



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 10, 2000

Ordinance 13962

Proposed No. 2000-0557.2

Sponsors Sullivan

1 AN ORDINANCE relating to comprehensive planning and
2 zoning; adopting amendments to the 1994 King County
3 Comprehensive Plan and area zoning, to comply with the
4 Central Puget Sound Growth Management Hearings
5 Board's Decision and Order on Supreme Court Remand in
6 Vashon-Maury Island, et. al v. King County, case No. 95-3-
7 0008, remanding portions of the 1994 King County
8 Comprehensive Plan to the county for modification;
9 amending Ordinance 263, article 2, section 1, as amended,
10 and KCC 20.12.010 and Appendix B to Ordinance 12824,
11 and declaring an emergency.

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BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

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SECTION 1. Findings:

17 A. Pursuant to the Countywide Planning Policies and the 1994 King County
18 Comprehensive Plan, an area of land approximately two thousand five hundred acres in
19 size located midway between the cities of Redmond and Duvall was designated urban
20 and included within the county's Urban Growth Area. Two urban planned developments
21 (UPDs) have been approved on this land, which is located in the Bear Creek community
22 planning area of the county. This area of land is known as the Bear Creek UPD site.

23 B. The Central Puget Sound Growth Management Hearings Board (board)
24 considered on appeal the county's urban designation of the Bear Creek UPD site. The
25 board's consideration of this appeal was limited to the facts and circumstances that
26 existed as of March 1996 when the county adopted the designation for the Bear Creek
27 UPD site.

28 C. In an order issued June 15, 2000 the board ordered King County to redesignate
29 a portion of the Bear Creek UPD site from urban to rural.

30 D. Based on the facts that existed as of March 1996 the board held that the urban
31 designation of the Bear Creek UPD site did not comply with the locational criteria of
32 RCW 36.70A.110 that govern the land that may be included within an Urban Growth
33 Area.

34 E. The board held that as of March 1996 when the county took the action being
35 reviewed by the board, the Bear Creek UPD site was neither characterized by urban
36 growth nor adjacent to territory characterized by urban growth within the meaning of
37 RCW 36.70A.110.

38 F. The board declined to look at current facts regarding the extent of
39 development that has occurred on site and also did not evaluate current information with

40 regard to the extent of development adjacent to the site.

41 G. The board also held, however, that King County's designation of the Bear
42 Creek UPD site as a fully contained community does comply with the requirements of the
43 Growth Management Act.

44 H. RCW 36.70A.350(2) provides that the final approval of a permit for a fully
45 contained community designates the property subject to the FCC as urban by operation of
46 law.

47 I. On January 24, 1997 King County adopted Ordinance No. 12617 approving a
48 fully contained community permit for one of the two Bear Creek UPDs (Redmond Ridge,
49 formerly known as Northridge). This ordinance was challenged and upheld in court as
50 valid. The effect of this ordinance was to designate the property subject to the permit as
51 urban in the county's comprehensive plan. The urban designation of this portion of the
52 Bear Creek UPD site was not affected by the board's decision.

53 J. The board ordered the county to change the urban designation of that portion of
54 the Bear Creek UPD site that is not based upon approval of a permit for a fully contained
55 community and to do so by September 15, 2000.

56 K. The board's final decision in this matter, denying Friends of the Law's motion
57 for reconsideration, was received by the county on August 24, 2000. King County filed a
58 petition for review in King County superior court appealing the board's decision and
59 moved for a stay of the board's order pending resolution of the county's appeal.

60 L. The county noted its motion for a stay for consideration by the court at the
61 earliest time the court had available, September 14, 2000. On September 13, 2000,
62 Friends of the Law asked the judge scheduled to hear the motion, King County Superior

63 Court Judge Michael J. Fox, to recuse himself, which he did. King County rescheduled
64 the stay motion as expeditiously as possible. The county's motion for a stay was heard
65 by the court on September 28, 2000. The court denied the county's motion for a stay,
66 requiring the county to comply with the board's decision pending resolution of the
67 county's appeal.

68 M. This ordinance is adopted solely to comply with the board's order. The
69 redesignation of portions of the Bear Creek UPD site to comply with the board's order
70 does not take into account any of the facts and circumstances that have changed since
71 March 1996. The adoption of this ordinance does not preclude future redesignation of
72 those portions of the Bear Creek UPD site affected by this ordinance as urban upon
73 consideration of current circumstances.

74 N. In December 1995 King County approved an Urban Planned Development
75 permit for Blakely Ridge through the adoption of Ordinance No. 12090. This permit
76 provides for the urban development of the Blakely Ridge portion of the Bear Creek UPD
77 site. As a requirement of that permit, King County entered into a development agreement
78 with the owner of that property. This development agreement obligates the county to
79 approve subsequent land use and construction permits and approvals that are needed to
80 complete the urban development of this property for a period of more than fifteen years.
81 The agreement was entered into in January 1996 and was recorded under Recording
82 Number 9601090553. That agreement and the county's obligations under that agreement
83 are not, in any way, affected or changed by this ordinance.

84 O. King County has appealed the board's order in litigation now pending in King
85 County Superior Court (Cause No. 00-2-23110-5 SEA). The county's position as to the

86 proper designation of the portions of the Bear Creek UPD site affected by this ordinance
87 is set forth in that lawsuit. This ordinance is enacted solely to comply with the board's
88 order pending resolution of that appeal and does not reflect a policy determination by the
89 county that the land use designation should be changed from that adopted previously.

90 P. It is in the interest of King County to comply with the board's order in a timely
91 manner. The potential ramifications of non-compliance include, but are not limited to the
92 invalidation of relevant sections of the King County comprehensive plan, invalidation of
93 zoning for affected portions of the Bear Creek UPD, ineligibility for future state grant
94 funds and sanctions imposed by the governor under RCW 36.70A.340.

95 Q. This ordinance is adopted in accordance with the provisions governing interim
96 zoning set forth under RCW 36.70A.390. King County will hold a public hearing on this
97 interim zoning ordinance within 60 days of its adoption.

98 R. If the county is to comply with the board's order as soon as possible there is
99 not sufficient time to provide for notice and adoption of a nonemergency ordinance and,
100 therefore, it is necessary that this ordinance be adopted on an emergency basis.

101 SECTION 2. Ordinance 263, Article 2, Section 1, as amended, and K.C.C.
102 20.12.010 are each hereby amended to read as follows:

103 Comprehensive Plan adopted. A. Under the King County Charter, the state
104 Constitution and the Washington State Growth Management Act, chapter 36.70A RCW,
105 the 1994 King County Comprehensive Plan is adopted and declared to be the
106 Comprehensive Plan for King County until amended, repealed or superseded. The
107 Comprehensive Plan shall be the principal planning document for the orderly physical
108 development of the county and shall be used to guide subarea plans, functional plans,

109 provision of public facilities and services, review of proposed incorporations and
110 annexations, development regulations and land development decisions.

111 B. The amendments to the 1994 King County Comprehensive Plan contained in
112 Appendix A to Ordinance 12061 (King County Comprehensive Plan 1995 amendments)
113 are hereby adopted.

114 C. The amendments to the 1994 King County Comprehensive Plan contained in
115 Attachment A to Ordinance 12170 are hereby adopted to comply with the Central Puget
116 Sound Growth Management Hearings Board Decision and Order in Vashon-Maury Island,
117 et. al. v. King County, Case No. 95-3-0008.

118 D. The Vashon Town Plan contained in Attachment 1 to Ordinance 12395 is
119 adopted as a subarea plan of the King County Comprehensive Plan and, as such, constitutes
120 official county policy for the geographic area of unincorporated King County defined in the
121 plan and amends the 1994 King County Comprehensive Plan Land Use Map.

122 E. The amendments to the 1994 King County Comprehensive Plan contained in
123 Appendix A to Ordinance 12501 are hereby adopted to comply with the Order of the
124 Central Puget Sound Growth Management Hearings Board in Copac-Preston Mill, Inc., et
125 al, v. King County, Case No. 96-3-0013 as amendments to the King County
126 Comprehensive Plan.

127 F. The amendments to the 1994 King County Comprehensive Plan contained in
128 Appendix A to Ordinance 12531 (King County Comprehensive Plan 1996 amendments)
129 are hereby adopted as amendments to the King County Comprehensive Plan.

130 G. The Black Diamond Urban Growth Area contained in Appendix A to Ordinance
131 12533 is hereby adopted as an amendment to the King County Comprehensive Plan.

132 H. The 1994 King County Comprehensive Plan and Comprehensive Plan Land
133 Use Map are amended to include the area shown in Appendix A of Ordinance 12535 as
134 Rural City Urban Growth Area. The language from Section 1D of Ordinance 12535 shall
135 be placed on Comprehensive Plan Land Use Map page #32 with a reference marker on the
136 area affected by Ordinance 12535.

137 I. The amendments to the 1994 King County Comprehensive Plan contained in
138 Appendix A to Ordinance 12536 (1997 Transportation Need Report) are hereby adopted as
139 amendments to the King County Comprehensive Plan.

140 J. The amendments to the 1994 King County Comprehensive Plan contained in
141 Appendix A to Ordinance 12927 (King County Comprehensive Plan 1997 amendments)
142 are hereby adopted as amendments to the King County Comprehensive Plan.

143 K. The amendments to the 1994 King County Comprehensive Plan contained in
144 the 1998 Transportation Needs Report, contained in Appendices A and B to Ordinance
145 12931 and in the supporting text, are hereby adopted as amendments to the King County
146 Comprehensive Plan.

147 L. The amendments to the 1994 King County Comprehensive Plan contained in
148 Appendix A to Ordinance 13273 (King County Comprehensive Plan 1998 amendments)
149 are hereby adopted as amendments to the King County Comprehensive Plan.

150 M. The 1999 Transportation Needs Report contained in Attachment A to
151 Ordinance 13339 is hereby adopted as an amendment to the 1994 King County
152 Comprehensive Plan, Technical Appendix C, and the amendments to the 1994 King
153 County Comprehensive Plan contained in Attachment B to Ordinance 13339 are hereby
154 adopted as amendments to the King County Comprehensive Plan.

155 N. The amendments to the 1994 King County Comprehensive Plan contained in
156 Attachment A to Ordinance 13672 (King County Comprehensive Plan 1999 amendments)
157 are hereby adopted as amendments to the King County Comprehensive Plan.

158 O. The 2000 Transportation Needs Report contained in Attachment A to this
159 Ordinance 13674 is hereby adopted as an amendment to the 1994 King County
160 Comprehensive Plan, Technical Appendix C.

161 P. The Fall City Subarea Plan contained in Attachment A to Ordinance 13875 is
162 adopted as a subarea plan of the King County Comprehensive Plan and, as such,
163 constitutes official county policy for the geographic area of unincorporated King County
164 defined in the plan. The Fall City Subarea Plan amends the 1994 King County
165 Comprehensive Plan land use map by revising the Rural Town boundaries of Fall City.

166 Q. The amendments to the King County Comprehensive Plan contained in
167 Attachment A to Ordinance 13875 are hereby adopted as amendments to the King
168 County Comprehensive Plan.

169 R. The Fall City area zoning amendments contained in Attachment A to
170 Ordinance 13875 are adopted as the zoning control for those portions of unincorporated
171 King County defined in the attachment. Existing property-specific development
172 standards (p-suffix conditions) on parcels affected by Attachment A to Ordinance 13875
173 do not change except as specifically provided in Attachment A to Ordinance. 13875.

174 S. The amendments to the 1994 King County Comprehensive Plan Land Use
175 Map contained in Attachment A to this Ordinance are hereby adopted to comply with the
176 Central Puget Sound Growth Management Hearings Board Decision and Order on
177 Supreme Court Remand in Vashon-Maury Island, et. al. v. King County, Case No. 95-3-

178 0008 (Bear Creek Portion).

179 SECTION 3. The amendments to the official King County zoning map contained
180 in attachment B to this ordinance in compliance with the Central Puget Sound Growth
181 Management Hearings Board Decision and Order on Supreme Court Remand in Vashon-
182 Maury Island, et. al. v. King County, case no. 95-3-0008c (Bear Creek Portion) are
183 adopted as the official zoning control for those portions of unincorporated King County
184 defined therein pursuant to KCC 20.12.050. Existing property specific development
185 conditions (p-suffix conditions) on parcels affected by the decision and order in case
186 number 95-3-0008c (Bear Creek Portion) are retained by this ordinance. Pursuant to
187 KCC 20.12.050, Appendix B to Ordinance 12824 is hereby amended by removing special
188 district overlay SO-070 from those portions of the Bear Creek urban planned
189 development that are being rezoned to RA-5-P-SO as shown on the map in Attachment B
190 to this ordinance.

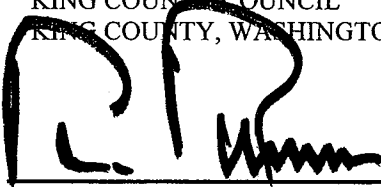
191 SECTION 4. For the reasons set forth in Section 1 of this ordinance, the county
192 council finds as a fact and declares that an emergency exists and that this ordinance is

**Ordinance
13962**

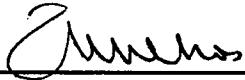
193 necessary for the immediate preservation of public peace, health or safety or for
194 the support of county government and existing public institutions.
195
196

Ordinance 13962 was introduced on 9/25/00 and passed as amended by the Metropolitan King County Council on 10/9/00, by the following vote:

Yes: 12 - Mr. von Reichbauer, Ms. Miller, Ms. Fimia, Mr. Phillips, Mr. Pelz, Mr. McKenna, Ms. Sullivan, Mr. Pullen, Mr. Gossett, Ms. Hague, Mr. Vance and Mr. Irons
No: 0
Excused: 1 - Mr. Nickels

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Pete von Reichbauer, Chair

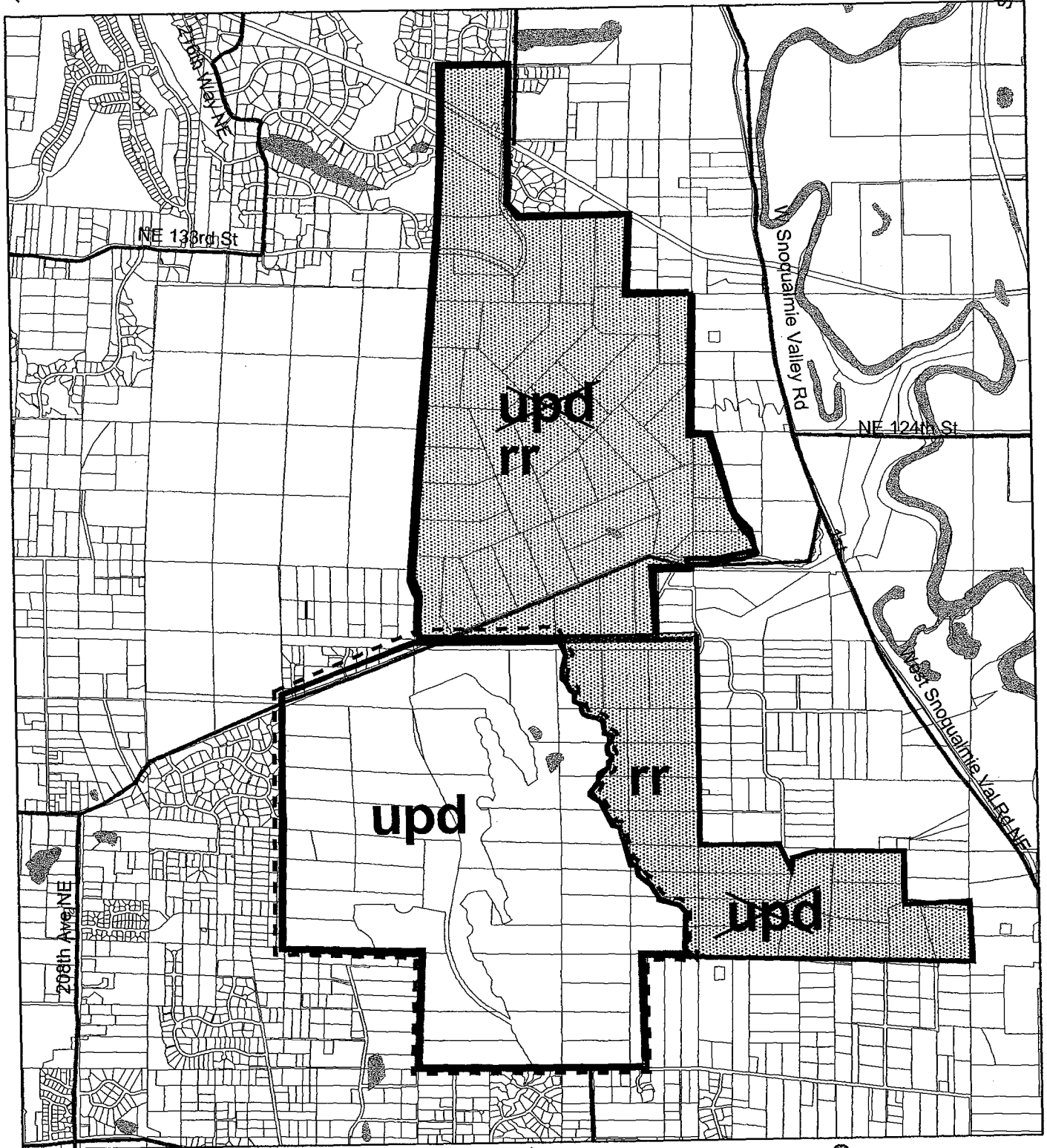
ATTEST:


Anne Noris, Clerk of the Council






APPROVED this 11 day of OCTOBER, 2000


Ron Sims, County Executive

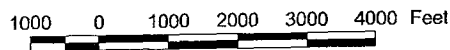
Attachments A. Amendment to King County Land Use Map, B. Amendment to King County Zoning Map, C. Central Puget Sound Growth Management Hearings Board Order on Supreme Court Remand, Case No. 95-3-008c (Bear Creek Portion)



Amendment to King County Land Use Map

-  Areas of Land Use Change
-  Revised Urban/Rural Line
-  Main Roads
-  Parcels
-  Lakes and Rivers

upd = Urban Plan Development
 rr = Rural Residential

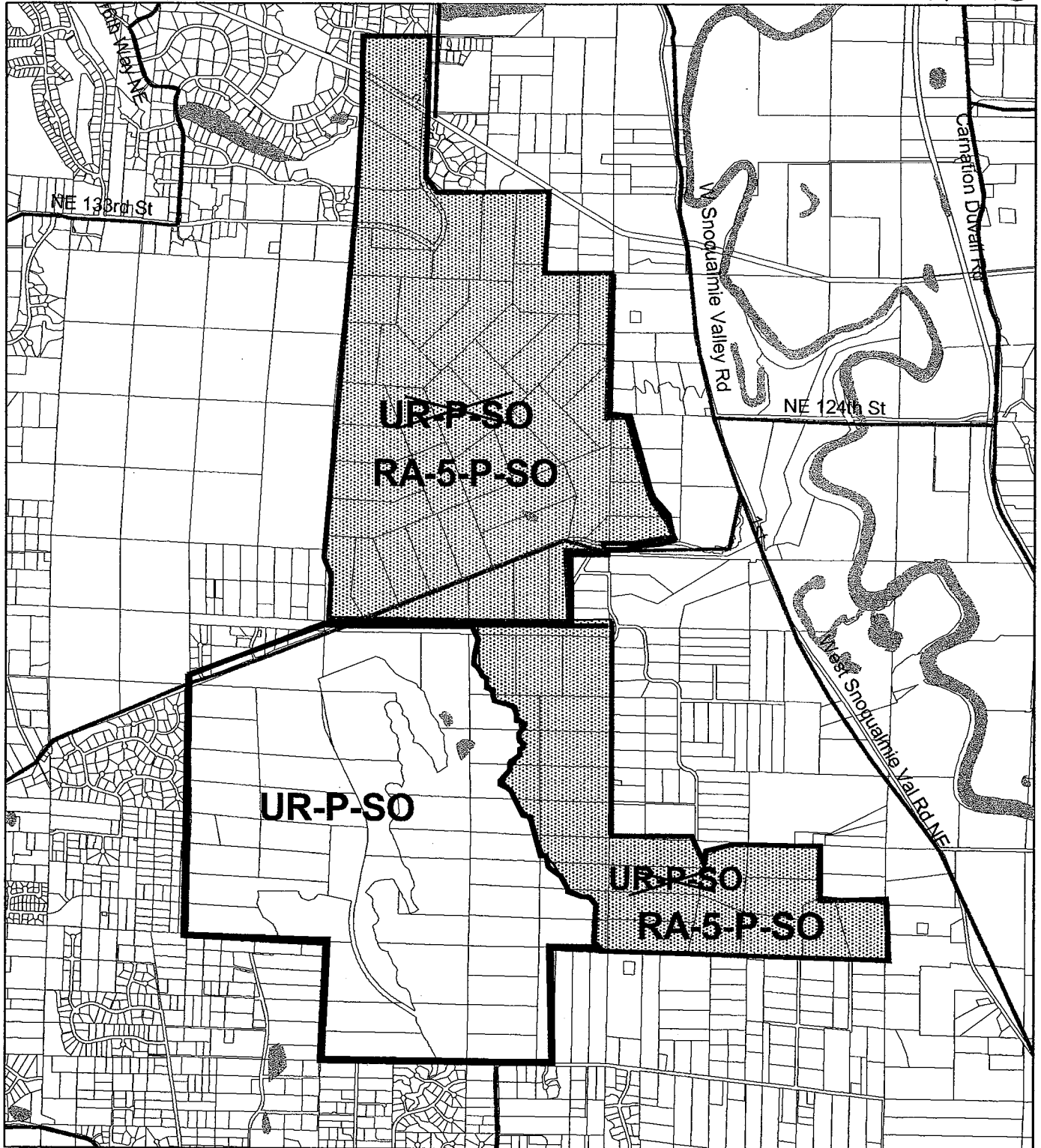


King County
DDES Department of Development and Environmental Services
 Geographic Information System
NOTICE NOTICE NOTICE NOTICE





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GIS File: m/susan/upd_xout.apr September, 2000

13962

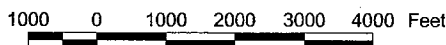


Amendment to King County Zoning Map

-  Areas of Zoning Change
-  Main Roads
-  Parcels
-  Lakes and Rivers

UR-P-SO = Urban Reserve, with P-Suffixes and Special Overlays

RA-5-P-SO = Rural Area, 5 Dwelling Units per Acre, with P-Suffixes and Special Overlays



King County
 Department of Transportation and Information Systems
 Geographic Information System
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13962

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

ATTACHMENT C.

COPY RECEIVED
PROSECUTING ATTORNEY

03 SEP -5 AM 10: 07

CIVIL DIVISION

VASHON-MAURY, et al.,

Case No. 95-3-0008c

Petitioners,

[Bear Creek Portion]

and

ORDER ON SUPREME COURT
REMAND

UNION HILL WATER ASSOCIATION,

Intervenor,

v.

KING COUNTY,

Respondent.

and

QUADRANT CORPORATION,
et al.,

Intervenors.

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2000 SEP -1 PM 4:30
KING COUNTY COUNCIL
CLERK

I. PROCEDURAL HISTORY

On October 23, 1995, the Central Puget Sound Growth Management Hearings Board (the Board), issued a Final Decision and Order (the FDO) in *Vashon-Maury, et al. v. King County, et al.*, CPSGMHB Case No. 95-3-0008c. The FDO dealt with almost sixty issues raised in nine consolidated petitions for review, all of which challenged the King County (the County) comprehensive plan (the Plan) for noncompliance with the Growth Management Act (GMA or the Act). The portion of the Plan which dealt with the Bear Creek Urban Growth Area (the Bear Creek UGA) was challenged by petitioner Friends of the Law and the Coalition for Public Trust (FOTL). In the FDO, a majority of the Board found in favor of the County.

On December 1, 1995, the Board issued an Order on Motions to Reconsider and Motion to Correct (the Order on Reconsideration). As to the Bear Creek UGA, a new majority of the Board found in favor of Petitioners.

1 The County and intervenor Quadrant Corporation (Quadrant) appealed the Order on
2 Reconsideration to King County Superior Court. The Superior Court reversed the Board
3 and reinstated the FDO's conclusions regarding the Bear Creek UGA. The trial court
4 was affirmed by the Court of Appeals, and the decision was appealed to the Washington
5 Supreme Court.

6 While the County challenged the Board's holding regarding CPPs, it also took steps to
7 comply with the remand portion of the Order on Reconsideration by adopting Ordinances
8 12170 and 12171 on March 11, 1996. The County retained the Bear Creek UGA
9 designation and also designated the Bear Creek Fully Contained Community.

10 On May 26, 1996, the Board concluded that this action constituted procedural compliance
11 with the Order on Reconsideration and issued a Finding of Compliance. The Board did
12 not reach the question of the County's substantive compliance. Finding of Compliance,
13 at 11.

14 On June 10, 1999, the Washington State Supreme Court issued its opinion in *King*
15 *County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161,
16 186 (1999). In addressing the matter of the Bear Creek UGA, the Supreme Court
17 reversed the Court of Appeals, reinstated the Board's Order on Reconsideration, and
18 remanded the matter to the Board for a determination of substantive compliance.

19 On November 19, 1999, the Board received an "Order on Remand" from King County
20 Superior Court in Case No. 96-2-16705-3.

21 On December 17, 1999, the Board issued the "First Pre-Compliance Hearing Order."

22 On January 13, 2000, the Board issued the "Statement of Compliance Issues" which
23 listed three issues to be briefed by the parties and decided by the Board in this matter.

24 On January 24, 2000, the Board issued the "Second Pre-Compliance Hearing Order,"
25 which set forth the applicable law in this compliance matter, the time and location for the
26 compliance hearing and a schedule for oral argument.

27 On February 4, 2000, the Board issued the "Order on King County's Motion Requesting
28 Official Notice or Alternatively to Supplement the Record and Order on FOTL's Motion
29 to Correct Index."

On February 18, 2000, the Board received "Friends of the Law and Coalition for Public
Trust's Prehearing Brief" (FOTL PHB). On this same date, the Board received "The
Quadrant Corporation's Motion to Dismiss and Motion for Board to Take Official
Notice."

On March 7, 2000, the Board received "King County's Opening Brief" and "Friends of
the Law's Response to Quadrant's Motion to Dismiss."

1 The County and intervenor Quadrant Corporation (**Quadrant**) appealed the Order on
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1 On March 8, 2000, the Board received "The Quadrant Corporation's Compliance Hearing
2 Response Brief" (Quadrant Response). On this same date, the Board received "King
3 County's Corrected Opening Brief" (County Response).

4 On March 10, 2000, the Board issued an "Order Revising Dates for Compliance Hearing
5 and Submittal of Reply Briefs, and Schedule for Oral Argument."

6 On March 21, 2000, the Board received "Friends of the Law's Reply Brief" (FOTL
7 Reply).

8 On April 4, 2000, the Board issued an "Order on Quadrant's Motion to Dismiss and to
9 Take Official Notice" which denied both the Quadrant Motion to Dismiss and the
10 Quadrant Motion for the Board to Take Official Notice.

11 On April 10, 2000, the Board issued a "Notice of Board Questions for Compliance
12 Hearing."

13 On April 17, 2000, the Board held a hearing on the merits in Suite 1022 of the Financial
14 Center, 1215 Fourth Avenue, Seattle, Washington. Present for the Board were Edward
15 G. McGuire and Lois H. North, Board Members, and Joseph W. Tovar, Presiding Officer.
16 Also present for the Board was the Board's law clerk, Andrew Lane. Representing
17 Petitioners was David A. Bricklin. Representing the County was H. Kevin Wright and
18 Michael Sinsky. Representing Intervenor, Quadrant, was George A. Kresovich. The
19 court reporter was Robert H. Lewis of Tacoma, Washington.

20 **II. MOTION TO STRIKE**

21 In the FOTL Reply, the Petitioner, at pages 3-5, included a Motion to Strike portions of
22 the County Response and the Quadrant Response (FOTL Motion to Strike). The FOTL
23 Motion to Strike moved to strike the following portions of the County's brief:

- 24 1. Page 17, lines 18-19;
- 25 2. Page 19, lines 4-6;
- 26 3. Page 19, lines 8-12 and attachment 95;
- 27 4. Page 22, line 17 through Page 25, line 3;
- 28 5. Page 37-38, note 25;
- 29 6. Exhibit 92;
- 7. Exhibits 97, 98, 100, and 101.

The FOTL Motion to Strike also moved to strike Page 10, lines 6-19 of the Quadrant
Response.

The FOTL Motion to Strike is granted with respect to the portions of the County's
Response listed above in items 1, 2, 3, 5, 6 and 7 and with respect to the cited portion of
the Quadrant Response; the FOTL Motion to Strike is denied with respect to item 4
above, the text of the County's Response on Page 22, line 17 through Page 25, line 3. It

1 is true that the Board has previously ruled that it will review the County's compliance for
2 all UGA requirements in the GMA. The cited portion of the County Response simply
3 sets forth the County's position that its compliance with these provisions of the Act's
4 UGA requirements has previously been answered by the Board.

5 **III. INTRODUCTION**

6 This case has its genesis in King County's 1994 adoption of its comprehensive plan. In
7 its Plan, the County designated urban growth areas (UGAs), including the Bear Creek
8 urban planned development UGA located between the cities of Redmond and Duvall in
9 the north-central part of the County. The Bear Creek UGA is a freestanding "island
10 UGA," separate from the contiguous UGA in the western portion of King County. The
11 Bear Creek UGA is within the Bear Creek community planning area. That portion of the
12 planning area at issue here is the area designated UGA and FCC (hereinafter, Bear
13 Creek island). The boundaries of the Bear Creek UGA and the Bear Creek Fully
14 Contained Community (FCC) are coterminous. Within the Bear Creek island are the
15 proposed developments of Northridge (now known as Redmond Ridge) and Blakely
16 Ridge.

17 Numerous petitioners, including FOTL, appealed the UGA adoption to the Board. The
18 Board issued a Final Decision and Order (FDO) and determined that the Bear Creek
19 island UGA complied with the GMA. The Board reluctantly reached this conclusion by
20 noting that the County-wide Planning Policies (CPPs) were adopted prior to the County's
21 adoption of its UGAs and included a requirement to designate the Bear Creek island as a
22 UGA. In addition, because the CPPs were not appealed, the policy requiring designation
23 of the Bear Creek island as a UGA bound the County's actions. The Board was reluctant
24 to find the Bear Creek island UGA in compliance with the GMA because the record
25 contained a paucity of justification to create an island UGA; the record was insufficient to
26 show that the Bear Creek island UGA satisfied the locational criteria of RCW
27 36.70A.110. FDO, at 37 - 41.

28 On reconsideration, the Board identified internal inconsistencies within the CPP directing
29 establishment of the Bear Creek UGA. Because of this inconsistency, the Board
30 determined that this CPP provided only general guidance and did not require the County
31 to designate the Bear Creek UGA. The Order on Reconsideration discussed the
32 locational criteria in the context of the CPPs and readopted the FDO's discussion of the
33 locational criteria of RCW 36.70A.110. Order on Reconsideration, at 7 and 9-12.
34 Ultimately the Board remanded the Bear Creek UGA to the County, stating:

35 The Bear Creek island UGA portion of the [comprehensive] Plan is
36 remanded to the County with instructions to either: (a) delete it; or (b)
37 adopt it as a fully contained community if it meets the requirements of
38 RCW 36.70A.350; or (c) justify it pursuant to the requirements of RCW
39 36.70A.110, and the rank order requirements for including lands in the

UGA as set forth in the *Bremerton v. Kitsap County* decision [95-3-0039c, Final Decision and Order (Oct. 6, 1995)], at 38-41.

Order on Reconsideration, at 16.

In response to the Order on Reconsideration, the County took three actions: (1) it sought to justify the UGA; (2) it amended its Plan and maps to designate the Bear Creek area as an FCC; and (3) it sought judicial review of the Board's decision. See Ex. 104, Justification of the Urban Designation of the Bear Creek UPD Sites, at 1-4. At the same time as the County was responding to the Board's remand, FOTL and other parties also appealed the remand order to Superior Court.

The Superior Court reversed the Board's Order on Reconsideration and reinstated the FDO. The Court of Appeals upheld the superior court. The Supreme Court reversed the Court of Appeals, reinstated the Order on Reconsideration and remanded the case to the Board "for a determination of whether the County has adequately complied with the terms of the Board's Order on Reconsideration by justifying the Bear Creek urban designation under the terms of the GMA or by redesignating the area as an FCC." *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161, 186 (1999).

The questions before the Board in this compliance proceeding are:

1. Does the King County (the County) action redesignating the Bear Creek Urban Planned Development (UPD) as a Fully Contained Community (FCC) meet the FCC requirements of the Growth Management Act (GMA), including, but not limited to, RCW 36.70A.350?
2. Does the County's justification for the designation of the Bear Creek Urban UPD as a non-FCC urban growth area (UGA) meet the UGA requirements of the GMA, including, but not limited to, RCW 36.70A.110?
3. If compliance issues 1 and 2 above are answered in the negative, will the continued validity of the County's FCC designation and/or non-FCC UGA designation of the Bear Creek UPD substantially interfere with the fulfillment of the GMA's goals at RCW 36.70A.020?

The Board will first address the UGA issue (Issue No. 2), followed by the FCC issue (Issue No. 1). Finally, the Board will address the question of invalidity (Issue No. 3). In the discussion that follows, the phrase "Bear Creek island" is used to characterize the Bear Creek UGA and Bear Creek FCC. The Board notes that the Bear Creek island includes two distinct master planned communities or urban planned developments. The Blakely Ridge project is located in the northern portion of the Bear Creek island; and the

1 Northridge or Redmond Ridge project is located on the southern portion of the Bear
2 Creek island.

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3 **IV. STANDARD OF REVIEW/BURDEN OF PROOF**

4 Pursuant to RCW 36.70A.320(1), King County's actions in response to the Board's Order
5 on Reconsideration are presumed valid. The burden is on Petitioners to demonstrate that
6 the actions taken by the County are not in compliance with the requirements of the GMA.
RCW 36.70A.320(2).

7 Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines
8 that the action taken by [the County] is clearly erroneous in view of the entire record
9 before the board and in light of the goals and requirements of [the GMA]." For the Board
10 to find the County's actions clearly erroneous, the Board must be "left with the firm and
definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121
Wn.2d 179, 201 (1993).

11 The County characterizes the "clearly erroneous" standard as requiring "considerable"
12 deference from the Board. County PHB, at 22. Quadrant characterizes the deference
13 owed to the County as "substantial." Quadrant PHB, at 4. The Board has previously
14 heard and rejected such characterizations.¹ FOTL correctly points out that the
15 Legislature had the opportunity to use "substantial" or "considerable" to describe the
degree of deference owed local governments in view of the clearly erroneous standard. It
did not do so. Transcript, at 105.

16 **V. GENERAL DISCUSSION**

17 Prior to the enactment of the GMA, before state planning goals, when comprehensive
18 planning was optional and development regulations were not required to implement
19 plans, local governments were primarily "reactive participants" in the urban development
20 process. Passage of the Act changed local government's role from one of reactive
21 participant to proactive manager of urban growth and development. Now GMA plans
define what type of growth may occur, when it may occur, and where it may occur. This
is unlike local government's role in the pre-GMA reactive participant world.

22 In the pre-GMA world, local government reviewed privately initiated proposals,
23 wherever they were located, on an ad hoc basis without the benefit of a well conceived,

24 ¹ The Board has recently stated:

25 To suggest that the legislature has "expressly directed" the granting of "considerable"
26 deference is wrong. The word "considerable" does not appear in the statute, nor was it
27 used by the *Manke* Court . . . cited by [Kitsap] County in its brief. To characterize the
degree of deference that attaches to the clearly erroneous standard codified in RCW
36.70A.320(3), the law simply uses the relative term "more" in reference to the earlier
"preponderance of the evidence" standard of review.

28 *Burrow v. Kitsap County*, CPSGMHB Case No. 99-3-0018, Final Decision and Order (Mar. 29, 2000), at 5
29 (citations and footnote omitted).

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1 enforceable comprehensive plan to guide growth. Many local governments learned to
 2 negotiate with project proponents and became adept at implementing what were to
 3 become GMA planning goals² within the limited confines of the proposal area. But there
 4 was no GMA context to guide these negotiations or decision-making. With this as
 background, a brief review of RCW 36.70A.110 and .350 is needed for further context.

5 RCW 36.70A.110 was part of the original GMA legislation enacted in 1990. RCW
 6 36.70A.110 requires counties, in collaboration with their cities, to apply locational
 7 criteria³ and decide *where* new growth and development will be accommodated and
 8 physically located. The locational criteria of .110 codify the GMA's predilection for
 9 compact urban growth and a gradual or incremental expansion of existing urban
 10 development within the boundaries of the designated UGA. This process is anticipatory
 11 and proactive and is an essential prerequisite for effectively managing growth. Once land
 12 is designated as being within a UGA, it is, in effect, "pre-approved" for future urban
 development. This UGA designation provides a degree of certainty for any urban
 development project, regardless of type or size, that any proponent chooses to pursue, so
 long as the proposed urban development is consistent with the jurisdiction's land use
 classifications, zoning designations, and other development regulations within the UGA.

13 In 1991, the Legislature authorized an "exception"⁴ to the UGA designation process of
 14 .110 by adding RCW 36.70A.350 to the GMA. The FCC provisions of .350 do not
 15 contain explicit locational criteria like those found in .110. RCW 36.70A.350 does not
 16 require, but *authorizes counties to establish a process for reviewing proposals for FCCs*.
 17 In lieu of the specific locational criteria found in .110, .350 statutorily sets forth FCC
 18 review criteria that may be characterized as minimum performance criteria to be used
 19 during review. Counties electing to utilize the GMA's FCC provisions must adopt a
 process for reviewing proposals for FCCs that includes the criteria contained in .350.⁵ If
 proposals successfully negotiate the FCC process established by a county, an FCC may
 be approved for an FCC area. Pursuant to RCW 36.70A.350, by operation of law, an
 approved FCC proposal automatically becomes a UGA.

20 ² E.g., compact urban development, preservation of open space, protection of the environment,
 21 concurrency, multimodal transportation and mixed use development. See RCW 36.70A.020 for the GMA's
 22 goals.

³ See discussion of Issue No. 2, below.

23 ⁴ "Exceptions are made to the 1990 requirements regarding urban growth areas (UGAs). New Fully
 24 Contained Communities . . . are allowed outside UGAs if certain criteria are met Once approved, a
 25 new fully contained community becomes a separate urban growth area." 1991 Final Legislative Report,
 26 Fifty-Second Washington State Legislature, ESHB 1025 (Ch. 32, Laws of 1991, 1st Ex. Sess.), at 5. The
 27 Board also recognized this UGA exception. See *Rural Residents v. Kitsap County*, CPSGPHB Case No.
 93-3-0010, Final Decision and Order (Jun. 24, 1994), at 44 ("A reiteration of the Act's exceptions is helpful
 in light of the definition of 'characterized by urban growth.' . . . six exceptions actually exist: First, UGAs
 can be adopted outside existing city limits if the detailed requirements for a new fully contained community
 are met. RCW 36.70A.350"); see also, *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c,
 Final Decision and Order (Oct. 9, 1995), at 38-41.

28 ⁵ Counties may supplement these criteria with additional requirements when designing their FCC review
 29 process.

1 Unlike the "pre-approved" urban development scheme for UGAs in RCW 36.70A.110,
 2 "pre-approved" urban development does not automatically attach if a county designates
 3 an *FCC area* pursuant to .350. Authorization for urban development, and subsequent
 4 UGA designation, occurs only *after review and approval* of a specific FCC proposal by a
 5 county.

6 Nonetheless, RCW 36.70A.350 also adheres to the anticipatory and proactive nature of
 7 responsible growth management by requiring the reservation of population as well as the
 8 reservation of land area for potential new fully contained communities. These actions
 9 must occur prior to embarking on the established FCC review process.

10 While RCW 36.70A.350 embodies anticipatory and proactive actions, it recognizes
 11 private initiatives, but includes detailed requirements that must be met for a proposal to
 12 be approved by the local government. These *reactive* review components combine the
 13 *proactive* reservation of population and land area components to provide a reasonable
 14 means of accomplishing effective growth management. The Board now turns to the
 15 Remand Issues.

16 VI. DISCUSSION OF REMAND ISSUES

17 A. RCW 36.70A.110 -- URBAN GROWTH AREAS (ISSUE NO. 2)

18 *Does the County's justification for the designation of the Bear Creek
 19 Urban UPD as a non-FCC urban growth area (UGA) meet the UGA
 20 requirements of the GMA, including, but not limited to, RCW
 21 36.70A.110?*

22 Applicable Law and Discussion

23 The Act's direction for UGA designation requires counties to consider locational criteria
 24 and OFM population projections for the county. RCW 36.70A.110. FOTL argues that
 25 the Bear Creek island UGA does not satisfy the GMA's UGA designation criteria
 26 because (1) the County has not shown why the Bear island Creek UGA is needed, given
 27 the excess capacity in the whole of the County's UGA; (2) the Bear Creek island UGA is
 28 not "based upon" the OFM population forecast; and (3) the Bear Creek island UGA does
 29 not satisfy the locational criteria of RCW 36.70A.110.

The Board discussed the question of excess capacity in the FDO and concluded that the
 County's Plan "utilizes a 25 percent land supply market factor which complies with
 RCW 36.70A.110." FDO, at 22. This determination was not affected by the Court's
 remand and will not be disturbed in this compliance proceeding.

Similarly, the Board also addressed the issue of whether the County's UGAs were based
 upon the OFM population forecast. In the FDO, the Board concluded that "the urban
 growth areas designated in the King County Comprehensive Plan, including the Bear
 Creek island UGA, were based upon OFM's population projections for the year 2012.

1 Accordingly, the Plan complies with the Act's requirement at RCW 36.70A.110(2) that
 2 UGAs must be sized based exclusively upon OFM's projections." FDO, at 13. This
 3 determination was also not affected by the Court's remand and will not be disturbed in
 this compliance proceeding.

4 Although the FDO and Order on Reconsideration contained some discussion of the
 5 locational requirements for UGA designation, the Board has not previously applied the
 6 locational requirements of .110 to the Bear Creek island UGA. Therefore, in this
 7 compliance proceeding, the Board must determine whether the Bear Creek island UGA
 meets the locational requirements of RCW 36.70A.110(1), which provides:

8 Each county that is required or chooses to plan under RCW 36.70A.040
 9 shall designate an urban growth area or areas within which urban growth
 10 shall be encouraged and outside of which growth can occur only if it is not
 11 urban in nature. Each city that is located in such a county shall be
 12 included within an urban growth area. An urban growth area may include
 13 more than a single city. An urban growth area may include territory that is
 14 located outside of a city only if such territory already is characterized by
 urban growth whether or not the urban growth area includes a city, or is
 adjacent to territory already characterized by urban growth, or is a
 designated new fully contained community as defined by RCW
 36.70A.350.

15 ...
 16 (Emphasis added.) In other words, all UGAs need not contain a city, but lands to be
 17 included in such UGAs must be lands that are: (1) already characterized by urban
 18 growth; (2) adjacent to lands already characterized by urban growth; or (3) designated as
 19 a new FCC pursuant to the requirements of RCW 36.70A.350. The first two factors are
 the locational criteria discussed below. The last factor is discussed in the Board's
 discussion of RCW 36.70A.350, relating to FCCs (Issue No. 1).

20 "Urban growth" is defined as:

21 growth that makes intensive use of land for the location of buildings,
 22 structures, and impermeable surfaces to such a degree as to be
 23 incompatible with the primary use of land for the production of food, other
 24 agricultural products, or fiber, or the extraction of mineral resources, rural
 uses, rural development, and natural resource lands designated pursuant to
 RCW 36.70A.170.

25 RCW 36.70A.030(17). "Characterized by urban growth" refers to "land having urban
 26 growth located on it, or to land located in relationship to an area with urban growth on it
 27 as to be appropriate for urban growth." *Id.* Significantly, these definitions speak to the
 28 built environment and are in the present tense (e.g., "growth that makes intensive use of
 land," "having urban growth located on it"); these definitions do not speak in the future
 tense (e.g., "undeveloped lands that, if fully developed as presently platted, would have

1 urban growth located on it"). In other words, these definitions used in the context of
2 designating urban growth areas, pursuant to the locational criteria, do not contemplate
3 prospective urban development. See Order on Reconsideration, at 7.

4 The first question, whether the Bear Creek island was characterized by urban growth
5 when the County designated it as a UGA, was discussed by the Board in the FDO.
6 Although the Board's decision did not turn on this discussion, the Board concluded that
7 the Bear Creek island "do[es] not constitute 'land having urban growth located on it.'" FDO, at 39; Order on Reconsideration, at 11. This conclusion was not disturbed by the Order on Reconsideration or the subsequent court decisions.

8 The County argues that the Bear Creek island was characterized by urban growth by
9 having urban growth located on it, because the County has approved development
10 permits for an Urban Planned Development and an FCC on the site. The County relies
11 on publications of the Department of Community Development (now, the Department of
12 Community, Trade and Economic Development (DCTED)), which provided the
13 following guidance to local governments for complying with the GMA: "Note that you
14 will probably want to treat land which is committed to a future use similarly to land
15 already developed," Att. 102, at 5 (Issues in Designating Urban Growth Areas, Part I);
16 and "In addition to actual urban development on the ground, extensive subdivision
17 platting at urban densities may have already occurred. . . . It probably makes sense to
18 recognize and plan for these vested developments." Att. 103, at 4 (The Art and Science of
19 Designating Urban Growth Areas, Part II).

20 These DCTED publications constitute less persuasive authority than the DCTED
21 guidelines, which are contained in the Washington Administrative Code.⁶ Even the
22 DCTED's guidelines are not binding. The GMA definition of "characterized by urban
23 growth" presents the question of whether the Bear Creek island had urban growth on it
24 when the County designated the Bear Creek island as a UGA, not whether the area might
25 have urban growth on it in the future.

26
27 At the time of UGA designation, the Bear Creek island consisted of generally vacant,
28 undeveloped lands. The Bear Creek island is adjacent to the City of Redmond's
29 watershed, an area that, although incorporated, is undeveloped. The Bear Creek island is
approximately two miles from the City of Redmond (excluding the City's watershed).
The intervening land between Redmond and the Bear Creek island includes the salmon-
bearing namesake for the Bear Creek island and is acknowledged by the County as "too
environmentally constrained to support urban growth and too valuable as an
environmental resource to lose to intensive urban development." FDO, at 39-41 (quoting
the 1994 Plan, Technical Appendix D, at D-14).

⁶ DCTED was directed by the Legislature to adopt rules "to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of this chapter." RCW 36.70A.190(4)(b).

1 After considering the oral and written arguments of the parties, the Board concludes that
2 FOTL has shown that the Bear Creek island is not "characterized by urban growth" and
3 the County has not justified its designation as a UGA by meeting this locational criterion.
4 Also, the Board affirms its previous discussions in the FDO and Order on
5 Reconsideration and concludes that the Bear Creek island was not characterized by urban
6 growth since there was no urban growth on it when the County designated it as a UGA.

7 The second question is whether the Bear Creek island was adjacent to lands already
8 characterized by urban growth so as to be appropriate for urban growth when the County
9 designated it as a UGA. In its FDO, the Board noted that it need not address this
10 locational criterion. FDO, at 40. However, on reconsideration, the Board did comment
11 on this locational factor, stating: "the argument that that the Bear Creek MPDs are
12 located 'in relationship to [adjacent to] land that has urban growth on it as to be
13 appropriate for urban growth' is specious." Order on Reconsideration, at 7.

14 FOTL points to this statement of the Board and suggests the County offers no new
15 argument on this point. The County argues that the Bear Creek island is adjacent to lands
16 already characterized by urban growth, because there are 450 one-acre lots in the
17 immediate vicinity of the Bear Creek island UGA.⁷ There is no evidence that these lots
18 had urban growth on them when the County designated the Bear Creek island UGA.

19 After considering the oral and written arguments of the parties, the Board concludes that
20 FOTL has shown that the Bear Creek island is not "adjacent to lands characterized by
21 urban growth" so "as to be appropriate for urban growth" and the County has not justified
22 its designation as a UGA by meeting this locational criterion. The Bear Creek island was
23 not adjacent to lands characterized by urban growth when the County designated it as a
24 UGA.

25 Because the Board finds that the Bear Creek island does not meet either of the GMA's
26 locational requirements for UGA designation, the Board need not address whether the
27 Bear Creek UGA is consistent with CPP and Plan locational criteria for UGAs.

28 Conclusions

29 Regarding the market factor provisions and the OFM population requirement provisions
of RCW 36.70A.110, the Board notes that the Board's prior determinations on these
issues in the FDO were not affected by the Court's remand. Therefore, the Board
declines to revisit these issues in this compliance proceeding and affirms its prior
decision.

Regarding the locational criteria of RCW 36.70A.110(1), the Board concludes that FOTL
has met its burden and the County has not justified that the Bear Creek island is
"characterized by urban growth" nor has the County justified that the Bear Creek island is

⁷ Whether these one-acre lots are vested is disputed by the parties. However, the question of vesting is not relevant to the Board's analysis.

1 "adjacent to lands characterized by urban growth." Pursuant to the Board's Order on
 2 Reconsideration, the County has not justified its designation of the Bear Creek UPDs as a
 3 UGA by meeting the locational criteria of RCW 36.70A.110(1). Therefore, the County's
 4 designation of the Bear Creek island as being within a UGA was clearly erroneous and
 5 does not comply with the locational requirements of RCW 36.70A.110(1). However, this
 conclusion does not resolve whether the County has complied with the FCC exception
 requirements authorized in .110(1). This question is addressed in the following issue.

6 **B. RCW 36.70A.350 – NEW FULLY CONTAINED COMMUNITIES**
 7 **(ISSUE NO. 1)**

8 *Does the King County action redesignating the Bear Creek UPD as a*
 9 *Fully Contained Community meet the FCC requirements of the*
 10 *Growth Management Act, including, but not limited to, RCW*
 11 *36.70A.350?*

12 **Background**

13 Having determined that the Bear Creek island's designation as a UGA failed to comply
 14 with the locational requirements of RCW 36.70A.110(1), the Bear Creek island is not
 15 part of the County's initially designated UGA.⁸ Although the Bear Creek island does not
 16 meet the locational criteria of .110, .110 recognizes that an area may become a UGA if it
 17 "is a designated new fully contained community as defined by RCW 36.70A.350."

18 RCW 36.70A.110 cross-references RCW 36.70A.350. Read together, RCW 36.70A.110
 19 and RCW 36.70A.350 provide that lands that do not have urban growth on them, that are
 20 not characterized by urban growth, and that are not adjacent to lands characterized by
 21 urban growth may become UGAs if they satisfy the FCC requirements of .350.

22 It is important to understand that the Board's review in this portion of the remand
 23 compliance proceeding is limited to whether the County's 1996 designation of the Bear
 24 Creek island as an FCC area and the FCC review process established by the County, in
 25 response to the Board's 1995 Order on Reconsideration, comply with RCW 36.70A.350.
 26 The Board is not reviewing subsequent Plan or development regulations adopted by the
 27 County, the adequacy of the County's road network, or the application of the County's
 28 FCC review process to any particular private sector proposal. It is within this context and
 29 framework that the Board analyzes King County's actions on remand in the present
 dispute.

The Board's Order on Reconsideration provided:

⁸ The status of the Bear Creek island UGA designation has been at issue since the Board's Order on
 Reconsideration. From the date the County adopted its GMA Comprehensive Plan in 1994 until the date of
 this Order, the County's designation of the Bear Creek island as a UGA has been valid. The Board's Order
 on Reconsideration never required deletion of the UGA designation, nor was the UGA designation
 invalidated for causing substantial interference with the goals of the Act.

1 The Bear Creek island UGA portion of the Plan is remanded to the
2 County with instructions to either: (a) . . . or (b) adopt it as a fully
3 contained community [if] it meets the requirements of RCW 36.70A.350;
4 or (c)

5 Order on Reconsideration, at 16, (emphasis in original). In response to this aspect of the
6 Board's Order, the County adopted Ordinance Nos. 12170 and 12171. Ex. 93 and 94.

7 Ordinance No. 12170 amended the County's Comprehensive Plan. The relevant
8 amendments: (1) amended Plan Policy R-104, changing the policy from expressing no
9 need for FCCs in the County, to a policy that found no need for FCCs in the County
10 except for the Bear Creek island FCC;⁹ (2) added introductory text to Plan Policy U-201,
11 regarding urban growth areas; (3) amended Plan Policy U-201, adding the Bear Creek
12 island FCC to eligible UGA lands if the permits were approved; (4) added new
13 introductory text and rationale for a section of the Plan dealing with FCCs; (5) added new
14 Plan Policy U-210, designating the Bear Creek island as an FCC on the land use and
15 zoning maps; (6) added new Plan Policy U-211, addressing the reservation of population
16 for the FCC; (7) added new Plan Policy U-212, articulating the .350(1) criteria for
17 approval of FCCs and defining "fully contained"; (8) added an FCC designation to the
18 Comprehensive Plan Land Use Map for the Bear Creek island; and (9) added an FCC
19 Special District Overlay to the Zoning Map for the Bear Creek island. Ex. 93 (Ordinance
20 No. 12170, Attachment A, Amendments 1-9).

21 Ordinance No. 12171, among other things, added new provisions to the County's
22 development regulations. It added an FCC Special District Overlay designation and
23 established FCC permit requirements that correspond to the detailed requirements of
24 RCW 36.70A.350(1). Ex. 94 (Ordinance No. 12171, Sections 7-9).

25 **Applicable Law and Discussion**

26 Given these actions of the County, the question for the Board is whether the County's
27 adoption of Ordinance Nos. 12170 and 12171 regarding the Bear Creek island FCC
28 satisfies the requirements of RCW 36.70A.350. The Board now turns to the GMA's
29 provisions for establishing new fully contained communities. RCW 36.70A.350
provides:

A county required or choosing to plan under RCW 36.70A.040 may establish a process as part of its urban growth areas, that are designated under RCW 36.70A.110, for reviewing proposals to authorize new fully contained communities located outside of the initially designated urban growth areas.

⁹ The Board notes that the Bear Creek island was still also designated as UGA when this amendment was adopted.

1 (1) A new fully contained community may be approved in a county
2 planning under this chapter if criteria including but not limited to
3 the following are met:

- 4 (a) New infrastructure is provided for and impact fees are
5 established consistent with the requirements of RCW
6 82.02.050;
- 7 (b) Transit-oriented site planning and traffic demand
8 management programs are implemented;
- 9 (c) Buffers are provided between the new fully contained
10 communities and adjacent urban development;
- 11 (d) A mix of uses is provided to offer jobs, housing, and
12 services to the residents of the new community;
- 13 (e) Affordable housing is provided within the new
14 community for a broad range of income levels;
- 15 (f) Environmental protection has been addressed and
16 provided for;
- 17 (g) Development regulations are established to ensure
18 urban growth will not occur in adjacent nonurban areas;
- 19 (h) Provision is made to mitigate impacts on designated
20 agricultural lands, forest lands, and mineral resource lands;
- 21 (i) The plan for the new fully contained community is
22 consistent with the development regulations established for
23 the protection of critical areas by the county pursuant to
24 RCW 36.70A.170.

25 (2) *New fully contained communities may be approved outside
26 established urban growth areas only if a county reserves a portion
27 of the twenty-year population projection and offsets the urban
28 growth area accordingly for allocation to new fully contained
29 communities that meet the requirements of this chapter. Any
county electing to establish a new community reserve shall do so
no more often than once every five years as a part of the
designation or review of urban growth areas required by this
chapter. The new community reserve shall be allocated on a
project-by-project basis, only after specific project approval
procedures have been adopted pursuant to this chapter as a
development regulation. When a new community reserve is
established, urban growth areas designated pursuant to this chapter
shall accommodate the unreserved portion of the twenty-year
population projection.*

*Final approval of an application for a new fully contained community
shall be considered an adopted amendment to the comprehensive plan
prepared pursuant to RCW 36.70A.070 designating the new fully
contained community as an urban growth area.*

(Emphasis supplied.)¹⁰

The Board's analysis of the question of the County's compliance with RCW 36.70A.350 is organized as follows: (1) Initially designated UGA; (2) Reservation of OFM population; (3) FCC review process; and (4) Locational criteria or constraints.

Initially designated UGA:

The first paragraph of RCW 36.70A.350 provides:

A county required or choosing to plan under RCW 36.70A.040 may establish a process as part of its urban growth areas, that are designated under RCW 36.70A.110, for reviewing proposals to authorize new fully contained communities *located outside of the initially designated urban growth areas*.

In answering the previous question, the Board concluded that the County's designation of the Bear Creek island as a UGA did not comply with the locational requirements of RCW 36.70A.110(1). In other words, 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.

Reservation of OFM population:

RCW 36.70A.350(2) also provides:

New fully contained communities may be approved outside established urban growth areas only *if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly for allocation to new fully contained communities that meet the requirements of this chapter*.

The question here is whether the County reserved "a portion of the twenty-year population projection and offset the UGA accordingly" for allocation to the Bear Creek island FCC. Ordinance No. 12170 includes a new Plan Policy U-211. This policy provides:

U-211 The population, household, and employment growth targets and allocations for the County's UGA in this plan include the Northridge and Blakely Ridge sites. Accordingly, the requirements in RCW 36.70A.350(2) that the County reserve a portion of the 20-year population projection for allocation to new Fully Contained Communities has been satisfied.

¹⁰ Note that nothing in RCW 36.70A.350 requires an FCC area to be identified, designated or physically located on a map at the time of Plan adoption. RCW 36.70A.350 speaks entirely of a review process.

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1 Rationale: Policy U-211 has been added to clarify that the population and
2 growth targets for the County's UGA (contained in Policy U-209) include
3 the Bear Creek UPD sites, and that these allocations offset other urban
4 growth areas accordingly. This is consistent with RCW 36.70A.350
5 which requires the County to offset population allocations within the UGA
6 to accommodate the urban growth within the FCC. Therefore it is not
7 necessary to further reserve population in the County's UGA.

8 Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 6, at 10).

9 The County clarifies that the same population allocated to the Bear Creek island UGA by
10 the County, is allocated to the Bear Creek island FCC designation. Transcript, at 80-81.
11 Petitioners never directly challenge whether the County reserved a portion of the twenty-
12 year population projection for the FCC and offset the UGA accordingly. Instead,
13 Petitioners challenge whether the UGA or FCC was ever based upon the OFM forecast.
14 FOTL PHB, at 26-29. As the Board has already noted in the discussion of the UGA, the
15 Board concluded in its FDO that the County's Plan was based on OFM's 2012 population
16 projections. The Board concludes that the County's addition of Plan Policy U-211
17 satisfies .350's requirement that the County reserve a portion of the twenty-year
18 population projection and offset the UGA accordingly.

19 FCC review process:

20 The question for the Board here is whether the County adopted an FCC project review
21 process that complies with the detailed requirements of .350. The criteria for the FCC
22 review process are found at RCW 36.70A.350(1), and provide:

- 23 (1) A new fully contained community may be approved in a county
24 planning under this chapter if criteria including but not limited to the
25 following are met:
- 26 (a) New infrastructure is provided for and impact fees are
27 established consistent with the requirements of RCW 82.02.050;
 - 28 (b) Transit-oriented site planning and traffic demand management
29 programs are implemented;
 - (c) Buffers are provided between the new fully contained
communities and adjacent urban development;
 - (d) A mix of uses is provided to offer jobs, housing, and services to
the residents of the new community;
 - (e) Affordable housing is provided within the new community for a
broad range of income levels;
 - (f) Environmental protection has been addressed and provided for;
 - (g) Development regulations are established to ensure urban
growth will not occur in adjacent nonurban areas;
 - (h) Provision is made to mitigate impacts on designated
agricultural lands, forest lands, and mineral resource lands;

(i) The plan for the new fully contained community is consistent with the development regulations established for the protection of critical areas by the county pursuant to RCW 36.70A.170.

Ordinance No. 12170 added new Policy U-212, which provides:

- U-212 The review and approval process for a Fully Contained Community (FCC) permit shall be the same as that for an Urban Planned Development (UPD) permit, except the following additional criteria shall be met, pursuant to the provisions of RCW 36.70A.350:
- a. New infrastructure (including transportation and utilities infrastructure) is provided for and impact fees are established and imposed on the FCC consistent with the requirements of RCW 83.02.050;
 - b. Transit-oriented site planning and traffic demand management programs are implemented in the FCC. Pedestrian, bicycle, and high occupancy vehicle facilities are given high priority in design and management of the FCC.
 - c. Buffers are provided between the FCC and adjacent non-FCC areas. Perimeter buffers located within the perimeter boundaries of the FCC delineated boundaries, consisting of either landscaped areas with native vegetation or natural areas, shall be provided and maintained to reduce impacts on adjacent land;
 - d. A mix of uses is provided to offer jobs, housing, and services to the residents of the new FCC. No particular percentage formula for the mix of uses should be required. Instead, the mix of uses for an FCC should be evaluated on a case-by-case basis, in light of the geography, market demand area, demographics, transportation patterns, and other relevant factors affecting the proposed FCC. Service uses in the FCC may also serve residents outside the FCC, where appropriate;
 - e. Affordable housing is provided within the new FCC for a broad range of income levels, including housing affordable by households with income levels below and near the median income for King County;
 - f. Environmental protection has been addressed and provided for in the new FCC, at levels at least equivalent to those imposed by adopted King County environmental regulations;
 - g. Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas. Such regulations shall include but are not limited to rural zoning of adjacent rural areas, FCC permit conditions requiring sizing of FCC water and sewer systems so as to ensure urban growth will not occur in adjacent nonurban areas; and/or FCC permit conditions prohibiting connection by property owners in the adjacent Rural Area (excepting public school sites) to new FCC sewer and water mains or lines;

- 1 h. Provision is made to mitigate impacts of the FCC on designated
- 2 agricultural lands, forest lands, and mineral resource lands; and
- 3 i. The plan for the new FCC is consistent with the development
- 4 regulations established for the protection of critical areas by King
- 5 County pursuant to RCW 36.70A.170.

6 For purposes of evaluating a FCC permit the following direction is

7 provided: The term "Fully contained" is not intended to prohibit all

8 interaction between a FCC and adjacent lands but to limit impacts on

9 adjacent lands and contain them within the development site as much as

10 possible. "Fully contained" should be achieved through the imposition of

11 development conditions that limit impacts on adjacent and nearby lands

12 and do not increase pressures on adjacent lands for urban development.

13 "Fully contained" is not intended to mandate that all utilities and public

14 services needed by an urban population both start and end within the

15 property (since sewer, water, power, and roads, are of such a nature that

16 the origin and/or outfall cannot reasonably both exist within the property

17 boundaries), but that the costs and provisions for those utilities and public

18 services that are generated primarily by the FCC (schools, police, parks,

19 employment, retail needs) be reasonably accommodated within its

20 boundaries and not increase pressure for more urban development on

21 adjacent properties.

22 Rationale: Policy U-212 has been added to set forth the specific

23 development criteria an FCC must meet prior to final County approval.

24 The nine criteria listed are consistent with criteria for FCC approval

25 specified in RCW 36.70A.350. One of the shortcomings of the FCC

26 provisions contained in the RCW is that no description of "FCC" is

27 provided. Policy U-212 does provide a description of what is meant by

28 FCC.

29 Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 7, at 11-12). The County's

30 development regulations contain similar language. See Ex. 94 (Ordinance No. 12171,

31 Section 8, at 5).

32 The County contends: "FOTL/CPT make absolutely no argument that the Bear Creek

33 FCC designation violates any of RCW 36.70A.350(1) criteria." County Response, at 45.

34 The County misreads FOTL's brief. While FOTL does not challenge *all* of the .350(1)

35 criteria, FOTL specifically attacks the County's compliance with the provisions of the

36 FCC review process required by .350(1)(g). FOTL characterizes .350(1)(g) as a

37 "containment" requirement.¹¹ FOTL PHB, at 11, 31-32; FOTL Reply, at 17-18.

38 Additionally, at the compliance hearing, FOTL questioned whether the County has

39 provided for the containment of the Bear Creek FCC. Transcript, at 39-42.

¹¹ RCW 36.70A.350(1)(g) states: "Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas."

1 Issues not briefed are abandoned. WAC 242-02-570(1). But for FOTL's challenge to the
 2 County's compliance with RCW 36.70A.350(1)(g), all other challenges to compliance
 3 with RCW 36.70A.350(1) have been abandoned by FOTL and are deemed abandoned
 4 by the Board. The Board now addresses FOTL's .350(1)(g) "containment" argument.

5 FOTL's focus on this issue is directed at Plan Policy R-104 and the following text, shown
 6 in amendatory form, which provides:

7 ~~R-104 ((King County finds no need to establish new "fully contained~~
 8 ~~communities" within the Rural Area, as provided for by the Growth~~
 9 ~~Management Act.)) Except for the Blakely Ridge and Northridge Fully~~
 10 ~~Contained Community designations in Policy U-210, no new Fully~~
 11 ~~Contained Communities are needed in King County.~~

12 Rationale: [Explains the Board Order on Reconsideration and the
 13 County's options, including FCC designation] . . . The proposed
 14 amendment to Policy R-104 recognizes that only one area within King
 15 County, i.e., the adjoining Blakely Ridge and Northridge sites [Bear Creek
 16 island], is recognized and designated as a FCC within the Plan. The
 17 proposed amendment maintains current R-104 policy direction that no
 18 new FCCs are needed within the Rural Area, and extends the FCC
 19 exclusionary language to all other areas of King County. Therefore, the
 20 proposed amendment confines the FCC designation to one area and
 21 prevents the establishment or proliferation of other FCCs in King County.

22 Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 1, at 1-2).

23 The "following text", that FOTL relies upon was not amended by Ordinance No. 12170.
 24 The "following text" provides:

25 Policy R-104 establishes King County's position that new "fully contained
 26 communities" should not occur within the Rural Area. The King County
 27 Rural Area's land base is so small, and its road network and housing
 28 market are so integrated into those of the metropolitan area and its
 29 economy, that "containment" would not be possible.

30 FOTL PHB, at 11; County PHB, at 38 (emphasis supplied).

31 FOTL argues that this text documents an admission by the County that it cannot contain
 32 growth within an FCC. FOTL PHB, at 11, 31-32. The County responds that FOTL
 33 misreads Plan Policy R-104 and the unamended following text regarding containment
 34 and ignores the explanation given with the amendment to R-104. The County argues that
 35 the text does not apply to the Bear Creek island FCC, but the need for *other* FCCs in the
 36 rural area. Also the County notes that other Plan Policies with explanatory text, and
 37 development regulations that govern review of FCCs (i.e., Ordinance No. 12171)
 38 describe how the Bear Creek FCC area will be contained. County Response, at 37-38,

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1 42-43. FOTL counters that the County cannot "reverse course and claim that some FCCs
2 can be contained, [without pointing] to substantial evidence in the record that its prior . . .
3 conclusion of no containment was in error. The County's prior . . . conclusion that FCC
4 containment is not possible in King County must stand." FOTL Reply, at 17-18.

5 At the compliance hearing, FOTL asserted that rural zoning in areas adjacent to the FCC
6 would not contain the FCC, that "rural zoning doesn't hold." Transcript, at 40. The
7 Board then asked the Petitioners: "Other than regulations for land surrounding a
8 designated FCC, what could the County do to ensure [containment]?" FOTL replied:
9 "They touch on it in their second and third [requirements of U-212(g)], they provide for
10 [these measures] as options but not requirements that utility systems be sized, especially
11 types that are hard to expand later on, that they be sized to not accept more water or
12 sewage than would be generated by the urban development, to preclude hook-ups to those
13 systems. There may be other things. [e.g., King County's four-to-one program]."¹²
14 Transcript, at 40-41.

15 RCW 36.70A.350(1)(g) requires the County to have "development regulations that
16 ensure urban growth will not occur in adjacent nonurban areas." FOTL's statement that
17 "rural zoning doesn't hold" is unsubstantiated. Also, what degree of FCC containment
18 FOTL is advocating is unclear from briefing and oral argument. Must such a community
19 be "fully contained" so as to be an isolated-walled community, or a totally independent
20 self-sufficient community, or something else? How independent or interdependent must
21 it, or can it, be? Petitioners never explain. Nor did the Legislature explain the meaning
22 of "fully contained."

23 The GMA, unfortunately, does not define "new fully contained community." The WACs
24 define an FCC as "a development proposed for location outside of the existing designated
25 urban growth areas which is characterized by urban densities, uses and services and
26 meets the criteria of RCW 36.70A.350." WAC 365-195-210. However, this definition
27 provides little guidance on what "fully contained" means, other than compliance with
28 .350. It may well be that if the undefined concept of "fully contained" is interpreted to
29 mean "total independence or complete self-sufficiency" it is a misnomer, especially in the
interdependent Central Puget Sound region.

Nonetheless, to the County's credit, it articulates *its* view of what "fully contained"
means in Plan Policy U-212. 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 start and end within
the site, but that costs and provision of the needed public facilities and services be borne
by and accommodated within the FCC. The County intends its "fully contained"
explanation to provide context for evaluating FCC proposals. The County's definition

¹² The County's four-to-one program allows the addition of 1 acre to the UGA for each 4 acres dedicated as
open space. See Plan Policy I-204 (quoted in the FDO, at 43-44).

1 also provides context for understanding the County's actions. The Board does not find
2 the County's interpretation and definition of "fully contained" to be unreasonable in the
3 context of this case.

4 Regarding FOTL's contention that the County has failed to provide for "containment" of
5 FCCs, the Board is not persuaded that the County's actions were in error. Petitioners
6 have not demonstrated that rural zoning does not "ensure urban growth will not occur in
7 adjacent nonurban areas." Further, the rationale that accompanies the amendment to R-
8 104 explains what was intended by the amendment.

9 The Board concludes that, in addition to rural and resource land zoning, *Plan Policies* (U-
10 210, 211, 212 and accompanying explanatory text to the Plan's section on FCCs) and *new*
11 *development regulations* (Ordinance No. 12171 - K.C.C. 21A.39.200(B)(3) and (7))
12 provide for "containment" of FCCs. Specifically, Plan Policy U-212 (c) and (g) deal with
13 containment. Plan Policies U-212 (c) and (g) make provision for:

14 (c) Buffers are provided between the FCC and adjacent non-FCC areas.
15 *Perimeter buffers* located within the perimeter boundaries of the FCC
16 delineated boundaries, consisting of either landscaped areas with native
17 vegetation or natural areas, *shall be provided and maintained to reduce*
18 *impacts on adjacent land;*

19 (g) *Development regulations are established to ensure urban growth will*
20 *not occur in adjacent nonurban areas.* Such regulations *shall include* but
21 are not limited to *rural zoning of adjacent rural areas, FCC permit*
22 *conditions requiring* sizing of FCC water and sewer systems so as to
23 ensure urban growth will not occur in adjacent nonurban areas; and/or
24 *FCC permit conditions prohibiting* connection by property owners in the
25 adjacent Rural Area (excepting public school sites) to new FCC sewer and
26 water mains or lines

27 Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 7, at 1-2) (emphasis supplied);
28 see also, Ex. 94 (Ordinance No. 12171, Section 8(B)(3) and (7)).

29 These Plan Policies specify the use of existing rural zoning and other new *development*
30 *regulations* as a means of "ensuring urban growth will not occur in adjacent nonurban
31 areas." Also, the Plan Policies and review requirements noted above include specific
32 *FCC permit conditions* regarding prohibitions on connections and the sizing of water and
33 sewer systems to discourage growth on lands adjacent to an FCC. While these are case-
34 specific and site-specific FCC permit conditions, not jurisdiction-wide regulations or
35 requirements as advocated by FOTL, these are the *same measures* suggested by
36 Petitioners at the compliance hearing that would *ensure* containment. Transcript, at 40-
37 41.

38 Finally, the Board notes that if a proposed FCC fails to gain County approval or is not
39 pursued by the proposal applicant the designation of the Bear Creek island as an FCC

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1 shall be *changed to a rural* designation. Ex. 93 (Ordinance No. 12170, Attachment A,
2 Amendment 3, at 2 (Plan Policy U-201)). However, if the County approves an FCC
3 proposal pursuant to RCW 36.70A.350(2), the approved FCC becomes a UGA by
4 operation of law. Therefore, all the "containment" protections associated with UGAs
5 attach. These include, for example, rural zoning, prohibition of urban growth outside the
6 UGA, limitations on extending urban governmental facilities and services, and in King
7 County, the four-to-one program.

8 To summarize, Petitioners have not demonstrated that the County's development
9 regulations do not ensure urban growth will not occur in the nonurban areas adjacent to
10 the Bear Creek island. The County's interpretation and definition of "fully contained" is
11 not unreasonable and provides a context for reviewing the County's actions. Plan Policy
12 R-104, as amended, complies with .350(1)(g) as do the other FCC Plan Policies,
13 specifically U-212. The County's nine requirements for the FCC project review process
14 contained in Plan Policy U-212 (a)-(i) and the same requirements contained in the
15 County's development regulations at KCC 21A.39.200(B)(1)-(9) mirror and amplify the
16 nine detailed requirements for project review contained in RCW 36.70A.350(1)(a)-(i).
17 The FCC Plan Policies and development regulation provisions protect nonurban areas
18 adjacent to FCCs from encroachment by urban growth. Therefore, the County's adoption
19 of Ordinance Nos. 12170 and 12171 complies with the FCC project review process
20 requirements of .350(1), including .350(1)(g).

21 Locational criteria or constraints:

22 The Board anticipated the significance of locational criteria in this compliance hearing
23 and posed the following questions to the parties prior to the Compliance Hearing:

- 24 1. What is the Legislative history of RCW 36.70A.350?
- 25 2. What does RCW 36.70A.350 mean in relation to RCW 36.70A.110,
26 including, but not limited to, the UGA locational criteria set forth in RCW
27 36.70A.110?
- 28 3. Are there any locational constraints on the designation of a fully contained
29 community designated pursuant to RCW 36.70A.350?

Notice of Board Questions for Compliance Hearing, at 2. The parties were asked to
respond orally to these questions at the compliance hearing.

In response to question 1, FOTL provided "bill reports," but all parties agreed that the
legislative history was not particularly illuminating as to .350.

In response to question 2, FOTL stated:

[O]ur reading of the FCC amendments is that *FCCs may be located in
areas that are not already characterized by urban growth* and that seemed

1 by the language of .110 which specifies that *urban growth areas may be*
2 *designated* in certain areas and one of them is *wherever there is an FCC*.
3 So we read that to create an *exception* from the general limitation that
4 UGAs may not occur . . . , unless . . . [the area] is already characterized by
5 urban growth.

6 [U]nlike the carve out for the locational criteria in Section .110 which
7 says that you don't have to be characterized by urban growth to be an
8 FCC, there is no similar carve out for FCCs regarding consistency with
9 the OFM population forecast accounting requirements.

10 Transcript, at 15-16, and 33, respectively (emphasis supplied).

11 In response to question 2, the County stated:

12 The second [question] had to do with the relationship between Section
13 .110 and Section .350 and that relationship is set forth largely in Section
14 .110 which explicitly says that land outside of the city may be included
15 within an urban growth area if it meets the locational criteria in .110 or if
16 it is a new fully contained community pursuant to .350. So those
17 locational criteria found in .110 of the Act do not apply to siting new fully
18 contained communities.

19 Transcript, at 57 (emphasis supplied).

20 In response to question 3, FOTL replied:

21 [T]here is a locational constraint in that [an FCC] can't be located in a
22 area where *containment* is not possible, so that would be one locational
23 constraint. And . . . Section .350 doesn't rule out the local jurisdiction
24 from adopting its own locational constraints and here in those policies the
25 County, *King County adopted additional locational constraints*, . . . and
26 those are legitimate under the Act and should be recognized.

27 Transcript, at 50 (emphasis supplied).

28 In response to question 3, the County said:

29 [A]re there any locational constraints on fully contained communities and
I agree with what Mr. Bricklin says, that *there are not any explicit*
locational constraints on locating fully contained communities other than
complying with the nine criteria that are listed in Section .350[1] which in
a given context may or may not have an effect on the County's ability to
locate a fully contained community. The development needs to be
contained, it needs to be buffered from adjacent urban development, there
needs to be protection for natural resource lands, protection for sensitive

1 areas, critical areas, and those criteria might in a given context indirectly
2 limit where you could put a fully contained community but *the Act doesn't*
3 *contain any explicit direct locational requirements for fully contained*
4 *communities.*

5 Transcript, at 57 (emphasis supplied).

6 The parties do not dispute that RCW 36.70A.110 provides a statutory *exception* for FCCs
7 from the UGA locational criteria contained in .110. The Board agrees, the locational
8 criteria contained in .110 of the Act do not apply to the identification and designation of
9 potential FCC areas. Additionally, the parties agree that the Act does not contain any
10 explicit locational requirements for FCCs, other than those factors enumerated in .350(1),
11 including .350(1)(g) "containment" which could affect location. The Board also concurs
12 in this conclusion. Additionally, the Board agrees with FOTL's contention that a
13 jurisdiction has discretion to adopt its own locational criteria or constraints for identifying
14 and designating potential FCC areas.

15 The Board now turns to FOTL's assertion that the County has adopted its own locational
16 criteria in the County Comprehensive Plan, with which the Bear Creek island must
17 comply. FOTL PHB, at 9, 34 and 41-42; Transcript, at 22-26 and 49-50. The Board has
18 addressed FOTL's first argument regarding the containment question in the discussion
19 above, under FCC review process, and will not discuss it further here. Thus, FOTL's
20 remaining argument relates to the County's own Plan provisions.

21 FOTL contends that Plan Policy U-201, which contains language similar to that of CPP
22 LU-26, contains locational criteria, such as consideration of natural boundaries and
23 topographical features, that apply to the Bear Creek island FCC. Additionally, FOTL
24 argues that inclusion of the Bear Creek island site among U-201's locational criteria is an
25 arbitrary exception to the criteria that is not supported by any rationale. FOTL PHB, at 9,
26 41-42; FOTL Reply, at 8; and Transcript, at 22-26. The County disputes that the
27 language of CPP LU-26 or U-201 precludes the designation of the Bear Creek island as
28 an FCC, since Washington's courts have affirmed that the CPPs directed the County to
29 include the Bear Creek island as a UGA. County PHB, at 39-42.

Plan Policy U-201, as amended in 1996, provides:

U-201 The Urban Growth Area designations shown on the official Land
Use Map includes enough land to provide the capacity to accommodate
growth expected over the period 1992-2012. These lands:

- a. Do not include land or unincorporated agriculture or forestry lands
designated through the Countywide Planning Policies plan process;
- b. Include only areas already characterized by urban development
which can be efficiently and cost effectively served by roads,

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1 water, sanitary sewer and storm drainage, schools and other urban
2 governmental services within the next 20 years;

- 3 c. Do not extend beyond natural boundaries, such as watersheds,
4 which impede provision of urban services;
- 5 d. Respect topographical features which form a natural edge such as
6 rivers and ridge lines; and
- 7 e. Include only areas which are sufficiently free of environmental
8 constraints to be able to support urban growth without major
9 environmental impacts unless such areas are designated as an
10 urban separator by interlocal agreement between jurisdictions; and
- 11 f. Include the Bear Creek Urban Planned Development (UPD) sites,
12 unless the applications for a UPD permit or a Fully Contained
13 Community (FCC) permit are denied by King County or not
14 pursued by the applicants.

15 Further, this policy recognizes [certain specified acreages are identified as
16 eligible for the four-to-one program unless plat approval is denied, in
17 which case, the lands convert to a rural designation]

18 In addition, this policy recognizes that the Bear Creek Urban Planned
19 Development (UPDs) are subject to an ongoing review process under the
20 adopted Bear Creek Community Plan and that these properties are urban
21 under the Countywide Planning Policies. If the applications necessary to
22 implement the UPDs are denied by King County or not pursued by the
23 applicant(s), then the property subject to the UPD shall be redesignated
24 rural pursuant to the Bear Creek Community Plan. ~~((Nothing in this policy
25 shall limit the continued review and implementation through existing
26 applications, capital improvements, appropriations or other approvals of
27 these two UPDs as new communities under the Growth Management
28 Act.))~~ This policy recognizes the appropriateness of designating the Bear
29 Creek UPD sites as a Fully Contained Community under the Growth
Management Act. If the applications necessary to implement the Fully
Contained Community are denied by King County or not pursued by the
applicant(s), and if the sites have not been otherwise approved as a UPD,
then the Property shall be designated Rural on the Land Use Map.

30 Rationale: The proposed amendment to Policy U-201 specifically
31 identifies the Bear Creek UPD sites within the UGA and recognizes that
32 these sites are also appropriately designated as a Fully Contained
33 Community under the GMA. The designation is consistent with
34 Countywide Planning Policies which both recognized the need for and
35 appropriateness of urban master planned developments in the Bear Creek

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1 area. The policy directs King County to redesignate these sites as Rural
2 should a FCC or UPD development proposal be denied or not pursued by
3 the applicant.

4 Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 3, at 4-5).

5 Plan Policy U-210 provides:

6 U-210 King County finds a need to establish a new Fully Contained
7 Community. Two sites are designated through this plan shown on the land
8 Use Map as a Fully Contained Community; and on the Area Zoning Map
9 as Urban Reserve: Blakely Ridge and Northridge Urban Planned
10 Development sites located in the Bear Creek Areas. Nothing in these
11 policies shall affect the continued validity of an approved Urban Planned
12 Development permit for either of these sites. This FCC designation may
13 be implemented by separate or coordinated permits for the two sites.

14 Rationale: Policy U-210 has been added to establish a FCC designation for
15 the Bear Creek UPD sites. This policy is consistent with the Growth
16 Management Act criteria specified in RCW 36.70A.350 for a FCC. This
17 amendment . . . provides consistency in the references to one designation
18 of two sites.

19 Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 5, at 9); *see also*, Amendment
20 8 and 9 for the Land Use Map and Area Zoning Map designations.

21 The Board observes that, while Plan Policy U-201 sets forth locational criteria, those
22 criteria apply specifically to UGA designations, not FCC designations.¹³ This
23 construction is consistent with the structure of the statute. RCW 36.70A.110 includes
24 UGA locational criteria, and includes the uncontested FCC "exception." CPP LU-26 also
25 contains UGA locational criteria and includes the FCC "exception."¹⁴ Likewise, Plan
26 Policy U-201 sets forth UGA locational criteria and again lists the recognized FCC
27 "exception." Plan Policy U-210 designated the Bear Creek island as an FCC and
28 subsequent map amendments illustrated this designation. Plan Policy U-210 makes the
29 .110's FCC "exception" a possible outcome for the Bear Creek island. Reflecting the
structure and language of the statute in a Plan Policy is not "arbitrarily picking out a
specific site without regard to those [locational] criteria" or "just pluck[ing] it [the area]
out of thin air." *See* Transcript, at 24-25. The Board finds no error by the County in
recognizing a statutorily created FCC "exception" to the UGA locational criteria in its
Plan Policy U-201.

¹³ The new FCC Plan Policies appear to be U-210, U-211 and U-212. They do not indicate that FCC's shall be subject to the locational criteria contained in U-201.

¹⁴ *See* Order on Reconsideration, at 4 for the text of CPP LU-26.

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1 Since the Legislature, not the County, created the FCC "exception" in RCW 36.70A.110,
2 it is not necessary for the County to justify, explain, or provide a rationale for, why the
3 FCC "exception" is included in its Plan Policies. Nonetheless, the Board acknowledges
4 that the County added the following language to the FCC section of its Comprehensive
5 Plan:

6 Regardless of whether the urban designation of the Bear Creek UPD sites
7 in the 1994 Comprehensive Plan is upheld, the GMA recognizes the FCC
8 provisions as an independent method of designation of lands as urban and
9 the County has determined that the Bear Creek UPD sites are appropriate
10 for designation as an FCC.

11 The Bear Creek FCCs provide substantial benefits and achieve Growth
12 Management Act goals which cannot be duplicated through the UGAs
13 associated with cities in this part of the County. *The findings and
14 justification for FCC designation, consistent with the criteria [in] RCW
15 36.70A.350(1), include the following:*

- 16 a. Site Characteristics: These two sites are appropriate as FCCs
17 due to a large land mass managed under two ownerships
18 allowing for an efficient and unified planning effort. Master
19 planning promotes GMA goals by concentrating development,
20 locating commercial services in close proximity to residents,
21 provides a mix of residential, commercial, and retail uses,
22 allows for the preservation of larger, contiguous amounts of
23 open space, and otherwise reduces inefficient consumption of
24 land.
- 25 b. Affordable Housing: the 1992 median household income in
26 the Bear Creek area is 54 percent higher than the countywide
27 median for this same period and multi-family units occupy 2
28 percent of the housing stock compared with 19 percent
29 countywide in unincorporated areas. These two sites will
introduce multi-family units and provide housing units for low,
median and moderate-income households. This introduction of
substantial affordable, and multi-family housing opportunities
will allow for greater housing choices not currently available in
the area and will correct an affordable housing deficiency in
this portion of the County which cannot be adequately
provided in other urban growth areas.
- c. Environmental Protection: Environmental protection standards
can exceed the highest standards in the County through
clustering and state-of-the-art water quality and drainage
systems. Critical areas, including wetlands, streams, and steep
slopes can be protected through comprehensive site design and

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1 extraordinary surface water management measures far beyond
2 protections that could be achieved through rural lot
3 development. The large scale of a master plan allows for
4 development of construction and conservation practices that
5 could not be achieved on smaller properties, or through rural
6 lot development.

- 7
- 8 d. Open Space and Recreation: Larger, cohesive public open
9 space systems including public parks, recreational facilities and
10 trails can be provided through the FCC process. Acquisitions
11 of this magnitude cannot be achieved in existing city UGAs,
12 but are instead dependent upon large acreage ownerships
13 available for master planning.
- 14 e. Public Facilities and Services: The large scale of a master plan
15 allows for efficient provision of many public services
16 internalized within the boundaries of the new communities.
17 Infrastructure costs can be borne by developers for
18 transportation, sewer, water, schools, and other facilities and
19 services consistent with the requirements of RCW 82.02.050.
20 Site design and development conditions such as traffic demand
21 management systems can encourage the use of transit and non-
22 motorized means of transportation.
- 23 f. Buffers and Adjacent Lands: Perimeter buffers and
24 development conditions can be imposed to reduce growth
25 pressures on adjacent and nearby lands, including designated
26 agriculture, forest and mineral resource lands.

27 Ex. 93 (Ordinance No. 12170, Attachment A, Amendment 4, at 7-8).

28 Although not required, these findings provide adequate rationale for the County's
29 designation of the Bear Creek island as an FCC pursuant to the FCC "exception" from
30 the Acts locational criteria for UGAs. These findings support the County's election,
31 albeit at the Board's suggestion, to incorporate an FCC review process into its growth
32 management system.

33 Conclusions

34 The Bear Creek island is located outside of the initially designated urban growth area.
35 Consequently, it is eligible for consideration as an FCC pursuant to RCW 36.70A.350.

36 The County's addition of Plan Policy U-211 satisfies RCW 36.70A.350's requirement
37 that the County reserve a portion of the twenty-year population projection and offset the
38 UGA accordingly.

1 FOTL has abandoned any challenge to the County's compliance with RCW
2 36.70A.350(1)(a-f) and (i).

3 Petitioners have not demonstrated that the County's development regulations, including
4 rural zoning, do not ensure urban growth will not occur in the nonurban areas adjacent to
5 the Bear Creek island. The County's interpretation and definition of "fully contained" is
6 not unreasonable and provides a context for reviewing the County's actions. Plan Policy
7 R-104, as amended, complies with .350(1)(g), as do the other FCC Plan Policies,
8 specifically U-212. The County's nine requirements for the FCC project review process
9 contained in Plan Policy U-212 (a)-(i) and the same requirements contained in the
10 County's development regulations at KCC 21A.39.200(B)(1)-(9) mirror and amplify the
11 nine detailed requirements for project review contained in RCW 36.70A.350(1)(a)-(i).
12 The FCC Plan Policies and development regulations provide protection for nonurban
13 areas adjacent to FCCs from encroachment by urban growth. Therefore, the County's
14 adoption of Ordinance Nos. 12170 and 12171 complies with the FCC project review
15 process requirements of .350(1).

16 The locational criteria of .110 do not apply to FCC areas. The GMA does not contain
17 any explicit locational requirements for FCCs other than those factors enumerated in
18 .350(1), including .350(1)(g) "containment" which could affect location. The Board
19 finds no error by the County in recognizing a statutorily created FCC "exception" to the
20 locational criteria in its Plan Policy U-201. The Board acknowledges that the County
21 provided adequate explanation and rationale in its Plan supporting its decision to adopt an
22 FCC review process and designate the Bear Creek island as an FCC.

23 The County's adoption of Ordinance Nos. 12170 and 12171, which designate the Bear
24 Creek island as an FCC and establish an FCC review process, meet the GMA's FCC
25 provisions and comply with the requirements of RCW 36.70A.350. By enacting these
26 Ordinances in compliance with .350, the County has activated the FCC "exception" of
27 RCW 36.70A.110(1) for designating UGAs. Successful completion of the FCC review
28 process will yield UGA designation.

29 **C. INVALIDITY – SUBSTANTIAL INTERFERENCE WITH GMA GOALS**
(ISSUE NO. 3)

*If compliance issues 1 and 2 above are answered in the negative, will
the continued validity of the County's FCC designation and/or non-
FCC UGA designation of the Bear Creek UPD substantially
interfere with the fulfillment of the GMA's goals at RCW
36.70A.020?*

30 The Board has determined that the County's designation of the Bear Creek island as a
31 non-FCC urban growth area does not comply with the *locational criteria* contained in
32 RCW 36.70A.110(1). The Bear Creek island cannot be designated UGA based upon
33 .110(1)'s locational criteria. Any such designation shall be removed from the County's
34 Plan. However, RCW 36.70A.110(1) does allow an approved FCC to become a UGA if

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1 the requirements of RCW 36.70A.350 are met. The Board has determined that the
2 County's *designation of the Bear Creek island as an FCC, and the County's FCC project*
3 *review process*¹⁵ complies with the requirements of RCW 36.70A.350. Thus, the FCC
4 "exception" is activated. The outcome of the County's FCC permit review process can
5 yield either approval or denial of an FCC permit. FCC permit approval by the County
6 results in UGA designation for the FCC permit area, pursuant to .110(1). FCC permit
7 denial by the County yields designation of the FCC permit area as Rural, pursuant to
8 County law (Plan Policy U-201). Either FCC permit review outcome complies with the
9 requirements for UGAs as set forth in RCW 36.70A.110. Consequently, in regard to
10 invalidity, the Board finds no need to inquire into whether there may be substantial
11 interference with the goals of the Act.

8 **VII. ORDER**

9
10 Having reviewed and considered the above-referenced documents and the file in this
11 case, having considered the arguments of the parties, and having deliberated on this
12 matter, the Board ORDERS:

- 12 1. King County's justification for the Bear Creek Island UGA fails to comply with
13 the Board's Order on Reconsideration and the locational criteria for UGAs as
14 found in RCW 36.70A.110(1). The Bear Creek island UGA designation, or any
15 portion thereof, that is based upon the locational criteria of RCW 36.70A.110(1),
16 if any, shall be removed from the County's Plan.
- 17 2. King County's adoption of Ordinance Nos. 12170 and 12171 **complies** with the
18 Board's Order on Reconsideration and the Act's provisions for new fully
19 contained communities, as contained in RCW 36.70A.350 and RCW
20 36.70A.110(1).
- 21 3. The Board directs King County to remove the Bear Creek island UGA
22 designation, or portion thereof, if any, that is based upon the locational criteria of
23 RCW 36.70A.110(1), by no later than **Friday, September 15, 2000**. The County
24 shall submit to the Board a "Statement of Actions Taken to Comply" (SATC), by
25 no later than **Friday, September 22, 2000**.

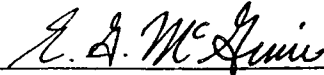
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28 ¹⁵ Recall that the Board did not review the County's application of the FCC permit review process to any
29 particular proposal.

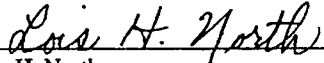
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2 So ORDERED this 15th day of June, 2000.

3 CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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6 Edward G. McGuire, AICP
7 Board Member (Board Member McGuire concurs with Board Member North with respect to the entire
8 order, and with Board Member Tovar with respect
9 to RCW 36.70A.110, and files a concurring opinion
10 with respect to RCW 36.70A.110, set out below)

11 

12 Lois H. North
13 Board Member (Board Member North concurs with
14 Board Member McGuire, and files a concurring
15 opinion with respect to RCW 36.70A.350, set out
16 below)

17 

18 Joseph W. Tovar, AICP
19 Board Member (Board Member Tovar concurs with
20 the majority as to compliance with RCW
21 36.70A.110. He dissents with respect to
22 compliance with RCW 36.70A.350 as set forth in a
23 separate opinion which follows.)

24
25 NOTICE: This is a final order for purposes of appeal. Pursuant to WAC 242-02-832, a
26 Motion for Reconsideration may be filed within ten days of service of this final order.
27
28

29
30 **Board Member McGuire's Concurrence re: RCW 36.70A.110**

31 I concur with the Board's analysis that, in 1994, the Bear Creek island did not have urban
32 growth on it, nor was it adjacent to lands having urban growth on it. However, the Board
33 provides no analysis of whether the Bear Creek island is "*land located in relationship to
34 an area with urban growth on it as to be appropriate for urban growth.*" RCW
35 36.70A.030(17). This vague portion of the definition of "characterized by urban growth"
36 could be read to authorize designation of virtually any "island" as a UGA, if a county
37
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1 documented and justified the "relationship" and explained why such designation would
2 be "appropriate" for urban growth. However, in my view, the broad scope of this
3 locational criterion was narrowed and given meaning in 1991 when the Legislature
4 amended the GMA to add the FCC provisions (.350 and the .110 FCC "exception").

5 The FCC provisions recognize the possibility of noncontiguous "island" UGAs, *if certain*
6 *detailed requirements are met*. Therefore, "land located in relationship to an area with
7 urban growth on it as to be appropriate for urban growth" is constrained and given
8 context in light of the authorization for a county to establish a process for reviewing FCC
9 proposals. Approval of an FCC by a county implicitly requires a determination that the
10 land (proposed FCC) is *appropriate* for urban growth. Such a determination has to be
11 based on the *relationship* of the FCC to the broader context of how urban growth is
12 managed in the county's GMA Plan (e.g., reservation of twenty-year population and
13 reciprocal land area, UGAs, etc.). This interpretation is consistent with, and supports, the
14 linkage between .350 and .110. I would have included this interpretation in the Board's
15 analysis and discussion of RCW 36.70A.110.

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16 **Board Member North's Concurrence re: RCW 36.70A.350**

17 All parties and the Board concur that the Legislature created an exception to the UGA
18 requirements of RCW 36.70A.110 when it adopted RCW 36.70A.350's FCC provisions.
19 I write separately to clearly state my view that this exception constitutes a gaping
20 loophole in the GMA, whereby our rural lands can be converted to urban growth at the
21 desire of any landowner with means. However, this legislatively created loophole cannot
22 be remedied by the Board, as we are bound to apply the clear language of the statute. It
23 is up to this State's Legislature to close this loophole.

24 **Board Member Tovar's Dissent re: RCW 36.70A.350**

25 **Summary**

26 For the reasons detailed below, I respectfully dissent from my colleagues. I do not agree
27 with the majority's conclusion that the County's designation of the Bear Creek FCC
28 complies with the goals and requirements of the Act, specifically and most
29 fundamentally, with RCW 36.70A.350(preamble). Quite to the contrary, I believe that
the County's designation of the Bear Creek urban island as an FCC is a brazen flouting of
the spirit of the Growth Management Act and an egregious violation of its requirements.
I would have entered a determination of invalidity.

There is no dispute that the FCCs are an "exception" from the locational criteria of RCW
36.70A.110. Significantly, however, they are not an exception from the statutory

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1 requirement in RCW 36.70A.350(preamble)¹⁶ that they be "fully contained." Surrounded
2 by rural areas, including environmentally constrained portions of the Bear Creek area to
3 the west and the designated agricultural resource lands of the Snoqualmie Valley to the
4 east, this so-called "fully contained" urban island is nothing of the sort. It is integrated
5 with the metropolitan road network,¹⁷ accessible to a high-speed and high-capacity state
6 freeway less than three miles distant which links it to the burgeoning economy and
7 housing market of the metropolitan urban growth area. This unincorporated urban island,
8 four square miles in size¹⁸, is only two miles from the City of Redmond, from which it
9 receives its sewer service and even its name (i.e., Redmond Ridge).

10 To label this land use designation as a "fully contained" community is an artifice belied
11 by the facts. At its core, this land use decision is rooted not in a sustainable future, but in
12 an expedient past. Far from being fully contained, this is classic leapfrog sprawl on a
13 grand scale,¹⁹ the likes of which has hastened the demise of rural and resource lands
14 throughout this country over the past fifty years. In my view, the majority has interpreted
15 the Act in a way that eviscerates the statute.

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Discussion

While the Board has addressed the UGA requirements of RCW 36.70A.110 many times
previously, this is a case of first impression as to the FCC provisions of RCW
36.70A.350. Although this latter provision was adopted in 1991, the Board has never
before substantively reviewed alleged noncompliance with these provisions. To glean the
meaning of a specific statutory provision, it is important to read it, not in isolation, but in
the context of the entire statute. See *Cramer v. Van Parys*, 7 Wn. App. 584, 586 (1972).
Therefore, it is appropriate to begin by recounting the GMA's history and purposes,
relevant provisions of the Act, and the court-made and board-made case law that provide
a legal context.

¹⁶ The term "preamble" refers to the portion of a section that precedes the numbered subsections. Some of
the most important mandates in the GMA appear in "preambles." For example, the substantive requirement
that comprehensive plans must be internally consistent appears at RCW 36.70A.070(preamble) which
provides in part:

The plan shall be an internally consistent document and all elements shall be consistent
with the future land use map.

¹⁷ Herein, the term "metropolitan road network" refers to federal and state highways. State Route 520 is
approximately 3.5 miles from the westerly edge of the Bear Creek Urban Island. State Route 203 is
approximately 2.5 miles from its easterly edge. These distances are scaled from maps in the record,
including the "Transportation Service Areas" Map, Chapter 9, Plan.

¹⁸ The Bear Creek island is 2,586 acres (approximately four square miles) in size and includes the
developments called Blakely Ridge and Northridge (a/k/a Redmond Ridge). Northridge Final EIS, January
1996, portion, Index 2076.

¹⁹ The Bear Creek island is larger than 35 percent (fourteen of the thirty nine) of the incorporated cities in
the County. Washington State Data Book, Office of Financial Management, 1999 edition, "Population,
Land Area, and Density for Cities and Towns, April 1, 1999."

1 GMA's History and Purposes

2 A prominent scholar of Washington land use law has observed: "Until the adoption of
3 the Growth Management Act in 1990, local land use planning and regulation was
4 optional and, if undertaken, was subject to modest state procedural standards and
5 virtually no substantive requirements at all."²⁰ The discretion of local governments to
6 make decisions about the location, scale and servicing of new growth was virtually
7 unbridled, and the state role very limited.

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8 This situation changed in a fundamental and profound way in 1990 with the adoption of
9 the GMA. The Legislature found that perpetuation of the pre-GMA land use decision-
10 making regime presented a threat to our state's economic and environmental future and
11 very quality of life.²¹ Commenting on these findings and the goals and requirements of
12 the Act, the Supreme Court described the GMA as a "sea change" in land use decision-
13 making in Washington. *Erickson & Associates, Inc. v. McClerran*, 123 Wn.2d 864, 875-
14 76 (1994). This Board reached a similar conclusion, stating: "the old way of doing
15 things (i.e., non-GMA planning and decision-making) threatened [Washington's] quality
16 of life ... [and] in order to meet this threat, new and important steps needed to be taken."
17 *Children's Alliance v. City of Bellevue*, CPSGMHB Case No. 95-3-0011, Final Decision
18 and Order (Jul. 25, 1995), at 4.

19 Ambiguity in the Statute is resolved by Discerning Legislative Intent

20 "Where the meaning of the statute is clear from the language of the statute alone, there is
21 no room for judicial interpretation." *Timberline Air Serv., Inc. v. Bell Helicopter-*
22 *Textron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994) (citation omitted). However,
23 where the meaning of the statute is ambiguous, "resort to rules of construction" is
24 appropriate. *Id.* (citation omitted). A cardinal rule of statutory construction is to give
25 effect to legislative intent. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 813
26 (1992).

27 It is clear from the provisions of RCW 36.70A.350(1) and (2) what the requirements are
28 for a county to grant an FCC permit. What is unclear from the language of the statute is
29 the meaning of the words in the preamble of RCW 36.70A.350. It provides:

30 ²⁰ Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, Seattle University Law
31 Review, Volume 23, No. 1 (1999), at 6.

32 ²¹ The Legislative Findings for the GMA are set forth at RCW 36.70A.010 which provides:

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

(Emphasis added.)

1 A county required or choosing to plan under RCW 36.70A.040 may
2 establish a *process as part of its urban growth areas*, that are *designated*
3 *under RCW 36.70A.110*, for reviewing proposals to authorize new *fully*
4 *contained* communities located outside of the initially designated urban
5 growth areas.

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6 (Emphasis added.)

7 What is meant by the emphasized words above? It would be clearer if the preamble, or
8 even the subsequent sections, stated that *first* there is an FCC land use designation in the
9 comprehensive plan, and *then* there is the submittal of a project application for an FCC
10 permit which is measured for compliance with subsections (1) and (2). However, the Act
11 does not explicitly say that. The only use of the word "designation" in the preamble
12 describes the urban growth areas provisions of RCW 36.70A.110. Is it a necessary
13 implication of RCW 36.70A.350 that, prior to FCC permit approval, a threshold "FCC
14 designation" is first required in the plan? Is such a threshold designation for FCCs a
15 necessary implication of the Act? If the answer is yes, then is such an implied threshold
16 designation subject only to the GMA's procedural requirements, or is it also subject to
17 the Act's substantive provisions? A final and significant question is, what is the meaning
18 of the phrase "fully contained"?²²

19 These questions, unanswered by the explicit terms of .350 itself, create ambiguity in the
20 statute. It is the Board's obligation and responsibility to discern the meaning of
21 ambiguous statutory provisions of the GMA. In so doing, it is essential to look to the
22 context of legislative intent and how that legislative intent has been construed by the
23 courts and the Board.

24 Although the Act does not explicitly state a requirement for a threshold designation as an
25 FCC, I construe that it is necessarily implied by the structure of RCW 36.70A.350. As to
26 the question of whether this threshold designation is subject to the Act's substantive
27 provisions, I again answer in the affirmative. I believe that this outcome is compelled by
28 the statutory language requiring FCCs to be "fully contained" and the necessity to give
29 effect to legislative intent.

30 Focusing on the question of the meaning of the phrase "fully contained," both the County
31 and Quadrant argue that the required "containment" is achieved by the action of adopting
32 the language of subsection (1) of RCW 36.70A.350 as a local ordinance and adhering to
33 the population accounting described in subsection (2). They argue that RCW 36.70A.350
34 does not mention locational criteria akin to RCW 36.70A.110. Quadrant Response, at 13;
35 Transcript, at 57. While the parties agree that there are no explicit FCC locational criteria
36 analogous to those found in the subsections of RCW 36.70A.110, FOTL argues that the

37 ²² While the County has supplied its own definition of "fully contained," there is none in the statute. With
38 all due respect to the County, in discharging its duty the Board is obliged to consider a broader context
39 when discerning the meaning of statutory language.

1 Bear Creek island does not comply with the GMA because it cannot be "fully contained."
2 Transcript at 49-50.

3 The theory advanced by the County suggests that its up to a county to define the term
4 "fully contained" as it sees fit and that compliance with the criteria of RCW
5 36.70A.350(1) and (2) constitutes, in effect, compliance with the Act. If this theory
6 holds, the action designating an FCC could easily be shielded from any substantive state
7 review. A county would simply adopt its own definition of "fully contained," adopt
8 verbatim the language of subsection (1), document that the population offsets discussed
9 in subsection (2) have been made, and thereby grant itself sweeping license to designate
10 FCCs of any size and number literally anywhere in the rural area. As discussed below,
11 this cannot be the outcome contemplated by the Legislature.

9 Legislative Intent and the Anti-Sprawl Imperative of GMA

10 The first two goals of the Act are to direct urban growth to urban areas and to minimize
11 the conversion of lands to low-density sprawl.²³ These goals are to be achieved through
12 the Act's substantive requirements, beginning with the fundamental step that all lands are
13 to be assigned one of three mutually exclusive land use designations: urban growth areas
14 (designated pursuant to RCW 36.70A.110), resource lands (designated pursuant to RCW
15 36.70A.170 and conserved by regulations adopted pursuant to RCW 36.70A.060) and
16 rural areas (designated and regulated pursuant to RCW 36.70A.070(5)).

17 In addition, the Act has made specific provision for three types of designations within
18 rural areas, including Master Planned Resorts (MPRs) pursuant to RCW 36.70A.360 and
19 .362, Fully Contained Communities (FCCs) pursuant to RCW 36.70A.350 and Limited
20 Areas of More Intensive Rural Development (LAMIRDs) pursuant to RCW
21 36.70A.070(5). In construing the meaning of the statutory language of the 1997 GMA
22 amendments that created the LAMIRD provisions, the Board summarized:

23 Since the GMA's initial adoption ... one of its bedrock principles has been
24 to direct urban development into urban areas and to protect the rural area
25 from sprawl While the 1997 rural amendments made accommodation
26 for "infill, development" of "existing" areas of "more intensive rural
27 development," such a pattern of such growth must be "minimized" and
28 "contained" within a "logical outer boundary." This cautionary language
29 evidences a continuing legislative intent to protect rural areas from low-
density sprawl.

26 ²³ RCW 36.70A.020 provides in part:

- 27 (1) Urban growth. Encourage economic development in urban areas where adequate
28 public facilities and services exist or can be provided in an efficient manner.
29 (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into
sprawling, low-density development.

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1 *Burrow v. Kitsap County*, CPSGMHB Case No. 99-3-0018, Final Decision and Order
2 (Mar. 29, 2000), at 18 (footnote omitted, emphasis added).

3 This strongly stated legislative intent of the GMA, to direct urban growth to urban growth
4 areas and to protect the rural area and resource lands²⁴ from sprawl, is one of the Act's
5 key imperatives.

6 When read together, RCW 36.70A.020(1) and (2), RCW 36.70A.070(5), RCW
7 36.70A.110, RCW 36.70A.350, RCW 36.70A.360 and RCW 36.70A.362 evidence a
8 strong legislative intent to protect rural and resource lands from sprawl. This anti-
9 sprawl imperative of the GMA is a central organizing concept that informs local
10 governments, the boards and the courts when construing the Act's requirements.²⁵

11 Legislative Intent requires FCCs to be "fully contained"

12 I agree with the majority that there are no locational criteria for FCCs analogous to those
13 for UGAs designated pursuant to RCW 36.70A.110. However, the provisions of RCW
14 36.70A.350(1) and (2) address conditions applicable to consideration of the FCC permit,
15 rather than the threshold question of FCC designation. The Board has no authority to
16 review a county's approval of an FCC application.²⁶ Its authority to substantively review
17 an FCC for fidelity with the Act derives instead from the statutory language of RCW
18 36.70A.350(preamble). A petitioner must point to facts in the record to persuade the
19 Board that the challenged FCC designation cannot be "fully contained." Only if a
20 petitioner can make this showing can the Board determine, "after a review of the entire
21 record, in light of the goals and requirements of the Act, that the County has made a
22 mistake" in interpreting and applying the provisions of RCW 36.70A.350.

23 Policy R-104, as adopted in 1994,²⁷ shows that the County appears to have the County
24 grasped that FCCs would not be appropriate in all rural areas because it would not be

25 ²⁴ Although resource lands designations are not at issue in the present case, it is important to note that
26 resource lands (designated agricultural lands and forest lands) are typically adjacent to and frequently
27 encompassed by rural lands. At a regional scale, rural lands serve to "buffer" resource lands from land use
28 conflicts with more intensive (i.e., urban) uses. Therefore, actions that undermine the viability of the rural
29 area can also undermine the viability of adjacent resource lands.

30 ²⁵ This Board has previously identified the negative consequences of sprawl and the Act's many
31 mechanisms to combat it. See *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0008c, Final
32 Decision and Order (Oct. 6, 1995), at 25-32. My use of the word "imperative" to describe the strong anti-
33 sprawl intent of the Act is deliberate. It rises to the status of the "agricultural conservation imperative" that
34 this Board construed from various other provisions of the GMA. *Green Valley, et al. v. King County*,
35 CPSGMHB Case No. 98-3-0008c, Final Decision and Order, July 29, 1998, at 16, currently on review by
36 the Washington State Supreme Court in *King County v. Central Puget Sound Growth Management
37 Hearings Board*, Case No. 68284-4.

38 ²⁶ The Board concurs with the parties that it has no jurisdiction over the FCC permit approval, because
39 permits are beyond the scope established by the Legislature and the courts. See ch. 36.70B RCW; and
40 *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 868 (1997).

41 ²⁷ R-104 reads as follows:

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43 Order on Supreme Court Remand
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1 possible to "fully contain" them in all cases. This policy also reflects the County's
2 recognition that the ability to "fully contain" an FCC depends upon the size of the rural
3 area and the degree of its integration with the metropolitan road network and UGA. As
4 originally written, R-104 acknowledged that the facts in 1994 (i.e., the small rural area
5 and its integration with the metropolitan road network) precluded the ability for FCCs in
6 the County's rural area to achieve the "full containment" required by the Act. The 1994
7 version of R-104 comes very close to the mark of how to construe the statutory direction
8 of RCW 36.70A.350(preamble). After essentially getting it right the first time, the
9 County's error was in amending R-104 in 1996 to arbitrarily exempt the Bear Creek FCC
10 (actually, the amendment lists Blakely Ridge and Northridge by name).

11 In my view, the correct statutory meaning of "fully contained" and how the FCC
12 provisions of the GMA operate, are as follows.

13 The Fully Contained Communities provisions of RCW 36.70A.350 establish a two-step
14 sequence: first, initial designation of an FCC in the comprehensive plan and second,
15 adoption of development regulations and approval of FCC permits. The "fully
16 contained" mandate of RCW 36.70A.350(preamble) requires counties, at the time of
17 initial FCC designation, to consider and adopt on the record findings about the facts and
18 circumstances in the rural area that enable potential FCCs to protect surrounding rural
19 and resource lands from sprawl. Included in the factors to be considered are: (1) the size
20 of the rural area, (2) the immediate impacts on surrounding rural and resource lands, (3)
21 the long-term service and infrastructure implications for the surrounding rural and
22 resource lands, (4) the degree of integration of the roads serving the FCC with the
23 regional road network and (5) the resulting relationship between the FCC and designated
24 UGAs. After designation of an FCC pursuant to RCW 36.70A.350(preamble), the county
25 adopts development regulations and issues an FCC permit subject to the requirements of
26 RCW 36.70A.350(1) and (2) and any other locally adopted requirements.

27 The County now argues that R-104, as amended,²⁸ refers to the inability of the rural areas
28 to contain any FCCs *other than the Bear Creek FCC*. This amended policy clearly seeks
29 to exempt the Bear Creek FCC from the preclusive effect of this policy but what factors
30 make the Bear Creek Island more appropriate for designation than "other" FCCs? More
31 to the point, *what facts about the rural area around the Bear Creek FCC, or its*

32 **King County finds no need to establish new "fully contained communities" within
33 the Rural Area, as provided for by the Growth Management Act.
34 Policy R-104 establishes that new "fully contained communities" should not occur within
35 the Rural Area. The King County Rural Area's land base is so small, and its road
36 network and housing market are so integrated into those of the metropolitan area and its
37 economy, that "containment" would not be possible.**

38 (Bold emphasis in original. Underlined *bold italics* emphasis added.)
39 ²⁸ R-104, as amended in 1996 provides:
40 Except for the Blakely Ridge and Northridge Fully Contained Community designations
41 in Policy U-210, no new Fully Contained Communities are needed in King County.
42 (Emphasis added.)

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1 relationship to the metropolitan road network and UGA, makes containment possible in
2 this portion of the rural area, but in no other? Did the rural area's size inexplicably
3 increase or its integration with the road network decrease between 1994 (the adoption
4 date of R-104) and 1996 (the amendment date of R-104)? Significantly, the County does
5 not differentiate between the rural area surrounding the Bear Creek FCC and any other
6 rural areas of the County, such as those south of I-90 or those adjacent to the Pierce
7 County line.²⁹ FOTL correctly points out that the County offers no facts or rationale to
8 support the arbitrary decision to exempt the Bear Creek FCC from the broad sweep of
9 this policy, namely, that the rural area itself is too small, and its road network too
10 integrated with the metropolitan road network and UGA, to enable containment.

11 The inescapable facts, impervious to amendment by the County, are these. The Bear
12 Creek urban island is four square miles in size, surrounded on all sides³⁰ by rural lands.
13 It is two miles east of the Redmond city limits, which is also the eastern edge of the
14 metropolitan urban growth area. The Bear Creek urban island is served by Novelty Hill
15 Road, which connects to the west to Avondale Road in Redmond, thence south one mile
16 to downtown Redmond and the eastern terminus of State Route 520, a high capacity, high
17 speed freeway. Novelty Hill Road connects to county roads to the east and ultimately to
18 SR 203 approximately 2.5 miles away on the east side of the Snoqualmie River Valley.
19 Plainly, the Bear Creek island is "integrated with the metropolitan road network." It is
20 not necessary to trace the evolution and machinations of adopted County policy to reach
21 this conclusion. Instead, all that is required is to review a scale map of the County. See
22 "Transportation Service Areas Map," Chapter 9, Plan. Far from being remote or
23 isolated³¹ from the metropolitan UGA and the metropolitan road network, the Bear Creek
24 island is a four-minute drive from the former and a seven-minute drive from the latter.³²

25 ²⁹ At the compliance hearing, the County was asked whether the term "rural area" in Policy R-104, as
26 amended, applied to all of the rural area in the County, or if anywhere a distinction was made subdividing
27 the rural area into smaller components. The County answered in the negative. Transcript, at 87-89.

28 ³⁰ The sole exception is the City of Redmond watershed, which abuts the northwestern edge of the FCC.
29 However, as noted above, this watershed does not constitute urban development nor provide a rationale for
30 urbanization of the Bear Creek urban island as a UGA.

31 At least one observer has commented on the presumed "isolated" nature of FCCs:

32 Isolated UGAs are authorized for "new fully contained communities" as a narrow
33 exception to the general requirements that UGAs be contiguous to existing urban areas to
34 preclude leapfrog development...."

35 Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, Seattle University Law
36 Review, Volume 23, No. 1 (1999), at 13 (emphasis added).

37 ³² This assumes driving at a somewhat leisurely 30 miles per hour average on Novelty Hill Road. Applying
38 simple math, the two mile drive to the Redmond city limits (a/k/a UGA boundary) will take about four
39 minutes, while driving another one and a half miles via Avondale Road to SR 520 will add another three
40 minutes. This of course assumes that future traffic from this urban island will not noticeably degrade travel
41 times along Novelty Hill and Avondale Roads. Interestingly, the County's Plan maps Novelty Hill Road,
42 from Avondale to the Bear Creek FCC, as having "Arterial Capacity Needs." Chapter 9, Plan. If
43 significant traffic impacts on these local roads were to occur as a result of this FCC designation and
44 subsequent development, resulting in longer travel times for these two and three and a half mile segments,

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1 Another inescapable fact is that the Bear Creek island will have immediate and ongoing
2 impacts on the surrounding rural area. Again, this conclusion does not depend upon
3 adopted County policy for its source. A review of the record suffices. According to the
4 County's own Hearing Examiner, development of this urban island would create a
5 "devastating effect" on the quiet rural lifestyle and "severe" impacts to surrounding rural
6 residential properties.³³ The rural area to the west of the Bear Creek island includes the
7 main tributary of Bear Creek, a salmon-bearing stream. The County has described this
8 area in the Bear Creek Community Plan as too environmentally sensitive to be urbanized.
9 To the east, between the Bear Creek island and SR 203, Novelty Hill Road and
10 connecting county roads traverse both rural lands and County-designated agricultural
11 resource lands in the Snoqualmie Valley. See Agricultural Lands Map, Chapter 6,
12 Natural Resource Lands, Plan.

13 The development of this urban island would constitute leapfrog development of
14 unprecedented proportions. I do not question the virtues of "clustered design"³⁴ but the
15 fact that the internal configuration of the challenged FCC will be clustered does not cure
16 the fundamental problem that it cannot be contained.

17 I note that RCW 36.70A.350 is a statutory provision that also applies to counties outside
18 the Central Puget Sound Region. As outlined above, determination of compliance with
19 the provisions of RCW 36.70.350 is a fact-based inquiry. The unique facts in this case
20 (i.e., the small size of King County's rural area, the integration of its rural and
21 metropolitan road networks, and the resultant meshing, rather than separation, of the FCC
22 from the economy and housing market of the metropolitan UGA) do not exist elsewhere
23 in the state. The Central Puget Sound Region is unique. It is a metropolitan region, with
24 four counties and eighty-two cities, containing over 56% of the state's population within
25 less than 10% of its land area. This results in a regional density twelve times that of the
26 rest of the state.³⁵ It may be possible to locate an FCC in a much larger, less densely
27 populated county, for example, in eastern Washington, where the rural area is large
28 enough, and the rural road network and potential FCCs are sufficiently remote to
29 practically achieve containment. Simply because the full containment required of an

30 it would further buttress the conclusion that the Bear Creek urban island is not, and cannot be, fully
31 contained.

32 ³³ FOIL PHB, Ex. 15 - (County Hearing Examiner's Report, June 28, 1996), at 9.

33 ³⁴ Clustered development is not a new concept, nor is it a panacea curing all manner of urban planning
34 malaise. See *KCRP v. Kitsap County*, CPSGMHB Case No. 94-3-0005, Final Decision and Order (Oct. 25,
35 1994), at 18, fn. 15. The primary purpose of clustering, at whatever scale, is to configure and locate
36 improvements on site in such a way as to enhance preservation of natural amenities. The primary
37 beneficiaries of clustered development are those who live on site. Those who live off site will be recipients
38 of off-site impacts, primarily traffic, regardless of whether the buildings generating those vehicle trips are
39 clustered or not. In this case, the 3,750 dwelling units planned for clustered developments in this FCC will
40 have traffic impacts indistinguishable in scale from that of a "non-clustered" project of similar unit count.

41 ³⁵ *Bremerton, et al. v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order (Oct. 9,
42 1995), at 29, fn. 12.

1 FCC is not practical in this fast-growing, densely populated metropolitan region does not
2 rule it out in other parts of the state.

3 **Conclusion**

4 Designation of a huge unincorporated urban island that cannot be fully contained because
5 it is inextricably linked to the metropolitan road network, and thereby the housing and
6 employment markets of the metropolitan UGA, violates the anti-sprawl imperative of the
7 Growth Management Act and thwarts legislative intent. It will immediately and
8 perpetually impair rural lifestyles in the surrounding rural area, ignite real estate
9 expectations and speculation about conversion of those rural lands to urban
10 designations,³⁶ hasten future demand for urban level services and infrastructure in the
11 rural area, and ultimately erode the long-term viability of rural resource lands, such as
12 those in the Snoqualmie Valley, that depend upon viable long-term rural areas around
13 them. It will be to the surrounding rural areas as a bonfire to a wheat field.

14 In my view, FOTL has pointed to facts in the record that persuade me that the challenged
15 FCC designation cannot be "fully contained." After a review of the entire record, and in
16 light of the goals and requirements of the Act, I am left with the firm and definite
17 conviction that the County has made a mistake in interpreting and applying the provisions
18 of RCW 36.70A.350.³⁷ Not only was the County's action designating the Bear Creek
19 FCC clearly erroneous, I believe that the continued validity of this designation will
20 substantially interfere with the fulfillment of the goals set forth at RCW 36.70A.020(1),
21 (2) and (6).

22 **APPENDIX**

23 **FINDINGS OF FACT**

- 24
- 25 1. King County designated the Bear Creek UGA in 1994.
 - 26 2. Petitions challenging the County's UGA designations were filed with this Board
27 and consolidated into CPSGMHB Case No. 95-3-0008c.
 - 28 3. The Board's Final Decision and Order the Board affirmed the County's
29 designation of the Bear Creek island UGA because the King County County-wide
Planning Policies directed the Bear Creek area designation as a UGA. FDO, at
41.

36 Designation of this FCC, and its ultimately build-out, will create the factual precedent necessary to
enable the County to re-designate rural land around the perimeter of the Bear Creek urban island to an
urban designation by virtue of being "adjacent to territory already characterized by urban growth." RCW
36.70A.110(1).

37 RCW 36.70A.350 is not the only violation I see with the County's FCC action. For example, I also
believe that the County's action fails to comply with RCW 36.70A.070(preamble) because it creates
internal inconsistency. However, because the most fundamental violation is a statutory one, I have focused
herein on the latter.

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- 1 4. On reconsideration, the Board reversed its conclusion regarding the Bear Creek
2 island UGA and remanded the issue to the County with instructions to rectify it.
3 The Board's Order on Reconsideration provided: "The Bear Creek island UGA is
4 remanded to the County with instructions to either: (a) delete it; or (b) adopt it as
5 a fully contained community [if] it meets the requirements of RCW 36.70A.350;
6 or (c) justify it pursuant to the requirements of RCW 36.70A.110, and the rank
7 order requirements for including lands in the UGA as set forth in the *Bremerton v.*
8 *Kitsap County* decision, at 38-41. Order on Reconsideration, at 16.
- 9 5. The Board did not invalidate the County's designation of the Bear Creek island as
10 a UGA. Order on Reconsideration, at 16.
- 11 6. In response to the Board's Order on Reconsideration the County took the
12 following actions: (a) it did not delete the Bear Creek island UGA (Ex. 104, at 1);
13 (b) it sought to justify its designation of the Bear Creek island UGA pursuant to
14 RCW 36.70A.110 (Ex. 104, at 2-10); (c) it designated the Bear Creek island as an
15 FCC pursuant to RCW 36.70A.350 (Ex. 104, at 1-2; Ex. 93 (Ordinance No.
16 12170); and Ex. 94 (Ordinance No. 12171)); and (d) it challenged the Board's
17 Order in Superior Court (Ex. 104, at 2).
- 18 7. The Board found procedural compliance, but did not reach the question of
19 substantive compliance. A new Petition for Review raised substantive
20 compliance.
- 21 8. The King County Superior Court reversed the Order on Reconsideration and
22 affirmed the Board's FDO.
- 23 9. In *Buckles v. King County*, CPSGMHB Case No. 96-3-0022, which followed the
24 Superior Court decision, the substantive question was not reached due to the
25 Superior Court decision.
- 26 10. The Court of Appeals, Division I, affirmed the Superior Court. *King County v.*
27 *Central Puget Sound Growth Management Hearings Board*, 91 Wn. App. 1
28 (1998).
- 29 11. The Supreme Court reversed the Court of Appeals and remanded the case to the
Board to determine whether the Bear Creek island UGA complied with RCW
36.70A.110 and/or whether the designation of the Bear Creek area as an FCC
complied with RCW 36.70A.350. *King County v. Central Puget Sound Growth
Management Hearings Board*, 138 Wn.2d 161 (1999).
12. The Bear Creek island is separate from, and noncontiguous to, the County's
designated UGA in the western portion of King County.

DECLARATION OF SERVICE (last revised 1/27/00)
CPSGMHB Case No. 95-3-0008c, Vashon-Maury: Bear Creek UGA Portion

I certify that I faxed and/or e-mailed to those checked below -- and also mailed to all listed below-- a copy of the Order on Supreme Court Remand, postage prepaid, in a receptacle for United States mail at Seattle, Washington, on June 15, 2000.

Signed: _____

Karlsson

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