. LAMIRDs are "characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." In essence, they are *compact forms of rural development*. [*Burrow, 9318,* FDO, at 18.]
- As to the question of range of permitted uses. . . the GMA's focus is on the *types* of uses in existence on July 1, 1990, rather than on specific businesses. Therefore, the limitations imposed are upon the types of uses (i.e., office, or residential, or commercial) that existed on July 1, 1990, not on the specific businesses that can be documented. . . . In future cases, with a smaller scale development and a narrower range of historical uses, the Board may be compelled to more closely examine the actual businesses or uses to determine what the appropriate range of uses might be. [*Burrow, 9318,* FDO, at 19-20.]
- RCW 36.70A.070(5)(d)(iv) requires existing areas (LAMIRDs) to be minimized and contained. [Physical constraints can minimize and constrain a LAMIRD, but nothing in the act mandates the exclusive use of such physical features; nor must a LAMIRD contain only homes of a certain historic vintage. The extent of existing infrastructure and service area can be used to set the logical outer boundary that minimizes and contains the LAMIRD.] [*Burrow, 9318,* FDO, at 23.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban

growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, at 6.]

- The County's argument about the propriety of its RAID designation evidence several fundamental misapprehensions. What the Act contemplates is flexibility for counties, in certain circumstances and subject to careful restrictions, to "round off" with logical outer boundaries "limited areas of more intensive rural development" [LAMIRDs]. However, simply because an unincorporated parcel was urbanized as of July 1, 1990, does not mean that it is appropriate to designated it as a LAMIRD. The County's spacing criteria for rural activity centers (RACs) and rural neighborhood centers (RNCs) indicates that it grasps the concept of a "central place," the idea that a commercial center serves a surrounding hinterland. The placement of its RAID less than 400 feet from the UGA flies in the face of this "central place" theory. The location of the [property] immediately adjacent to the UGA makes it a candidate not for LAMIRD designation, but potentially for UGA expansion. [*Tacoma II, 9323c,* FDO, at 7.]
- [The argument that the LAMIRD designations authorized in 1997 are simply smaller and more limited rural centers than those included in its pre-1997 rural designations (RACs and RNCs) is a flawed perception.] The County's RACs and RNCs were designated before the legislature created the specific template for how such rural centers were to be designated and limited. RCW 36.70A.070(5)(d)(iv) establishes the exclusive means for designating RACs and RNCs and other rural centers. The range of uses and scale of rural commercial centers allowed in a RAID [LAMIRD] is governed by this section of the GMA, not the County's preexisting RAC and RNC provisions. [*Tacoma II, 9323c,* FDO, at 7.]
- The types of uses in a RAID [LAMIRD] must have been among the types of uses in existence within the RAID [LAMIRD] on July 1, 1990. . . .Uses permitted in RACs [or RNCs] are irrelevant to uses permitted in RAIDs [LAMIRDs]. [*Tacoma II, 9323c,* FDO, at 7-8.]
- The County's hierarchy of rural centers provides that RACs be located no closer than five miles from a UGA; and that RNCs be located no closer than two miles from a UGA. Without explanation as to UGA proximity requirements, this RAID [LAMIRD] is located within 360 feet of the UGA, which is the present city limits for the City of Tacoma. Designation of a RAID [LAMIRD in this location fosters the low-density sprawl that RAIDS [LAMIRDs] are required to avoid. Proximity to the UGA alone suggests to the Board that if the area were to be urban, adjustments to the UGA would be a more appropriate means of accomplishing this objective. [*Tacoma II, 9323c,* FDO, at 8.]
- [Designation of LAMIRDs in subarea plans must comply with the requirements of RCW 36.70A.070(5)(d); requirements for their designation are not discretionary.] [*Tacoma II, 9323c,* FDO, at 9.]
- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c,* FDO, at 10.]
- Existing sewer service in the "rural area" is a reality in some areas that must be acknowledged. However, the mere presence of existing sewer service does not guarantee that the area will be included within a RAID [LAMIRD] designation. [*Tacoma II, 9323c,* FDO, at 10.]
- Providing sewer service to RAIDs [LAMIRDs] is explicitly permitted by the GMA. [*Tacoma II, 9323c,* FDO, at 11.]
- [The de-designation of the property to rural is consistent with the County's policies regarding rural character] because the property lies between and buffers the Forster Woods [residential] development and the adjacent Rattlesnake Mountain Scenic Recreational Area. [*Forster Woods, 1308c*, FDO, at 23.]

- [The rural property involved was rezoned from one unit per ten acres to one unit per five acres. A Plan policy provided "A residential density of one home per ten acres shall be applied in the rural area where the predominant lot size is ten acres or larger. . ." After review of the information on [a map exhibit], the Board concludes that the most conspicuous and prevalent lot sizes 'in the rural area" are more than ten acres in size. Some five-acre lots exist within this area; however, the predominant lot size is more than ten acres (20 and 40 acre lots). [*Forster Woods, 1308c*, FDO, at 27.]

SANCTIONS

- General Discussion of sanctions. [*FOTL I, 4303,* 5/18/94 Order, p. 5-6]
- *Pilchuck, 4302,* 10/28/94 Order. [Withdrawn]
- *Hensley, 5343,* 11/3/95 Order. [Withdrawn]
- *Children's I, 5311,* 2/2/96 Order, [Withdrawn]
- *Bremerton, 5339c,* 5/28/96 Order. [Contingent Sanctions – Withdrawn]
- *Port of Seattle, 7314,* 5/28/98 Order. [Contingent Sanctions – Withdrawn]

SAVINGS CLAUSE

- The severability/savings clauses in [the Ordinances], by operation of law, effectively repeal the ordinances found to be invalid by the Board, and revive the prior plan and zoning designations for the area. The Board has previously found that [prior plan and zoning designations] complied with the provisions of the GMA. (Citations omitted.) Therefore, pursuant to RCW 36.70A.302(4), the Board concludes that the prior plan designation and zoning designation were valid during the remand period – commencing on [the date of the FDO invalidating the Ordinances]. [*McVittie V, 0316*, 8/16/01 Order, at 4.]

SEQUENCING

- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, p. 6]
- A local jurisdiction's comprehensive plan must be consistent with the county-wide planning policies. Its development regulations that implement the comprehensive plan must be consistent with that plan. Those implementing development regulations are not required to be consistent with the adopted county-wide planning policies since CPPs cannot alter the land use powers of cities. [*Children's I, 5311,* 5/17/95 Order, p. 12]
- Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." [*Bremerton, 5339c,* FDO, p. 31]

- If GMA stands for nothing else, it stands for the proposition that the citizens of a neighborhood are also citizens of a larger community, be it a city and/or county, a region and indeed, the state itself. To allow the City to proceed with a neighborhood planning process that is segmented and insulated from the goals and requirements of the Act, and the policy documents that the Act requires of cities and counties, would ignore this basic axiom of comprehensive planning. [*WSDF III, 5373,* FDO, p. 28]
- The GMA's planning goals guide the development and adoption of comprehensive plans, and guide the adoption of amendments to comprehensive plans. [*Cole, 6309c,* FDO, p. 15]
- Under the sequencing scheme of the GMA, the land does speak first; but, on the rare occasion, as is the case here, where the land may speak late – it will be heard. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 35]
- [Generally, in sizing its UGAs pursuant to RCW 36.70A.110(3) to accommodate the residential population, a county should look first to existing city limits, then its existing UGA before considering expansion of the UGA. The record should document this process – "show its work".] [*Kitsap Citizens, 0319c*, FDO, at 15.]

SERVICE

- The PFR was served on the "City of Bonney Lake," 10 days after the Board received the PFR. WAC 242-02-230(1) is less strict than RCW 4.28.080, but substantial compliance is still required. [*Salisbury, 5358,* 10/27/95 Order, p. 3]
- The prosecutor was served, not the Council Clerk as required by local ordinance; mail service is proper, but must be served on the proper agent. [*Keesling, 5378,* 3/18/96 Order, p. 3]
- Petitioner failed to properly serve the respondent, in accordance with the Board's rules of practice and procedure. [*Wallock, 6337,* 2/20/97 Order, p. 3-4]
- When serving by mail, there is no excuse for failing to address the documents to one of the specific persons named in WAC 242-02-230 (Mayor, City Manager or City Clerk); when serving in person, the specific person named may not be available, even during regular office hours. Acceptance of service by one of the named person's secretaries substantially complies with the Board's rules. [*Rabie, 8305c,* 4/24/98 Order, p. 2-3]
- [The GMA, specifically RCW 36.70A.290, does not provide for service requirements. However, the Board's rules, at WAC 242-02-230, do establish service requirements. The Board views failure to comply with the WAC service requirements as jurisdictional, not merely procedural.] [*Lane, 8333c,* 1/20/99 Order, p. 2]

SETTLEMENT EXTENSIONS – *SEE:* EXTENSIONS

- Although both DOC and DSHS attempted to negotiate a settlement agreement with the City of Tacoma, agreement was reached only between DSHS and the City. The City stipulated to entry of an order of noncompliance. [*DOC/DSHS, 0307,* FDO, at 5.]

SEWER – *SEE:* PUBLIC FACILITIES AND SERVICES AND CAPITAL FACILITIES ELEMENT

- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD or RAID] does not amount to

an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to {LAMIRDs or RAIDs] is explicitly permitted by the GMA. [*Gain, 9319*, at 6.]

- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c,* FDO, at 10.]
- Existing sewer service in the "rural area" is a reality in some areas that must be acknowledged. However, the mere presence of existing sewer service does not guarantee that the area will be included within a RAID [LAMIRD] designation. [*Tacoma II, 9323c,* FDO, at 10.]
- Providing sewer service to RAIDs [LAMIRDs] is explicitly permitted by the GMA. [*Tacoma II, 9323c,* FDO, at 11.]

SHORELINE MANAGEMENT ACT - SMA

- The Department of Ecology's approval of an amendment to a SMP for a shoreline of state-wide significance, is not subject to the consistency requirements of the GMA. The requirement to achieve consistency among a city's comprehensive plan elements is the city's duty, not Ecology's. Instead, Ecology's action must be reviewed for consistency with the policy of RCW 90.58.020 and the applicable guidelines. [*Gilpin, 7303,* FDO, pp. 6-7]
- The GMA distinguishes shorelines as one area where higher density is allowed in a rural setting. The Act states that "the rural element *may* allow for limited areas of more intensive development [such as shoreline development]." RCW 36.70A.070(5)(d). However, the Act does not require that the rural element allow areas of more intensive development. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 71]

SHORELINES

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SHORELINES MASTER PROGRAMS – SMPS

- No entries

SHOW YOUR WORK

- Counties must specify how many acres (or some other common measurement of land) are within a UGA so that, in the event of an appeal, the Board can determine whether the selected UGA is indeed sufficient. Counties have a great deal of discretion in how they achieve this requirement. The Board only demands that counties "show their work." [*Rural Residents, 3310,* FDO, p. 35]
- Counties do not have cart blanche permission to include nonurban areas in UGAs. In those rare cases when exceptional circumstances so warrant, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled. [*Rural Residents, 3310,* FDO, p. 45]

- A county must base its UGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and specify the methods and assumptions used to support the IUGA designation. In essence, a county must "show its work" so that anyone reviewing a UGAs ordinance, can ascertain precisely how the county developed the regulations it adopted. [*Tacoma, 4301,* FDO, p. 19]
- The land use capacity analysis for designated UGAs is not required to be in the comprehensive plan; however, showing of work must be done somewhere in the record. Technical Appendix D is not required to be incorporated into the Plan. [*Vashon-Maury, 5308c,* FDO, p. 16]
- "Show your work" has been applied to the documentation of factors and data used in the accounting exercise of counties in sizing UGAs as required by RCW 36.70A.110; it does not apply to the mandatory plan elements of RCW 36.70A.070. [*Litowitz, 6305,* FDO, p. 17]
- [A land capacity analysis that deducts for redevelopment and unavailable land factors cumulatively, and for roads, public facilities and critical areas sequentially (from the same gross total) avoids double counting.] [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 20]
- The sizing of the UGA must be supported by analytical rigor and an explicit accounting, yet [the sizing of UGAs] is an inexact science. The specificity and precision important to the accounting are tempered by the imprecise nature of long-range population projections, and indeed comprehensive planning itself. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 37]
- [Show your work applies to sizing UGAs, it has not been required to demonstrate compliance with the mandatory elements requirements of the Act.] [*MacAngus, 9317,* FDO, at 11.]
- The UGA-sizing requirements of RCW 36.70A.110 rely to a great extent on mathematical calculations (allocation of population growth, assumptions regarding numbers of persons per dwelling, land needs based on planned densities and market factors, etc.) Without a clear showing in the record of the mathematical calculations and assumptions, interested persons have no criteria against which to judge a county's UGA delineation. Such is not the case here. [Petitioner] disagrees with the land use designation of its property and wants the County to show or explain why it did not change the [agricultural] designation. This is not required since the record clearly shows the basis for the County's [designation. The county relied upon Soil Conservation Service Prime Farmland List for the County.] [*MacAngus, 9317,* FDO, at 11.]
- Actions of local governments are presumed valid; however, when [UGA designations or expansions are] challenged the record must provide support for the actions the jurisdiction has taken; otherwise the action may be determined to have been taken in error – clearly erroneous. The Board will continue to adhere to the requirement that counties must "show their work" when designating UGAs and affirms its prior decisions on this question. [*Kitsap Citizens, 0319c*, FDO, at 13.]
- [The County adopted a subarea plan that included a residential component in an area originally envisioned as an industrial reserve.] The Board recognizes that both the City of Bremerton and Kitsap County have placed a high priority on identifying land for future economic development. [The record developed during the County's decision-making process [on the subarea plan] indicates [the County has "shown its work" – citing various documents from the record]. [*Kitsap Citizens, 0319c*, FDO, at 14-15.]
- Its review of challenges to initial UGA designations caused this Board to articulate a "show your work" requirement that compelled Counties to demonstrate the analytical rigor and accounting that supported the sizing and designations of UGAs. The "show your work" provision for sizing and designating UGAs has been applied to the four Puget Sound counties within this Board's geographic

jurisdiction. Thus far, this Board has limited the application of the "show your work" requirement to the sizing of UGAs. (Citations omitted.) [*Master Builders Association, 1316*, FDO, at 8.]

- Based upon the arguments presented, the Board construes the crux of the dispute in this [issue] to be a question of: whether the County had a GMA duty to update its [UGA capacity analysis] (a new showing of work) when it adopted the amendments to the PRD regulations. In reviewing the question, the Board agrees with the County and affirms its prior holding in *Kelly* [*7312*, FDO] that the GMA creates no duty to continuously update UGA land capacity analysis every time development regulations are amended. [*Master Builders Association, 1316*, FDO, at 10.]

SPRAWL

- The Act has a clear bias for efficiency and concurrency in the placement and financing of infrastructure and urban governmental services. *See also* Planning Goal 12 at RCW 36.70A.020(12). The urban form and land use pattern that is implicit in these legislative directions is one that is more compact and dense than what market forces alone have historically produced. The Board holds that *compact urban development* is the antithesis of sprawl. By *striving* to achieve a land use pattern and urban form that is compact, cities and counties will serve the explicit direction of Planning Goals 1 and 2. [*Rural Residents*, 3310, FDO, at 18-19, footnotes omitted]
- Frank Lloyd Wright's design for Broadacre City is an accurate prediction of post - World War II suburban sprawl. The GMA intends to reduce, rather than perpetuate sprawl, no matter how well designed. [*Aagaard*, 4311c, FDO, at 8, fn. 7]
- The technological capability has existed for 50 years for growth to sprawl across a vast landscape. In combination with powerful market forces, and absent an effective public policy to resist it, sprawl has resulted in the proliferation of low-density metropolitan regions such as Phoenix and Los Angeles. The rise of sprawl in the United States after the Second World War, and the public policy reasons why state and local governments across the country have chosen to combat it, is well documented in the literature of urban planning and real estate development. [*Bremerton*, 5339c, FDO, p. 25]
- [T]here are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton*, 5339c, FDO, at 28.]
- When the GMA's substantive requirements for county plans . . . are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community that, in turn, has dire social consequences. [*Bremerton*, 5339c, FDO, at 51-52]
- An urban land use pattern of 1- or 2.5-acre parcels would constitute sprawl; such a development pattern within the rural area would also constitute sprawl. [*Bremerton,* 5339c, FDO, p. 49.]
- Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl . . . While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized"

and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. [*Burrow, 9318,* FDO, at 18.]

STANDARD OF REVIEW

- The preponderance of the evidence standard listed in the last sentence of RCW 36.70A.320 does apply to OFM's population projections. [*Kitsap/OFM, 4314,* FDO, p. 12]
- The statutory presumption of validity discussed in the first sentence of RCW 36.70A.320 does not apply to OFM's population projections. [*Kitsap/OFM, 4314,* FDO, p. 12]
- The standard of review for determining whether a county's issuance of a DNS violated SEPA is the "clearly erroneous" standard. [*PNO, 4318,* FDO, p. 17]
- A petitioner must first show that the Act imposes a duty upon a local jurisdiction to undertake a particular action and then show by a preponderance of the evidence how the local jurisdiction has breached that duty. Conclusory statements that the Act imposes a duty are insufficient to carry the petitioner's burden of proof. [*Robison, 4325c,* FDO, p. 10]
- Pursuant to RCW 36.70A.320(3), the Board shall find compliance unless it determines that the action by [the local government] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]. For the Board to find the [local government's] action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD 1,* 121 Wn.2d 179, 201 (1993). [*Burien, 8310,* FDO, p. 4]
- [For purposes of analyzing challenges to RCW 36.70A.020(6),] a clearly erroneous action is not necessarily an arbitrary action. "Arbitrary" means to be determined by whim or caprice. Washington's courts have further defined "arbitrary or capricious" action to mean willful and unreasoning action taken without regard to or consideration of the facts and circumstances surrounding the action. Citing cases. [*LMI/Chevron, 8312,* FDO, p. 31]
- [Where the language of a Plan's amended goals, policies and text is ambiguous, the Board may interpret the ambiguity consistently with the goals and requirements of the Act, and remand the ambiguous amendatory language for clarification that is consistent with the goals and requirements of the GMA.] [*LMI/Chevron, 8312,* FDO, pp. 37-38]
- This Board has addressed the application of the 1997 amendment to the standard of review in several prior cases. All of these prior cases shared a common procedural posture: except for the issuance of the Board's final order, all events, including all briefing and oral argument, had occurred prior to the effective date of the amended standard of review (citations omitted). The Board's review and deliberation of whether the local government was in compliance with the GMA had already commenced prior to the effective date of the amended standard of review. Unlike these prior cases, the briefing of the substantive issues now on remand from the Supreme Court, the hearing on the merits, and the Board's review and deliberation have not yet begun. [*Bear Creek,* 5308c, 1/24/00 Order, at 3.]
- ESB6094 provided that most of the Legislature's 1997 GMA amendments "are prospective in effect and shall not effect the validity of <u>actions taken or decisions made</u> before the effective date of this section." 1997 Wash. Laws ch. 429 § 53 (emphasis added). The amendment to the standard of review clearly affects "action taken and decisions made" by the Board. There is nothing in RCW 36.70A.320(3), the codification of the amended standard of review that speaks to actions or decisions of the local governments. Consequently, the Board's deliberation and review in this case, where briefing, oral arguments, and the issuance of the Board's order will occur after the effective date of the 1997 amendment, the Board is obligated to apply the Legislature's amended standard of

review – clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. [*Bear Creek,* 5308c, 1/24/00 Order, at 3.]

- [Except for the Board's standard of review] the Board will apply the provisions of the GMA that were in effect at the time the County took the challenged actions. [*Bear Creek,* 5308c, 1/24/00 Order, at 4.]
- To suggest that the legislature has "expressly directed" the granting of "considerable" deference is wrong. The word "considerable" does not appear in the statute, nor was it used by the *Manke* Court, as cited by the County in its brief. To characterize the degree of deference that attaches to the clearly erroneous standard codified at RCW 36.70A.320(2) the law simply uses the relative term "more" in reference to the earlier "preponderance of the evidence standard of review. [*Burrow, 9318,* FDO, at 5.]

STANDING

- Talking to local government staff or, in the case of elected officials, talking to them off the record (i.e., not at a public hearing or meeting), as opposed to communicating in writing to either or talking to elected officials on the record at a public hearing or meeting, does not constitute appearance. [*FOTL I, 4303,* 4/22/94 Order, p. 9]
- For purposes of enabling a representative organization or association such as FOTL to obtain standing, a member of the organization must appear and indicate that he or she represents that organization. Simply being a member of an organization and being in attendance at a public hearing without indicating that one represents the organization will not suffice to confer standing upon the organization. [*FOTL I, 4303,* 4/22/94 Order, p. 9]
- The Board treats the language "regarding the matter" narrowly to mean the specific matter before the local government. It does not mean the general subject matter such as land use planning or the GMA. [*FOTL I, 4303,* 12/30/94 Order, p. 11]
- [To have APA standing, the interest that the petitioner is seeking to protect must be arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question; and the petitioner must allege an ""injury in fact," i.e., that he or she will be "specifically and perceptibly harmed" by the proposed action.] [*FOTL I, 4303,* 4/22/94 Order, pp. 14-15]
- [In order to show injury in fact, one] must present facts that show he will be adversely affected. His affidavits must collectively demonstrate sufficient evidentiary facts to indicate that he will suffer an "injury in fact." Further, when a person alleges a threatened injury, as opposed to an existing injury, he or she must show an immediate, concrete, and specific injury to him or herself. If the injury is merely conjectural or hypothetical, there can be no standing.] [*FOTL I, 4303,* 4/22/94 Order, pp. 14-15]
- As a matter of law, when a local jurisdiction has failed to act, any person who resides or owns property within that jurisdiction has standing to bring a "failure to act" challenge. [*FOTL I, 4303,* 4/22/94 Order, p. 19]
- A party wishing to challenge a SEPA determination must meet a two-part test to establish standing: (1) The plaintiff's supposedly endangered interest must be arguably within the zone of interests protected by SEPA; (2) the plaintiff must allege an injury in fact; that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her specific and perceptible harm. The plaintiff who alleges a threatened injury rather than an existing injury must also show that the injury will be "immediate, concrete, and specific"; a conjectural or hypothetical injury will not confer standing. [*WSDF I, 4316,* 4/22/94 Order, pp. 6-7]
- Challenges to either SEPA or GMA standing before the Board can be brought at any time by either a party or the Board on its own initiative. [*PNO, 4318,* FDO, p. 19]

- It will be difficult for any petitioner to demonstrate the "specific injury" required by the *Leavitt* [*Leavitt v. Jefferson County*, 74 Wn. App. 668, 875 P.2d 681 (1994)] and *Trepanier* [*Trepanier v. Everett*, 64 Wn. App. 380, 824 P.2d 524, review denied, 119 Wn.2d 1012 (1992)] courts when challenging the final environmental impact statement for a comprehensive plan. [*Bremerton, 5339c,* 6/5/95 Order, p. 17]
- In order to raise issues before the Board, it is not necessary for participants and petitioners to have addressed those specific issues when they appeared before the county or city during the public participation process regarding the adoption of the comprehensive plan. [*Bremerton/Port Gamble, 5339/7324c,* 4/22/97 Order, p. 6]
- Petitioners must describe their standing in the PFR. Petitioners can make the necessary showing by: (1) including a narrative in the PFR itself; (2) attaching a declaration or affidavit to the PFR; or (3) incorporating by reference exhibits from the record below. [*Pilchuck II, 5347c,* 8/17/95 Order, p. 3]
- The Board will apply the *Trepanier/Leavitt* test as follows: When the underlying action is the adoption of an "environmental protection" piece of legislation such as a critical areas ordinance, the Board will strictly apply the SEPA standing test. When the underlying action is the adoption of a piece of legislation that does not inherently or explicitly involve the direct protection of the environment, the Board will apply the SEPA test more loosely. Examples of such legislation are the capital facilities, transportation or housing elements of a comprehensive plan. [*Pilchuck II, 5347c,* 8/17/95 Order, p. 6]
- The Board has never held, nor does the Act state, that the triggering event or action that conveys standing to a person must also describe the total scope of issues on which a person may subsequently request review. According to the Board's holdings and the Act, the scope of the Board's review is defined by the "detailed statement of issues" that a petitioner is required to include in its request for review. [*Sky Valley, 5368c,* FDO, p. 23]
- The question of standing is to be interpreted liberally, that any party who appears during the GMA planning process should have the ability to request review of the resulting document or any portion of that document. [*Sky Valley, 5368c,* FDO, p. 23]
- The certification process of Chapter 47.80 RCW [Regional Transportation Planning Organizations] is completely separate from the GMA. The Board has jurisdiction under the GMA to determine compliance of a comprehensive plan's transportation element with the requirements of the Act. [*Sky Valley, 5368c,* FDO, p. 129]
- A petitioner is not precluded from challenging development regulations that implement a certain comprehensive plan policy, even though the petitioner did not challenge the specific policies in the plan (assuming the petitioner otherwise meets the standing and timely petition filing requirements of the Act). [*PNA II, 5371,* FDO, p. 23]
- The Board's Rules of Practice and Procedure require that, as part of a petition for review, a petitioner must show standing. WAC 242-02-210(d). However, no such requirement exists for an intervenor. [*Benaroya I, 5372c,* 1/9/96 Order, p. 6]
- General discussion of standing requirements. [*Hapsmith I, 5375c,* FDO, p. 12-18]
- Petitioners must specify within their petitions for review which method of standing allows them to proceed with a case before the Board. For instance, petitions for review relying upon APA standing must either allege that the petitioners are within the zone of interest of the GMA and that they have been injured by the local government's GMA action, or they must cite to the specific GMA standing provision under which they qualify (i.e., RCW 36.70A.280(2)'s language "qualified pursuant to RCW 34.05.530). However, although the petition should also contain information that supports these allegations, it need not contain such evidence. Instead, if the petitioner's alleged standing is challenged, the petitioner will be given the opportunity to provide additional evidence in response. [*Hapsmith I, 5375c,* FDO, p. 16]

- The Board's holding in Pilchuck that a prima facie case [for standing] must be made within the petition for review is reversed. [*Hapsmith I, 5375c,* FDO, p. 16]
- RCW 36.70A.210(6) permits only a city or the governor to appeal an adopted county-wide planning policy. [*Sundquist, 6301,* 2/21/96 Order, p. 3]
- For an organization to "appear," its representative must state that he or she represents the organization. The purpose of this requirement is to give notice to the local government that the people before it represent more than individual interests, that they are a group. Failure to give such notice is fatal to an organization's standing. [*Banigan, 6316c,* 7/29/96 Order, p. 8]
- If the appeal period has lapsed, the organization cannot substitute an individual as petitioner in a petition for review. [*Banigan, 6316c,* 7/29/96 Order, p. 11]
- Although participation in the legislative process as an identified representative of a citizen group may establish GMA standing, obtaining GMA standing does not automatically bestow SEPA standing upon a petitioner. [*Buckles, 6322c,* FDO, p.23]
- Issue 5 challenged whether the City had made any threshold determination as required by SEPA. The City did not adduce case law sufficient to support its position that standing should be denied where no threshold determination had been made. [*Morris, 7329c,* 1/9/98 Order, p. 2]
- Recap of the Board's standing analysis. [*Bremerton/Alpine, 5339c/8332c,* 10/7/98 Order, p. 4-6]
- The Board rejects the County's urging that to have participation standing, petitioners must have raised the specific issues before the County that are now before the Board. [*Bremerton/Alpine, 5339c/8332c,* 10/7/98 Order, p. 7]
- To have meaningful public participation and avoid "blind-siding" local governments, members of the public must explain their land use planning concerns to local government in sufficient detail to give the government the opportunity to consider these concerns as it weighs and balances its priorities and options under the GMA. [*Bremerton/Alpine, 5339c/8332c,* 10/7/98 Order, p. 8]
- To determine participation standing, the Board reviews the issue as set forth in the Prehearing Order, the PFR, the briefing and the record to ascertain the nature of the petitioner's participation. If the petitioner's participation is reasonably related to the petitioner's issues as presented to the Board, then the petitioner has standing to raise and argue that issue. If petitioner's participation is not reasonably related to petitioner's issue as presented to the Board, then the petitioner will not have standing to raise and argue that issue. [*Bremerton/Alpine, 5339c/8332c,* 10/7/98 Order, p. 8]
- Reliance on another person's participation before the County as a basis for standing is not supported by RCW 36.70A.280(2)(b). A person (or organization) cannot establish standing based solely on the participation of another. [*Bremerton/Alpine, 5339c/8332c,* 10/7/98 Order, p. 9]
- Briefing an issue in a prior phase of the pending proceeding, which is part of the record before the Board, and an issue in the pending case is reasonably related to the matter. [*Bremerton/Alpine, 5339c/8332c,* 10/7/98 Order, p. 10]
- The Board's "organizational standing" rule was first articulated in *Friends of the Law v. King County:* For an organization to have participation standing, a member of that organization must identify himself or herself as a representative of the organization when that person testifies at a hearing or submits a letter to the county or city." [*Montlake, 9302c,* 4/23/99 Order, at 4.]
- The Legislature's scheme for broad and continuous public participation during the development and adoption of plans and regulations is distinct from the Legislature's scheme for appellate review of GMA actions. Any person may participate in the local government's GMA plan development and adoption process. Persons who participated may file a PFR, but only under the Legislature's statutorily prescribed conditions set out at RCW 36.70A.280(2) and .290(2). [*Montlake, 9302c*, 4/23/99 Order, at 4.]
- Petitioner can allege standing [in their PFR] by either citing to RCW 36.70A.280(2)(a),(b),(c) or (d); or by alleging facts clearly indicating the basis for their standing. [*WRECO, 8335,* FDO, at 4.]

- The GMA does not mandate, nor has the Board ever required this degree of specificity [indicating whether the alleged participation was oral or written] in the standing allegations in a PFR. [*WRECO, 8335,* FDO, at 5]
- Once again, the Board rejects a GMA based "issue-specific standing requirement" and reaffirms its reasoning in *Alpine* [participation is "reasonably related" to the issue presented to the Board]. [*NW Golf, 9314,* 9/29/99 Order, at 5.]
- Participation on behalf of landowners in not unlike participation on behalf of organizations. Representatives of a landowner must put the local government on notice that the landowner has an interest in the matter. [*MacAngus, 9317,* FDO, at 4.]
- To have standing under the APA test, a petitioner must be within the zone of interests protected by the GMA and must allege an injury in fact. To satisfy the evidentiary burden to show an injury in fact, a petitioner must show that the government action will cause him or her 'specific and perceptible harm' and that the injury will be 'immediate, concrete and specific.' If the injury is merely conjectural or hypothetical, there can be no standing. In addition, a petitioner must show that a judgment in his or her favor 'would substantially eliminate or redress' that prejudice. [*MacAngus, 9317,* FDO, at 5.]
- [Where a Plan designation is not changed from the original designation, but merely continued, a petitioner cannot show injury in fact due to the original designation. A change in the zoning, that implements the Plan designation, but eliminates certain previously permitted uses (such as churches, county clubs, day care facilities, group homes, hospitals, libraries and schools), does not constitute injury in fact.] [*MacAngus, 9317,* FDO, at 6.]
- Participation before the local government regarding one aspect of its GMA action is not necessarily sufficient to challenge other aspects of its GMA action. This Board recently explained that a petitioner's participation before the local government must be reasonably related to the petitioner's issues as presented to the Board (Citation omitted). [*Gain, 9319*, 1/28/00 Order, at 4.]
- The State Court of Appeals for Division One recently clarified the Legislature's intended meaning of the word "matter" in [RCW 36.70A.280(2)(b)]. The Court stated: "We conclude that [the Legislature] intended the word 'matter' to refer to a subject or topic of concern or controversy." (Citation omitted.) [Also, to determine whether a petitioner has participation standing, the Court affirmed the CPSGMHB reasonable relationship test adopted in *Alpine, 8332c*, 10/7/98 Order, at 8.] [*Ramey Remand, 9302*, 12/15/00 Order, at 3.]
- Off-the-record and informal conversations [and telephone conversations] with advisory board members and staff do not constitute 'meaningful' public participation with the local government decision-makers since these concerns [raised in conversations] are not part of the decision record. [*Ramey Remand, 9302*, 12/15/00 Order, at 9-10.]
- A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [McVittie V, 0316, at 4-5]
- The County simply did not provide ***any*** notice or opportunity for public comment on its consideration of the proposed Plan and development regulation amendments contained in the two emergency ordinances. . . . A jurisdiction may not bar GMA participation standing by providing no notice of, nor opportunity for, public participation at any time either prior to, or after, the adoption or amendment of a GMA plan or development regulation or other related GMA measure. [*McVittie V, 0316*, 11/6/00 Order, at 4-5]
- A jurisdiction may not bar GMA public participation standing by not providing notice or the opportunity to participate at any time, either prior to, or after, adoption of an amendment to a GMA Plan, development regulation or other related GMA document. If no notice or opportunity for public

participation is provided for a GMA action, a petitioner may assert GMA participation standing pursuant to RCW 36.70A.280(2)(b). [*McVittie V, 0316*, FDO, at 29.]

- The record clearly shows that, while [Petitioners] attempted to attend the public hearing, by their own admission they arrived after the close of the hearing. There was no allegation that the notice was inadequate or that the 5:30 p.m. starting time was not clear, nor an argument that the City was somehow obligated to keep the hearing open until all interested citizens arrived. Instead there is an admission on the record that the Petitioner did not arrive before the close of the public hearing. This fact, coupled with Petitioners' lack of written comment prior to the well-publicized deadline, was fatal to [the] claim to participation standing pursuant to RCW 36.70A.280(2)(b). [*Mesher, 1307*, 8/2/01 Order, at 9.]
- The Board finds that its ruling in *Sound Transit* [9303, 6/18/99 Order] is directly on point. The Board's jurisdiction is properly limited to Chapters 36.70A RCW, 90.58 RCW and 43.21C RCW. It is not for this Board to interpret other statutes, nor to determine whether a petitioner has acted within its authority as described by other statutes (i.e. Chapter 35.14 RCW). It is undisputed that the East Bellevue Community Council has established participation standing pursuant to RCW 36.70A.280. If the City wishes to pursue its argument that EBCC lacks authority to bring this appeal, its recourse is to the courts. [*Bennett, 1322c*, 1/7/02 Order, at 5.]

STATE AGENCY COMPLIANCE

- [The County adopted level of service (LOS) "objectives" for state highways.] The fact that the State has not yet adopted "standards" placed the County in a difficult situation, in view of the GMA mandate that the County adopt something by December of 2000. Relying upon the guidance of the [Puget Sound Regional Council] to adopt the [Washington State Department of Transportation] "objectives" in the County Plan was not unreasonable. In fact, for the County to have described as a standard that which the State described as an "objective" would have been more than misleading, it would have been flatly incorrect. [*McVittie VIII, 1317*, FDO, at 9.]
- [Petitioner argued that] there appears to be a serious disconnect between transportation plans and improvements done by the County and the State. [Therefore] the spirit of Goals 3 and 12 [must apply because they] would demand a better degree of coordination and consistency between the plans and actions of State and County government. Even the County laments the timing of State improvement, to say nothing of the timing of the adoption of State LOS standards. Nevertheless, the Board must conclude that neither Goals 3 and 12, indeed **none** of the goals listed in RCW 36.70A.020 apply to the State because the preamble to that section unequivocally states the goals "shall be used *exclusively* for the purpose of guiding the development of comprehensive plans and development regulations." This is an unfortunate but inescapable conclusion, because to truly achieve managed growth there must be a better linkage between local efforts and state efforts. [*McVittie VIII, 1317*, FDO, at 10.]
- As provided in the statute [RCW 36.70A.070(6)(a)(iii)(C)], the purpose for including state LOS standards at the local level is for monitoring, evaluating and facilitating coordination between the state and local plans. Providing information to the state for its further analysis and assessment is the driver behind this section of the GMA. As discussed in [elsewhere], there is no financing or implementation "hook" for binding the state to undertake any given state road project, critical or otherwise. [*McVittie VIII, 1317*, FDO, at 14.]

STATE ENVIRONMENTAL POLICY ACT - SEPA

- The GMA establishes public participation requirements separate from the SEPA. [*Tracy, 2301,* FDO, p. 11]
- Unlike GMA, the SEPA statute does not require "enhanced public participation"; absent legislative direction, the Board will not create an enhanced citizen participation requirement for SEPA. [*Rural Residents, 3310,* 2/16/94 Order, p. 12]
- A party wishing to challenge a SEPA determination must meet a two-part test to establish standing: (1) The plaintiff's supposedly endangered interest must be arguably within the zone of interests protected by SEPA; (2) the plaintiff must allege an injury in fact; that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her specific and perceptible harm. The plaintiff who alleges a threatened injury rather than an existing injury must also show that the injury will be "immediate, concrete, and specific"; a conjectural or hypothetical injury will not confer standing. [*WSDF I, 4316,* 12/30/94 Order, pp. 6-7]
- A four-part test for determining whether the exhaustion requirement bars a SEPA claim is: (1) whether administrative remedies were exhausted; (2) whether an adequate remedy was available; (3) whether adequate notice of the appeals procedure was given; and (4) whether exhaustion would have been futile. [*WSDF I, 4316,* 12/30/94 Order, p. 11]
- The standard of review for determining whether a county's issuance of a DNS violated SEPA is the "clearly erroneous" standard. [*PNO, 4318,* FDO, p. 17]
- Challenges to either SEPA or GMA standing before the Board can be brought at any time by either a party or the Board on its own initiative. [*PNO, 4318,* FDO, p. 19]
- It will be difficult for any petitioner to demonstrate the "specific injury" required by the *Leavitt* [*Leavitt v. Jefferson County*, 74 Wn. App. 668, 875 P.2d 681 (1994)] and *Trepanier* [*Trepanier v. Everett*, 64 Wn. App. 380, 824 P.2d 524, review denied, 119 Wn.2d 1012 (1992)] courts when challenging the final environmental impact statement for a comprehensive plan. [*Bremerton, 5339c,* 6/5/95 Order, p. 17]
- Petitioners must describe their standing in the PFR. Petitioners can make the necessary showing by: (1) including a narrative in the PFR itself; (2) attaching a declaration or affidavit to the PFR; or (3) incorporating by reference exhibits from the record below. [*Pilchuck II, 5347c,* 8/17/95 Order, p. 3]
- The Board will apply the *Trepanier/Leavitt* test as follows: When the underlying action is the adoption of an "environmental protection" piece of legislation such as a critical areas ordinance, the Board will strictly apply the SEPA standing test. When the underlying action is the adoption of a piece of legislation that does not inherently or explicitly involve the direct protection of the environment, the Board will apply the SEPA test more loosely. Examples of such legislation are the capital facilities, transportation or housing elements of a comprehensive plan. [*Pilchuck II, 5347c,* 8/17/95 Order, p. 6]
- The Board does not have independent SEPA jurisdiction where it lacks subject matter jurisdiction over the underlying matter. [*Hayes, 5381,* 4/23/95 Order, p. 7]
- Although participation in the legislative process as an identified representative of a citizen group may establish GMA standing, obtaining GMA standing does not automatically bestow SEPA standing upon a petitioner. [*Buckles, 6322c,* FDO, p. 23]
- Issue 5 challenged whether the City had made any threshold determination as required by SEPA. The City did not adduce case law sufficient to support its position that standing should be denied where no threshold determination had been made. [*Morris, 7329c,* 1/9/98 Order, p. 2]
- [To challenge a jurisdiction's action under SEPA before this Board] [t]his Board has consistently followed the direction of the courts and has consistently required petitioners to exhaust a local

jurisdiction's administrative appeal process before seeking SEPA review before this Board (citations omitted). [*Tulalip II, 9313*, 1/28/00 Order, at 5.]

- [Edgewood challenged Sumner's use of an addendum, instead of a supplemental environmental impact statement, to accompany the amendments. Edgewood specifically was concerned with air quality, noise and traffic. The Board reviewed the addendum provisions for air quality, noise and traffic and found that the generalized information included or referenced in the addendum did not substantially change the analysis of significant impacts and alternatives in the existing environmental impact statement. The Board concluded Sumner's use of the addendum was not clearly erroneous and complied with the requirements of SEPA. [*Edgewood, 1318*, FDO, at 18-23.]

STIPULATION

- No entries

STORMWATER – *SEE:* LAND USE ELEMENT AND CAPITAL FACILITIES ELEMENT

- A jurisdiction must provide in its land use element an indication that it has reviewed drainage, flooding and stormwater run-off in the area and nearby jurisdictions. [*Hensley III, 6331,* FDO, p. 7]

SUBAREA PLANS

- Subarea plans also are planning policy documents under the GMA. [*Happy Valley, 3308c,* 10/25/93 Order, p. 18]
- A pre-existing neighborhood or community plan does not automatically become a part of the GMA required comprehensive plan. If desired, the jurisdiction must explicitly make it so by subsequent legislative action. [*Northgate, 3309,* 11/8/93 Order, p. 17]
- Pre-GMA sub-area plans need not be adopted as GMA enactments in order to continue to have useful application in local land use decision-making. However, such pre-GMA sub-area plans may not be used to satisfy a GMA requirement unless they are specifically incorporated by reference and adopted for that purpose pursuant to the requirements of the Act; nor may they supersede any specific policy or regulatory directive contained in a GMA enactment. [*Sky Valley, 5368c,* FDO, p. 55]
- The requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas – while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." [*Benaroya I, 5372c,* FDO, p. 21]
- The Act does not permit a "neighborhood veto", whether de jure or de facto, and the policies challenged cannot achieve such an outcome. The ultimate decision-makers in land use matters under the GMA are the elected officials of cities and counties, not neighborhood activists or neighborhood organizations. [*Benaroya I, 5372c,* FDO, p. 22]
- A city may choose to undertake optional neighborhood planning, pursuant to RCW 36.70A.080; however, those neighborhood plans must comply with the Plan and the requirements of the GMA. Conversely, a city cannot "pick and choose" – to adopt some and not other neighborhood plans under the authority of the GMA. [*Benaroya I, 5372c,* FDO, p. 22]
- While "subarea plan" is not defined in the Act, it appears as an "optional" element of comprehensive plans ate RCW 36.70A.080. [*WSDF III, 5373,* FDO, p. 22]

- General discussion of prior holdings and issues with subarea plans. [*WSDF III, 5373,* FDO, pp. 22-28]
- By whatever name (e.g., neighborhood plan, community plan, business district plan, specific plan, master plan, etc.) a land use policy plan that is adopted after the effective date of the GMA and purports to guide land use decision-making in a portion of a city or a county, is a subarea plan within the meaning of RCW 36.70A.080. While a city or a county has discretion whether or not to adopt such optional enactment, once it does so, the subarea plan is subject to the goals and requirements of the Act and must be consistent with the comprehensive plan. [*WSDF III, 5373,* FDO, p. 25]
- The discretion conferred upon cities and counties by RCW 36.70A.080(2) is the discretion to undertake new detailed subarea land use policy plans. If they do so, such plans must be adopted as part of the comprehensive plan; the GMA has removed the discretion of cities and counties to undertake new localized land use policy exercises disconnected from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan. [*WSDF III, 5373,* FDO, p. 26]
- Since the neighborhood plans must become a part of the Plan, all the Act's other requirements apply to neighborhood plans. [*WSDF III, 5373,* FDO, p. 27]
- If GMA stands for nothing else, it stands for the proposition that the citizens of a neighborhood are also citizens of a larger community, be it a city and/or county, a region and indeed, the state itself. To allow the City to proceed with a neighborhood planning process that is segmented and insulated from the goals and requirements of the Act, and the policy documents that the Act requires of cities and counties, would ignore this basic axiom of comprehensive planning. [*WSDF III, 5373,* FDO, p. 28]
- Any provision or policy of a neighborhood plan that purports to guide land use decision-making (including subarea or neighborhood plans including land use, capital facilities and transportation planning) must be incorporated into the jurisdiction's comprehensive plan to be implemented pursuant to Chapter 36.70A RCW. Conversely, provisions or policies of a neighborhood plan or program that will not be used to guide land use decision-making, and therefore will not be implemented pursuant to Chapter 36.70A RCW, need not be incorporated into a jurisdiction's comprehensive plan. [*WSDF IV, 6333,* FDO, p. 11]
- The legislative body must ultimately decide and balance: the competing interests of different neighborhoods in the City, the interests of the City as a whole, and the interests of the City as a significant entity in the region and the state. [*WSDF IV, 6333,* FDO, p. 12]
- The jurisdiction's legislative body has the ultimate responsibility to determine, consistent with Chapter 36.60A RCW, what provisions of neighborhood plans will be incorporated into a comprehensive plan, to be implemented and thereby guide land use decision-making. [*WSDF IV, 6333,* FDO, p. 12]
- [A plan, or subarea plan, policy that seeks to protect and maintain the large lot, low density, residential character of a city without encouraging urban growth at appropriate urban densities or reducing the conversion of undeveloped land to low density development is inconsistent with, thwarts, and does not comply with Goals 1 and 2 (RCW 36.70A.020(1) and (2).] [*LMI/Chevron, 8312,* FDO, p. 28]
- [Designating localized special planning areas [Subarea Plan areas] does not constitute discriminatory action.] [*LMI/Chevron, 8312,* FDO, p. 31]
- Once a jurisdiction decides to adopt a subarea for purposes of guiding land use decision-making, the subarea plan must be adopted as part of the comprehensive plan. Subarea plans are subject to the goals and requirements of the Act and must be consistent with the jurisdiction's comprehensive plan. [*LMI/Chevron, 8312,* FDO, p. 51]
- Subarea plan refinements must be consistent with the jurisdiction's comprehensive plan and comply with the goals and requirements of the Act. Where the subarea plan modifies only portions of a

jurisdiction's comprehensive plan for the subarea, the unaffected provisions of the comprehensive plan continue to apply and govern in the subarea. [*LMI/Chevron, 8312,* FDO, p. 51]

- When a subarea plan refines one of the mandatory elements of the jurisdiction's comprehensive plan the requirements set forth in RCW 36.70A.070 apply to that subarea plan. [*LMI/Chevron, 8312,* FDO, p. 51]
- The County's decision to attempt to comply with the FDO and address the land use of the [property] in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy. The time and effort expended on the present process illustrate the difficulty and complexity of developing an optional Lake Stevens UGA subarea plan. The Board does not want to dissuade the County from subarea planning and notes that neither the substance or the Lake Stevens subarea plan nor the appropriateness of that public process is presently before the Board. Unfortunately, the action needed for the County to address the Board's finding that the notice was defective for the County's amendment to 33.7 acres in Ordinance No. 96-074 had been needlessly enmeshed in the subarea planning process. The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan. Further, the County's Lake Stevens UGA subarea plan process had interjected broader GMA and subarea planning issues into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance No. 96-074. [The Board directed the County to repeal those portions of Ordinance 96-074 that were invalidated due to defective notice.] [*Kelly, 7312c,* 3/31/99 Order, pp. 6-7]
- General Discussion of the relationship between the neighborhood plans adopted by the City; and the unadopted neighborhood plans that represent the wishes of the citizens of the neighborhoods. [*Montlake, 9302c,* FDO, at 6-8.]
- The City Council has exercised its discretion and adopted (portions of the neighborhood plan) which is distinct and separate from the unadopted (neighborhood plan). The City is also clear that it recognizes . . . that the unadopted (neighborhood plan) represents "the *wishes* of the citizens of the University Community," and that the (unadopted neighborhood plan) provides the basis for "a *desired* work program . . . for the neighborhood." However, the City has explicitly chosen **not** to include the neighborhood's . . . planning document, including the work program . . ., as part of the City-wide Comprehensive Plan. It is the City-wide Comprehensive Plan that the City must use to guide land use decision-making in the University Community Plan area. [*Montlake, 9302c,* FDO, at 8.]
- Neither RCW 36.70A.130(1) nor *WSDF III* stand for the proposition that subarea plans must contain, in every case, each of the mandatory comprehensive plan elements set out in RCW 36.70A.070 (footnote pertaining to *LMI* omitted). [*Tulalip II, 9313*, 1/28/00 Order, at 11.]
- [A] challenge to a 1999 adoption of a subarea plan is an action that, if timely filed, is subject to the GMA appeal procedures. [However, adoption of a subarea plan, that does not alter a land use designation originally adopted in a prior GMA plan, does not open the original designation to challenge. The challenge to the original designation is untimely.] [*MacAngus, 9317*, FDO, at 7.]
- [T]he County initiated the review and evaluation of the [subarea, not a property owner seeking to "correct" an alleged prior "error."] The purpose of the County's undertaking the planning process for the [subarea] was to reconcile differences between the Tribe's Plan and the County's Plan for the area, not to revisit and reevaluate all designations within the subarea. The [agricultural] designation within the subarea was not among the items needing to be reconciled. In the end, the County's adoption of the subarea plan did not alter the land use designation of Petitioner's property. [*MacAngus, 9317,* FDO, at 7-8.]

- The adoption of [a subarea plan] is a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to [an unchanged plan designation.] [A jurisdiction's decision to maintain an existing designation does not reopen the appeal period of that unchanged designation.] [*MacAngus, 9317,* FDO, at 8.]
- In adopting the Tulalip Subarea Plan, the County did not change, re-adopt, or re-affirm the [agricultural] designation; it merely maintained the existing designation. Additionally, the County's action was not taken in response to a statutory requirement, such as RCW 36.70A.215, which may require the County to change, re-adopt, or re-affirm its comprehensive plan or development regulations. [*MacAngus, 9317,* FDO, at 8-9.]
- [Designation of LAMIRDs in subarea plans must comply with the requirements of RCW 36.70A.070(5)(d); requirements for their designation are not discretionary.] [*Tacoma II, 9323c,* FDO, at 9.]
- The Board has previously determined that it is within a city's sound discretion to adopt as part of its comprehensive plan optional elements such as sub-area plans. [It is correct] that neither the Act, nor the [City's Plan itself, contain standards, or even generalized parameters, for the boundaries of an urban village or neighborhood plan. The Board holds that decisions about the geographic extent or shape of such sub-areas, absent explicit direction elsewhere in the plan, are also within the sound discretion of the City. [*Radabaugh, 0302*, FDO, at 5.]
- When a local government adopts an optional element, such as a neighborhood plan, it must be consistent with both the GMA and the provisions of the City-wide comprehensive plan. [Subarea Plan policies] may not over-ride, amend or "modify" such city-wide provisions [or policies.] [*Radabaugh, 0302,* FDO, at 7.]
- The Board understands that the City wishes to provide non-urban village citizens with some assurances that capital facility investments can be made outside of designated urban village boundaries. However, such a policy choice would have implications for existing (city-wide) comprehensive plan policies. For this and other reasons, not the least of which is the public notice requirements of RCW 36.70A.035, the avenue to pursue that end would be in a proposed amendment to the adopted city-wide policy rather than incremental, ad-hoc amendment to thirty-seven individual neighborhood plans. [*Radabaugh, 0302,* FDO, at 10.]
- The initial adoption of a subarea plan is explicitly excepted from [the] annual concurrent review process RCW 36.70A.130(2)(a)(i). [*Kitsap Citizens, 0319c*, FDO, at 12.]
- [The County adopted a subarea plan that included a residential component in an area originally envisioned as an industrial reserve.] The Board recognizes that both the City of Bremerton and Kitsap County have placed a high priority on identifying land for future economic development. [The record developed during the County's decision-making process [on the subarea plan] indicates [the County has "shown its work" – citing various documents from the record]. [*Kitsap Citizens, 0319c*, FDO, at 14-15.]
- [Generally, in sizing its UGAs pursuant to RCW 36.70A.110(3) to accommodate the residential population, a county should look first to existing city limits, then its existing UGA before considering expansion of the UGA. The record should document this process – "show its work".] [*Kitsap Citizens, 0319c*, FDO, at 15.]

SUBJECT MATTER JURISDICTION - SMJ

- The Board has jurisdiction to determine whether a development regulation adopted pursuant to RCW 36.70A.060 is in compliance with the GMA. [*Tracy, 2301,* FDO, p. 8]
- The GMA authorizes the Board to determine whether an enactment by a local jurisdiction is in compliance with the requirements of the act. In so doing, the Board will necessarily consider

whether a local jurisdiction planning under the GMA has exceeded the requirements of that act. The Board will do this by examining whatever action was taken by the local jurisdiction and comparing it to the purposes, requirements and goals of the GMA as a whole. If the local action is consistent with the requirements of the GMA, this Board will find that the local government was in compliance with the GMA. Conversely, inconsistent actions will be remanded. [*Tracy, 2301,* FDO, p. 21]

- If a local jurisdiction indicates that the challenged adopted ordinance was enacted pursuant to the requirements of the GMA, this Board will review the entire document. Only if a local jurisdiction clearly specifies that certain provisions of an adopted ordinance were adopted under the authority of another act or the jurisdiction's general police powers, will this Board not accept jurisdiction to review that portion of the enactment. If it is clear that a local jurisdiction has split its ordinance into GMA and non-GMA provisions, a potential challenger will have to file more than one appeal: one with a growth planning hearings board and the other with the local superior court. This Board has jurisdiction only over matters specified in RCW 36.70A.280. [*Tracy, 2301,* FDO, p. 21]
- When a petition for review alleges that a local jurisdiction failed to comply with a statute other than one named in RCW 36.70A.280(1), the Board does not have jurisdiction to make a decision on the issue of compliance. [*Gutschmidt, 2306,* FDO, p. 8]
- The Board does not have jurisdiction to determine federal and state constitutional issues arising from a county or city's implementation of the Act. [*Gutschmidt, 2306,* FDO, p. 10]
- Although the Board may consider the common law, other statutes and processes in determining GMA claims, it does not have jurisdiction to decide whether these "other statutes" and the common law, which are not specifically referenced in RCW 36.70A.280(1), have been violated. [*Twin Falls, 3303c,* 10/6/93 Order, p. 5]
- The Board's jurisdiction does not apply to all planning documents enacted by a local government or a state agency. Instead, the Board's jurisdiction is limited to planning documents, such as comprehensive plans and development regulations, that were adopted in an effort to comply with the requirements of the GMA. The Board's subject matter jurisdiction is strictly limited to the matters specified in RCW 36.70A,210(6) and RCW 36.70A.280(1). This conclusion is bolstered by the legislature's use of the word "only" in RCW 36.70A.210(1) and the fact that RCW 36.70A.300(1) indicates that the Board's final decision ". . . shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, or chapter 43.21C RCW as it relates to plans, regulations, and amendments thereto, adopted under RCW 36.70A.040. . . ." [*Happy Valley, 3308c,* 10/25/93 Order, p. 13-14]
- The Board does not have the authority to determine equitable issues. [*Tacoma, 4301,* 3/4/94 Order, p. 3]
- Challenges to non-GMA actions taken after GMA deadlines have passed, and alleging failure to comply with the requirements of the Act, must be brought before a superior court, unless the legislature subsequently expands the Board's jurisdictional authority. [*KCRP, 4305,* 7/27/94 Order, p. 14]
- As a matter of law, any jurisdiction planning under the Act and within the Board's jurisdiction must comply with the current requirements of the Act and this Board's decisions, unless the latter have been reversed upon judicial review. [*FOTL II, 4309,* 11/8/94 Order, p. 8]
- Unless the legislature amends either the Board's jurisdictional statute or the BRB statute or both, the Board will not review decisions of any boundary review board. [*Sumner, 4313,* 12/14/94 Order, p. 6]
- The CPSGMHB's jurisdiction is limited to the four-county Central Puget Sound region by RCW 36.70A.250. Thus, the precedential impact of this Board's decisions is limited to King, Pierce, Snohomish and Kitsap counties. This is consistent with the regional diversity that is one of the hallmarks of the Growth Management Act. [*Kitsap/OFM, 4314,* FDO, p. 5]

- Although respondent city did not specifically raise a subject matter jurisdiction defense in this case, the Board is bound by its own precedent. The Board cannot determine in one case (i.e., *Bainbridge Island*) that it does not have jurisdiction over challenges to Chapter 82.02 RCW, and then ignore that decision in another case where the jurisdictional defense was not specifically raised. [*Slatten, 4328,* 2/24/95 Order, p. 2]
- The Board does not have jurisdiction to review the approval of a sewer district comprehensive plan amendment by a county legislative authority acting pursuant to RCW 56.02.060 and 56.08.020. [*Hensley I, 4329,* 2/24/95 Order, p. 3]
- Although the Board does not have jurisdiction to determine whether RCW 35A.14.330 has been violated, in determining whether RCW 36.70A.110 applies, the Board is free to examine other statutes besides those codified in Chapter 36.70A RCW. [*Bremerton, 5339c,* 6/5/96 Order, p. 4]
- The Board does not have jurisdiction over annexation issues in Title 35 RCW. [*Bremerton, 5339c,* 11/6/95 Order, p. 2]
- The Board does not have jurisdiction to determine whether the vested rights doctrine applies or has been violated. [*Bremerton, 5339c,* 11/6/95 Order, p. 2]
- All jurisdictions in the Central Puget Sound region, regardless of size or local circumstances, are obliged to meet the procedural and substantive requirements of the GMA. [*CCSV, 5344,* 6/14/95 Order, p. 5]
- The Board has jurisdiction over both adopted GMA enactments <u>and</u> failures to adopt specifically mandated GMA enactments. [*CCSV, 5344,* 6/14/95 Order, p. 6]
- The Board does not have jurisdiction over Title 35 as it relates to annexation. [*Anderson Creek, 5353c,* 10/18/95 Order, p. 7]
- The Board does not have jurisdiction over legal issues regarding whether a municipality sold surplus property. [*Anderson Creek, 5353c,* 10/18/95 Order, p. 9]
- The Board does not have jurisdiction over Chapter 82.02 RCW. [*Anderson Creek, 5353c,* 10/18/95 Order, p. 10]
- The Board does not have jurisdiction over whether the County complied the requirements of Chapter 36.32 RCW [County Commissioners] prior to filing its petition for review. [*Anderson Creek, 5353c,* 10/18/95 Order, p. 10]
- General discussion and recap of Board's subject matter jurisdiction. [*South Bellevue, 5355,* 11/30/95 Order, p. 3-6]
- The Board does not have jurisdiction to review petitions for review that allege that a state agency, county or city action fails to comply with Chapter 82.02, or other chapters in the RCW besides Chapters 36.70A or 43.21C RCW. [*South Bellevue, 5355,* 11/30/95 Order, p. 8]
- The Board does not have jurisdiction over the common law vested rights doctrine. [*South Bellevue, 5355,* 11/30/95 Order, p. 10]
- General discussion and recap of the quasi-judicial nature of the Board, jurisdictional issues and the APA. [*Sky Valley, 5368c,* FDO, p. 6-20]
- Counties are required to be guided by the goals set forth at RCW 36.70A.020, and that the requirement has both a procedural and a substantive component. RCW 36.70A.280 gives the Board jurisdiction over that requirement; RCW 36.70A.300 directs the Board to determine whether compliance with that requirement has occurred. [*Sky Valley, 5368c,* FDO, p. 124]
- The question of emergency ordinances, since repealed and replaced by interim ordinances, are moot; the Board will not hear and decide moot issue. [*Hayes, 5381,* 4/23/96 Order, p. 4]
- The Board does not have authority to review an action of a county acting pursuant to RCW 36.94.140 – relating to funding for new or expanded treatment plants. [*Hayes, 5381,* 4/23/96 Order, p. 6]

- The Board does not have independent SEPA jurisdiction where it lacks subject matter jurisdiction over the underlying matter. [*Hayes, 5381,* 4/23/96 Order, p. 7]
- The Board has jurisdiction to determine a challenged local government action's compliance with the goals *and* requirements of the Act. [*Cole, 6309c,* FDO, p. 11-13]
- The Board is authorized to review a jurisdiction's legislative action that is alleged not to comply with the Act. The Board will not review quasi-judicial actions of local jurisdictions. Simply because a person has requested that a designation be changed does not mean that the resulting action taken by the legislative body was quasi-judicial. [*Buckles, 6322c,* FDO, p. 24]
- Nowhere in the GMA is "emergency" defined, nor is there a requirement for a jurisdiction to define emergency in its plan. More directly on point, RCW 36.70A.130(2)(b) does not address the procedures for declaring an emergency, nor confer jurisdiction upon the Board to review such a declaration. [*Wallock I, 6325,* FDO, p. 10]
- If a County adopts annexation policies as part of its CPPs or if annexation policies are included in an adopted comprehensive plan, the Board would have jurisdiction to review such annexation policies. [*Lake Forest Park, 6336,* 2/14/97 Order, p. 4]
- The Board does not have subject matter jurisdiction to review interim annexation policies that were not adopted to comply with, or in furtherance of, a requirement of Chapter 36.70A RCW. [*Lake Forest Park, 6336,* 2/14/97 Order, p. 5]
- The Board is without authority to rule on issues not properly before it. [*Rabie, 8305c,* 4/24/98 Order, p. 3]
- Although the purchase of [certain parcels or property] was linked to subsequent Plan and development regulation amendments, the purchase itself is not a GMA action and thus not subject to RCW 36.70A.140. (*See also* Footnote 4, [T]he Board recognizes that local government must undertake many steps, internal communications and activities prior to the development of a proposed amendment to a GMA plan or regulation, at least some of which actions are not GMA actions. The Board has not previously articulated, and does not here articulate, a standard for when such local government steps, communications and activities arise to the status of a "proposed GMA amendment" that would be subject to the requirements of RCW 36.70A.140 or other provisions of the Act. [*Green Valley, 8308c,* FDO, p. 10]
- Just as the Board lacks authority to consider and rule on the GMA propriety of the process or rationale for the County's purchasing decision, so, too, does the Board lack authority to assign any weight to the historical factors that ostensibly led the County to adopt the agricultural land amendments that it did. [*Green Valley, 8308c,* FDO, p. 10]
- It is not the Board's role to evaluate the advisability of different policy choices that a local government may make. [*Green Valley, 8308c,* FDO, p. 10]
- The Board does not have jurisdiction to determine compliance with RCW 89.08.010 and to determine the [jurisdiction's] ability to deed-restrict itself. [*Green Valley, 8308c,* FDO, p. 12]
- A challenge to a vote of the citizenry is beyond the jurisdiction of the Board. The Board' authority is limited to legislative actions of the legislative body of the local government. [*Style, 8309,* 2/13/98 Order, p. 1]
- The Board does not have subject matter jurisdiction over claims arising under Chapter 47.80 RCW. [*Burien, 8310,* 4/23/98 Order, p. 1]
- The negotiation and execution of an Interlocal Agreement, that is a non-GMA action, is not subject to the public participation requirements of the GMA over which the Board has jurisdiction. [*Burien, 8310,* FDO, p. 9]
- RCW 36.70A.280(1) does not confer jurisdiction upon the Board to review a land use project permit decision, including but not limited to, conditional use permits. This Board has no authority or

jurisdiction to review land use project permit decisions of a local government. [*Hanson, 8315c,* 9/28/98 Order, p. 5]

- [The Board may refer to the Civil Rules for guidance, but it is not bound by them.] The Board is not a court; its jurisdiction and authority is prescribed by the Legislature. The explicit statutory filing period for a petition is sixty days yet [petitioner] asks that the Board in effect, extend it. . . . To allow the addition of [or substitution of] a new petitioner at this time and allow this change to relate back to [the original filing date of the PFR], would substantially expand the jurisdictional limits the Legislature established for the Boards. This the Board cannot do. [*Montlake, 9302c*, 4/23/99 Order, at 6.]
- Nowhere in RCW 36.70A.280 is the Board explicitly or implicitly delegated the authority to determine compliance with Chapter 81.112 RCW or with the law of agency. Tukwila has not identified any authority establishing Board jurisdiction over these matters. [*Sound Transit, 9303,* 6/18/99 Order, at 2]
- The action of approving a docket of proposed amendments and revisions to a GMA Plan does not adopt or amend the Plan or development regulations. Therefore, pursuant to RCW 36.70A.280(2), the Board does not have jurisdiction to review AFT's PFR. [*AFT, 9302,* 6/18/99 Order, at 4.]
- The Board will not address Petitioner's contention that the Board's participation standing requirements violate constitutional rights of due process and equal protection. The Board has no jurisdiction to decide constitutional issues. [*NW Golf, 9314,* 9/29/99 Order, at 3.]
- Respondent argued that the Board [nor a court] could not grant the "ultimate relief" [free from the impacts of development] sought by Petitioners therefore the case was moot. The Board stated, whatever the "ultimate relief" sought by [Petitioners], the relief sought before this Board is a finding of non-compliance and a determination of invalidity. [*Bear Creek, 5308c*, 4/4/00 Order, at 3.]
- Authority to determine . . . vested rights is beyond the jurisdiction of this Board; resolution of such a question must be made in the judicial forum. [*Bear Creek, 5308c*, 4/4/00 Order, at 3.]
- [RCW 36.70A.290(2)] is unambiguous; if a petition is not filed within sixty days after publication, the Board is without authority to review the petition. [*Gain, 9319*, 1/28/00 Order, at 3.]
- Those issues that challenge project approval that does not involve the issue of whether the [jurisdiction] properly complied with the GMA must be dismissed. [*Gain, 9319*, 1/28/00 Order, at 5.]
- [Nowhere in the GMA is the Board granted jurisdiction to determine an appearance of fairness doctrine issue.] [*Gain, 9319*, 1/28/00 Order, at11.]
- [Nowhere in the GMA is the Board granted jurisdiction to determine the scope of authority of a hearings examiner.] [*Gain, 9319*, 1/28/00 Order, at12.]
- The Board has no authority to determine whether a decision of a hearing examiner is legally binding. [*Gain, 9319*, 1/28/00 Order, at12.]
- While the Board clearly has authority to hear and determine *compliance* with the GMA, here we lack the circumstances to do so. Absent a properly framed legal issue, couched in a timely PFR, the Board has no means to reach Shoreline's questions. Lacking such a PFR, the Board cannot evaluate whether Shoreline's Plan (or Woodway's 1994 Plan, Snohomish County's Plan or the County's County-wide Planning Policies) comply with the goals and requirements of the Act; nor address the Plan's validity or binding effect, if any, beyond its corporate limits. For these reasons, the lack of an appropriate PFR and an inappropriate question for a PDR, the Board declines to issue a declaratory ruling in this matter. [*Shoreline pdr, 0301pdr*, at 3.]
- [The Board has jurisdiction to review actions of the legislative bodies of cities and counties within the central Puget Sound region. The Snohomish County Council has not acted. The challenged action] has been taken by Snohomish County Tomorrow, (SCT) an informal planning body with no

governmental authority. [SCT's adoption of a Metropolitan urban growth area (MUGA) review process is not within the Board's jurisdiction to review.] [*Shoreline, 0310*, 9/5/00 Order, at 3-4.]

- [Cities that incorporate in Central Puget Sound are subject to the GMA and must comply with its goals and requirements. Such cities are within the Board's jurisdiction.] [*WHIP, 0312*, 11/6/00 Order, at 4-7.]
- The City of Covington is a GMA planning jurisdiction. It was under no obligation to adopt any amendments the GMA plan and regulations that it adopted in 1997 as its own – having chosen to do so, the City must comply with the goals and requirements of the GMA. Because it has chosen to do so by adopting the challenged ordinances, it has taken actions that are subject to the goals and requirements of the GMA. Therefore, the Board concludes, that pursuant to RCW 36.70A.280, it has jurisdiction to hear and decide the PFR. [*WHIP, 0312*, 11/6/00 Order, at 7.]
- [The Board's jurisdiction was recently addressed by the Supreme Court, which held that the Boards do not have jurisdiction to hear a petition that does not involve a comprehensive plan or development regulation under the GMA.] The PFR . . . challenges [the jurisdiction's] approval of a project permit application (a conditional use permit authorizing a multi-family mental health housing facility); the PFR does not challenge a comprehensive plan or development regulation, or amendment thereto. Consequently, RCW 36.70A.280(1) does not confer jurisdiction upon this Board to review such land use project permit decisions. [*Petersville Road Residents, 0313*, at 4-5.]
- The Board affirms its decision in *Hanson, 8315*, and concludes that RCW 36.70A.280(1), in light of the definitions contained in RCW 36.70A.030(7) and RCW 36.70B.020(3), does not confer jurisdiction upon this Board to review a local government's decision on a land use permit application. [*Petersville Road Residents, 0313*, at 5.]
- [I]t is axiomatic that the Board has jurisdiction to review legislative actions that adopt or amend a jurisdiction's GMA comprehensive plan or implementing development regulations, regardless of the vehicle (emergency ordinance, ordinance, resolution or motion) chosen by the jurisdiction to accomplish such action. [*McVittie V, 0316*, 1/22/01 Order, at 4.]
- [In *Wallock I*], the Board did conclude, "it does *not have jurisdiction* to review the [jurisdiction's] *declaration* of emergency as it relates to the adoption of the [challenged ordinance]." (Citation omitted.) The Board also stated it did not have jurisdiction to review "the circumstances, situations, or events that may precipitate a proposed [emergency] amendment." (Citation omitted.) The Board reaffirms this conclusion. . . . Petitioner fails to cite to any authority in the GMA, authorizing the Board to review the facts, circumstances, situations or events that underlie a jurisdiction's basis for *declaring* an emergency. [*McVittie V, 0316*, 1/22/01 Order, at 5.]
- [There is] interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. The Growth Boards have jurisdiction to determine compliance with the GMA, including UGA designations. UGA designation enables city annexations, since cities are prohibited from annexing areas beyond designated UGAs. Boundary Review Board decisions must be consistent with provisions of the GMA, including the UGA provisions. This system is consistent and coordinated and yields certainty in situations where UGAs have been found by the Board to comply with the Act, or where UGA designations have not been challenged. However, this system yields uncertainty where the UGA designation has been challenged, but not resolved as the annexation process proceeds. It is a situation that the Legislature has not, to date, addressed. [This uncertainty is prevalent in this case. In this case, the Board cannot, and will not, address the effect of the annexation, nor will it speculate on the outcome of pending litigation. However, the Board must carry out its mandated responsibilities.] Determining compliance with the goals and requirements of the GMA is the primary responsibility of the Board; it cannot shirk this duty. The Board must determine whether the challenged UGA designation complies with the goals and requirements of the Act. [*Kitsap Citizens, 0319c*, 2/16/01 Order, at 9-11.]

- [The Court of Appeals Division I] found that the Board had erroneously concluded that it did not have jurisdiction to review a resolution amending the City of Seattle's critical area policies. The Court found that where a jurisdiction chooses to adopt critical area policies the Growth Boards have jurisdiction to review such policies and determine whether the policies comply with the requirements of RCW 36.70A.172. [*HEAL, 6312*, 10/4/01 Remand Order, at 4.]
- [WHIP requested that the Board continue jurisdiction over "repealed" but still "pending" ordinances.] The City's continuing consideration of the ordinances previously invalidated on public participation grounds is not a violation of the Board's Order or the GMA. Once the City acts to adopt "something" (the same, revised, or entirely different ordinances), WHIP can challenge such action, as it deems necessary. However, the Board no longer has jurisdiction over the substance of the challenged ordinances because the challenged ordinances have been repealed. [*WHIP, 0312*, 3/5/01 Order, at 5.]
- [The County asserted that its Charter did not require public participation for emergency ordinances, and that its Charter supercedes special and general laws of the state.] A PFR has been filed with the Board challenging the County's compliance with the public participation requirements of the Act. This Board is obliged to reach a determination on this question. If that determination yields a conflict with the County's Charter, it is not for this Board to determine whether a general law of the state, such as the GMA, or the County Charter prevails. The Courts are the appropriate forums for addressing that question. [*McVittie V, 0316*, FDO, at 12-13.]
- RCW 36.70A.390 falls squarely within this Board's subject matter jurisdiction; the Board has clear authority to determine whether its provisions have been met. This section [of the GMA] is unique in the GMA context; it is a blunt instrument within a statute containing very detailed and refined requirements. It allows for temporary, interim or stopgap measures to manage development activity while appropriate analysis and planning can occur. This section also explicitly authorizes local jurisdictions to undertake the rather draconian measure of placing a freeze on development, i.e. to maintain the status quo while it undertakes the necessary planning to analyze and address the perceived issue(s). However, to successfully impose such a moratorium, the jurisdiction must adhere to the section's procedural provisions. [*SHAG, 1314*, 8/3/01 Order, at 5.]
- [The County asserted that its Charter did not require public participation for emergency ordinances, and that its Charter supercedes special and general laws of the state.] A PFR has been filed with the Board challenging the County's compliance with the public participation requirements of the Act. This Board is obliged to reach a determination on this question. If that determination yields a conflict with the County's Charter, it is not for this Board to determine whether a general law of the state, such as the GMA, or the County Charter prevails. The Courts are the appropriate forums for addressing that question. [*McVittie V, 0316*, FDO, at 12-13.]
- Petitioners cite to no authority for its ["necessary linkage" assertion that the Board must determine the constitutionality of a action to determine compliance with Goal 6.] [The Board agrees with the City] the Board does not have to 'necessarily' determine the constitutionality of a city's action when reviewing a challenge under Goal 6. Under Goal 6, the requirement to find both arbitrary and discriminatory action is not the same as finding a violation of a constitutional provision. [The Board has jurisdiction to review an action for whether it complies with Goal 6, but not for whether it is constitutional.] [*HBA II, 1319*, 10/18/01 Order, at 2-3.]
- The Board finds that its ruling in *Sound Transit* [9303, 6/18/99 Order] is directly on point. The Board's jurisdiction is properly limited to Chapters 36.70A RCW, 90.58 RCW and 43.21C RCW. It is not for this Board to interpret other statutes, nor to determine whether a petitioner has acted within its authority as described by other statutes (i.e. Chapter 35.14 RCW). It is undisputed that the East Bellevue Community Council has established participation standing pursuant to RCW 36.70A.280. If the City wishes to pursue its argument that EBCC lacks authority to bring this appeal, its recourse is to the courts. [*Bennett, 1322c*, 1/7/02 Order, at 5.]

SUBURBAN

- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, pp. 44-48]
- New urban land uses may be located only within UGAs. [*Bremerton, 5339c,* FDO, p. 48]
- Suburban is a subset of urban. [*Bremerton, 5339c,* FDO, p. 49]
- The legislature recognized that MPRs are urban growth outside of UGAs. The GMA permits the urban growth of an MPR if the County's regulations do not permit other urban or suburban growth in the vicinity of the MPR. [Urban growth in MPRs is recognized by, not prohibited by the Act.] [*Gain, 9319*, at 8.]

SUMMARY JUDGMENT – *SEE:* DISPOSITIVE MOTIONS

- Although a dispositive motion before a board and a motion for summary judgment before a superior court may be similar, the Board is not constrained by CR 56 time limits or case law interpretation of that rule. [*Twin Falls, 3303c,* 6/11/93 Order, p. 19]

SUPPORTING EVIDENCE – *SEE:* EVIDENCE OR EXHIBITS OR RECORD

TIERING

- The Act neither mandates nor prohibits temporal phasing of development within a UGA. [*Rural Residents, 3310,* FDO, p. 46]
- If a county elects to utilize tiering within its UGAs, it is best served at the FUGA stage, when the capital facilities plan element of the comprehensive plan has been prepared. It is premature to require tiering at the IUGA level. [*Tacoma, 4301,* FDO, p. 35]
- [Regarding when there is conversion of] Urban Reserve lands to UGA, the Board finds no requirement in the Act obligating the County to set forth a phasing schedule, *per se*. [However, RCW 36.70A.215] obligates the County to monitor the rate at which lands within the UGA are being utilized and to take appropriate action, which could include expansion of the UGA, if circumstances so warrant. [*Bremerton/Alpine, 5339c/8332c,* FDO, pp. 44-45]
- [Generally, in sizing its UGAs pursuant to RCW 36.70A.110(3) to accommodate the residential population, a county should look first to existing city limits, then its existing UGA before considering expansion of the UGA. The record should document this process – "show its work".] [*Kitsap Citizens, 0319c*, FDO, at 15.]

TIMELINESS

- Until a jurisdiction complies with the Act's procedural requirements, a failure to act challenge can be brought at any time. Once the Act's procedural requirements are met, substantive challenges to an enactment must be brought within the sixty-day statute of limitations. [*KCRP, 4305,* 7/27/94 Order, p. 19]
- In the absence of a brief on any of the issues set forth in the prehearing order, by the deadline, all issues have been abandoned – per WAC 242-02-570(1). [*Kitsap, 4306,* 12/2/94 Order, p.1]
- No statute of limitations exists for petitioning for adjustments of OFM's population projections. [*Kitsap/OFM, 4314,* FDO, p. 12]

- Challenges to either SEPA or GMA standing before the Board can be brought at any time by either a party or the Board on its own initiative. [*PNO, 4318,* FDO, p. 19]
- It is notice of publication of the Plan, not the date a SEPA document is prepared nor the date a hearing examiner issues a decision on an administrative appeal of that SEPA document(s), that triggers the sixty-day statute of limitations for bringing appeals to the Board. [*PNA I, 5359,* FDO, p. 8]
- A petitioner is not precluded from challenging development regulations that implement a certain comprehensive plan policy, even though the petitioner did not challenge the specific policies in the plan (assuming the petitioner otherwise meets the standing and timely petition filing requirements of the Act). [*PNA II, 5371,* FDO, p. 23]
- If the appeal period has lapsed, the organization cannot substitute an individual as petitioner in a petition for review. [*Banigan, 6316c,* 7/29/96 Order, p. 11]
- The Board does not have the authority to review petitions for review filed more than sixty days after publication of the jurisdiction's challenged action. The Board cannot create exceptions that expand this authority. [*Torrance, 6338,* 3/31/97 Order, p. 4]
- Petitioners cannot now challenge the original designation of their property (untimely); neither can they challenge the County's decision not to adopt the proposed amendments. [*Torrance, 6338,* 3/31/97 Order, p. 5-6]
- [The Board may refer to the Civil Rules for guidance, but it is not bound by them.] The Board is not a court; its jurisdiction and authority is prescribed by the Legislature. The explicit statutory filing period for a petition is sixty days yet [petitioner] asks that the Board in effect, extend it. . . . To allow the addition of [or substitution of] a new petitioner at this time and allow this change to relate back to [the original filing date of the PFR], would substantially expand the jurisdictional limits the Legislature established for the Boards. This the Board cannot do. [*Montlake, 9302c*, 4/23/99 Order, at 6.]
- [Filing motions (dispositive or to supplement the record) are untimely if filed after the deadline established in the prehearing order, unless written permission is granted by the Board.] [*WRECO, 8335,* FDO, at 2-3]
- The issues set forth in AFT's PFR challenge the County's 1995 UGA and future land use map designations. Pursuant to RCW 36,70A.290(2), the time for challenging these 1995 designations is long past. AFT's PFR is untimely. [*AFT, 9302,* 6/18/99 Order, at 4.] The issues set forth in AFT's PFR challenge the County's 1995 UGA and future land use map designations. Pursuant to RCW 36,70A.290(2), the time for challenging these 1995 designations is long past. AFT's PFR is untimely. [*AFT, 9302,* 6/18/99 Order, at 4.]
- [The City's "screenline" LOS methodology and Concurrency Regulations were adopted in 1994. The Ordinance challenged here, which adopted the Plan amendments, did not amend the LOS provisions of the Transportation Element or Concurrency Regulations as adopted in 1994. Petitioner cannot now challenge these provisions.] [*Montlake, 9302c,* FDO, at 10-12.]
- [A challenge to an Ordinance amending the Capital Facilities Element cannot be a vehicle to challenge the jurisdiction's Housing, Utilities and Transportation Element. Such challenges to these elements are untimely, since they were not amended in the challenged Ordinance.] [*McVittie, 9316c, FDO, at* 15-17.]
- [A] challenge to a 1999 adoption of a subarea plan is an action that, if timely filed, is subject to the GMA appeal procedures. [However, adoption of a subarea plan, that does not alter a land use designation originally adopted in a prior GMA plan, does not open the original designation to challenge. The challenge to the original designation is untimely.] [*MacAngus, 9317,* FDO, at 7.]
- The adoption of [a subarea plan] is a new process, generating a new decision and requiring a new evaluation of consistency, but not as it applies to [an unchanged plan designation.] [A jurisdiction's

decision to maintain an existing designation does not reopen the appeal period of that unchanged designation.] [*MacAngus, 9317,* FDO, at 8.]

- [RCW 36.70A.290(2)] is unambiguous; if a petition is not filed within sixty days after publication, the Board is without authority to review the petition. [*Gain, 9319*, 1/28/00 Order, at 3.]
- [A failure to act challenge may be brought at any time after the deadline has passed. WAC 242-02-220(5).] If a city or county failed to take any action relating to a GMA deadline, a petitioner may challenge the failure of that city or county to act by that deadline. On the other hand, if a city or county has taken some action relating to a GMA deadline, and published notice of that action, a challenge to that action must be filed within sixty days after publication. [*Gain, 9319*, 1/28/00 Order, at 4.]
- The record is clear that the County designated GMA forest lands and adopted development regulations. The County did not "fail to act." Petitioner's disagreement with the County's actions at this late date cannot re-open review of the County's action. [*Gain, 9319*, 1/28/00 Order, at 6.]
- Without any explanation, Petitioners filed their response brief with the Board two days after the Board's deadline. The Board may dismiss any action for failure to comply with any order of the Board. WAC 242-02-720. Because Petitioners' brief was filed late and without prior approval of the Board, the Board has not considered Petitioners' response brief. [*Tacoma II, 9323c*, 3/10/00 Order, at 2]
- [On reconsideration, the Board considered Petitioners' response brief, but affirmed its decision to dismiss the PFRs alleging the County failed to adopt the amendments proposed by Petitioners.] [*Tacoma, 9323c*, 3/27/00 Order, at 1-2.]
- [Filing a PFR prior to publication is not a premature and invalid filing. PFRs may be filed from the date of legislative action until sixty-days after publication.] [*McVittie IV, 0306c*, 4/25/00 Order, at 4-5.]
- RCW 36.70A.290(2) limits the time within which a jurisdiction is exposed to a potential GMA challenge. However, it is the jurisdiction's legislative action of adopting or amending its Plan, development regulations or taking other GMA actions to implement its plan that "triggers" the possibility of challenge or opens the window for petitioning the Board. To close the window, RCW 36.70A.290(2) requires a jurisdiction to publish notice of its GMA action. Publication puts the public on notice that the opportunity to appeal will close in sixty-days. RCW 36.70A.290(2) enables a jurisdiction to establish a date certain, after which its GMA actions will not be subject to challenge. [*McVittie IV, 0306c*, 4/25/00 Order, at 4.]
- If notice of the GMA action is not published, there is no closure of the appeal period and no protection provided by RCW 36.70A.290(2). However, once published, the protection provided by RCW 36.70A.290(2) is available. That protection is a limitation on the appeal period. [McVittie IV, 0306c, 4/25/00 Order, at 4-5.]
- [The jurisdiction's] legislative action starts the clock for filing appeals toe the Board. Publication by the [jurisdiction] of notice of its legislative action establishes the date the clock stops. [*McVittie IV, 0306c*, 4/25/00 Order, at 5.]
- [Withdrawal of publication, when there is no change in the legislative action, does not close the appeal period or remove it; the appeal period remains open until re-publication establishes the end of the sixty-day period.] [*McVittie IV, 0306c*, 4/25/00 Order, at 5.]
- [Since the County did not revise its minimum standards (LOS), inventories, or needs assessment in the challenged CFE enactments, the challenge is untimely.] [*McVittie IV, 0306c*, at 13-14.]
- [Since the County did not revise its minimum standards (LOS), inventories, or needs assessment in the challenged Transportation Element enactments, the challenge is untimely.] [*McVittie IV*, *0306c*, at 17-18.]

- The Board rejects the argument that the 1994 designation of the . . .parcel as forest resource lands was a "mistake." The record supporting that prior designation is not before the Board and the time to challenge the GMA sufficiency of that designation has long since passed. [The Board notes that the original property owner did not characterize the prior resource lands designation as a "discrepancy" or "mistake" in 1994, nor in 1995 when it sold the property with that designation intact. Nor did Intervenor characterize the prior designation as a "mistake" until after the property was logged in reliance upon that resource land designation. To advance such argument at this time is ironic, if not disingenuous.] [*Forster Woods, 1308c*, FDO, at 16 and footnote 5.]

TRANSFER OF DEVELOPMENT RIGHTS - TDRS

- RCW 36.70A.170(1)(a) requires counties and cities to designate all lands that meet the definition of agricultural lands, unless the lands fall within a UGA lacking a program for purchase or transfer of development rights, and that RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all designated agricultural lands. [*Sky Valley, 5368c,* FDO, p. 113]
- A city is without authority to make any agricultural designations within a UGA prior to the enactment of a program authorizing a transfer or purchase of development rights pursuant to RCW 36.70A.060(4). Unless and until it adopts such a program, it is obliged to designate such properties for non-agricultural urban uses. [*Benaroya I, 5372c,* FDO, pp. 11-12]
- It is not the jurisdiction's burden to demonstrate the effectiveness of a TDR program. [*Cosmos, 6319,* 6/17/96 Order, p. 4]
- The Board reaffirmed its holding in the FDO that the City could not designate lands agriculture unless and until it adopted a program authorizing the transfer or development of development rights. [*Benaroya I, 5372c,* 12/31/98 Order-Court Remand, p. 3]

TRANSFORMATION OF GOVERNANCE

- County-wide planning policies are policy documents that have both a procedural and a substantive effect on the comprehensive plans of cities and the county. The immediate purpose of the CPPs is to achieve consistency between and among the plans of cities and the county on regional matters. A long-term purpose of the CPPs is to facilitate the transformation of local governance in urban growth areas so that cities become the primary providers of urban governmental services and counties become the providers of regional and rural services and the makers of regional policies. [*Poulsbo, 2309c,* FDO, p. 23]
- UGAs take direction from the Act's planning goals at RCW 36.70A.020 and from CPPs. UGAs therefore also serve the three purposes of CPPs: (1) to achieve consistency between plans as required by RCW 36.70A.100; (2) to achieve a transformation of local governance within the UGA; and (3) to direct urban development to urban areas and to reduce sprawl. [*Rural Residents, 3310,* FDO, p. 14]
- Comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve compact urban development. [*Tacoma, 4301,* FDO, p. 12]
- The Board concludes that the six exceptions to the general rule that counties cannot designate UGAs beyond city limits, as set forth in *Rural Residents, at 44,* were not changed by the 1995 legislative amendments. However, a new holding is in order, as follows:

> Regardless of whether a satisfactory showing has been made that existing cities can accommodate the projected population growth, counties will be permitted to designate FUGAs beyond existing incorporated areas on lands covered by the third exception. However, this does not give counties the carte blanche permission to designate as UGAs *all* urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both UGAs and CPPs must serve: to achieve the *transformation of local governance* within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve *compact urban development. See Tacoma,* at 12. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical to now blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted. *Amending Bremerton,* pp. 39-40.

[*Vashon-Maury, 5308c,* FDO, p. 26]

- Just because unincorporated lands today contain urban growth on them does not necessarily mean that they should be included within a UGA. Instead counties must examine how a UGA designation for such lands would achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services, and will achieve compact urban development. [*Vashon-Maury, 5308c,* FDO, p. 27]
- The GMA acknowledged that the "old way of doing things" (i.e., non-GMA planning and decision-making) threatened the quality of life enjoyed by Washington's residents, and that in order to meet this threat, new and important steps needed to be taken. RCW 36.70A.010 (FN1) describes a legislatively preferred future for our state, just as the subsequent sections of the Act mandate that communities manage the problems of growth and change in a new way. [*Children's I, 5311,* FDO, p. 4]
- In the GMA, there are a number of specific references that address housing and residential land uses, some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population. [*Children's I, 5311,* FDO, p. 5]
- Growth is more than simply a quantitative increase in the numbers of people living in a community and the addition of "more of the same" to the built environment. Rather, it encompasses the related and important dynamic of change. Because the characteristics of our population have changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup, the GMA requires that housing policies and residential land use regulations must follow suit. This transformation in our society must be reflected in the plans and implementing measures adopted to manage growth and change. [*Children's I, 5311,* FDO, p. 9]
- The Board concludes that there are at least eight major negative consequences of sprawl: (1) it needlessly destroys the economic, environmental and aesthetic value of resource lands; (2) it creates an inefficient land use pattern that is very expensive to serve with public funds; (3) it blurs local government roles, fueling competition, redundancy and conflict among those governments; (4) it threatens economic viability by diffusing rather than focusing needed public infrastructure investments; (5) it abandons established urban areas where substantial past investments, both public and private, have been made; (6) it encourages insular and parochial local policies that thwart the siting of needed regional facilities and the equitable accommodation of locally unpopular land uses; (7) it destroys the intrinsic visual character of the landscape; and (8) it erodes a sense of community, which, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, p. 28]

- The Act intends local governments to plan meaningfully for the future – to change the way land use planning has traditionally been done. . . . The regional physical form required by the Act is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape. [*Bremerton, 5339c,* FDO, pp. 28-29]
- The GMA's focus on regional diversity contemplates that the solutions that are necessary and appropriate for the Central Puget Sound region may not pertain to other parts of Washington. [*Bremerton, 5339c,* FDO, p. 29]
- Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." [*Bremerton, 5339c,* FDO, p. 31]
- In specifically rejecting the sprawl model for Washington State, the GMA asserts the importance of taking a balanced, long-term view and promoting and serving the broad public interest. When the GMA's substantive requirements for county plans and FUGAs are read together, what emerges is a sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community, that, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, pp. 51-52]
- A county cannot base its future planning for new growth on its past development practices if those past practices, as here, do not comply with the GMA. What was once permissible is no longer so. The GMA was passed to stop repeating past mistakes in the future. [*Bremerton, 5339c,* FDO, p. 71]
- The advent of the GMA changed land use law in this state in a profound way, changing the land use patterns that counties may permit in rural areas. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 25]
- Pre-existing parcelization cannot be undone, however there is no reason to perpetuate the past (i.e., creation of an urban land use pattern in the rural area) in light of the GMA's call for change. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 25]
- All jurisdictions in the Central Puget Sound region, regardless of size or local circumstances, are obliged to meet the procedural and substantive requirements of the GMA. [*CCSV, 5344,* 6/14/95 Order, p. 5]
- Although counties cannot be expected to undo past land use practices, they cannot adopt regulations that fail to place appropriate conditions on growth outside UGAs to limit it to achieve conformance with requirements of RCW 36.70A.110. [*PNA II, 5371,* FDO, p. 13]
- In the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the GMA. [*WSDF IV, 6333,* FDO, p. 11]
- Designation of a UGA adjacent to existing city limits fosters compact urban development and the transformation of local governance. [*Johnson II, 7302,* FDO, p. 7]

TRANSPORTATION ELEMENT

- Establishing level of service (LOS) methodology for arterials and transit routes, like calibrating a thermometer, is simply an objective way to measure traffic. That is all the Act requires establishing; it does not dictate what is too congested. Under the GMA, setting the desired level of service standard is a policy decision left to the discretion of local elected officials. Citizen dissatisfaction with the City's LOS methodology or its LOS standards may be expressed through the City's

legislative process and the ballot box, not through the quasi-judicial system. [*WSDF I, 4316,* FDO, p. 60]

- [Where a large percentage of population and employment growth is concentrated by a city's comprehensive planning process, a city's comprehensive plan must at least discuss what impact its concentrated population growth strategy will have on future traffic forecasts.] [*WSDF I, 4316,* FDO, p. 63]
- City comprehensive plans must contain an assessment of its impact on adjacent jurisdictions. . . . At the very least, a plan must indicate which jurisdictions are adjacent to the city, what the present traffic volumes and system capacities of major arterials in those jurisdiction connected to the city's are, and an analysis of what impact, if any, the city's transportation plan will have on those neighboring jurisdictions. [*WSDF I, 4316,* FDO, p. 68]
- The certification process of Chapter 47.80 RCW [Regional Transportation Planning Organizations] is completely separate from the GMA. The Board has jurisdiction under the GMA to determine compliance of a comprehensive plan's transportation element with the requirements of the Act. [*Sky Valley, 5368c,* FDO, p. 129]
- The Act does not require the use of any particular methodology for the 10-year traffic forecast. The nature of traffic forecasting is that it applies a methodology to data and assumptions to generate a prediction of the likely future. Where the Act does not prescribe a particular methodology, a state or local government is free to employ its own methodology, provided that it is supported by objective data and credible assumptions. [*Hapsmith I, 5375c,* FDO, p. 30]
- General discussion of transportation coordination with adjacent jurisdictions. [*Hapsmith I, 5375c,* FDO, pp. 32-34]
- Any railroads with facilities, such as trackage, railyards and intermodal centers, that serve the region or state, as a matter of law, constitute state or regional transportation facilities and therefore are essential public facilities. [*Hapsmith I, 5375c,* FDO, p. 39]
- For purposes of RCW 36.70A.070(4) railroads are not utilities. Given the nature and size of railroads and their potential impact on land use planning, sound policy dictates that railroads be considered under the transportation element rather than the utilities element of a comprehensive plan. [*Hapsmith I, 5375c,* FDO, p. 49]
- For purposes of evaluating a jurisdiction's compliance with RCW 36.70A.070(6)(d), adjacent jurisdictions are those which are connected to the jurisdiction by a major arterial. [*WSDF IV, 6333,* FDO, p. 35]
- RCW 36.70A.020(3) does not require that each and every land use designation of a jurisdiction permit residential densities that support all modes of transportation. [Reliance on urban density designations alone is not enough to demonstrate noncompliance with Goal 3.] [*LMI/Chevron, 8312,* FDO, p. 29]
- A threshold issue for determining whether [Snohomish] County has made its capital budget decisions, pertaining to roads, in conformity with its comprehensive plan, is the relationship of the County's Transportation Element, the six-year financing plan in the 1999-2004 Capital Plan Detail and the Transportation Improvement Plan (TIP). Conceptually, the starting point for this inquiry is the County's Transportation Element, [as adopted in 1995]. Within this document, the County identifies its proposed transportation improvements for the short range (1995-2000 Phase) and long range (2001-2012 Phase). The transportation improvements identified in the Transportation Element are the baseline Plan provisions against which conformity of capital budget decisions are measured. The next question for assessing [a RCW 36.70A.120] challenge is which documents contain the capital budget decisions that must conform to the comprehensive plan? [Here these decisions were contained in the County's TIP, and summarized in the CFE's six-year financing plan. In this case,

Petitioner did not challenge the TIP; consequently, the issue was dismissed.] [*McVittie, 9316c, FDO, at* 18-20.]

- *See also:* **Goals** [*McVittie, 9316c*]
- While Board review of a challenge to RCW 36.70A.070(3) or (6) focuses on the specific requirements of the section, the Board's review must be done in light of Goal 12, not in lieu of Goal 12. [*McVittie, 9316c, FDO, at* 22.]
- The GMA requires local governments to establish a single LOS standard for transportation facilities. [In a footnote, the Board acknowledges that screenline methodologies comply.] [*McVittie, 9316c, FDO, at* 23.]
- For transportation, the "trigger mechanism" is found in RCW 36.70A.070(6)(a)(iv)(C). (Quotation omitted.) It is clear that a local government must take action to ensure that the level of service standards will be met if (the "trigger") probable transportation funding falls short of meeting identified transportation needs. [*McVittie, 9316c, FDO, at* 26.]
- It is important to recognize that local government may use various regulatory techniques to avoid the situation where funding shortfalls occur. However, once local action is forced by a probable funding shortfall, a local government has numerous options to consider in reassessing and reevaluating its plan. In reassessing or reevaluating its plan, a local government is not automatically required to revise its land use element. There are other options that may be considered to meet identified capital facility needs and maintain plan consistency. [Options include: reducing standard of service (LOS); increase revenue; reduce average cost of the capital facility; reduce demand – reallocate or redirect population within the jurisdiction; reduce consumption; combinations of these options.] [*McVittie, 9316c, FDO, at* 26-27.]
- If reassessment action is triggered, the local government's response must culminate in public action in the public forum. [pursuant to RCW 36.70A.020(11), .035, .130 and .140] This includes, but is not limited to, disclosure of the need for a reassessment, disclosure of options under consideration, and public participation prior to local legislative action. (Footnote omitted.) [*McVittie, 9316c, FDO, at* 27.]
- The transportation element requires a local government to adopt a "concurrency" ordinance that will prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan. (Footnote omitted.) [*McVittie, 9316c, FDO, at* 29.]
- The record before the Board does not make clear whether the "Sidewalk Inventory" map was produced, or available, during the pendency of the adoption of the Greenwood/Phinney Ridge Urban Village. Even if the Board were to agree with Petitioner that the necessary inventory was not available during that process, the fact that it presently exists arguably renders legal issue 4 [alleging no inventory of sidewalks] moot. [*Radabaugh, 0302,* FDO, at 11.]
- [Sidewalks are a critical component of successful compact urban development. However,] the Board cannot, with the facts and argument presented in this case, discern a GMA duty that would oblige the City to adopt "levels of service" for sidewalks in urban villages nor subject projects in urban villages to a "concurrency" requirement for the installation of such facilities. [*Radabaugh, 0302,* FDO, at 14.]
- In order to determine whether [a jurisdiction] is experiencing a shortfall in transportation funding, the question is simply, have the needs identified in the transportation element (and supporting documents) been carried forward to the transportation improvement plan and funded. [*McVittie IV*, *0306c*, at 18.]
- [Petitioner alleged seven perspectives to demonstrate funding shortfalls in transportation funding:
    1) Uncertain funding – if probable funding is not secured the County is committed to secure new revenue sources;

2) Exclusion of projects – projects desired by Petitioner are not included, but needed capacity projects identified in the transportation element are funded;
3) Lack of funding for projects in arrears (below LOS) – LOS deficiencies are due to state roads, concurrency does not apply to transportation facilities of state-wide significance. [However, the County is not helpless in this situation];
4) Partial funding – if part can stand as an independent unit, there is no need to delay until full financing is secured. [However, projects must be completed within 20-year Plan];
5) Use of "1995 dollars" in the transportation element underestimates the current need for revenue in 2000 – adequate revenue has been collected in "updated dollars";
6) Costs have increased faster than revenues – capacity projects in the transportation element are funded; and
7) Postponing projects creates a shortfall – Postponing projects, during the early or middle years of the 20-year planning horizon, does not create a funding shortfall. From each perspective, Petitioner failed to show a shortfall in funding.] [*McVittie IV*, *0306c*, at 19-21.]

- [Jurisdictions] should be aware that those needs identified in the 20-year Plan (transportation element ending in 2012), ultimately must be addressed (funded and implemented) at some point during the original 20-year life of the Plan i.e. by 2012. If these needs are not met by 2012, at a minimum, the [jurisdiction] will be noncompliant in meeting the funding requirements of RCW 36.70A.070(6). [*McVittie IV*, *0306c*, at 21.]
- [O]nce a shortfall is established and a reassessment precipitated, the GMA's public participation requirements come into play. [Conversely, if a shortfall is not established, and reassessment is unnecessary, public participation is not required.] [*McVittie IV*, *0306c*, at 23.]
- One of [the Board's] fundamental conclusions was the Board review of a challenge to RCW 36.70A.020(3) or (6) must be done "in light of Goal 12, not in lieu of Goal 12. [*McVittie VI*, *1302*, FDO, at 11.]
- [The County adopted level of service (LOS) "objectives" for state highways.] The fact that the State has not yet adopted "standards" placed the County in a difficult situation, in view of the GMA mandate that the County adopt something by December of 2000. Relying upon the guidance of the [Puget Sound Regional Council] to adopt the [Washington State Department of Transportation] "objectives" in the County Plan was not unreasonable. In fact, for the County to have described as a standard that which the State described as an "objective" would have been more than misleading, it would have been flatly incorrect. [*McVittie VIII, 1317*, FDO, at 9.]
- [Petitioner argued that] there appears to be a serious disconnect between transportation plans and improvements done by the County and the State. [Therefore] the spirit of Goals 3 and 12 [must apply because they] would demand a better degree of coordination and consistency between the plans and actions of State and County government. Even the County laments the timing of State improvement, to say nothing of the timing of the adoption of State LOS standards. Nevertheless, the Board must conclude that neither Goals 3 and 12, indeed **none** of the goals listed in RCW 36.70A.020 apply to the State because the preamble to that section unequivocally states the goals "shall be used *exclusively* for the purpose of guiding the development of comprehensive plans and development regulations." This is an unfortunate but inescapable conclusion, because to truly achieve managed growth there must be a better linkage between local efforts and state efforts. [*McVittie VIII, 1317*, FDO, at 10.]
- As provided in the statute [RCW 36.70A.070(6)(a)(iii)(C)], the purpose for including state LOS standards at the local level is for monitoring, evaluating and facilitating coordination between the state and local plans. Providing information to the state for its further analysis and assessment is the driver behind this section of the GMA. As discussed in [elsewhere], there is no financing or

implementation "hook" for binding the state to undertake any given state road project, critical or otherwise. [*McVittie VIII, 1317*, FDO, at 14.]

- The Board notes that it is WSDOT [Washington State Department of Transportation], not cities or counties, that designates LOS standards on state highways, and Meridian *is* a state highway. [*Lewis, 1320*, FDO, at 19.]

URBAN DENSITIES

- Compact urban development is the antithesis of sprawl. [*Rural Residents, 3310,* FDO, p. 19]
- Comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve compact urban development. [*Tacoma, 4301,* FDO, p. 12]
- A density of one unit per ten acres is a rural density. [*Bremerton, 5339c,* FDO, p. 21]
- Although urban growth should be located where there is adequate infrastructure to support it, the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. [*Robison, 4325c,* FDO, pp. 20-21]
- A pattern of 1- and 2.5-acre lots meets the Act's definition of urban growth. . . . However, a pattern of 1- or 2.5-acre lots is not an appropriate urban density either. . . . An urban land use pattern of 1- or 2.5-acre parcels would constitute sprawl; such a development pattern within the rural area would also constitute sprawl. [*Bremerton, 5339c,* FDO, p. 49]
- Generally, any residential pattern of four net dwelling units per acre, or higher, is compact urban development and satisfies the low end of the range required by the Act. Any larger urban lots will be subject to increased scrutiny. [*Bremerton, 5339c,* FDO, p. 50]
- For a county to calculate the amount of unincorporated UGA land necessary to accommodate its allocated population growth, the county must utilize a population density assumption that reflects development densities anticipated by the county plan. [*Bremerton/Port Gamble, 5339c/7324c, 9/8/97* Order, p. 16]
- On parcels large enough to have more than one density designation, the Board will look at the average net density of that entire ownership. [*Benaroya I, 5372c,* FDO, p. 33]
- The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide adequate justification for residential densities under 4 du/acre within a UGA. [*Benaroya I, 5372c,* 3/13/97 Order, p. 13]
- Neither goal (1) and (2) nor *Anderson Creek,* establish a GMA duty that precludes a jurisdiction from limiting the scope and magnitude of development in critical areas or environmentally sensitive areas. [*Litowitz, 6305,* FDO, p. 9]
- When environmentally sensitive systems are large in scope (e.g., a watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, a local government may also choose to afford a higher level of protection by means of land use plan designations lower than 4 du/acre. Such designation must be supported by adequate justification. [*Litowitz, 6305,* FDO, p. 12]

- The GMA does not require cities to designate for the highest intensity uses every parcel of property with infrastructure adequate to support urban development. Just because infrastructure may be available to support intense development does not mean the land must be designated for intense development. [*Litowitz, 6305,* FDO, p. 20]
- The GMA does not require a jurisdiction to designate property with urban infrastructure for a particular intensity of use. [*Litowitz, 6305,* FDO, p. 20]
- That which is urban should be municipal. The corollary is: that which is municipal must be urban, which is to say, must generally have residential densities at 4 du/acre or higher. The Act is clear in providing that urban governmental services are to be available and provided in urban areas. [*Hensley III, 6331,* FDO, p. 9]
- The consequence of including within an urban area a net residential density below 4 du/acre is that the plan will be subject to increased scrutiny for justification. [*Hensley III, 6331,* FDO, p. 9]
- Designation of a traditional UGA generally establishes certainty that: 1) the development of the land within it will be urban in nature; 2) this urban land will ultimately be provided with adequate urban facilities and services within the planning horizon; and 3) the land will ultimately be developed at urban densities and intensities. [*Johnson II, 7302,* FDO, p. 10]
- [Pursuant to RCW 36.70A.110(1), all cities are included in UGAs. Pursuant to RCW 36.70A.110(2), each UGA must permit urban densities. Therefore, the GMA imposes a duty upon all cities to designate lands within their city limits (UGA) to permit urban densities.] The GMA requires every city to designate lands within its jurisdiction at appropriate urban densities. [*LMI/Chevron, 8312,* FDO, p. 23]
- Fundamental to a city's complying with Goals 1 and 2 is that its land use element, including its future land use map, permits appropriate urban densities throughout its jurisdiction. [*LMI/Chevron, 8312,* FDO, p. 24]
- [A future land use map designation for residential development that permits 4 du/ac within city limits (UGA) is an appropriate urban density.] [*LMI/Chevron, 8312,* FDO, p. 24]
- [A future land use map designation for residential development that permits only 1 du/2 ac within city limits (UGA) is not an appropriate urban density and constitutes sprawling low-density development.] [*LMI/Chevron, 8312,* FDO, p. 24]
- When critical areas are large in scope, with a high rank order value and are complex in structure and function, a city may use its future land use map designations to afford a higher level of critical areas protection than is available through its regulations to protect critical areas. In these limited circumstances, the resulting residential density will be deemed an appropriate urban density. [*LMI/Chevron, 8312,* FDO, p. 25]
- [A]bsent the requisite environmental attributes of a critical area that is large in scope, of high rank order value and is complex in structure and function, [a city's] future land use map density designations must permit appropriate urban densities. [*LMI/Chevron, 8312,* FDO, p. 26]
- [A plan, or subarea plan, policy that seeks to protect and maintain the large lot, low density, residential character of a city without encouraging urban growth at appropriate urban densities or reducing the conversion of undeveloped land to low density development is inconsistent with, thwarts, and does not comply with Goals 1 and 2 (RCW 36.70A.020(1) and (2).] [*LMI/Chevron, 8312,* FDO, p. 28]
- RCW 36.70A.020(3) does not require that each and every land use designation of a jurisdiction permit residential densities that support all modes of transportation. [Reliance on urban density designations alone is not enough to demonstrate noncompliance with Goal 3.] [*LMI/Chevron, 8312,* FDO, p. 29]
- [RCW 36.70A.020(4) does not require that each and every land use designation of a jurisdiction provide for affordable housing. [*LMI/Chevron, 8312,* FDO, p. 29]

- Although common sense suggests that longer, more detailed project review will increase the costs of developing property, common sense alone is not probative. To prevail, argument must be accompanied by factual evidence [from the record]. [*LMI/Chevron, 8312,* FDO, p. 30]
- [The GMA does not compel redevelopment of existing developed parcels, but it does require that the plans that govern new development or redevelopment allow compact urban development at appropriate urban densities in order to be consistent with the goals of the GMA.] [*LMI/Chevron, 8312,* FDO, p. 37]
- [The legend on the zoning map indicating urban densities, contradicts the "compliant" text of the zoning code making the area rural. The legend discrepancy, whether or not inadvertent, means the legend designation is non-compliant with the GMA. [*Bear Creek, 3508c*, 11/3/00 Order, at 12.]
- [A 53 acre property within the County's UGA was rezoned from four units per acre to one unit per acre.] It is undisputed that four dwelling units per acre constitutes compact urban growth. Over the last decade, as the GMA has evolved and been interpreted, it has generally been accepted that this density is an appropriate urban density. . . .However, densities of less than four dwelling units per acre have been challenged before this Board and found to be appropriate urban densities in limited circumstances. The Board has stated, "The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide adequate justification for residential densities under 4 du/acre within a UGA. (Citation omitted.) [*Forster Woods, 1308c*, FDO, at 31.]
- Just as the future land use map must permit appropriate urban densities in the UGA, so too must the implementing zoning designations. Also, the duty of a city to provide for appropriate urban densities within a UGA, likewise applies to a county. Counties must provide for appropriate urban densities within unincorporated UGAs. [*Forster Woods, 1308c*, FDO, at 32.]
- [The Board found no environmental constraints to support the County's action.] The County's contention that the rezoning is appropriate because it is within the 'range of urban densities' the County permits, is unpersuasive. The 'range of urban densities' may dip below typical urban densities when environmental constraints support such and outcome. That is not the case here. [*Forster Woods, 1308c*, FDO, at 32.]
- The focus of this appeal is Snohomish County's recent amendments to its Planned Residential Development (**PRD**) regulations. Basically, PRDs allow higher residential densities than the underlying zoning classifications would otherwise permit. In Snohomish County, the PRD regulations set the maximum number of dwelling units permitted in the urban single family zones at 120 percent of the maximum number of units permitted under the underlying zoning classification. In essence, a 20% density bonus is permitted for using the PRD approach. The crux of this challenge involves changes in the basis and methodology in calculating the unit yield and bonus, including a limitation on the maximum number of dwelling units allowed and a limitation on the minimum lot size to which the PRD regulations can be applied. The challenged Ordinance changed the basis of the calculations from a gross acreage to a net acreage, modified factors to be included in calculating the developable area, established a maximum density in certain zones and limited the application of PRDs to lots over a certain size. [The Board upheld these amendments.] [*Master Builders Association, 1316*, FDO, at 6.]
- The MBA contends that the undisputed cumulative impact of these changes is a reduction in the *quantity* of dwelling units that had previously been allowed in certain zones under the PRD approach. This reduction in *quantity* of dwelling units [*i.e.* density] permitted by the new PRD regulations forms the foundation of the MBA challenge. However, the County seeks to justify these changes as being the product of debate and compromise that ultimately seeks to encourage quality construction of higher density development in the urban area while protecting open space, recreation and critical areas. Additionally, the County contends that these changes to the PRD regulations are not a violation of any of the challenged provisions of the GMA. [The Board agreed with the County.] [*Master Builders Association, 1316*, FDO, at 6.]

- It is undisputed that the County's amendments to the PRD regulations have the effect of reducing the allowable density within [challenged urban single family residential] zoning designations. . . .[A County Plan policy] states, "development regulations shall be adopted which will require that new residential subdivisions achieve a minimum net density of 4-6 dwelling units per acre in all unincorporated UGAs." The Snohomish County Code requires "A minimum density of four dwelling units per net acre shall be required in all UGAs (noting exceptions not relevant here)." (Citations omitted.) The County's zoning designations [for the challenged urban single family residential zones], coupled with the PRD regulations and [the Code provision], allow for between 4 and 7 dwelling units per net acre. These densities are consistent with the Plan policies and fall within the bounds of appropriate urban densities. [*Master Builders Association, 1316*, FDO, at 18-19.]
- The MBA assertion that the County's development pattern within the unincorporated UGA only permits 3.71 du/*gross* acre is unpersuasive. Snohomish County Code specifically requires a minimum density of 4 dwelling units per *net* acre within the unincorporated UGA. The County's 2000 Growth Monitoring Report indicates *net* residential densities of 7.11 du/net acre in the unincorporated UGA. The Board finds that this density is an appropriate urban density for unincorporated UGAs in Snohomish County. [*Master Builders Association, 1316*, FDO, at 19.]
- The purpose statements of the PRD regulations evidence the versatility the PRD regulations are trying to serve. Achieving density is not the sole purpose of the PRD process (nor the GMA). Instead, as the County states, the PRD regulations "seek to encourage the construction of *quality*, high-density development while protecting open space, recreation areas and natural site amenities." The Board agrees. [*Master Builders Association, 1316*, FDO, at 23.]

URBAN GROWTH

- Annexation is an exercise of the land use powers of cities, and therefore a CPP cannot express a preference or otherwise provide direction to cities as to the methods of annexation. If a county wishes to discuss methods of annexation within the CPPs, it may do so, provided that such language serves to facilitate rather than frustrate the legislative directive of "that which is urban should be municipal." In any event, such language must not alter the land use powers of cities. [*Poulsbo, 2309c,* FDO, p. 26]
- UGAs take direction from the Act's planning goals at RCW 36.70A.020 and from CPPs. UGAs therefore also serve the three purposes of CPPs: (1) to achieve consistency between plans as required by RCW 36.70A.100; (2) to achieve a transformation of local governance within the UGA; and (3) to direct urban development to urban areas and to reduce sprawl. [*Rural Residents, 3310,* FDO, p. 14]
- Compact urban development is the antithesis of sprawl. [*Rural Residents, 3310,* FDO, p. 19]
- Cities are the focal points of urban growth, governmental service delivery, and governance within UGAs. [*Rural Residents, 3310,* FDO, p. 42]
- The only place urban growth is permitted is within a UGA. [*Rural Residents, 3310,* FDO, p. 42]
- Land use designations within a UGA must allow for urban development regardless of the rural character a parcel of land may have today. [*Aagaard, 4311c,* FDO, p. 17]
- Although urban growth should be located where there is adequate infrastructure to support it, the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban

development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. [*Robison, 4325c,* FDO, pp. 20-21]

- The land use capacity analysis for designated UGAs is not required to be in the comprehensive plan; however, showing of work must be done somewhere in the record. Technical Appendix D is not required to be incorporated into the Plan. [*Vashon-Maury, 5308c,* FDO, p. 16]
- The process of converting total population into household size does not violate the Act, provided that the County clearly and credibly demonstrates how the household figures are derived from the population projections. [*Vashon-Maury, 5308c,* FDO, p. 20]
- The Board concludes that the six exceptions to the general rule that counties cannot designate UGAs beyond city limits, as set forth in *Rural Residents, at 44,* were not changed by the 1995 legislative amendments. However, a new holding is in order, as follows:

  > Regardless of whether a satisfactory showing has been made that existing cities can accommodate the projected population growth, counties will be permitted to designate FUGAs beyond existing incorporated areas on lands covered by the third exception. However, this does not give counties the carte blanche permission to designate as UGAs *all* urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both UGAs and CPPs must serve: to achieve the *transformation of local governance* within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve *compact urban development. See Tacoma,* at 12. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical to now blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted. *Amending Bremerton,* at 39-40.

  [*Vashon-Maury, 5308c,* FDO, p. 26]
- Just because unincorporated lands today contain urban growth on them does not necessarily mean that they should be included within a UGA. Instead counties must examine how a UGA designation for such lands would achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services, and will achieve compact urban development. [*Vashon-Maury, 5308c,* FDO, p. 27]
- RCW 36.70A.030(14)'s definition of urban growth focuses on the intensity of the use of land, specifically naming such physical improvements as "buildings, structures and impermeable surfaces." Thus, the net intensity of physical improvements placed on rural land can, alone, be conclusive in determining if growth proposed for a rural area can be permitted, or if it crosses the threshold into impermissible urban growth. [*Vashon-Maury, 5308c,* FDO, p. 67]
- For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider "such lands" to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity. [*Vashon-Maury, 5308c,* FDO, p. 68]
- Proposed uses that meet the definition of urban growth will be prohibited in rural areas unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility. [*Vashon-Maury, 5308c,* FDO, p. 69]
- Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter. [*Vashon-Maury, 5308c,* FDO, p. 77]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not

represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, p. 79]

- The GMA acknowledged that the "old way of doing things" (i.e., non-GMA planning and decision-making) threatened the quality of life enjoyed by Washington's residents, and that in order to meet this threat, new and important steps needed to be taken. RCW 36.70A.010 (FN1) describes a legislatively preferred future for our state, just as the subsequent sections of the Act mandate that communities manage the problems of growth and change in a new way. [*Children's I, 5311,* FDO, p. 4]
- In the GMA, there are a number of specific references that address housing and residential land uses some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population. [*Children's I, 5311,* FDO, p. 5]
- Growth is more than simply a quantitative increase in the numbers of people living in a community and the addition of "more of the same" to the built environment. Rather, it encompasses the related and important dynamic of change. Because the characteristics of our population have changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup, the GMA requires that housing policies and residential land use regulations must follow suit. This transformation in our society must be reflected in the plans and implementing measures adopted to manage growth and change. [*Children's I, 5311,* FDO, p. 9]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, pp. 44-48]
- New urban land uses may be located only within UGAs. [*Bremerton, 5339c,* FDO, p. 48]
- Suburban is a subset of urban. [*Bremerton, 5339c,* FDO, p. 49]
- One of the GMA's most fundamental principles is that urban areas are to be characterized by urban growth and rural areas are not. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 23]
- The Board has recognized reasonable and necessary exceptions to the prohibition of urban growth in the rural areas. The Board has even construed the Act to permit compact rural development, under certain circumstances and if sufficiently limited in scope and character. The essence of the Board's decisions – that rural areas are to be very different from urban areas, while recognizing reasonable and necessary exceptions and flexibility for compact rural development, is reflected in ESB 6094, amending RCW 36.70A.070(5). [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 24]
- ESB 6094's amendments to RCW 36.70A.070(5) explicitly clarifies: the legislature's continuing intent to protect rural areas from low-density sprawl; and that while some accommodation may be made for infill of certain "existing areas" of more intense development in the rural area, that infill has to be "minimized" and "contained" within a "logical outer boundary." *With* such limitations and conditions, more intense rural development in areas where more intense development already exists could constitute permissible compact urban development; *without* such limitations and conditions more intense rural development would constitute an impermissible pattern of urban growth in the rural area. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 24]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban area portion of the projected twenty years of county-wide population growth. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 42]
- The GMA requires designation and protection of critical areas and makes no qualifying statement that, for example, urban wetlands are any less important or deserving of protection than rural ones.

As a practical matter, past development practices may have eliminated and degraded wetlands in urban areas to a greater degree than rural areas, but the Board rejects the reasoning that this provides a GMA rationale for not protecting what is left. [*Pilchuck II, 5347c,* FDO, p. 23]

- The requirement that critical areas are to be protected in the urban area is not inconsistent with the Act's predilection for compact urban development. [*Pilchuck II, 5347c,* FDO, p. 24]
- The fact that property today is basically undeveloped property that has a "rural" character does not mean that future-planning efforts must maintain that flavor. If that property is within a UGA, it must be planned for future urban development. Generally, designating property within a UGA for industrial uses is consistent with the Act. [*Anderson Creek, 5353c,* FDO, p. 21]
- The Board rejects the theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas and the Act's explicit prohibition of urban growth outside the UGAs. [*Sky Valley, 5368c,* FDO, p. 45]
- The designation of 7,822 acres (approximately twelve square miles) – which permits 2.3-acre lots, creates an impermissible pattern (number, location and configuration of lots) of urban growth in the rural area. (3,400 lots of 2.3 acres, astride the North Fork of the Stillaguamish River, east, west and south of the Darrington UGA.) This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern. [*Sky Valley, 5368c,* 10/2/97 Order, p. 13-14]
- The requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas – while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." [*Benaroya I, 5372c,* FDO, p. 21]
- The Act does not require a city to designate a specific property for the highest intensity uses simply because infrastructure already may exist that is capable of supporting urban growth. [*Benaroya I, 5372c,* FDO, p. 37]
- In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development, the duty to accommodate the population and employment that is allocated to them by a county, the duty to accommodate a county allocation and reflect it in both a city's comprehensive plan land use designations and capital facility plans, the Act imposes a duty on cities to encourage urban growth within UGAs. [*Benaroya I, 5372c,* 3/13/97 Order, p. 8]
- The GMA imposes an affirmative duty upon cities to give support to, foster, and stimulate (encourage) urban growth throughout the jurisdictions' UGAs within the twenty-year life of their comprehensive plans. [*Benaroya I, 5372c,* 3/13/97 Order, p. 8]
- The duty to encourage urban growth throughout the jurisdictions' UGA does not direct a specific outcome as to all parcels of land within a city. [*Benaroya I, 5372c,* 3/13/97 Order, p. 8]
- That which is urban should be municipal. The corollary is: that which is municipal must be urban, which is to say, must generally have residential densities at 4 du/acre or higher. The Act is clear in providing that urban governmental services are to be available and provided in urban areas. [*Hensley III, 6331,* FDO, p. 9]
- The consequence of including within urban areas a net residential density below 4 du/acre is that the plan will be subject to increased scrutiny for justification. [*Hensley III, 6331,* FDO, p. 9]
- The Act requires that urban services be made available and provided within UGAs. Generally, this means cities will make available and provide those urban services. [*Hensley III, 6331,* FDO, p. 10]
- The Act requires local jurisdictions to plan for and accommodate new growth – that projected by OFM and allocated by the County. There is **no** provision in the GMA to suggest that the Act allows

a jurisdiction **not** to accommodate new growth because it has a capital facilities maintenance backlog or has not guaranteed funding to remove any maintenance backlog, or it is postponing indefinitely its duty to accommodate new growth until its maintenance backlog is removed or reduced. To do so would fly in the face of one of the cornerstones of the GMA. [*WSDF IV, 6333,* FDO, p. 32]

- Designation of a UGA adjacent to existing city limits fosters compact urban development and the transformation of local governance. [*Johnson II, 7302,* FDO, p. 7]
- Designation of a traditional UGA generally establishes certainty that: 1) the development of the land within it will be urban in nature; 2) this urban land will ultimately be provided with adequate urban facilities and services within the planning horizon; and 3) the land will ultimately be developed at urban densities and intensities. [*Johnson II, 7302,* FDO, p. 10]
- Some very fundamental issues have been resolved by virtue of the UGA designation: (1) the land use will be urban; (2) the land use designations reflect population and employment allocations made by the County; and (3) urban services provided within the UGA should be primarily provided by cities. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 48]
- Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl. The Act's lengthy definitions and requirements regarding urban growth areas and natural resource lands also date to 1990. However, the Act's initial description of future rural uses and development patterns was spare. While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. [*Burrow, 9318,* FDO, at 18.]
- LAMIRDs are neither urban growth, nor are they to be the predominant patter of future rural development. [LAMIRDs are not quite urban, but not quite rural.] LAMIRDs are settlements that existed on July 1, 1990 in some land use pattern or form more intensive than what might typically bed found in a rural area. LAMIRDs are "characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." In essence, they are *compact forms of rural development*. [*Burrow, 9318,* FDO, at 18.]
- The Act's definitions (RCW 36.70A.030(17)) expressly state that development within LAMIRDs is not urban. The Act does not put an explicit limit on the absolute residential density permitted in LAMIRDs. The limit is unique to each LAMIRD and is established by the conditions that existed on July 1, 1990. [*Burrow, 9318,* FDO, at 19.]
- A pattern of more intensive rural development, as allowed within a valid LAMIRD, does not constitute "urban" development. [*Burrow, 9318,* FDO, at 24.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, at 6.]
- The legislature recognized that MPRs are urban growth outside of UGAs. The GMA permits the urban growth of an MPR if the County's regulations do not permit other urban or suburban growth in the vicinity of the MPR. [Urban growth in MPRs is recognized by, not prohibited by the Act.] [*Gain, 9319*, at 8.]

URBAN GROWTH AREAS – UGAS - GENERALLY

- When a county does designate urban growth areas it must do so accurately, precisely and in detail for the designation to have binding legal effect under the GMA. [*Happy Valley, 3308c,* 10/25/93 Order, p. 21]
- IUGAs must be guided by the planning goals of RCW 36.70A.020. [*Rural Residents, 3310,* Motions, pp. 2-3]
- UGAs take direction from the Act's planning goals at RCW 36.70A.020 and from CPPs. UGAs therefore also serve the three purposes of CPPs: (1) to achieve consistency between plans as required by RCW 36.70A.100; (2) to achieve a transformation of local governance within the UGA; and (3) to direct urban development to urban areas and to reduce sprawl. [*Rural Residents, 3310,* FDO, p. 14]
- The regulatory effect of IUGAs ceases upon adoption of the FUGA boundary with regard to annexations, and upon adoption of implementing regulations with regard to prohibiting urban development beyond the boundary. [*Rural Residents, 3310,* FDO, p. 15]
- IUGAs and FUGAs are policy documents. [*Rural Residents, 3310,* FDO, p. 16]
- A major purpose of UGAs is to serve Planning Goal 1 and Planning Goal 2. [*Rural Residents, 3310,* FDO, p. 17]
- Counties will be held to a lesser standard of compliance with the Act's planning goals when adopting IUGAs than when adopting comprehensive plans and implementing development regulations, since IUGAs are only temporary. However, on the spectrum of compliance, with strict compliance required for comprehensive plans and implementing development regulations, and lowest compliance required for interim critical areas and natural resource lands development regulations, IUGAs fall closer to the high end of the range. [*Rural Residents, 3310,* FDO, p. 28]
- The only place urban growth is permitted is within a UGA. [*Rural Residents, 3310,* FDO, p. 42]
- Annexations are prohibited beyond UGAs. RCW 35.13.005 and RCW 35A.14.005. [*Rural Residents, 3310,* FDO, p. 42]
- Cities are the focal points of urban growth, governmental service delivery, and governance within UGAs. [*Rural Residents, 3310,* FDO, p. 42]
- The Act neither mandates nor prohibits temporal phasing of development within a UGA. [*Rural Residents, 3310,* FDO, p. 46]
- Counties, as regional governments, must choose how to configure UGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth that is allocated to them by the county, again consistent with the goals and requirements of the Act. [*Tacoma, 4301,* FDO, p. 10]
- Comprehensive plans, including FUGAs, must follow the direction provided by the three fundamental purposes of both UGAs and CPPs: (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services; and (3) to achieve compact urban development. [*Tacoma, 4301,* FDO, p. 12]
- If a county elects to utilize tiering within its UGAs, it is best served at the FUGA stage, when the capital facilities plan element of the comprehensive plan has been prepared. It is premature to require tiering at the IUGA level. [*Tacoma, 4301,* FDO, p. 35]
- RCW 36.70A.110(2) implicitly requires the written justification before a legislative action establishing UGAs is taken so that the dissatisfied city can decide whether to formally object to DCTED. [*Tacoma, 4301,* FDO, p. 36]
- The Board finds no absolute prohibition in the Act against the inclusion of land in a UGA that cannot be associated with an existing or potential future city. Nevertheless, the act is clear that the

long-term future of urban growth areas is for them to have urban governmental services provided primarily by either existing or potential future cities. [*Tacoma, 4301,* FDO, p. 37]

- A county can delegate the responsibility to negotiate an agreement with each city on the location of UGAs to whomever it decides is bested suited for the task. However, only the legislative body of the county can make the ultimate decision to adopt UGAs as required by the Act. [*Tacoma, 4301,* FDO, pp. 45-46]
- The Board can conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties. Such a rural development proposal could constitute "compact rural development" rather than "urban growth." [*KCRP, 4305,* FDO, p. 15]
- The decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. [*Aagaard, 4311c,* FDO, p. 6]
- While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless. It is subject to several practical and legal limitations.
    1. As a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.
    2. The Act's requirement of internal consistency between the elements of the plan, and with the future land use map, will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
    3. The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.
    4. Critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.
    5. There are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan. [*Aagaard, 4311c,* FDO, p. 9]
- Land use designations within a UGA must allow for urban development regardless of the rural character a parcel of land may have today. [*Aagaard, 4311c,* FDO, p. 17]
- Although urban growth should be located where there is adequate infrastructure to support it, the Act does not prevent cities from planning for urban growth in areas where growth or infrastructure to support urban growth currently does not exist, so long as they simultaneously plan for the infrastructure necessary to support such growth. Neither does the Act require cities to locate urban growth in every area having one or more types of infrastructure capable of supporting urban growth. The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. [*Robison, 4325c,* FDO, pp. 20-21]
- Cities are not authorized to and therefore not required to designate urban growth areas in their comprehensive plans. [*Slatten, 4328,* 2/21/95 Order, p. 3]
- Just because unincorporated lands today contain urban growth on them does not necessarily mean that they should be included within a UGA. Instead counties must examine how a UGA designation for such lands would achieve the transformation of local governance within the UGA such that cities

are, in general, the primary providers of urban governmental services, and will achieve compact urban development. [*Vashon-Maury, 5308c,* FDO, p. 27]

- For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider "such lands" to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity of a proposed use, and whether the proposed use will be compatible with rural character of the land use pattern in the vicinity. [*Vashon-Maury, 5308c,* FDO, p. 68]
- Proposed uses that meet the definition of urban growth will be prohibited in rural areas unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility. [*Vashon-Maury, 5308c,* FDO, p. 69]
- Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter. [*Vashon-Maury, 5308c,* FDO, p. 77]
- Any residential pattern of 10 acre lots, or larger, is rural. [*Vashon-Maury, 5308c,* FDO, p. 79]
- Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not represent an undue threat to large scale natural resource lands, such as forest lands, and large scale critical areas, such as aquifers; will not thwart the long term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. [*Vashon-Maury, 5308c,* FDO, p. 79]
- On reconsideration, the Board now concludes that the CPP did not "make the county do it" with respect to the Bear Creek island UGA. Note: the Court of Appeals, Division 1, reversed the Board's reconsideration conclusion on Bear Creek and reinstated the original conclusion. [*Vashon-Maury, 5308c,* 12/1/95 Order, p. 8]
- Whether a county or city elects to include critical areas maps that it has prepared in other documents within its comprehensive plan is left to the jurisdiction's discretion. Counties are not precluded from including designated critical areas within UGAs, so long as they protect them as required by RCW 36.70A.060. [*Gig Harbor, 5316c,* FDO, p. 28]
- Discussion of UGAs in other states – evaluation. [*Gig Harbor, 5316c,* FDO, p. 55]
- The Act creates an ongoing duty for Washington's communities to plan for future growth, including preservation of the flexibility to increase the UGA land supply at a date beyond the immediate twenty-year planning horizon. [*Gig Harbor, 5316c,* FDO, p. 56]
- Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (*see* RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (*see* RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." [*Bremerton, 5339c,* FDO, p. 31]
- Determining size and shape of UGAs – general discussion of prior Board decisions. [*Bremerton, 5339c,* FDO, pp. 32-42]
- Permitted uses in rural areas and review of prior Board holdings on urban growth, rural and suburban. [*Bremerton, 5339c,* FDO, pp. 44-48]
- New urban land uses may be located only within UGAs. [*Bremerton, 5339c,* FDO, p. 48]
- In specifically rejecting the sprawl model for Washington State, the GMA asserts the importance of taking a balanced, long-term view and promoting and serving the broad public interest. When the GMA's substantive requirements for county plans and FUGAs are read together, what emerges is a

sketch, in broad strokes, of a specific physical and functional regional outcome. The Act's mandated outcome stands in sharp contrast to the undifferentiated suburban sprawl that, in many other parts of the country, has contributed to environmental degradation, economic stagnation and an eroded sense of community, that, in turn, has dire social consequences. [*Bremerton, 5339c,* FDO, pp. 51-52]

- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 42]
- The fact that property today is basically undeveloped property that has a "rural" character, does not mean that future-planning efforts must maintain that flavor. If that property is within a UGA, it must be planned for future urban development. Generally, designating property within a UGA for industrial uses is consistent with the Act. [*Anderson Creek, 5353c,* FDO, p. 21]
- It is the County's duty to establish UGA boundaries. The City's role in that process is limited to a consultative one. [*AFT, 5356,* FDO, p. 10]
- Where a city has planned for an area not included in its UGA, such planning activities, including land use designations, have no effect. [*AFT, 5356,* FDO, p. 20]
- The Board rejects the theory that it is entirely up to each county legislative body to determine what constitutes "rural" land use. It does so because of the mutually exclusive nature of UGAs and rural areas and the Act's explicit prohibition of urban growth outside the UGAs. [*Sky Valley, 5368c,* FDO, p. 45]
- A pattern of 10-acre lots is clearly rural and the Board now holds that, as a general rule, a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use, provided that the number, location and configuration of lots does not constitute urban growth; does not present an undue threat to large scale natural resource lands; will not thwart the long-term flexibility to expand the UGA; and will not otherwise be inconsistent with the goals and requirements of the Act. As a general rule, any new land use pattern that consists of lots smaller than 5 acres would constitute urban growth and is therefore prohibited in rural areas. The greater the density becomes, the more difficult it will become to justify an exception to the general rule. The exceptions to this general rule are few, both because the circumstances justifying them are rare and because excessive exceptions will swallow a general rule. [*Sky Valley, 5368c,* FDO, p. 46]
- The designation of 7,822 acres (approximately twelve square miles) – which permits 2.3-acre lots, creates an impermissible pattern (number, location and configuration of lots) of urban growth in the rural area. (3,400 lots of 2.3 acres, astride the North Fork of the Stillaguamish River, east, west and south of the Darrington UGA.) This great number of potential lots, located on three sides of the Darrington UGA, and configured as, in effect, one large mass, plainly constitutes a land use pattern. [*Sky Valley, 5368c,* 10/2/97 Order, p. 13-14]
- Although counties cannot be expected to undo past land use practices, they cannot adopt regulations that fail to place appropriate conditions on growth outside UGAs to limit it to achieve conformance with requirements of RCW 36.70A.110. [*PNA II, 5371,* FDO, p. 13]
- A city is without authority to make any agricultural designations within a UGA prior to the enactment of a program authorizing a transfer or purchase of development rights pursuant to RCW 36.70A.060(4). Unless and until it adopts such a program, it is obliged to designate such properties for non-agricultural urban uses. [*Benaroya I, 5372c,* FDO, pp. 11-12]
- The discretion of cities, as recognized by the Board in *Aagaard*, also applies to counties; counties enjoy the same broad discretion to make many specific choices about how growth is to be accommodated within UGAs. [*Cole, 6309c,* FDO, p. 15]

- The Bear Creek MPDs are within the County's "island" UGA. The Superior Court included the Bear Creek properties in the UGA. Therefore, in this unique situation, to respond to the Board's Order, the County need not have resorted to using the FCC designation process, as set forth in RCW 36.70A.350, to address the Bear Creek MPDs inclusion in the UGA. [*Buckles, 6322c,* FDO, p. 30]
- While a city may propose a UGA and consult on its designation, a city has no authority to designate UGAs under the Act. [*Hensley III, 6331,* FDO, p. 5]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban portion of the twenty years of county-wide population growth. The county, as to the unincorporated portion of the UGA, and the cities, as to their respective portions of the UGA, have a duty to adopt comprehensive plans that accommodate that allocated growth over the twenty-year life of their plans, including provision of public facilities and services. [*Hensley III, 6331,* FDO, p. 8]
- Designation of a UGA adjacent to existing city limits fosters compact urban development and the transformation of local governance. [*Johnson II, 7302,* FDO, p. 7]
- Designation of a traditional UGA generally establishes certainty that: 1) the development of the land within it will be urban in nature; 2) this urban land will ultimately be provided with adequate urban facilities and services within the planning horizon; and 3) the land will ultimately be developed at urban densities and intensities. [*Johnson II, 7302,* FDO, p. 10]
- Annexation, although encouraged by the GMA, is not a condition precedent to urban development in a UGA. [*Johnson II, 7302,* FDO, p. 10]
- In unique and limited circumstances and situations, the designation of a non-traditional UGA may be in compliance with the GMA, if the regulations or agreement implementing the UGA designation contains adequate restraints to curb abuse while thwarting sprawl and inefficient, unplanned growth. [*Johnson II, 7302,* FDO, p. 12]
- Any acreage designated by a county as a non-traditional UGA must be justified and accounted for in its plan. [*Johnson II, 7302,* FDO, p. 12]
- Although an Interlocal Agreement may address the timing of, and allocation of responsibility for, infrastructure planning in a UGA, the requirements of the GMA govern infrastructure planning within a UGA. [*Johnson II, 7302,* FDO, p. 19-20]
- Counties may choose to designate future urban reserves outside of the UGAs. When such a tool is utilized, the Board has cautioned that care must be taken to protect the long-term flexibility to expand UGAs. [*Bremerton/Alpine, 5339c/ 8332c,* FDO, p. 44]
- [Regarding when conversion of] Urban Reserve lands to UGA, the Board finds no requirement in the Act obligating the County to set forth a phasing schedule, *per se*. [However, RCW 36.70A.215] obligates the County to monitor the rate at which lands within the UGA are being utilized and to take appropriate action, which could include expansion of the UGA, if circumstances so warrant. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 44-45]
- [U]nequivocal and directive language that, on its face, imposes conditions precedent to city annexations in urban growth areas . . . fail to comply with RCW 36.70A.110. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 48]
- Some very fundamental issues have been resolved by virtue of the UGA designation: (1) the land use will be urban; (2) the land use designations reflect population and employment allocations made by the County; and (3) urban services provided within the UGA should be primarily provided by cities. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 48]
- Once a UGA has been designated, the provisions of a county plan may not condition or limit the exercise of a city's annexation land use power. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 48]
- The fact that an area is urbanized [does not] compel the County to designate it as a UGA. The Board affirms its prior holding to that effect. Likewise, the mere fact that a [prior version or draft plan]

designated [an area] as UGA . . . does not mandate the same outcome in [a subsequent] plan. [*Bremerton/Alpine, 5339c/ 8332c,* FDO, p. 58]

- [The fact that an area is adjacent to a UGA does not compel its designation as a UGA.] [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 59]
- [The fact that an area was designated within a UGA and designated industrial in a prior version or draft plan, does not mandate the same outcome in a subsequent plan.] [*Bremerton/Alpine, 5339c/8332c,* FDO, pp. 65-66]

The County's decision to attempt to comply with the FDO and address the land use of the [property] in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy. The time and effort expended on the present process illustrate the difficulty and complexity of developing an optional Lake Stevens UGA subarea plan. The Board does not want to dissuade the County from subarea planning and notes that neither the substance or the Lake Stevens subarea plan nor the appropriateness of that public process is presently before the Board. Unfortunately, the action needed for the County to address the Board's finding that the notice was defective for the County's amendment to 33.7 acres in Ordinance No. 96-074 had been needlessly enmeshed in the subarea planning process. The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan. Further, the County's Lake Stevens UGA subarea plan process had interjected broader GMA and subarea planning issues into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance No. 96-074. [The Board directed the County to repeal those portions of Ordinance 96-074 that were invalidated due to defective notice.] [*Kelly, 7312c,* 3/31/99 Order, pp. 6-7]

- [A]ll UGAs need not contain a city, but lands to be included in such UGAs must be lands that are: (1) already characterized by urban growth; (2) adjacent to lands already characterized by urban growth; or (3) designated as a new FCC pursuant to the requirements of RCW 36.70A.350. [*Bear Creek, 5803c*, 6/15/00 Order, at 9.]
- [The Act's definitions of "urban growth' and "characterized by urban growth'] used in the context of designating urban growth areas, pursuant to the locational criteria [of RCW 36.70A.110(1)], do not contemplate prospective urban development. [*Bear Creek, 5803c*, 6/15/00 Order, at 10.]
- If the county approves an FCC proposal pursuant to RCW 36.70A.350(2), the approved FCC becomes a UGA by operation of law. Therefore, all the "containment" protections associated with UGAs attach. These include, for example, rural zoning, prohibition of urban growth outside the UGA, limitations on extending urban governmental facilities and services, and in King County the four-to-one program. [*Bear Creek, 5803c*, 6/15/00 Order, at 22.]
- The Supreme Court stated, "Upon a determination that the [UGA] provision violates the GMA, it should be stricken from both the comprehensive plan <u>and the CPPs</u>. The Board has determined that the County's UGA provision for Bear Creek violates the GMA. Therefore, by operation of law, the urban designation has effectively been stricken from both the plan and CPP. A CPP that directs an unlawful outcome is inoperative. [*Bear Creek, 3508c*, 11/3/00 Order, at 11-12.]
- Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl. The Act's lengthy definitions and requirements regarding urban growth areas and natural resource lands also date to 1990. However, the Act's initial description of future rural uses and development patterns was spare. While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized" and "contained" within a "logical outer boundary." This cautionary

and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl. [*Burrow, 9318,* FDO, at 18.]

- Designation of UGAs pursuant to RCW36.70A.110 is a legislative act. The County designated UGAs when it adopted its Plan in 1994. Among the UGAs designated by the County was the Comprehensive Urban Growth Area (CUGA). It was a legislative act to designate the UGAs, including the CUGA. Cascadia [FCC] is located within a UGA; specifically, it is located within the County's CUGA. Any subsequent project specific decision cannot alter the Plan designation of this area as a UGA. [*Gain, 9319*, 1/28/00 Order, at 7-8.]
- Because the proposed Cascadia [FCC] development is located within a designated UGA, the CUGA, the provisions of RCW 36.70A.350 do not apply. [RCW 36.70A.350 applies to FCCs located outside of the initially designated urban growth areas.] [*Gain, 9319*, 1/28/00 Order, at 8.]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, at 6.]
- The legislature recognized that MPRs are urban growth outside of UGAs. The GMA permits the urban growth of an MPR if the County's regulations do not permit other urban or suburban growth in the vicinity of the MPR. [Urban growth in MPRs is recognized by, not prohibited by the Act.] [*Gain, 9319*, at 8.]
- The County's argument about the propriety of its RAID designation evidence several fundamental misapprehensions. What the Act contemplates is flexibility for counties, in certain circumstances and subject to careful restrictions, to "round off" with logical outer boundaries "limited areas of more intensive rural development" [LAMIRDs]. However, simply because an unincorporated parcel was urbanized as of July 1, 1990, does not mean that it is appropriate to designated it as a LAMIRD. The County's spacing criteria for rural activity centers (RACs) and rural neighborhood centers (RNCs) indicates that it grasps the concept of a "central place," the idea that a commercial center serves a surrounding hinterland. The placement of its RAID less than 400 feet from the UGA flies in the face of this "central place" theory. The location of the [property] immediately adjacent to the UGA makes it a candidate not for LAMIRD designation, but potentially for UGA expansion. [*Tacoma II, 9323c,* FDO, at 7.]
- The County's hierarchy of rural centers provides that RACs be located no closer than five miles from a UGA; and that RNCs be located no closer than two miles from a UGA. Without explanation as to UGA proximity requirements, this RAID [LAMIRD] is located within 360 feet of the UGA, which is the present city limits for the City of Tacoma. Designation of a RAID [LAMIRD in this location fosters the low-density sprawl that RAIDS [LAMIRDs] are required to avoid. Proximity to the UGA alone suggests to the Board that if the area were to be urban, adjustments to the UGA would be a more appropriate means of accomplishing this objective. [*Tacoma II, 9323c,* FDO, at 8.]
- The inconsistency is clear on its face: [The CPP] only allows sewer interceptors, in limited circumstances, to extend beyond the UGA, while [the amendment] allows all sanitary sewers in the rural area. [The amendment] allows more sewer service in rural areas than the CPP allow. [*Tacoma II, 9323c,* FDO, at 10.]
- [The Board has jurisdiction to review actions of the legislative bodies of cities and counties within the central Puget Sound region. The Snohomish County Council has not acted. The challenged action] has been taken by Snohomish County Tomorrow, (SCT) an informal planning body with no governmental authority. [SCT's adoption of a Metropolitan urban growth area (MUGA) review process is not within the Board's jurisdiction to review.] [*Shoreline, 0310*, 9/5/00 Order, at 3-4.]

- [There is] interplay between the GMA's UGA provisions and the statutes governing annexation. Counties must designate UGAs, pursuant to the GMA. The Growth Boards have jurisdiction to determine compliance with the GMA, including UGA designations. UGA designation enables city annexations, since cities are prohibited from annexing areas beyond designated UGAs. Boundary Review Board decisions must be consistent with provisions of the GMA, including the UGA provisions. This system is consistent and coordinated and yields certainty in situations where UGAs have been found by the Board to comply with the Act, or where UGA designations have not been challenged. However, this system yields uncertainty where the UGA designation has been challenged, but not resolved as the annexation process proceeds. It is a situation that the Legislature has not, to date, addressed. [This uncertainty is prevalent in this case. In this case, the Board cannot, and will not, address the effect of the annexation, nor will it speculate on the outcome of pending litigation. However, the Board must carry out its mandated responsibilities.] Determining compliance with the goals and requirements of the GMA is the primary responsibility of the Board; it cannot shirk this duty. The Board must determine whether the challenged UGA designation complies with the goals and requirements of the Act. [*Kitsap Citizens, 0319c*, 2/16/01 Order, at 9-11.]
- The UGA amendment in this case is essentially the same situation as posed in *Kitsap Citizens* [*0319c*, 2/16/01 Order]. Snohomish County's action of amending its previous UGA designation also precipitated two courses of action. One course led to the City of Arlington's annexation of the area; the other course led to a PFR before this Board challenging the Ordinance that enabled the annexation to occur. Consequently, as in *Kitsap Citizens*, here the Board will proceed to carry out its GMA mandated duty to review the challenged actions for compliance with the goals and requirements of the Act. [*McVittie V, 0316*, FDO, at 11.]
- [Pursuant to RCW 36.70A.215, the County adopted a CPP to govern UGA expansions. To maintain consistency with the UGA expansion CPP, the County also adopted an identical Plan policy. The CPP and Plan policy include review and analysis requirements for the expansion of UGAs for residential, commercial and industrial lands. The (Maltby) UGA expansion, designation and rezone indicate commercial designations. However, a concomitant agreement limited the area in dispute for use as a church, thereby allegedly precluding other commercial uses. Consequently, the issue for the Board was whether the existence of the concomitant agreement made the UGA review and analysis required by CPP and Plan policy necessary. The Board determined the County CPP and Plan policy both apply and govern the expansion of the UGA.] [*Hensley IV, 1304c*, FDO, at 29.]
- Full compliance with [the provisions of] RCW 36.70A.215 is not required to be completed until September 1, 2002. However, portions of the County's "buildable lands" process have been completed, adopted and are effective, including the guiding principle of [the CPP and Plan policy, which state:] "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 [GMA] and one of the following four conditions are met." If the conditions have not yet been fully defined, by necessity, the [CPPs and Plan policy's] prohibition on UGA expansion is operative until such time as they have are established and applied. [*Hensley IV, 1304c*, FDO, at 33.]
- [The requirements of RCW 36.70A.070(preamble), .070(1) and .110(3)] apply to comprehensive plans and UGA designations; they do not apply to development regulations – *i.e.* rezones. [The Board dismissed these issues *sua sponte*.] [*Forster Woods, 1308c*, FDO, at 29.]
- *See also:* **Fully Contained Communities** [*FOTL VI, 1310*]
- [The petition for review as reflected in the prehearing order challenged Woodway's compliance with the GMA "when it designated (an area) as a UGA." The adoption of UGAs is solely a county duty and requirement under the Act, not a duty or requirement for cities. Notwithstanding Woodway's choice of GMA jargon [PAAs or UGAs], it has no duty or authority to adopt UGAs. [*Shoreline II, 1313*, 8/9/01 Order, at 5-6.]

UGAs – Location

- Only after the actual capacity of cities to take this growth is definitively known, and it is determined how much of the forecasted growth could not be accommodated by cities, would it then be appropriate for the FUGA to include unincorporated lands that now have urban growth on them. Urban growth may be allocated to unincorporated areas that are not now characterized by urban growth only as a third rank order choice and only in unusual circumstances. [*Rural Residents, 3310,* FDO, p. 15]
- Counties do not have cart blanche permission to include nonurban areas in UGAs. In those rare cases when exceptional circumstances so warrant, the counties will be required to convincingly demonstrate their rationale for drawing UGA boundaries to include lands within the fourth, fifth and sixth exceptions, specifically utilizing the statistical information that has been compiled. [*Rural Residents, 3310,* FDO, p. 45]
- The Act does provide six exceptions to the general rule governing locations where UGAs can be extended beyond existing city limits.
    1. UGAs can be located outside existing city limits if the detailed requirements for a new fully contained community are met. RCW 36.70A.350.
    2. UGAs can be located outside existing city limits if the detailed requirements for master planned resorts are met. RCW 36.70A.360.
    3. UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is already "land having urban growth located on it." RCW 36.70A.110(1); or
    4. UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is already "land located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1); or
    5. UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is adjacent to territory already "... having urban growth located on it." RCW 36.70A.110(1); or
    6. UGAs <u>may</u> include territory outside existing city limits <u>only</u> if that additional territory is adjacent to territory already "... located in relationship to an area with urban growth on it as to be appropriate for urban growth." RCW 36.70A.110(1).

  [*Rural Residents, 3310,* FDO, p. 48]
- A necessary implication of the Act is that UGAs must be distinguishable among cities. This implied requirement arises from RCW 36.70A.110(2) which provides that "each city shall propose the location of an UGA," and the necessity for a county to know, for each portion of the lands covered by the county's comprehensive plan, which city's comprehensive plan must be addressed to meet the consistency requirements of RCW 36.70A.100 and the joint planning requirements of RCW 36.70A.210(3)(f). [*Tacoma, 4301,* FDO, pp. 12-13]
- Generally, UGAs should be limited to existing municipal boundaries and can be extended beyond city limits only in particular circumstances. [*Tacoma, 4301,* FDO, p. 49]
- The Board expects counties to initially draw UGAs at existing city boundaries and proceed beyond city limits only with sufficient justification to permit such expansion. [*Tacoma, 4301,* FDO, p. 49]
- The Board concludes that the six exceptions to the general rule that counties cannot designate UGAs beyond city limits, as set forth in *Rural Residents, at 44,* were not changed by the 1995 legislative amendments. However, a new holding is in order, as follows:

  > Regardless of whether a satisfactory showing has been made that existing cities can accommodate the projected population growth, counties will be permitted to designate FUGAs beyond existing incorporated areas on lands covered by the third exception. However, this does not give counties the carte blanche permission to designate as UGAs *all* urbanized unincorporated lands, because to do so would violate two of the fundamental purposes that both

UGAs and CPPs must serve: to achieve the *transformation of local governance* within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve *compact urban development. See Tacoma,* at 12. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical to now blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted. *Amending Bremerton,* at 39-40.

[*Vashon-Maury, 5308c,* FDO, p. 26]

- Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter. [*Vashon-Maury, 5308c,* FDO, p. 77]
- Determining size and shape of UGAs – general discussion of prior Board decisions. [*Bremerton, 5339c,* FDO, pp. 32-42]
- The future land use map must depict UGAs and reference the location of maps of appropriate scale to discern the actual location of the UGA boundaries. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 17]
- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 41]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p.42]
- It is the County's duty to establish UGA boundaries. The City's role in that process is limited to a consultative one. [*AFT, 5356,* FDO, p. 10]
- Where a city has planned for an area not included in its UGA, such planning activities, including land use designations, have no effect. [*AFT, 5356,* FDO, p. 20]
- The Bear Creek MPDs are within the County's "island" UGA. The Superior Court included the Bear Creek properties in the UGA. Therefore, in this unique situation, to respond to the Board's Order, the County need not have resorted to using the FCC designation process, as set forth in RCW 36.70A.350, to address the Bear Creek MPDs inclusion in the UGA. [*Buckles, 6322c,* FDO, p. 30]
- While a city may propose a UGA and consult on its designation, a city has no authority to designate UGAs under the Act. [*Hensley III, 6331,* FDO, p. 5]
- Designation of a UGA adjacent to existing city limits fosters compact urban development and the transformation of local governance. [*Johnson II, 7302,* FDO, p. 7]
- Counties may choose to designate future urban reserves outside of the UGAs. When such a tool is utilized, the Board has cautioned that care must be taken to protect the long-term flexibility to expand UGAs. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 44]
- [The fact that an area is adjacent to a UGA does not compel its designation as a UGA.] [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 59]
- The Board rejects [the] unsupported assertion that Island Crossing is "clearly" an entryway to Arlington. Area A of the Island Crossing area is an isolated, small-scale freeway service node, and all of the Island Crossing area is on the flat bottom land of a river valley. In addition to being a mile

away, Arlington is neither physically nor visually connected to Island Crossing and is situated above the valley floor. [*Sky Valley,* 5368c, 4/22/99 Order, at 10]

- [The Bear Creek island is not characterized by urban growth nor adjacent to lands characterized by urban growth, it therefore does not meet the locational criteria of RCW 36.70A.110(1)]. [*Bear Creek, 5803c*, 6/15/00 Order, at 11.]
- RCW 36.70A.110 cross references RCW 36.70A.350. Read together, RCW 36.70A.110 and RCW 36.70A.350 provide that lands that do not have urban growth on them, that are not characterized by urban growth, and that are not adjacent to lands characterized by urban growth may become UGAs if the satisfy the FCC requirements of .350. [*Bear Creek, 5803c*, 6/15/00 Order, at 12.]
- The Bear Creek island is *located outside of the initially designated urban growth area*. Consequently, it is eligible for consideration as an FCC pursuant to .350. [*Bear Creek, 5803c*, 6/15/00 Order, at 15.]
- If the county approves an FCC proposal pursuant to RCW 36.70A.350(2), the approved FCC becomes a UGA by operation of law. Therefore, all the "containment" protections associated with UGAs attach. These include, for example, rural zoning, prohibition of urban growth outside the UGA, limitations on extending urban governmental facilities and services, and in King County the four-to-one program. [*Bear Creek, 5803c*, 6/15/00 Order, at 22.]
- RCW 36.70A.110 provides a statutory *exception* for FCCs from the UGA locational criteria contained in .110. . . . [T]he locational criteria contained in .110 of the Act do not apply to the identification and designation of potential FCC areas. . . . [T]he Act does not contain any explicit locational requirements for FCCs, other than those factors enumerated in .350(1), including .350(1)(g) "containment" which could affect location. . . . [A] jurisdiction has discretion to adopt its own locational criteria or constraints for identifying and designating potential FCC areas. [*Bear Creek, 5803c*, 6/15/00 Order, at 24.]
- [The locational criteria adopted by the County apply specifically to UGAs, not FCC designations. The County's Policy on locational criteria include the .110 FCC "exception."] . . . Since the Legislature, not the County, created the FCC "exception" in RCW 36.70A.110, it is not necessary for the County to justify, explain, or provide a rationale for, why the FCC "exception" is included in its Plan Policies. [*Bear Creek, 5803c*, 6/15/00 Order, at 26-27.]
- The County's argument about the propriety of its RAID designation evidence several fundamental misapprehensions. What the Act contemplates is flexibility for counties, in certain circumstances and subject to careful restrictions, to "round off" with logical outer boundaries "limited areas of more intensive rural development" [LAMIRDs]. However, simply because an unincorporated parcel was urbanized as of July 1, 1990, does not mean that it is appropriate to designated it as a LAMIRD. The County's spacing criteria for rural activity centers (RACs) and rural neighborhood centers (RNCs) indicates that it grasps the concept of a "central place," the idea that a commercial center serves a surrounding hinterland. The placement of its RAID less than 400 feet from the UGA flies in the face of this "central place" theory. The location of the [property] immediately adjacent to the UGA makes it a candidate not for LAMIRD designation, but potentially for UGA expansion. [*Tacoma II, 9323c,* FDO, at 7.]

UGAs – Size

- Counties must specify how many acres (or some other common measurement of land) are within a UGA so that, in the event of an appeal, the Board can determine whether the selected UGA is indeed sufficient. Counties have a great deal of discretion in how they achieve this requirement. The Board only demands that counties "show their work." [*Rural Residents, 3310,* FDO, p. 35]

- A county must base its UGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and specify the methods and assumptions used to support the IUGA designation. In essence, a county must "show its work" so that anyone reviewing a UGAs ordinance, can ascertain precisely how the county developed the regulations it adopted. [*Tacoma, 4301,* FDO, p. 19]
- Although a county has discretion in determining the physical size of a UGA, it does not have discretion in how much population it should plan for. OFM's twenty-year population projection is the exclusive number to use when designating UGAs. [*Tacoma, 4301,* FDO, p. 25]
- A county may, as an optional and supplementary feature of its comprehensive plan, include a population projection for any year subsequent to 2012, provided that such supplementary projection is unrelated to the process of designating UGAs. It may be wise to look beyond the GMA-mandated twenty-year time horizon, in view of the fact that major capital investments, i.e., sewage treatment plants and transportation facilities such as roads, airports and rail lines, have well beyond a twenty-year life and the results of certain public policy decisions will likewise endure beyond twenty years. However, the land supply and density decisions that must be made in designating UGAs must accommodate only the demands of twenty years of growth. [*Kitsap/OFM, 4314,* FDO, p. 23]
- Allocating growth to rural areas is not, on its face, a violation of the GMA. Growth may be allocated to rural areas, provided that it does not constitute urban growth. How rural growth is manifested on the ground is a separate matter. [*Vashon-Maury, 5308c,* FDO, p. 77]
- The fact that a UGA can accommodate more residents than OFM projects for the next 20 years does not automatically mean that the UGA is invalid. [*Gig Harbor, 5316c,* FDO, p. 41]
- The Act creates an ongoing duty for Washington's communities to plan for future growth, including preservation of the flexibility to increase the UGA land supply at a date beyond the immediate twenty-year planning horizon. [*Gig Harbor, 5316c,* FDO, p. 56]
- Determining size and shape of UGAs – general discussion of prior Board decisions. [*Bremerton, 5339c,* FDO, pp. 32-42]
- Where counties adopt a land supply market factor between 1 and 1.25 (i.e., of 25 percent), the Board will presume that the factor is reasonable. In evaluating allegations that a county has used an unreasonable land supply market factor, the Board will give increased scrutiny to those cases where the factor exceeds the 25 percent bright line. In determining whether the county's choice was reasonable, the Board shall consider three general questions: (1) What is the magnitude of the "land supply market factor" beyond the 25 percent bright line? (2) Is there other evidence to suggest that the land supply market factor is not reasonable? (3) Has the county also availed itself of other approaches, such as continuously monitoring land supply and making necessary adjustments over the life of the plans for the county and its cities? [*Bremerton, 5339c,* FDO, pp. 42-44]
- For a county to calculate the amount of unincorporated UGA land necessary to accommodate its allocated population growth, the county must utilize a population density assumption that reflects development densities anticipated by the county plan. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 16]
- For sizing UGAs, the density assumption used cannot be based upon historic patterns that perpetuated low density sprawl, and must reflect the planned for urban densities. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 16]
- The land capacity analysis should be related to the CTED models, other accepted models, or the methodology, if any, established in the CPPs. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 17]

- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban area portion of the projected twenty years of county-wide population growth. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 42]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p.42]
- A city must comply with its county's population allocation and cannot unilaterally modify the persons-per-household assumptions upon which it was based. [*Benaroya I, 5372c,* FDO, p. 17]
- "Show your work" has been applied to the documentation of factors and data used in the accounting exercise of counties in sizing UGAs as required by RCW 36.70A.110; it does not apply to the mandatory plan elements of RCW 36.70A.070. [*Litowitz, 6305,* FDO, p. 17]
- The GMA does not require counties to re-size its UGAs each time an assumption changes or more accurate information becomes available; however, the GMA does not allow counties to ignore changed circumstances or more accurate data. UGA review is required at least every ten years. [*Kelly, 7312c,* FDO, p. 16]
- [A land capacity analysis that deducts for redevelopment and unavailable land factors cumulatively, and for roads, public facilities and critical areas sequentially (from the same gross total) avoids double counting.] [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 20]
- The sizing of the UGA must be supported by analytical rigor and an explicit accounting, yet [the sizing of UGAs] is an inexact science. The specificity and precision important to the accounting are tempered by the imprecise nature of long-range population projections, and indeed comprehensive planning itself. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 37]
- [T]he County reserved a portion of the twenty-year population projection and offset the UGA accordingly [as required by .350]. [*Bear Creek, 5803c*, 6/15/00 Order, at 16.]
- [Show your work applies to sizing UGAs, it has not been required to demonstrate compliance with the mandatory elements requirements of the Act.] [*MacAngus, 9317,* FDO, at 11.]
- The UGA-sizing requirements of RCW 36.70A.110 rely to a great extent on mathematical calculations (allocation of population growth, assumptions regarding numbers of persons per dwelling, land needs based on planned densities and market factors, etc.) Without a clear showing in the record of the mathematical calculations and assumptions, interested persons have no criteria against which to judge a county's UGA delineation. Such is not the case here. [Petitioner] disagrees with the land use designation of its property and wants the County to show or explain why it did not change the [agricultural] designation. This is not required since the record clearly shows the basis for the County's [designation. The county relied upon Soil Conservation Service Prime Farmland List for the County.] [*MacAngus, 9317,* FDO, at 11.]
- Actions of local governments are presumed valid; however, when [UGA designations or expansions are] challenged the record must provide support for the actions the jurisdiction has taken; otherwise the action may be determined to have been taken in error – clearly erroneous. The Board will continue to adhere to the requirement that counties must "show their work" when designating UGAs and affirms its prior decisions on this question. [*Kitsap Citizens, 0319c*, FDO, at 13.]
- Its review of challenges to initial UGA designations caused this Board to articulate a "show your work" requirement that compelled Counties to demonstrate the analytical rigor and accounting that supported the sizing and designations of UGAs. The "show your work" provision for sizing and designating UGAs has been applied to the four Puget Sound counties within this Board's geographic jurisdiction. Thus far, this Board has limited the application of the "show your work" requirement to the sizing of UGAs. (Citations omitted.) [*Master Builders Association, 1316*, FDO, at 8.]

- Based upon the arguments presented, the Board construes the crux of the dispute in this [issue] to be a question of: whether the County had a GMA duty to update its [UGA capacity analysis] (a new showing of work) when it adopted the amendments to the PRD regulations. In reviewing the question, the Board agrees with the County and affirms its prior holding in *Kelly* [*7312*, FDO] that the GMA creates no duty to continuously update UGA land capacity analysis every time development regulations are amended. [*Master Builders Association, 1316*, FDO, at 10.]
- The Board notes that RCW 36.70A.130(3) was amended in 1997 to provide: "The review required by this subsection *may be combined* with the review and evaluation required by RCW 36.70A.215." (Emphasis supplied.) RCW 36.70A.215 further supports the principle that *periodic* review and evaluation for UGA sizing and designation, *not continuous updates*. [*Master Builders Association, 1316*, FDO, at 10.]
- The GMA provides protections against the scenario painted by Petitioners [Once UGAs are set, densities can be increased or decreased without demonstrating consistency with the GMA until the five-year review are due. Thus yielding a five-year period where no rules are in effect.] If UGAs are altered and challenged, which is not the case here, this Board requires an accounting to support the alteration. (Citation omitted.) Additionally, the Act itself provides specific requirements that development regulations, and amendments thereto, be consistent and implement the Plan, including the UGAs. (Citations omitted.) Thus, any changes, *at any time*, to development regulations that increase or decrease densities within a UGA are required to be "consistent with and implement the Plan." Interested persons or groups would be free to challenge such amendments to development regulations as they occurred, within the GMA appeal period. . . .Absent an alteration to a UGA boundary, the GMA specifically requires periodic review and evaluation for UGAs (Citations omitted.) [*Master Builders Association, 1316*, FDO, at 12.]
- [The Board's conclusion that only periodic reviews, not continuous update, are required by the GMA] does not insulate the County from a UGA challenge based upon whether development regulations implement the Plan and are consistent with the Plan and Goals of the Act. [*Master Builders Association, 1316*, FDO, at 13.]

URBAN SERVICES

- County-wide planning policies are policy documents that have both a procedural and a substantive effect on the comprehensive plans of cities and the county. The immediate purpose of the CPPs is to achieve consistency between and among the plans of cities and the county on regional matters. A long-term purpose of the CPPs is to facilitate the transformation of local governance in urban growth areas so that cities become the primary providers of urban governmental services and counties become the providers of regional and rural services and the makers of regional policies. [*Poulsbo, 2309c,* FDO, p. 23]
- The eventual and logical culmination of 'cities as the primary providers of urban services requires that annexation and incorporation occur rather than service agreements sufficing as more than a transitional device. [*Poulsbo, 2309c,* FDO, p. 26]
- Cities are the focal points of urban growth, governmental service delivery, and governance within UGAs. [*Rural Residents, 3310,* FDO, p. 42]
- The Board finds no absolute prohibition in the Act against the inclusion of land in a UGA that cannot be associated with an existing or potential future city. Nevertheless, the act is clear that the long-term future of urban growth areas is for them to have urban governmental services provided primarily by either existing or potential future cities. [*Tacoma, 4301,* FDO, p. 37]
- Just because unincorporated lands today contain urban growth on them does not necessarily mean that they should be included within a UGA. Instead counties must examine how a UGA designation

for such lands would achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services, and will achieve compact urban development. [*Vashon-Maury, 5308c,* FDO, p. 27]

- Determining how to distribute projected population growth among existing cities falls within the ultimate discretion of counties, subject to the requirements of RCW 36.70A.110(2) to attempt to reach agreement with cities. The Act does not require proportionate distributions. [*Vashon-Maury, 5308c,* FDO, p. 34]
- The Four-to-One program is the type of innovative land use management technique that the Act encourages. [*Vashon-Maury, 5308c,* FDO, p. 46]
- Regarding RCW 36.70A(3)(c-d), if a county does not own or operate a facility, it should not be required to include the locational or financing information in its CFE since these decisions are beyond its authority. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 39]
- When a jurisdiction that owns and/or operates a specified capital facility cooperates with the county and discloses information pertaining to location or financing (RCW 36.70A.070(3)(c-d), the county may include such information in its CFE. Indeed, aside from being sound growth management and public policy, it may be a necessary prerequisite to access a new funding source – *e.g.* impact fees. [*Bremerton/Port Gamble, 5339/7324c*, 9/8/97 Order, p. 39]
- If a county designates a UGA that is to be served by a provider (other than the county), the county should at least cite, reference or otherwise indicate where locational and financing information can be found that supports the UGA designations and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p. 41]
- If a county has limited authority to locate and finance needed infrastructure because those aspects of capital facility decision-making rest with special districts, other jurisdictions (city, state or federal governments) or private interests, then a county should be cautious and judicious in designating UGAs until assurances are obtained that ensure public facilities and services will be adequate and available. [*Bremerton/Port Gamble, 5339/7324c,* 9/8/97 Order, p.42]
- In view of the various provisions of the Act regarding the role of cities as the primary providers of urban governmental services, the Act's predilection for compact urban development, the duty to accommodate the population and employment that is allocated to them by a county, the duty to accommodate a county allocation and reflect it in both a city's comprehensive plan land use designations and capital facility plans, the Act imposes a duty on cities to encourage urban growth within UGAs. [*Benaroya I, 5372c,* 3/13/97 Order, p. 8]
- One of the fundamental premises of the Act is that UGAs are to be designated with sufficient land and densities to accommodate the urban portion of the twenty years of county-wide population growth. The county, as to the unincorporated portion of the UGA, and the cities, as to their respective portions of the UGA, have a duty to adopt comprehensive plans that accommodate that allocated growth over the twenty-year life of their plans, including provision of public facilities and services. [*Hensley III, 6331,* FDO, p. 8]
- That which is urban should be municipal. The corollary is: that which is municipal must be urban, which is to say, must generally have residential densities at 4 du/acre or higher. The Act is clear in providing that urban governmental services are to be available and provided in urban areas. [*Hensley III, 6331,* FDO, p. 9]
- The Act requires that urban services be made available and provided within UGAs. Generally, this means cities will make available and provide those urban services. [*Hensley III, 6331,* FDO, p. 10]
- Designation of a traditional UGA generally establishes certainty that: 1) the development of the land within it will be urban in nature; 2) this urban land will ultimately be provided with adequate urban

facilities and services within the planning horizon; and 3) the land will ultimately be developed at urban densities and intensities. [*Johnson II, 7302,* FDO, p. 10]

- A county may take precautions (i.e., requiring interlocal agreements) regarding the allocation of responsibility for services, and the process of transfer of jurisdiction, especially where the potential annexing city lies outside that county. [*Kelly, 7312c,* FDO, p. 12 -13]
- Some very fundamental issues have been resolved by virtue of the UGA designation: (1) the land use will be urban; (2) the land use designations reflect population and employment allocations made by the County; and (3) urban services provided within the UGA should be primarily provided by cities. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 48]
- The GMA does not support the argument [that LAMIRDs are not within UGAs and should not be served with sewer service.] [LAMIRDs] are permitted by the GMA, "including necessary public facilities and public services to serve the limited area." RCW 36.70A.070(5)(d). The legislature explicitly determined that these areas (called RAIDs in Pierce County's Plan) are "not urban growth." (Citation omitted). Providing sewer service to a [LAMIRD] does not amount to an inefficient extension of urban services and contribute to urban sprawl; providing sewer service to [LAMIRDs] is explicitly permitted by the GMA. [*Gain, 9319*, at 6.]

UTILITIES ELEMENT

- In order to describe the general locations of utilities as required by RCW 36.70A.070(4), a city or county must compile an inventory of the utilities that exist within its boundaries and the location of known proposals for future utilities. Additionally, a jurisdiction must note the capacity of these existing and proposed utilities. [*Sky Valley, 5368c,* 4/15/96 Order, p. 6]
- For purposes of RCW 36.70A.070(4) railroads are not utilities. Given the nature and size of railroads and their potential impact on land use planning, sound policy dictates that railroads be considered under the transportation element rather than the utilities element of a comprehensive plan. [*Hapsmith I, 5375c,* FDO, p. 49]

WATER

- A jurisdiction is not required to tabulate "certificates of water availability" in order to measure water supply. [*Vashon-Maury, 5308c,* FDO, p. 48]

WETLANDS

- *See also:* **Critical Areas**
- The Act's directive that local governments are to "protect" critical areas means that they are to preserve the structure, value and functions of wetlands, aquifer recharge areas used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas. [derived from WAC 365-195-825(2)(b)] [*Pilchuck II, 5347c,* FDO, p. 20]
- It is the structure, value and functions of critical areas that are inviolate, not the critical areas themselves. The "protect critical areas" mandate does not equate to "do not alter or negatively impact critical areas in any way." While the preservation of the structure, value and functions of wetlands, for example, is of paramount importance, the Act does not flatly prohibit any alteration of or negative impacts to such critical areas. [*Pilchuck II, 5347c,* FDO, p. 20]
- The Act's requirement to protect critical areas means that the structure, value and functions of such natural systems are inviolate. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such

flexibility must be wielded sparingly and carefully for good cause, and in no case result in a net loss of the structure, value and functions of such natural systems within a watershed or other functional catchment area. [*Pilchuck II, 5347c,* FDO, p. 21]

- The GMA requires designation and protection of critical areas and makes no qualifying statement that, for example, urban wetlands are any less important or deserving of protection than rural ones. As a practical matter, past development practices may have eliminated and degraded wetlands in urban areas to a greater degree than rural areas, but the Board rejects the reasoning that this provides a GMA rationale for not protecting what is left. [*Pilchuck II, 5347c,* FDO, p. 23]
- The Act's mandate for protection requires either a buffer, or a functionally equivalent protection for all wetlands, including category 4 wetlands. It may well be that some or even most category 4 wetlands can be protected by means other than a buffer. However, . . . some mechanism is needed to protect these areas. [*Pilchuck II, 5347c,* FDO, p. 35]
- The use of performance standards is recommended in the Minimum Guidelines for "circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be specifically identified." WAC 365-190-040(1). However, where critical areas are known, cities and counties cannot rely solely upon performance standards to designate these areas. [*Pilchuck II, 5347c,* FDO, pp. 41-42]
- The Act's requirement to protect critical areas, particularly wetlands and fish and wildlife habitat conservation areas, means that the ~~structure,~~ values and functions of such ~~natural~~ ecosystems ~~are inviolate~~ must be maintained. While local governments have the discretion to adopt development regulations that may result in localized impacts upon, or even the loss of, some critical areas, such flexibility must be wielded sparingly and carefully for good cause, and in no case result in the net loss of the ~~structure,~~ value and functions of such ~~natural~~ ecosystems within a watershed or other catchment area. [*Tulalip, 6329,* FDO, p. 11, amending a holding in *Pilchuck II*, FDO 5347, pursuant to a Superior Court remand]
- Local governments have the flexibility to adopt critical area development regulations that would permit the reduction of the geographic extent of, for example, a wetland. This could result in the loss of all or a portion of an individual site-specific critical area, so long as the values and functions of the ecosystem in which the critical area is located is not diminished. [*Tulalip, 6329,* FDO, p. 11]
- Certain critical areas, such as wetlands and fish and wildlife habitat areas, constitute ecosystems that transcend the boundaries of individual properties and jurisdictions, and that it is therefore necessary to address certain critical area issues on a watershed level. [*Tulalip, 6329,* FDO, pp. 11-12]
- Although the Booth studies document the basin-wide 10 percent impervious surface threshold for damage to aquatic systems, the studies also identify measures to mitigate the effects of impervious surfaces. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 31]
- Rather than adopting a maximum limit on impervious surfaces . . . the County, utilizing best available science in a substantive way, adopted a system for critical areas protection that includes buffers, building setbacks, mitigation, and stormwater drainage controls. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]
- [Even if a maximum impervious basin-wide coverage of 10 percent constitutes the best available science, petitioners have not shown that the adopted regulations allow more than 10 percent basin-wide impervious surface coverage. [*Bremerton/Alpine, 5339c/8332c,* FDO, p. 32]

ZONING – *SEE:* DEVELOPMENT REGULATIONS

- [The assertion that rural zoning designations in areas adjacent to an FCC would not contain the FCC – rural zoning does not hold – is unsubstantiated.] [*Bear Creek, 5803c*, 6/15/00 Order, at 20.]

- If the county approves an FCC proposal pursuant to RCW 36.70A.350(2), the approved FCC becomes a UGA by operation of law. Therefore, all the "containment" protections associated with UGAs attach. These include, for example, rural zoning, prohibition of urban growth outside the UGA, limitations on extending urban governmental facilities and services, and in King County the four-to-one program. [*Bear Creek, 5803c*, 6/15/00 Order, at 22.]
- [The legend on the zoning map indicating urban densities, contradicts the "compliant" text of the zoning code making the area rural. The legend discrepancy, whether or not inadvertent, means the legend designation is non-compliant with the GMA. [*Bear Creek, 3508c*, 11/3/00 Order, at 12.]
- [A jurisdiction may appropriately rely on RCW 36.70A.390 for amending a zoning map.] The nature of a "moratorium, interim zoning map, interim zoning ordinance or interim official control" is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a "rush to the permit counter" and undermine the objectives of adopting the interim control. [*Bear Creek, 3508c*, 11/3/00 Order, at 8-9.]
- [Plans are not development regulations. Comprehensive plans do not control the issuances of permits (footnote omitted) nor directly control the use of land. Plans are directive to development regulations and capital budget decisions.] The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, such emergency actions can only be taken "after appropriate public participation." [The public has a reasonable expectation that it will be alerted about plan amendments before a jurisdiction adopts the plan amendments.] [*Bear Creek, 3508c*, 11/3/00 Order, at 9-10.]
- [An interim ordinance may not continue in force and effect in perpetuity.] By the explicit terms of RCW 36.70A.390, "a legislative enactment 'adopted under this section' may be effective for not longer than six months. . ." [*Bear Creek, 3508c*, 11/3/00 Order, at 11.]
- [Where a Plan designation is not changed from the original designation, but merely continued, a petitioner cannot show injury in fact due to the original designation. A change in the zoning, that implements the Plan designation, but eliminates certain previously permitted uses (such as churches, county clubs, day care facilities, group homes, hospitals, libraries and schools), does not constitute injury in fact.] [*MacAngus, 9317,* FDO, at 6.]
- RCW 36.70A.070 does not apply to development regulations. [*MacAngus, 9317,* FDO, at 9.]
- [If more than one zoning designation implements a plan designation, a change from one implementing zoning designation to another does not create an inconsistency with the plan.] [*MacAngus, 9317*, FDO, at 10.]
- [The Board agreed with DOC that the M-3 district had limited access to needed resources for work release facilities, and available land for such facilities in the M-3 district was limited.] Limiting work release facilities to the M-3 zoning designation where the availability of non-developed, non-contaminated sites is problematic precludes the siting of work release facilities from being located within the City of Tacoma. [*DOC/DSHS, 0307,* FDO, at 8-9.]
- Regarding Tacoma's "grand-fathering" of [existing] work release facilities, the Board notes that prior to [adoption of] the present Ordinance, work release facilities were allowed in various zones, but under the Ordinance they are prohibited from *all zones* except the M-3 district. But for the new prohibitions of the Ordinance, the "grand-fathering" of existing work release facilities within their present zoning districts would not be necessary. The City should be aware that RCW 36.70A.200 prohibits the City from not allowing the expansion of existing essential public facilities as well as precluding new essential public facilities. [*DOC/DSHS, 0307,* FDO, at 9.]

- *See also:* **Affordable Housing** [*LIHI I, 0317*]
- [Pursuant to RCW 36.70A.215, the County adopted a CPP to govern UGA expansions. To maintain consistency with the UGA expansion CPP, the County also adopted an identical Plan policy. The CPP and Plan policy include review and analysis requirements for the expansion of UGAs for residential, commercial and industrial lands. The (Maltby) UGA expansion, designation and rezone indicate commercial designations. However, a concomitant agreement limited the area in dispute for use as a church, thereby allegedly precluding other commercial uses. Consequently, the issue for the Board was whether the existence of the concomitant agreement made the UGA review and analysis required by CPP and Plan policy necessary. The Board determined the County CPP and Plan policy both apply and govern the expansion of the UGA.] [*Hensley IV, 1304c*, FDO, at 29.]
- The Board acknowledges concomitant agreements have a long history in this state and have been upheld by our Courts in the pre-GMA *zoning* context (Footnote omitted); however, concomitant agreements do not readily transfer to the GMA context. GMA planning contains numerous requirements not found in pre-GMA planning. These requirements include, for example: ongoing and extensive public participation, designated and documented UGAs, state articulated goals provide guidance to plans and implementing regulations, required (not optional) comprehensive planning, plans must contain certain elements, plan elements must be consistent, and development regulations must be implemented consistently with the plans – through regulations (*i.e.* zoning) and capital investments. UGA expansion and amendment to a plan [future land use map – FLUM] designation involve broader issues of public concern and interest than the use of an individual parcel of property. Concomitant "zoning" agreements for a parcel of property cannot be the controlling factor in issues of UGA expansion or comprehensive plan [FLUM] designation. [*Hensley IV, 1304c*, FDO, at 32.]
- There is no language in [the CPP or Plan policy] that indicates that "commercial land" means anything other than what is designated on the FLUM or Zoning maps. The concomitant agreement does not alter this fact. Therefore, the inescapable conclusion is that expanding the [UGA to include the area as] "urban commercial" is commercial land falling within the purview of [the controlling CPP and Plan policy.] [*Hensley IV, 1304c*, FDO, at 33.]
- The Board does not disagree with the County that this church use is more appropriate in the urban area, but the issue here is whether the UGA was expanded consistently with the County's own policies. [It was not.] [*Hensley IV, 1304c*, FDO, at 33.]
- [The rural property involved was rezoned from one unit per ten acres to one unit per five acres. A Plan policy provided "A residential density of one home per ten acres shall be applied in the rural area where the predominant lot size is ten acres or larger. . ." After review of the information on [a map exhibit], the Board concludes that the most conspicuous and prevalent lot sizes 'in the rural area" are more than ten acres in size. Some five-acre lots exist within this area; however, the predominant lot size is more than ten acres (20 and 40 acre lots). [*Forster Woods, 1308c*, FDO, at 27.]
- [A 53 acre property within the County's UGA was rezoned from four units per acre to one unit per acre.] It is undisputed that four dwelling units per acre constitutes compact urban growth. Over the last decade, as the GMA has evolved and been interpreted, it has generally been accepted that this density is an appropriate urban density. . . .However, densities of less than four dwelling units per acre have been challenged before this Board and found to be appropriate urban densities in limited circumstances. The Board has stated, "The presence of special environmental constraints, natural hazards and environmentally sensitive areas may provide adequate justification for residential densities under 4 du/acre within a UGA. (Citation omitted.) [*Forster Woods, 1308c*, FDO, at 31.]
- Just as the future land use map must permit appropriate urban densities in the UGA, so too must the implementing zoning designations. Also, the duty of a city to provide for appropriate urban densities within a UGA, likewise applies to a county. Counties must provide for appropriate urban densities within unincorporated UGAs. [*Forster Woods, 1308c*, FDO, at 32.]

- [The Board found no environmental constraints to support the County's action.] The County's contention that the rezoning is appropriate because it is within the 'range of urban densities' the County permits, is unpersuasive. The 'range of urban densities' may dip below typical urban densities when environmental constraints support such and outcome. That is not the case here. [*Forster Woods, 1308c*, FDO, at 32.]
- The focus of this appeal is Snohomish County's recent amendments to its Planned Residential Development (**PRD**) regulations. Basically, PRDs allow higher residential densities than the underlying zoning classifications would otherwise permit. In Snohomish County, the PRD regulations set the maximum number of dwelling units permitted in the urban single family zones at 120 percent of the maximum number of units permitted under the underlying zoning classification. In essence, a 20% density bonus is permitted for using the PRD approach. The crux of this challenge involves changes in the basis and methodology in calculating the unit yield and bonus, including a limitation on the maximum number of dwelling units allowed and a limitation on the minimum lot size to which the PRD regulations can be applied. The challenged Ordinance changed the basis of the calculations from a gross acreage to a net acreage, modified factors to be included in calculating the developable area, established a maximum density in certain zones and limited the application of PRDs to lots over a certain size. [The Board upheld these amendments.] [*Master Builders Association, 1316*, FDO, at 6.]
- The MBA contends that the undisputed cumulative impact of these changes is a reduction in the *quantity* of dwelling units that had previously been allowed in certain zones under the PRD approach. This reduction in *quantity* of dwelling units [*i.e.* density] permitted by the new PRD regulations forms the foundation of the MBA challenge. However, the County seeks to justify these changes as being the product of debate and compromise that ultimately seeks to encourage quality construction of higher density development in the urban area while protecting open space, recreation and critical areas. Additionally, the County contends that these changes to the PRD regulations are not a violation of any of the challenged provisions of the GMA. [The Board agreed with the County.] [*Master Builders Association, 1316*, FDO, at 6.]
- It is undisputed that the County's amendments to the PRD regulations have the effect of reducing the allowable density within [challenged urban single family residential] zoning designations. . . .[A County Plan policy] states, "development regulations shall be adopted which will require that new residential subdivisions achieve a minimum net density of 4-6 dwelling units per acre in all unincorporated UGAs." The Snohomish County Code requires "A minimum density of four dwelling units per net acre shall be required in all UGAs (noting exceptions not relevant here)." (Citations omitted.) The County's zoning designations [for the challenged urban single family residential zones], coupled with the PRD regulations and [the Code provision], allow for between 4 and 7 dwelling units per net acre. These densities are consistent with the Plan policies and fall within the bounds of appropriate urban densities. [*Master Builders Association, 1316*, FDO, at 18-19.]
- The MBA assertion that the County's development pattern within the unincorporated UGA only permits 3.71 du/*gross* acre is unpersuasive. Snohomish County Code specifically requires a minimum density of 4 dwelling units per *net* acre within the unincorporated UGA. The County's 2000 Growth Monitoring Report indicates *net* residential densities of 7.11 du/net acre in the unincorporated UGA. The Board finds that this density is an appropriate urban density for unincorporated UGAs in Snohomish County. [*Master Builders Association, 1316*, FDO, at 19.]
- [The MBA exhibit] illustrates the benefits of housing affordability that accrue from use of the PRD approach compared to not having the benefits of the PRD regulations (or average lot sizing). However, MBA's concern about the impact on affordable housing is one of degree. While the housing affordability statistics are likely to be different under the new PRD regulations than they were under the prior PRD regulations, those statistics will still be better under the new PRD

regulations than under a development scheme with no PRD option. This difference in degree of benefit is not sufficient to find the County's action was in error. [*Master Builders Association, 1316*, FDO, at 22-23.]

- The purpose statements of the PRD regulations evidence the versatility the PRD regulations are trying to serve. Achieving density is not the sole purpose of the PRD process (nor the GMA). Instead, as the County states, the PRD regulations "seek to encourage the construction of *quality*, high-density development while protecting open space, recreation areas and natural site amenities." The Board agrees. [*Master Builders Association, 1316*, FDO, at 23.]
- [This is a case of first impression for the Board.] The City of Edgewood, a newly incorporated city, is challenging a Plan amendment and zoning change to a geographic area that lies *entirely within the city limits of the City of Sumner*, but adjacent to Edgewood's city limits. [*Edgewood, 1318*, FDO, at 4.]

APPENDIX A - GLOSSARY OF ACRONYMS

ADU	Accessory Dwelling Units
AMIRD	Areas of More Intense Rural Development
APA	Administrative Procedures Act
ARA	Aquifer Recharge Areas
BAS	Best Available Science
BMP	Best Management Practice
BOCC	Board of County Commissioners
CA	Critical Area
CAO	Critical Areas Ordinance
CARA	Critical Aquifer Recharge Area
CFE	Capital Facilities Element
CO	Compliance Order
CP	Comprehensive Plan
CPP	Countywide Planning Policy
CTED	Community, Trade & Economic Development, Department of
DOE	Department of Ecology
DNS	Determination of Nonsignificance
DR	Development Regulation
EIS	Environmental Impact Statement
EPF	Essential Public Facility
FCC	Fully Contained Community
FDO	Final Decision and Order
FEIS	Final Environmental Impact Statement
FFA	Frequently Flooded Area
FWH	Fish and Wildlife Habitat Conservation Areas (FWHCA)
GHA	Geologically Hazardous Area
GMA, Act	Growth Management Act
GMHB	Growth Management Hearings Board
HMP	Habitat Management Plan
ILA	Interlocal Agreement
ILB	Industrial Land Bank
IUGA	Interim Urban Growth Area
LAMIRD	Limited Areas of More Intensive Rural Development
LOS	Level of Service
LUPP	Lands Useful for Public Purposes
MCPP	Multi-County Planning Policies
MPR	Master Planned Resort
MO	Motion Order
NRL, RL	Natural Resource Land, Resource Land
OFM	Office of Financial Management
PFR	Petition for Review
PHS	WA Dept. of Fisheries and Wildlife Priority Species and Habitat Manual
PUD	Planned Unit Development
RAID	Rural Areas of Intense Development
RO	Reconsideration Order
SCS	Soil Conservation Service
SEPA	State Environmental Policy Act
SMA	Shoreline Management Act
SMP	Shoreline Master Program
TDR	Transfer of Development Rights
TMZ	Traffic Management Zone
UGA	Urban Growth Area

APPENDIX B - GMA LEGISLATIVE HISTORY

1990
Laws of 1990, 1st Ex. Sess., ch. 17

1991
Laws of 1991, ch. 322
Laws of 1991, Sp. Sess., ch. 32

1992
Laws of 1992, ch. 207
Laws of 1992, ch. 227

1993
Laws of 1993, Sp. Sess., ch. 6
Laws of 1993, ch. 478

1994
Laws of 1994, ch. 249
Laws of 1994, ch. 257
Laws of 1994, ch. 258
Laws of 1994, ch. 273
Laws of 1994, ch. 307

1995
Laws of 1995, ch. 49
Laws of 1995, ch. 190
Laws of 1995, ch. 347
Laws of 1995, ch. 377
Laws of 1995, ch. 378
Laws of 1995, ch. 382
Laws of 1995, ch. 399
Laws of 1995, ch. 400

1996
Laws of 1996, ch. 167
Laws of 1996, ch. 239
Laws of 1996, ch. 325

1997
Laws of 1997, ch. 382
Laws of 1997, ch. 402
Laws of 1997, ch. 429

1998
Laws of 1998, ch. 112
Laws of 1998, ch. 171
Laws of 1998, ch. 249
Laws of 1998, ch. 286
Laws of 1998, ch. 289

1999
Laws of 1999, ch. 315

2000
Laws of 2000, ch. 36
Laws of 2000, ch. 196

2001
Laws of 2001, 2nd sp. Sess., ch. 12
Laws of 2001, ch. 326

APPENDIX C - COURT DECISIONS

2001

North Kitsap Coordinating Council v. Kitsap County, No. 46624-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 2001 WL 1155774, 2001 Wash. App. LEXIS 2232; October 1, 2001, Filed; UNPUBLISHED OPINION.

Cooper Point Association v. Thurston County, No. 26425-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 108 Wn. App. 429, 31 P.3d 28; September 14, 2001, Filed.
Sammamish Community Council v. City of Bellevue, Nos. 47252-6-I, 47786-2-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 108 Wn. App. 46, 29 P.3d 728; August 20, 2001, Filed.

Abercrombie v. Chelan County, No. 19641-1-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, 2001 WL 772495, 2001 Wash. App. LEXIS 1487; July 10, 2001, Filed; UNPUBLISHED OPINION; September 11, 2001, Order Granting Motion for Extension and Order Denying Motion for Reconsideration.

Somers v. Snohomish County, No. 41710-0-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 105 Wn. App. 937, 21 P.3d 1165; April 23, 2001, Filed; Reconsideration Denied June 5, 2001.

Citizens for Responsible and Organized Planning v. Chelan County, No. 17795-5-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, 105 Wn. App. 753, 21 P.3d 304; April 10, 2001, Filed.

Moab Irrigation District v. Washington State Boundary Review Board for Spokane County, No. 19186-9-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, 2001 WL 293137, 2001 Wash. App. LEXIS 492; March 27, 2001, Filed; UNPUBLISHED OPINION.

Lane v. Central Puget Sound Growth Management Hearings Board, No. 46773-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 2001 WL 244384, 2001 Wash. App. LEXIS 425; March 12, 2001, Filed; UNPUBLISHED OPINION.

Moore v. Whitman County, No. 69053-7, SUPREME COURT OF WASHINGTON, 143 Wn.2d 96; 18 P.3d 566; 2001 Wash. LEXIS 140, September 26, 2000, Argued, February 22, 2001, Filed, As Corrected February 26, 2001.

2000

Scott v. City of Seattle, No. 44704-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 103 Wn. App. 1059; 2000 Wash. App. LEXIS 2559, December 26, 2000, Filed.

King County v. Central Puget Sound Growth Management Hearings Board, (Green Valley), No. 68284-4, SUPREME COURT OF WASHINGTON, 142 Wn.2d 543; 14 P.3d 133; 2000 Wash. LEXIS 834, May 31, 2000, Oral Argument, December 14, 2000, Filed

Faben Point Neighbors v. City of Mercer Island, No. 44847-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 102 Wn. App. 775; 11 P.3d 322; 2000 Wash. App. LEXIS 1602, August 28, 2000, Filed.

Stewart v. Review Bd., No. 42041-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 100 Wn. App. 165; 996 P.2d 1087; 2000 Wash. App. LEXIS 1382, August 3, 2000, Filed

Wenatchee Sportsmen Association v. Chelan County, NO. 67785-9, SUPREME COURT OF WASHINGTON, 141 Wn.2d 169; 4 P.3d 123; 2000 Wash. LEXIS 472, November 18, 1999, Oral Argument, July 20, 2000, Filed

Association of Rural Residents v. Kitsap County, NO. 68027-2, SUPREME COURT OF WASHINGTON, 141 Wn.2d 185; 4 P.3d 115; 2000 Wash. LEXIS 473, November 18, 1999, Oral Argument, July 20, 2000, Filed

Wells v. Western Washington Growth Management Hearings Board, No. 43028-9-I linked with: No. 43397-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 100 Wn. App. 657; 997 P.2d 405; 2000 Wash. App. LEXIS 583, April 10, 2000, Filed.

Manke Lumber Co. v. Central Puget Sound Growth Management Hearings Board, No. 23599-4-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 2000 Wash. App. LEXIS 356, March 3, 2000, Filed. (Unpublished Opinion at, 99 Wn. App. 1050)

Caswell v. Pierce County, No. 41882-3-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 99 Wn. App. 194; 992 P.2d 534; 2000 Wash. App. LEXIS 163, January 31, 2000, Filed.

1999

New Castle Investments v. City of LaCenter, No. 23954-0-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 98 Wn. App. 224; 989 P.2d 569; 1999 Wash. App. LEXIS 064, December 10, 1999, Filed

City of Des Moines v. Puget Sound Regional Council, No. 43100-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 98 Wn. App. 23; 988 P.2d 27; 1999 Wash. App. LEXIS 1940, November 15, 1999, Filed

City of Des Moines v. Puget Sound Regional Council, No. 42306-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 97 Wn. App. 920; 988 P.2d 993; 1999 Wash. App. LEXIS 1943, November 15, 1999, Filed

Clark County Citizens United, Inc. v. Clark County Natural Resources Council, NO. 68105-8, SUPREME COURT OF WASHINGTON, 139 Wn.2d 1002; 989 P.2d 1136; 1999 Wash. LEXIS 782, November 2, 1999, Decided

King County v. Central Puget Sound Growth Management Hearings Board, (Bear Creek) No. 66904-0, SUPREME COURT OF WASHINGTON, 138 Wn.2d 161; 979 P.2d 374; 1999 Wash. LEXIS 434, January 14, 1999, Oral Argument, June 10, 1999, Filed, As Amended by Order of the Supreme Court September 22, 1999, Reported at: 1999 Wash. LEXIS 636. Reconsideration Granted September 22, 1999.

Buckles v. King County, No. 98-35270, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 191 F.3d 1127; 1999 U.S. App. LEXIS 21612; 99 Cal. Daily Op. Service 7504, July 15, 1999, Argued and Submitted, Seattle, Washington, September 10, 1999, Filed

City of Bellevue v. East Bellevue Community Council, No. 67157-5, SUPREME COURT OF WASHINGTON, 138 Wn.2d 937; 983 P.2d 602; 1999 Wash. LEXIS 625, May 20, 1999, Oral Argument Date, September 9, 1999, File.

Honesty in Environmental Analysis & Legislation v. CPSGMHB, No. 40939-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 96 Wn. App. 522; 979 P.2d 864; 1999 Wash. App. LEXIS 1112, June 21, 1999, Filed

Duwamish Valley Neighborhood Preservation Coalition v. CPSGMHB, No. 41523-9-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 97 Wn. App. 98; 982 P.2d 668; 1999 Wash. App. LEXIS 1545, August 23, 1999, Filed, PUBLISHED IN PART

Diehl v Mason County, No. 22540-9-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 94 Wn. App. 645; 972 P.2d 543; 1999 Wash. App. LEXIS 429, March 5, 1999, Filed

Glenrose Community Ass'n v. City of Spokane, No. 16822-1-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, PANEL EIGHT, 93 Wn. App. 839; 971 P.2d 82; 1999 Wash. App. LEXIS 472, February 4, 1999, Filed, As Amended by Order of the Appellate Court February 26, 1999; Reported at: 971 P. 2d 82; 1999 Wash. App. LEXIS 436.

1998

Gastineau v. City of Bothell, No. 42979-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 1998 Wash. App. LEXIS 1785, December 28, 1998, Filed. (Decision without Published Opinion at, 93 Wn. App. 1045; 1998 Wash. App. LEXIS 2102)

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Litowitz v. Central Puget Sound Growth Management Hearings Board, No. 40399-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 93 Wn. App. 66; 966 P.2d 422; 1998 Wash. App. LEXIS 1567, November 9, 1998, Filed

Project For Informed Citizens v. Columbia County, No. 21054-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 92 Wn. App. 290; 966 P.2d 338; 1998 Wash. App. LEXIS 1295, September 4, 1998, Filed,

King County v. Central Puget Sound Growth Management Hearings Board, No. 39333-2-I, NO. 39914-4-I, No. 40310-9-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 91 Wn. App. 1; 951 P.2d 1151; 1998 Wash. App. LEXIS 344, March 2, 1998, Filed, As Modified August 6, 1998.

City of Redmond v. Central Puget Sound Growth Management Hearings Board, No. 65863-3, SUPREME COURT OF WASHINGTON, 136 Wn.2d 38; 959 P.2d 1091; 1998 Wash. LEXIS 575, August 6, 1998, Filed

Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, No. 64798-4, SUPREME COURT OF WASHINGTON, 135 Wn.2d 542; 958 P.2d 962; 1998 Wash. LEXIS 473, June 25, 1998, Filed

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Citizens for Mount Vernon v. City of Mount Vernon, No. 63823-3, SUPREME COURT OF WASHINGTON, 133 Wn.2d 861; 947 P.2d 1208; 1997 Wash. LEXIS 814, May 20, 1997, Oral Argument, December 18, 1997, Filed

Hale v. Island County, No. 39223-9-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 88 Wn. App. 764; 946 P.2d 1192; 1997 Wash. App. LEXIS 1897, November 17, 1997, Filed

Clean v. City of Spokane, 65262-7, SUPREME COURT OF WASHINGTON, 133 Wn.2d 455; 947 P.2d 1169; 1997 Wash. LEXIS 736, June 18, 1997, Oral Argument, November 13, 1997, Filed

Children's Alliance v. City of Bellevue, No. C95-905Z, UNITED STATES DISTRICT COURT FORTHE WESTERN DISTRICT OF WASHINGTON, SEATTLE DIVISION, 950 F. Supp. 1491; 1997 U.S. Dist. LEXIS 287, January 8, 1997, Decided, January 8, 1997, FILED, ENTERED

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Postema v. Snohomish County, No. 37389-7-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 83 Wn. App. 574; 922 P.2d 176; 1996 Wash. App. LEXIS 356, September 9, 1996, FILED, Petition for Review Denied April 4, 1997, Reported at: 1997 Wash. LEXIS 176.

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Matson v. Clark County Board of Commissioners, No. 17452-9-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 79 Wn. App. 641; 904 P.2d 317; 1995 Wash. App. LEXIS 451, November 1, 1995, Filed

Vashon Island Comm. For Self-Government v. Washington State Boundary Review Board, No. 62306-6, SUPREME COURT OF WASHINGTON, 127 Wn.2d 759; 903 P.2d 953; 1995 Wash. LEXIS 218, June 20, 1995, Oral Argument, October 12, 1995, Filed

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Whatcom County v. Brisbane, No. 60655-2, SUPREME COURT OF WASHINGTON, 125 Wn.2d 345; 884 P.2d 1326; 1994 Wash. LEXIS 704, December 8, 1994, Filed

Snohomish County Property Rights Alliance v. Snohomish County, No. 33287-2-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 76 Wn. App. 44; 882 P.2d 807; 1994 Wash. App. LEXIS 432, September 19, 1994, Filed, Order Granting Publication October 24, 1994. Order Changing Opinion October 28, 1994, Reported at: 1994 Wash. App. LEXIS 440. As Corrected.

Save Our State Park v. Board of Clallam County Commissioners, No. 15853-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 74 Wn. App. 637; 875 P.2d 673; 1994 Wash. App. LEXIS 275, June 24, 1994, Filed, As Amended July 15, 1994.

Jones v. King County, No. 33150-7-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 74 Wn. App. 467; 874 P.2d 853; 1994 Wash. App. LEXIS 255, April 18, 1994, Filed, Ordered Published June 6, 1994.

Snohomish County v. Anderson, No. 60672-2, SUPREME COURT OF WASHINGTON, 123 Wn.2d 151; 868 P.2d 116; 1994 Wash. LEXIS 62, January 27, 1994, Decided, January 27, 1994, Filed

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King County v. Washington State Boundary Review Board, No. 59249-7, SUPREME COURT OF WASHINGTON, 122 Wn.2d 648; 860 P.2d 1024; 1993 Wash. LEXIS 315, November 4, 1993, Decided, November 4, 1993, Filed