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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

RESOLUTION NO. 05-001

ACTING TO COMPLY WITH THE ORDER FINDING CONTINUING
NONCOMPLIANCE AND CONTINUING INVALIDITY AND RECOMMENDATION
OF GUBERNATORIAL SANCTIONS ISSUED BY THE CENTRAL PUGET
SOUND GROWTH MANAGEMENT HEARINGS BOARD IN CASE NO. 03-3-
0019c CONCERNING THE PROPERTY AT ISLAND CROSSING

WHEREAS, on September 10, 2003, the County Council adopted Amended Ordinance No. 03-063 as part of the 2003 docket process established pursuant to Chapter 30.74 SCC to change the land use designation of 110.5 acres at Island Crossing from Riverway Commercial Farmland and Rural Freeway Service to Urban Commercial on the comprehensive plan and from Rural Freeway Service and Agriculture-10 Acre to General Commercial on the zoning map, and to place the property in the urban growth area for the City of Arlington; and

WHEREAS, there had been early and continuous public participation in the review of the provision of Amended Ordinance No. 03-063; and

Whereas, Section 6 of Amended Ordinance No. 03-063 contained a Severability/Savings Clause providing in part that "if any provision of this ordinance is held invalid or unconstitutional, then the provision in effect prior to the effective date of this ordinance shall be in full force and effect for that individual provision as if this ordinance had never been adopted"; and

WHEREAS, 1000 Friends of Washington, the Stillaguamish Flood Control District, Agriculture for Tomorrow, the Pilchuck Audubon Society and the director of the Washington State Department of Community, Trade, and Economic Development appealed the adoption of Amended Ordinance No. 03-063 to the Central Puget Sound Growth Management Hearings Board (Board) in 1000 Friends of Washington, et al. v. Snohomish County (Island Crossing), Case No. 03-3-0019c, in which Dwayne Lane appeared as an intervenor; and

WHEREAS, on March 22, 2004, the Board issued its Final Decision and Order (FDO) in Island Crossing; and

WHEREAS, the Board concluded that Amended Ordinance No. 03-063 did not comply with the GMA by redesignating natural resource land and rural land to allow urban development, and by including that property within the urban growth area (UGA) of the City of Arlington without a land capacity analysis

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supporting the need for the expansion of the UGA, determined that the ordinance was invalid for violating the goals of the Growth Management Act, and remanded the ordinance to the County to take appropriate legislative action; and

WHEREAS, the Board recognized in *Hensley VI* (Order Finding Validity of the Prior Plan and Regulations During the Remand Period and Rescinding Invalidity, No. 03-3-0009c, October 13, 2003) at 3, a copy of which is attached hereto as Exhibit A and incorporated by reference, that upon a finding of invalidity, a savings clause, by operation of law, causes the invalid provisions of an ordinance (Ordinance Nos. 03-001 and 03-002 in that case) to be changed back to the previous plan and regulations which had been in place as if the invalidated provisions were never adopted; and

WHEREAS, on March 30, 2004, Snohomish County filed a motion in the *Island Crossing* case requesting that the Board recognize the effect of the Severability/Savings clause in Section 6 of Amended Ordinance No. 03-063 as reinstating the prior designations on the Island Crossing property of Rural Freeway Service and Riverway Commercial Farmland on the comprehensive plan and Rural Freeway Service and Agriculture - 10 Acre on the zoning map; and

WHEREAS, on April 9, 2004, the Board issued an Order Rescinding Findings of Noncompliance and Invalidity in *Island Crossing* a copy of which is attached hereto as Exhibit B and incorporated by reference, in which it concluded and ordered:

The Board has reviewed the land use and zoning designations that were revised by the operation of Section 6 of Ordinance No. 03-063 and finds and includes (sic) that those prior policies (footnote omitted) are valid during the period of remand.

Having reviewed and considered the Corrected FDO, the County's Motion, the CTED Response, the GMA and the Board's Rules of Practice and Procedure, as well as the prior land use and zoning provisions that were revived by the operation of Section 6 of Ordinance No. 03-063, the Board finds and concludes that these revised designations and zoning are valid pursuant to RCW 36.70A.302(4).

The Board **rescinds** the findings of noncompliance and invalidity that were adopted in the FDO and issues Snohomish County a **Finding of Compliance** with respect to the Riverway Commercial Farmland and Rural Freeway

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Service land use designations and the Agriculture-10 Acres (sic) and Rural Freeway Service Zoning designations for Island Crossing; and

WHEREAS, on remand, the County conducted a public hearing and received public testimony, which included a report from a consultant documenting a lack of large parcels in the Arlington UGA, as well as information on the historical uses of the subject property; and

WHEREAS, on May 24, 2004, in an effort to comply with the Board's FDO, the County Council adopted Amended Emergency Ordinance No. 04-057 which, based on the new record, adopted new findings but again redesignated the Island Crossing property to a comprehensive plan designation of Urban Commercial and a zoning map designation of General Commercial and placed it within the Arlington urban growth area exactly as Amended Ordinance No. 03-063 had done; and

WHEREAS, Amended Emergency Ordinance No. 04-057 contained a Severability/Savings clause in Section 6 that was identical to the one in Amended Ordinance No. 03-063 discussed above; and

WHEREAS, on June 14, 2004, the Board conducted a compliance hearing regarding Amended Emergency Ordinance No. 04-057; and

WHEREAS, on June 24, 2004, the Board issued an Order Finding Continuing Noncompliance and Continuing Invalidity and Recommending Gubernatorial Sanctions in which it concluded that the County was no longer out of compliance regarding the lack of a buildable lands report (at p.22), but ruled that Amended Emergency Ordinance No. 04-057 was both noncompliant with the GMA and invalid; and

WHEREAS, on July 6, 2004, Snohomish County filed a motion for reconsideration with the Board in which it requested, in part, that the Board issue a finding of compliance and validity for the Island Crossing property, recognizing the effect of the Severability/Savings clause in Section 6 of Amended Emergency Ordinance No. 04-057 to reinstate the prior designations on that property of Rural Freeway Service and Riverway Commercial Farmland on the comprehensive plan and Rural Freeway Service and Agricultural 10-Acre on the zoning map; and

WHEREAS, on July 22, 2004, the Board issued an Order Granting Reconsideration [Revising Finding of Fact 17] and Denying Motion to Enter a Determination of Validity Pursuant to RCW 36.70A.302(4) in which it refused to issue a finding of compliance and validity based upon the Severability/Savings clause in Amended Emergency Ordinance No. 04-057; and

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WHEREAS, because of the severability/savings clause in Section 6 of Amended Emergency Ordinance No. 04-057, the land use designations on the comprehensive plan are Rural Freeway Service and Riverway Commercial Farmland, and on the zoning map are Rural Freeway Service and Agriculture-10 Acre on the zoning map, exactly as they were prior to the adoption of Amended Ordinance No. 03-063; and

WHEREAS, on July 30, 2004, Governor Gary Locke sent a letter (a copy of which is attached as Exhibit C and incorporated by reference) to Snohomish County Council Chair John Koster indicating his wish not to impose sanctions upon Snohomish County in response to the Board's June 24, 2004, order; and

WHEREAS, on August 3, 2004, a representative of the Governor's office called Council Chair John Koster and stated at that time that sanctions would not be imposed; and

WHEREAS, on September 30, 2004, the Board issued a Finding of Compliance in Case No. 03-2-0020 (*CTED II*), a copy of which is attached hereto as Exhibit D and incorporated by reference, based upon the operation of law of savings clause in Ordinance No. 03-104 (which was identical to that in Amended Emergency Ordinance No. 04-057) and the County's subsequent adoption of Resolution No. 04-023 recognizing the legal effect of that severability/savings clause; and

WHEREAS, on November 30, 2004, the Honorable Ellen J. Fair entered an Order and Judgment in Snohomish County Case No. 03-2-12871-4, Snohomish County, et al. v. Hensley, et al., a copy of which is attached hereto as Exhibit E and incorporated by reference, in which she ruled (at paragraphs 13 and 18) that the invalidated provisions of Ordinance Nos. 03-001 and 03-002 involved in the *Hensley VI* case discussed above, were again effective upon her reversal of the Board's decision in that case; and

WHEREAS, by letter dated December 27, 2004, (a copy of which is attached as Exhibit F and incorporated by reference), the Governor advised State Treasurer Mike Murphy to withhold from Snohomish County, effective March 1, 2005, its share of motor vehicle fuel tax revenue, estimated to be approximately \$9.2 Million; and

WHEREAS, in his December 27, 2004, letter, Governor Locke noted Snohomish County had "taken no action to address the noncompliance" of the Island Crossing property; and

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WHEREAS, Snohomish County made it clear through its Severability/Savings clause in both Amended Ordinance No. 03-063 and Amended Emergency Ordinance No. 04-057 that it did not intend to remain noncompliant and invalid with respect to the designations of the Island Crossing property; and


WHEREAS, three times in the last fifteen months, including once in the *Island Crossing* case itself, the Board has recognized the legal effect of the Severability/Savings clause language in Snohomish County ordinances to restore prior land use and zoning designations following a finding of invalidity, and yet the Board in its June 24, 2004, and July 22, 2004, orders refused to acknowledge the validity and effect of the Severability/Savings clause in Amended Emergency Ordinance No. 04-057 to restore the prior land use designations on the Island Crossing property; and

WHEREAS, Snohomish County wishes to make clear its intentions that the land use designations on the Island Crossing property not be out of compliance and invalid with the Board rulings during the pendency of the court of appeals in the *Island Crossing* case.

NOW, THEREFORE, IT IS RESOLVED that Snohomish County hereby states its intention that the property at Island Crossing retains the land use designations (Rural Freeway Service and Riverway Commercial Farmland on the comprehensive plan, and Rural Freeway Service and Agriculture-10 Acre on the zoning map) that were in effect prior to the adoption of Amended Emergency Ordinance No. 04-057, and that Snohomish County does not intend to take any further legislative action regarding that property unless and until the Board's holdings in Case No. 03-3-0019c are reversed by a court of competent jurisdiction.

APPROVED this 5th day of January, 2005.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington


Chairperson

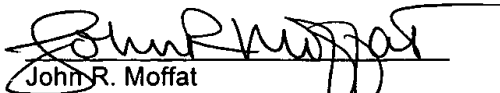
ATTEST:


Asst. Clerk of the Council

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Approved as to form:


John R. Moffat
Sr. Deputy Prosecuting Attorney

Resolution No. 05-001

D-1

ACTING TO COMPLY WITH THE ORDER FINDING CONTINUING NONCOMPLIANCE AND
INVALIDITY AND RECOMMENDATION OF GUBERNATORIAL SANCTIONS ISSUED BY THE
CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD IN CASE NO. 03-3-
0019c CONCERNING THE PROPERTY AT ISLAND CROSSING - 6

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

OCT 14 2003

CORINNE HENSLEY and 1000 FRIENDS
OF WASHINGTON,

Case No. 03-3-0009c

PROSECUTOR
FOR SNOHOMISH
CIVIL DIVISION

Petitioners,

(Hensley VI)

TIME: _____

v.

SNOHOMISH COUNTY,

ORDER FINDING VALIDITY
OF THE PRIOR PLAN AND
REGULATIONS DURING THE
REMAND PERIOD AND
RESCINDING INVALIDITY

Respondent,

and

MARK VERBARENDSE, MBA/SCCAR,
SULTAN and MARYSVILLE SCHOOL
DISTRICTS, MacANGUS RANCHES INC.,
AND YARMUTH-DAVIS PARTNERSHIP

Intervenors.

I. PROCEDURAL BACKGROUND

On September 22, 2003, 2001 the Central Puget Sound Growth Management Hearings Board (the **Board**) entered a Final Decision and Order (**FDO**) in the above-captioned case. The Board found certain provisions of Ordinance Nos. 03-001 and 03-002 both noncompliant and invalid. The FDO set a compliance deadline of March 11, 2004, and directed Snohomish County (the **County**) to file a Statement of Actions Taken to Comply (**SATC**) within ten days of taking the legislative compliance actions.

The Board's September 22, 2003 FDO provided, in relevant part:

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

Snohomish County's adoption of Ordinance No. 03-001, as it relates to the County's designation of a Type 3 LAMIRD on 9-acres of land, as discussed

1 *supra*, does not comply with the requirements of RCW 36.70A.070(5)(d)(iii), and
2 was not guided by RCW 36.70A.020(2).
3

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

10 FDO, at 50.
11

12 On October 2, 2003, the Board received "Snohomish County's Motion for Determination
13 of Validity Pursuant to RCW 36.70A.302(4)" (**County Motion**); and "Intervenor
14 MacAngus Ranches, Inc.'s Joinder in Snohomish County's Motion for Determination of
15 Validity Pursuant to RCW 36.70A.302(4)" (**MacAngus Motion**).
16

17 As of the date of this Order, the Board had not received any response or objection to the
18 County or MacAngus Motions.
19

20
21 **II. DISCUSSION OF MOTION Re: Validity of Prior Plan and Regulations**
22

23 As noted *supra*, the Board's FDO found that Snohomish County's adoption of Ordinance
24 Nos. 03-001 and 03-002 **did not comply** with the provisions of RCW 36.70A.170, and
25 .070(5)(d)(iii) and .020(2), as they related to the agricultural land de-designation and
26 creation of a LAMIRD. Additionally, the Board determined that these Ordinances were
27 **invalid** as they related to the agricultural land de-designation and LAMIRD since they
28 substantially interfered with the fulfillment of Goals 2 and 8 (RCW 36.70A.020(2) and
29 (8).
30

31
32 Snohomish County's Motion relies upon RCW 36.70A.302(4) to request that due to the
33 County's savings clauses, the invalid provisions of its action, be reinstated and the prior
34 valid designations be in effect during the remand period. RCW 36.70A.302(4) provides:
35

36
37 If the ordinance that adopts a plan or development regulation under this
38 chapter includes a savings clause intended to revive prior policies or
39 regulations in the event the new plan or regulations are determined to be
40 invalid, the board shall determine under subsection (1) of this section
41 whether the prior policies or regulations are valid during the period of
42 remand.
43

44 The Board finds:
45

- 46 1. Ordinance Nos. 03-001 and 03-002 both contain savings clauses at sections 6 of
47 the Ordinances, respectively.
48

- 1
2 2. The savings clause, in both Ordinances states:
3

4 Provided, however, that if any section, sentence, clause or
5 phrase of this ordinance is held to be invalid by the Board
6 or a court of competent jurisdiction, the section, sentence,
7 clause or phrase in effect prior to the effective date of this
8 ordinance shall be in full force and effect for that individual
9 section, sentence, clause or phrase as if this ordinance had
10 never been adopted.
11

12 (See Ordinance No. 03-001, Section 6 – Ex. 271 and Ordinance No. 03-002,
13 Section 6 – Ex. 270)
14

- 15
16 3. The Board ruled that Ordinances 03-001 and 03-002 were invalid regarding the
17 agricultural land de-designation and LAMIRD on September 22, 2003.
18
19 4. The savings clause in both ordinances caused the plan and regulations regarding
20 the two invalid provisions to be changed, by operation of law, back to the
21 previous plan and regulation in place as if the invalidated ordinances were never
22 adopted.
23
24 5. Prior to enactment of Ordinance Nos. 03-001 and 03-002, the land use and zoning
25 designation on the affected agricultural land was Upland Commercial Farmland
26 and A-10, respectively. The prior land use designation on the affected LAMIRD
27 was Rural Residential – 5. These designations were valid under the provisions of
28 the GMA.
29
30 6. These savings clauses, therefore had the effect of reinstating the prior GMA
31 compliant plan and zoning designations.
32
33

34 Based upon these findings, the Board concludes:
35

- 36
37 1. The prior designations have been revived and reinstated, by operation of the law,
38 through the savings clauses of Ordinance Nos. 03-001 and 03-002.
39
40 2. These reinstated provisions remain in effect and are valid and compliant during
41 the period of remand (September 22, 2003 through compliance proceedings).
42
43 3. The 216 acres of agricultural land affected by the County's action and Board's
44 FDO is therefore currently designated as Upland Commercial Farmland on the
45 County's FLUM and zoned Agricultural – 10. The 9 acre LAMIRD affected by
46 the County's action and Board's FDO is therefore designated as Rural Residential
47 – 5 on the County's FLUM.
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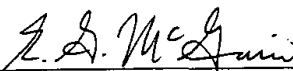
III. ORDER

Having reviewed its September 22, 2003 FDO, the Motion of the County and Intervenor, and relevant provisions of the GMA, and considering the findings of fact and conclusions of law contained in Sections II of this Order, *supra*, the Board ORDERS:

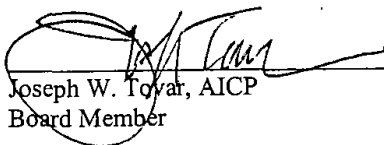
- The 216 acres of agricultural land affected by the County's action (MacAngus amendment), the Board's FDO and the savings clause is currently designated as Upland Commercial Farmland on the County's FLUM and zoned Agricultural – 10.
- The 9 acre LAMIRD affected by the County's action (Verbarendse amendment), the Board's FDO and the savings clause is currently designated as Rural Residential – 5 on the County's FLUM.
- Pursuant to RCW 36.70A.302(4), these designations are **deemed valid** during the period of remand and the Board **rescinds the Determination of Invalidity**.
- The Compliance schedule, as set forth in the Board's September 22, 2003 FDO remains in effect.

So ORDERED this 13th day of October 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD



Edward G. McGuire, AICP
Presiding Officer



Joseph W. Tovar, AICP
Board Member

NOTICE: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a petition for reconsideration pursuant to WAC 242-02-832.

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

RECEIVED

APR 13 2004

PROSECUTOR GENERAL
FOR SNOHOMISH COUNTY
CIVIL DIVISION
TIME: _____

Case No. 03-3-0019c

1000 FRIENDS OF WASHINGTON,)
STILLAGUAMISH FLOOD CONTROL)
DISTRICT, AGRICULTURE FOR)
TOMORROW, PILCHUCK AUDUBON)
SOCIETY;)

ORDER RESCINDING
FINDINGS OF
NONCOMPLIANCE AND
INVALIDITY

and

THE DIRECTOR OF THE STATE OF)
WASHINGTON DEPARTMENT OF)
COMMUNITY, TRADE AND)
ECONOMIC DEVELOPMENT,)

Petitioners,

v.

SNOHOMISH COUNTY,

Respondent,

and

DWAYNE LANE,

Intervenor.

I. BACKGROUND

On March 22, 2004, the Central Puget Sound Growth Management Hearings Board (the Board) entered a Final Decision and Order (the FDO) in the above captioned case. The FDO provided, in part:

1. With respect to adoption of Ordinance No. 03-063, the Board issues Snohomish County a finding of noncompliance with RCW 36.70A.020(1), (2), (8), and (10) and .040, .060(1), .110, .170(1)(a) and .215.

EXHIBIT B

1
2 2. The Board enters a **finding of invalidity** with respect to the following
3 portions of Ordinance No. 03-063:
4

- 5
- 6 • The portion that expanded the Arlington urban growth area by 110.5
7 acres to include the Island Crossing area.
 - 8 • The portion that replaced the 75.5 acre area of Riverway Commercial
9 Farmland designation with an Urban Commercial designation
 - 10 • The portion that rezoned the 75.5 acres of A-10 to General
11 Commercial (GC)
 - 12 • The portion that replaced the 35.5 acre area of Rural Freeway Service
13 with an Urban Commercial designation
 - 14 • The portion that rezoned the 35.5 acres of Rural Freeway Service
15 (RFS) to General Commercial
16

17 FDO, at 40-41.
18

19
20 On March 30, 2004, the Board received "Snohomish County's Motion for Determination
21 of Validity Pursuant to RCW 36.70A.302(4)" (the **County's Motion**), which provided in
22 part:
23

24 As the Board noted, this ordinance [Ordinance No. 03-063] includes a
25 savings clause intended to revive prior policies or regulations in the event
26 the new plan or regulations are determined invalid. Snohomish County
27 requests that the Board enter an order determining that these prior policies
28 and regulations are valid as required by RCW 36.70A.302(4).
29

30 County's Motion, at 1.
31

32 The County further states:
33

34 The County is concerned that uncertainty of the validity of County land
35 use designations and zoning during the period of remand could adversely
36 affect the availability of grant funds for planning and transportation
37 activities. Confirmation from this Board that the prior land use
38 designations and zoning are valid is essential for the County to remain
39 competitive for these funds.
40

41
42 County's Motion, at 2-3.
43

44 On March 31, 2004, the Board issued a "Notice of Corrected Final Decision and Order"
45 which listed a number of corrections to the FDO and attached a "Corrected FDO" (the
46 **Corrected FDO**).
47
48
49
50

1 On April 7, 2004, the Board received "CTED's Response to Snohomish County's Motion
2 for Determination of Validity Pursuant to RCW 36.70A.302(4)" (the **CTED Response**),
3 which provides in part:
4

5 CTED has reviewed the prior policies and regulations that would be
6 revived if the savings clause in Snohomish County Amended Ordinance
7 No. 03-063 were declared valid. CTED does not object to the Board
8 granting the County's motion.
9

10 CTED Response, at 2.
11

12 On April 9, 2004, the Presiding Officer asked Susannah Karlsson, the Board's
13 Administrative Officer, to contact the other parties to determine whether they wished to
14 file a response to the County Motion. Ms. Karlsson contacted counsel for 1000 Friends
15 and Intervenor Dwayne Lane, both of whom indicated they did not wish to file a
16 response.
17

18 II. DISCUSSION

19 A. Applicable Law

20 RCW 36.70A.302(4) provides:
21

22 If the ordinance that adopts a plan or development regulation under this
23 chapter includes a savings clause intended to revive prior policies or
24 regulations in the event the new plan or regulations are determined to be
25 invalid, the board shall determine under subsection (1) of this section
26 whether the prior policies or regulations are valid during the period of
27 remand.
28

29 WAC 242-02-534(1) provides in part:
30

31 A party served with a motion shall have ten days from the date of receipt
32 of the motion to respond to it, unless otherwise directed by the presiding
33 officer.
34

35 B. Conclusions

36 The only Response to the County's Motion, by CTED, was timely filed. Neither CTED,
37 nor any other party to this matter, objected to the County's Motion. The Board has
38 reviewed the land use and zoning designations that were revived by the operation of
39
40
41
42

1 Section 6 of Ordinance No. 03-063 and finds and includes that those prior policies¹ are
2 valid during the period of remand.
3

4 **III. ORDER**

5
6 Having reviewed and considered the Corrected FDO, the County's Motion, the CTED
7 Response, the GMA and the Board's Rules of Practice and Procedure, as well as the prior
8 land use and zoning provisions that were revived by the operation of Section 6 of
9 Ordinance No. 03-063, the Board finds and concludes that these revived designations and
10 zoning are valid pursuant to RCW 36.70A.302(4).
11

12
13 The Board **rescinds** the findings of noncompliance and invalidity that were adopted in
14 the FDO and issues Snohomish County a **Finding of Compliance** with respect to the
15 Riverway Commercial Farmland and Rural Freeway Service land use designations and
16 the Agriculture-10 Acres and Rural Freeway Service zoning designations for Island
17 Crossing.
18

19 So ORDERED this 9th day of April 2004.
20

21 CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD
22

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25
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27 Bruce C. Laing, FAICP
28 Board Member

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32 Edward G. McGuire, AICP
33 Board Member

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38 Joseph W. Tovar, FAICP
39 Board Member
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48 ¹ The revived land use plan designations are Riverway Commercial Farmland and Rural Freeway Service
49 and the revived zoning is Agriculture-10 Acres and Rural Freeway Service. Findings of Fact 15 and 16,
50 Corrected FDO, at 10.

GARY LOCKE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

July 30, 2004

The Honorable John Koster
Chair, Snohomish County Council
3000 Rockefeller Avenue
Everett, WA 98201

Dear Chairman Koster:

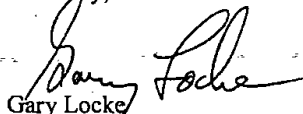
Recently the Central Puget Sound Growth Management Hearings Board (Board) issued an Order Finding Continuing Noncompliance and Continuing Invalidity against Snohomish County. The Board also recommended sanctions against the County.

It is my sincere desire to avoid the imposition of sanctions and instead work together on a solution. I believe that the County has the tools available to bring it into compliance and address the issues raised by the Board.

It is important that local governments comply with the Growth Management Act, which establishes a framework for protection of certain statewide interests. One of these interests is the protection of agricultural lands of long-term commercial significance. It is critical to the success of agriculture in our state that counties protect and preserve agricultural lands and economies. The Act provides local governments with the tools to accomplish this while accommodating population growth. In Snohomish County, agriculture is clearly a significant and critical component of the economy and quality of life.

Again, it's my desire to resolve this matter without resorting to sanctions, and I look forward to working toward that end in the near future.

Sincerely,


Gary Locke
Governor

cc: The Honorable Aaron Reardon, Snohomish County Executive


EXHIBIT C

JCC

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

RECEIVED

OCT 01 2004

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6 DIRECTOR OF THE STATE)
7 DEPARTMENT OF COMMUNITY,)
8 TRADE AND ECONOMIC)
9 DEVELOPMENT,)
10)
11)
12)

Case No. 03-3-0020)
(CTED II))
TIME: _____)

11 Petitioner,)
12)
13)

14 v.)
15)

16 SNOHOMISH COUNTY,)
17)
18)

FINDING OF COMPLIANCE

18 Respondent,)
19)
20)

20 and)
21)
22)

22 SNOHOMISH SCHOOL DISTRICT NO.)
23 201,)
24)
25)

25 Intervenor.)
26)
27)

I. BACKGROUND

28
29
30
31 On May 4, 2004, the Central Puget Sound Growth Management Hearings Board (the
32 Board) issued its Final Decision and Order (FDO) in the matter of *Department of*
33 *Community, Trade and Economic Development v. Snohomish County (CTED II)*,
34 CPSGMHB Case No. 03-3-0020. The Board found noncompliance and the FDO, entered
35 a **determination of invalidity** for the Ordinance, and **remanded** the Ordinance No. 03-
36 104 (amending the County's GMA Plan and Development Regulations) back to the
37 County with direction to take the necessary legislative actions to comply with the Act.
38 The FDO provided:
39

40 Based upon review of the Petition for Review, the briefs and exhibits
41 submitted by the parties, having considered the arguments of the parties,
42 and having deliberated on the matter, the Board ORDERS:
43
44

45 Snohomish County's enactment of Ordinance No. 03-104,
46 amending the County's Plan and implementing development
47 regulations (*i.e.*, Land Use Policy LU 1.C.4 and Utilities Policy UT
48 3.C.1, and SCC 7.44.03, SCC 30.29.110 and SCC 30.29.120] was
49 **clearly erroneous**. Ordinance No. 03-104 does **not comply** with
50 the requirements of RCW 36.70A.110(4).

1
2 The Board **remands** Ordinance No. 03-104 to the County with the
3 following directions:
4

- 5
6 1. By no later than **September 3, 2004**, the County shall take
7 appropriate legislative action to bring its Plan and
8 implementing development regulations into compliance with
9 the goals and requirements of the GMA [RCW
10 36.70A.110(4)], as interpreted and set forth in this Final
11 Decision and Order (FDO).
12
13 2. By no later than **September 10, 2004**, the County shall file
14 with the Board an original and four copies of a Statement of
15 Action Taken to Comply (SATC) with the GMA, as
16 interpreted and set forth in this FDO. The SATC shall attach
17 copies of legislation enacted in order to comply. The County
18 shall simultaneously serve a copy of the SATC, with
19 attachments, on Petitioner and Intervenor. By this same date,
20 the County shall file a "**Remand Index**," listing the
21 procedures and materials considered in taking the remand
22 action.
23
24 3. By no later than **September 20, 2004**,¹ the Petitioner or
25 Intervenor may file with the Board an original and four copies
26 of Comments on the County's SATC. Petitioner and
27 Intervenor shall each simultaneously serve a copy of its
28 Comments on the County's SATC on the County and each
29 other.
30
31 4. By no later than **September 27, 2004**, the County may file
32 with the Board an original and four copies of the County's
33 Reply to Comments. The County shall simultaneously serve a
34 copy of such Reply on Petitioner and Intervenor.
35
36
37

38 Pursuant to RCW 36.70A.330(1), the Board hereby schedules the
39 **Compliance Hearing** in this matter for **10:00 a.m. September 30, 2004**
40 at the Board's offices. With the consent of the parties, the compliance
41 hearing may be conducted telephonically.
42

43 If the County takes legislative compliance actions prior to the September
44 3, 2004 deadline set forth in this Order, it may file a motion with the
45 Board requesting an adjustment to this compliance schedule.
46
47
48

49
50 ¹ September 20, 2004 is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. See RCW 36.70A.330(2).

1 CTED II, FDO, at 12-13; the determination of invalidity is entered in the FDO, at 11-12.
2

3 On September 10, 2004, the Board received "Snohomish County's Statement of Actions
4 Taken to Comply" (SATC), with four attached exhibits [Attachments A, B, C and D],
5 including a copy of Resolution No. 04-023 [Attachment A].
6

7 The Board did not receive any comment on the SATC from Petitioner CTED nor
8 Intervenor School District.
9

10 On September 28, 2004 the Board received a letter (9/28/04 Letter), via facsimile, from
11 the County indicating that "the parties . . . have agreed to conduct the September 30, 2004
12 compliance hearing telephonically." 9/28/04 Letter, at 1.
13

14 On September 30, 2004, the Board conducted the compliance hearing telephonically.
15 Present for the Board were Board Members Edward G. McGuire, Margaret A. Pageler
16 and Bruce C. Laing. Jason J. Cummings represented and participated on behalf of
17 Snohomish County. Alan D. Copsey participated on behalf of Petitioner. Intervenor
18 Snohomish School District did not participate in the compliance proceeding.
19

20 II. DISCUSSION

21 Ordinance No. 03-104 amended the County's GMA Plan and development regulations to
22 permit rural churches and schools to connect to sewer service contrary to the provisions
23 of RCW 36.70A.110(4).
24

25 On September 1, 2004 Snohomish County adopted Resolution No. 04-023. The
26 Resolution provides:
27

28 The County Council recognizes the Final Decision and Order issued by
29 the Board and acknowledges the legal effect of the Severability Clause
30 contained in Ordinance No. 03-104. If it has not already been
31 accomplished, the County Code Reviser is directed to update the County
32 Code to reflect the invalidity of Ordinance No. 03-104 and re-instate the
33 former provisions. The Clerk of the Council is also directed to reflect the
34 Board's Final Decision and Order where appropriate in the GPPs. The
35 County Council further directs the Clerk of the Council to publish this
36 resolution.
37

38 Resolution No. 04-023, at 3. Attachment B to the SATC contained a copy of the re-
39 instated provisions of the County's GMA Plan and Attachment C contained the re-
40 instated provisions to the County Code - Snohomish County Code Sections 7.44.030,
41 30.29.110 and 30.29.120. Attachment D contained a copy of the published legal notice
42 for Resolution 04-023. See SATC and Attachments.
43

44 In its SATC, at 2-3, the County states,
45
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1 Since, by operation of law, the amendments authorized by Ordinance No.
2 03-104 were rendered ineffective when the Board made its determination
3 of invalidity, the County concluded that no action it could take would
4 provide greater compliance with the GMA than has already been achieved
5 with the savings clause. Resolution No. 04-023 acknowledges this,
6 *informs the public of the effect*, and ensures that the text of both the GPPS
7 and development regulations reverted to their prior provisions.
8

9
10 (Emphasis provided).

11 All parties to the telephonic compliance hearing agree that the prior provisions of the
12 County's GMA Plan and development regulation have been reinstated and that the public
13 has been informed of this action via adoption of Resolution No. 04-023.
14

15 The Board concurs. The Board recognizes that the savings clause operates to revive prior
16 provisions in the County's Plan and development regulations. However, operation of the
17 savings clause typically escapes the public view. The resolution provides not only
18 acknowledgement of the effect of the Board's FDO, but more importantly, it also informs
19 the public that the amendments contained in Ordinance No. 03-104 are ineffective and
20 are no longer part of the Plan or County Code.
21

22 III. FINDINGS and CONCLUSIONS

23 Findings of Fact:

24
25 Based upon the submittals of the parties, comments offered at the compliance hearing,
26 and the Board's discussion *supra*, the Board finds:
27

- 28 1. RCW 36.70A.330 requires the Board to conduct a compliance hearing.
- 29 2. The Board's May 4, 2004 FDO found Ordinance No. 03-104 noncompliant and
30 invalid; it was remanded and Snohomish County was directed to take appropriate
31 legislative action to achieve compliance with the Act, according to a compliance
32 schedule. *CTED II*, FDO, at 11-13.
- 33 3. On September 1, 2004, the County adopted Resolution No. 04-023. The
34 Resolution acknowledges the Board's FDO and operation of the savings clause in
35 Ordinance No. 03-104. The Resolution was published. The prior provisions of
36 the County's GMA Plan and development regulations have been reinstated,
37 pursuant to the Board's remand. *See* SATC, at 1-5, and Attachments A, B, C and
38 D.
39
- 40 4. On September 10, 2004, consistent with the compliance schedule, the City filed a
41 timely SATC, with attachments. *Id.*
42
- 43 5. No comments on the SATC were received from Petitioner or Intervenor.
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2 6. The Board conducted the compliance hearing, telephonically, on September 30,
3 2004.
4

5 Conclusions of Law:

6 Based upon the submittals of the parties, comments at the compliance hearing, and the
7 Board's discussion and findings of fact 1-6, *supra*, the Board concludes:
8

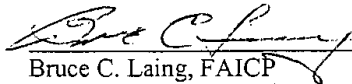
- 9
10 1. The County's enactment of Resolution 04-023 acknowledges the Board's FDO
11 and the operation of the savings clause in noncompliant and invalid Ordinance
12 No. 03-104. The prior provisions to the County's Plan and development
13 regulations, regarding the extension of sewers in the rural areas are reinstated.
14 Notice of this action has been published to inform the public that the provisions of
15 Ordinance No. 03-104 are ineffective.
16
17 2. The County's enactment of Resolution No. 04-023 **complies** with the goals and
18 requirements of the Growth Management Act as set forth and interpreted in the
19 Board's May 4, 2004 FDO. Invalidity, as to these provisions, is **rescinded**.
20

21 IV. RECISSION OF INVALIDITY and FINDING OF COMPLIANCE

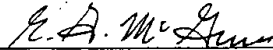
22
23 Based upon review of the Board's May 4, 2004 FDO, Snohomish County's SATC
24 (including Attachments A through D), the arguments and comments of the parties at the
25 compliance hearing, and the findings of fact 1-6 and conclusions of law, *supra*, the Board
26 **rescinds invalidity** and finds that Snohomish County has **complied** with the goals and
27 requirements of the GMA as set forth in the aforementioned Board Order. The Board
28 therefore enters **Finding of Compliance** for Snohomish County re: CPSGMHB Case No.
29 03-3-0020.
30

31 So ORDERED this 30th day of September 2004.
32

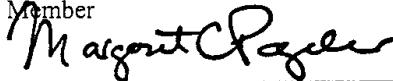
33
34 CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD
35

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37 
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39 Bruce C. Laing, FAICP
40 Board Member

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42 
43

44 Edward G. McGuire, AICP
45 Board Member

46
47 
48

49 Margaret A. Pageler
50 Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300.

CPSGMHB Case No. 03-3-0020

Office of Community Development II v. Snohomish County

DECLARATION OF SERVICE:

I certify that I mailed a copy of the **Finding of Compliance** to the persons and addresses listed hereon, postage prepaid, in a receptacle for United States mail at Seattle, Washington, on **September 30, 2004**.

Signed: _____

J. Karlsson

P

R 425-388-6330 fax 388-6333

Director of the Dept. of Community Trade and
Economic Development
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128 10th Ave. SW
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Elizabeth Thomas, Grace Yuan and Denise Lietz
Preston Gates and Ellis
925 4th Avenue, Ste. 2900
Seattle, WA 98104-1158

FILED

NOV 30 2004

PAM L. DANIELS
SNOHOMISH COUNTY CLERK
EX - OFFICIO CLERK OF COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

SNOHOMISH COUNTY,

Petitioner,

vs.

CORINNE R. HENSLEY, et al.,

Respondents.

NO. 03-2-12871-4

ORDER AND JUDGMENT

(Consolidated with No. 03-2-12932-0
and No. 03-2-12966-4)

MARK VERBARENDSE,

Petitioner,

vs.

CENTRAL PUGET SOUND GROWTH
MANAGEMENT HEARINGS BOARD,
et al.,

Respondents.

MacANGUS RANCHES, INC.,

Petitioner,

vs.

CENTRAL PUGET SOUND GROWTH
MANAGEMENT HEARINGS BOARD,
et al.,

Respondents.

1 **I. JUDGMENT SUMMARY**

2 Pursuant to RCW 4.64.030, this judgment shall be summarized as follows:

3 **Judgment Debtor:** 1000 Friends of Washington
4 **Judgment Debtor's Attorney:** John Zilavy
5 **Judgment Creditor 1:** Snohomish County
6 **Judgment Creditor 1 Attorneys:** Janice E. Ellis, Snohomish County
7 Prosecuting Attorney, and Shawn J.
8 Aronow, Deputy Prosecuting Attorney
9 **Judgment Creditor 2:** Mark Verbarendse
10 **Judgment Creditor 2 Attorney:** Molly Lawrence, Buck and Gordon
11 **Judgment Creditor 3:** MacAngus Ranches, Inc.
12 **Judgment Creditor 3 Attorney:** Steven Jones, Marten Law Group
13 **Amount of Judgment Creditor 1:** \$411.85 (Statutory attorney fees
14 (\$200.00) under RCW 4.84.080, costs
15 (\$110.00 filing fee); and \$101.85 cost of
16 Record).
17 **Amount of Judgment Creditor 2:** \$411.85 (Statutory attorney fees
18 (\$200.00) under RCW 4.84.080, costs
19 (\$110.00 filing fee), and \$101.85 cost of
20 Record).
21 **Amount of Judgment Creditor 3:** \$411.85 (Statutory attorney fees
22 (\$200.00) under RCW 4.84.080, costs
23 (\$110.00 filing fee), and \$101.85 cost of
24 Record).
25 **Total Amount of Judgment:** \$1,235.55
26 **Interest Owed to Date of Judgment:** \$ -0-

16 **II. HEARING**

17 This matter came on before the Honorable Ellen J. Fair of the Snohomish
18 County Superior Court for hearing under the Administrative Procedures Act
19 (ch. 34.05 RCW) on October 21, 2004. This is an appeal from the decisions of the
20 Central Puget Sound Growth Management Hearings Board ("Board") entitled
21 Corrine Hensley and 1000 Friends of Washington v. Snohomish County, et. al.,
22 under Case No. 03-3-0009c. Petitioners Snohomish County, Mark Verbarendse,
23 and MacAngus Ranches, Inc., appeared by and through their counsel of record
24 Shawn J. Aronow, Deputy Prosecuting Attorney; Molly Lawrence; and Steve Jones,
25 respectively. Respondent 1000 Friends appeared by and through its counsel of

1 record John Zilavy. Respondent Corrine Hensley did not appear in or defend this
2 appeal. The Court reviewed and considered the briefs of the parties and the record
3 certified to it, and heard argument of counsel. The Court issued an oral decision
4 with findings and conclusions on October 21, 2004, a copy of which has been
5 transcribed and is attached hereto and incorporated herein by this reference.

6 III. STIPULATION

7 The parties stipulate that the Court may enter the Proposed Form of Order
8 presented by the Snohomish County Prosecuting Attorney's Office on Tuesday,
9 November 9, 2004. Respondent 1000 Friends of Washington previously raised
10 certain issues with respect to the court's oral decision through an e-mail sent to the
11 Court and copied to all parties on November 4, 2004. MacAngus Ranches, Inc.,
12 objected to 1000 Friends of Washington's attempt to raise those issues through an
13 e-mail, and acknowledged that those issues might be appropriately raised in a
14 timely-filed formal motion for reconsideration, and that should such a motion be
15 filed, MacAngus Ranches, Inc., would respond in accordance with the rules and as
16 directed by the Court. Consistent with those positions and to facilitate entry of a
17 written Order reflecting the Court's oral decision, the parties hereby stipulate that,
18 in the event 1000 Friends of Washington files a valid motion for reconsideration of
19 the Court's decision, Petitioners may not object to any issue raised in such a
20 motion on the ground that such issue was waived by 1000 Friends of Washington's
21 failure to note the issue at the time of entry of the Order. Pursuant to the Court's
22 oral decision, the Court

23 IV. ORDER

24 ORDERS, ADJUDGES and DECREES that:

- 1 1. The Board's Final Decision and Order issued September 22, 2004, in
2 CPSGMHB Case No. 03-3-0009c is reversed in part. This matter is
3 remanded to the Board to enter an order consistent with this decision. The
4 Findings of Facts and Conclusions of Law as stated in the Court's oral
5 decision are attached and incorporated herein.
- 6 2. The Court may grant judicial relief if it determines that the Board's orders
7 were: a) outside the Board's statutory authority or jurisdiction; b) the result
8 of an unlawful procedure or decision-making process; c) the result of an
9 erroneous interpretation or application of the law; d) not supported by
10 substantial evidence; e) inconsistent with Board rules; or f) arbitrary or
11 capricious pursuant to RCW 34.05.570(3)(b), (c), (d), (e), and (h)(i).
- 12 3. The County's decisions are presumed valid. RCW 36.70A.320(1). Upon
13 review of the County's decisions by the Board, the burden is on the
14 petitioners before the Board (here 1000 Friends of Washington and Corrine
15 Hensley) to demonstrate that the County's decisions were not in compliance
16 with the requirements of GMA. RCW 36.70A.320(2). Petitioners before the
17 Board must show that the County's decisions were clearly erroneous in view
18 of the entire record before the Board and in light of the goals and
19 requirements of the GMA. RCW 36.70A.320(3). The Board is to find
20 compliance unless it determines that the action by the state agency, county
21 or city is clearly erroneous in view of the entire record before the Board and
22 in light of the goals and requirements of this chapter. RCW 36.70A.320(3).
23 The Legislature has mandated that the Board apply a more deferential
24 standard of review to actions of counties and cities than the preponderance
25 of the evidence standard. RCW 36.70A.3201.

1 Mike Davis Proposal

2 4. The Mike Davis ("Davis") amendment added 5.8 acres to the Arlington urban
3 growth area ("UGA"), redesignated the property from Rural Residential and
4 Rural Urban Transition Area (allowing 1 dwelling unit per 5 acres) to Urban
5 Low Density Residential (allowing 4-6 dwelling units per acre.) The GMA
6 provides criteria for locating UGAs. Land located outside of a city may be
7 included within a UGA if it is adjacent to territory already characterized by
8 urban growth pursuant to RCW 36.70A.350. The Board record
9 demonstrates that the Davis property is adjacent to territory already
10 characterized by urban growth, and the property is adjacent to a residential
11 subdivision and a high school. The Davis property meets the GMA
12 requirements for inclusion within a UGA.

13 5. The Board erred in its interpretation or application of RCW 36.70A.210,
14 relating to county-wide planning policies ("CPPs"), and RCW 36.70A.215,
15 relating to reasonable measures, because it failed to defer to the County's
16 interpretation of its own policy, CPP UG-14, as required by RCW
17 36.70A.3201. The Board misinterpreted the policy and concluded that the
18 Davis amendments were inconsistent with CPP UG-14. The policy requires
19 the County to consider reasonable measures and the record shows that it
20 did so. The Court also finds that the Board's decision was not supported by
21 substantial evidence.

22 6. This matter is remanded to the Board for entry of an order reinstating the
23 Davis redesignation and declaring Snohomish County Ordinance 03-005
24 compliant with GMA.

1 Mark Verbarendse Proposal

- 2 7. The Mark Verbarendse ("Verbarendse") amendment redesignated an
3 undeveloped 9-acre site at the intersection of Interstate 5 and 300th St. NW
4 from Rural Residential-5 to Rural Freeway Service ("RFS"). The County
5 adopted the RFS designation pursuant to its Comprehensive Plan criteria
6 (Land Use Policy LU 6.G.7), and the GMA's provisions allowing limited
7 areas of more intensive rural development ("LAMIRD"). RCW
8 36.70A.070(5)(d). The GMA provides for three types of LAMIRDs. The
9 Verbarendse property was designated a Type 3 LAMIRD, which allows "new
10 development of isolated cottage industries and isolated small-scale
11 businesses that are not principally designated to serve the existing and
12 projected rural population and nonresidential uses, but do provide job
13 opportunities for rural residents." RCW 36.70A.070(5)(d)(iii).
- 14 8. The Board erroneously interpreted and applied the GMA when it concluded
15 that the Verbarendse redesignation did not comply with the GMA and
16 declared the RFS designation invalid. The Board erroneously concluded
17 that the proposal did not meet the criteria set forth in RCW
18 36.70A.070(5)(d)(iii), because the property is located on I-5 and is not
19 "isolated". Also, there was substantial evidence in the record that the
20 property met the County's requirements set forth in General Policy Plan LU
21 6.G.7 for redesignation to RFS.
- 22 9. The Board exceeded its authority when it based its decision to invalidate the
23 County's action on an issue (whether the property is "isolated") that was not
24 briefed or argued by any of the parties before the Board. RCW
25 34.05.570(3)(b) and (c).

1 10. The Board lacked the authority to consider the "isolated" issue. Even if the
2 Board held that the issue of whether the Verbarendse property was isolated
3 was encompassed in the Board's Petitioners' general issue statements,
4 neither party briefed or argued this issue before the Board and, therefore,
5 they abandoned this issue. WAC 242-02-570(1), RCW 36.70A.290(1). The
6 Board exceeded its authority by issuing an advisory opinion in violation of
7 RCW 36.70A.290(1).

8 11. Board member Tovar's conclusion in his concurring opinion that
9 Snohomish County is not a "rural county" was not before the Board and is
10 not supported by the record. The Board exceeded its authority by raising
11 and deciding this issue. RCW 34.05.570(3)(b) and (c).

12 12. The language of RCW 36.70A.070(5)(d)(iii) establishing the criteria for
13 designating a Type 3 LAMIRD is unambiguous. RCW 36.70A.070(5)(d)(iii)
14 anticipates and permits new development of previously undeveloped land.
15 Prior development of the property is not required to meet the criteria for a
16 Type 3 LAMIRD. There is substantial evidence in the record demonstrating
17 that the property met the location requirements for designation as a Type 3
18 LAMIRD. The Board's conclusion that the County's redesignation of the
19 Verbarendse property to RFS was clearly erroneous constitutes an error of
20 law. RCW 34.05.570 (3)(d).

21 13. This matter is remanded to the Board for entry of an order reinstating the
22 Verbarendse redesignation and declaring Snohomish County Ordinance 03-
23 001 compliant with GMA.
24
25
26

1 MacAngus Ranches, Inc.

- 2 14. The MacAngus Ranches, Inc. ("MacAngus") amendment redesignated 216
3 acres from Upland Commercial Farmland to Rural Residential-10 Resource
4 Transition and rezoned the site from Agriculture-10 Acres to Rural Resource
5 Transition-10, thus removing the site from the County's inventory of
6 "agricultural lands of long-term commercial significance" under the GMA.
7 RCW 36.70A.170(1)(a).
- 8 15. The GMA's definition of agricultural lands has two elements: (1) the land
9 must be primarily devoted to commercial agricultural production; and (2) the
10 land must have long-term commercial significance for agricultural
11 production. RCW 36.70A.030(2). The Legislature determined that
12 jurisdictions must evaluate growing capacity, productivity, and soil
13 composition in light of the land's proximity to population areas and the
14 possibility of more intense uses of land. RCW 36.70A.030(10).
- 15 16. The Board erred when it failed to grant deference to the County's decision
16 to de-designate MacAngus Ranches' property as agricultural resource land.
17 RCW 36.70A.3201. The Board dismissed the findings of the County Council
18 with regard to the long-term commercial significance of the MacAngus
19 property and inappropriately substituted its judgment for that of the County.
20 Under GMA, it is left to counties and cities to identify and designate
21 agricultural lands of long-term commercial significance based on criteria set
22 out in the GMA itself, under *Community Trade and Economic Development*
23 ("*CTED*") guidelines, and consistent with their own comprehensive plans.
- 24 17. The record reflects that the Snohomish County Council considered the
25 combined effects of all the factors under the statute, *CTED's* guidelines, and
26

1 under the County's own GPP, and made an appropriate determination that
2 the MacAngus property no longer has long-term commercial significance for
3 agricultural production. The fact that the Board disagreed with the County's
4 decision does not allow the Board to override it. When supported by
5 evidence in the record, as it was here, the County's decision is entitled to
6 deference by the Board unless shown to be clearly erroneous. In this case,
7 the County's decision was supported by substantial evidence in the record.
8 By contrast, when considering the evidence in the record as a whole, the
9 Court finds that the Board appeared to simply disagree with the County's
10 policy decision. Under the applicable standard of review imposed by GMA
11 and taking account of the burdens of proof imposed on the petitioners before
12 the Board, such disagreement is not a sufficient ground for the Board to
13 overturn the County's decision.

14 18. This matter is remanded to the Board for entry of an order reinstating the
15 MacAngus redesignation and declaring Snohomish County Ordinance
16 03-002 compliant with GMA.

17 19. The Court's other findings and conclusions with respect to these specific
18 issues are set forth in the oral decision attached hereto and incorporated
19 herein.

20 20. Petitioners are awarded their costs and statutory attorney's fees.

21 21. In the event of a further appeal from the Board's order on remand, this
22 Court retains jurisdiction over this matter.

23 DONE IN OPEN COURT this 30th November, 2004.

24 *Ellen J. Fair*

25

The Hon. Ellen J. Fair, Judge
26 Snohomish County Superior Court

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Presented by:

JANICE E. ELLIS
Snohomish County Prosecuting Attorney

By: *Shawn J. Aronow*
Shawn J. Aronow, WSBA #17851
Deputy Prosecuting Attorney
Attorney for Snohomish County

Approved as to form;
Notice of Presentation Waived:

MacAngus Ranches, Inc.
Marten Law Group

Steven Jones, WSBA #19334
Attorney for MacAngus Ranches, Inc.

Approved as to form;
Notice of Presentation Waived:

Mark Verbarendse
Buck & Gordon

Molly Lawrence, WSBA#28236
Attorney for Mark Verbarendse

Approved as to form;
Notice of Presentation Waived:

1000 Friends of Washington

John Zilavy, WSBA #19126
Attorney for 1000 Friends

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Presented by:

JANICE E. ELLIS
Snohomish County Prosecuting Attorney

By: _____
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GARY LOCKE
Governor



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December 27, 2004

The Honorable Mike Murphy
Washington State Treasurer
Post Office Box 40200
Olympia, WA 98504-0200

RE: Findings, Notice of Noncompliance and Imposition of Sanctions, and Notification to Withhold County Revenues

Dear Mr. Murphy:

On June 24, 2004, the Central Puget Sound Growth Management Hearings Board (Board) issued an Order Finding Continuing Noncompliance and Continuing Invalidity and Recommendation for Gubernatorial Sanctions (Order) against Snohomish County.

Based on the continued noncompliance of Snohomish County, and the findings contained herein, this letter is notification of the imposition of sanctions on Snohomish County, and direction to you to withhold the revenues it is entitled to and identified below, pursuant to RCW 36.70A.340. Beginning March 1, 2005, these funds are to be withheld until such time as Snohomish County provides sufficient information to the governor and the Board for a determination that the County has complied with the Growth Management Act (GMA) as interpreted in the Board's orders, and the governor notifies you that this notice of noncompliance and imposition of sanctions has been rescinded.

Findings

In the Board's order of June 24, 2004, it concluded that Snohomish County's comprehensive plan and development regulations for the Island Crossing Area continued to not comply with the goals and requirements of the GMA. In its decision, the Board also detailed the extensive appeals history surrounding the development regulations for the Island Crossing Area, and the repeated decisions by various Growth Hearings Boards and courts regarding the County's actions. Therefore, the Board entered a Finding of Continuing Noncompliance and Continuing Invalidity.

The Board also noted that the ordinance in question represented the County's third attempt under the GMA (and second attempt within the past nine months) to convert the Island Crossing Area from agriculture resource land designation into an urban growth area. Because of what the Board considered the County's "ongoing unwillingness to comply with those portions of the Growth Management Act with which it disagrees," the Board recommended the imposition of financial sanctions authorized under RCW 36.70A.340.¹

¹ *Order Finding Continuing Noncompliance and Continuing Invalidity and Recommendations for Gubernatorial Sanctions*, CPSGMHB No. 03-3-0019c, June 24, 2004, p. 24.

EXHIBIT F

On July 30, 2004, I wrote Councilman John Koster, Chair of the Snohomish County Council, informing him of the Board's recommendation for sanctions and indicated my desire to work with the County in their efforts to come into compliance. The County has taken no action to address the noncompliance. Instead, in September 2004, Snohomish County appealed the decision of the Board to the Snohomish County Superior Court. The court has set oral argument for April 1, 2005.

With respect to the Island Crossing Area at issue in the Board's decision, Snohomish County has repeatedly taken actions contrary to the previous decisions of the Snohomish County Executive², the Growth Management Hearings Board³, Snohomish County Superior Court⁴, and the First Division of the Washington State Court of Appeals⁵, and they have ignored the Board's recent orders and finding of noncompliance. This conduct represents an ongoing unwillingness on the part of the County to comply with the orders of the Board.

Notice of Noncompliance and Imposition of Sanctions

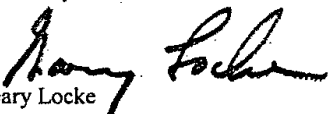
Based upon these findings, I am imposing sanctions on Snohomish County, pursuant to RCW 36.70A.340, and hereby direct you to withhold the revenues to which the County is entitled as follows:

- The motor vehicle fuel tax, as provided in chapter 82.36 RCW.

These funds are to be withheld beginning March 1, 2005, and including accrued interest, are to be withheld until such time as sanctions are removed and you receive direction from this office for release. In taking this action, I understand that Snohomish County may continue to pursue its appeal of the Board's decision. I will inform you if the results of that appeal require modification of these sanctions.

I appreciate your assistance and the work of your staff in implementing this directive.

Sincerely,


Gary Locke
Governor

cc: The Honorable John Koster, Chair, Snohomish County Council
The Honorable Aaron Reardon, Snohomish County Executive
Central Puget Sound Growth Management Hearings Board
Marty Brown, Director, Office of Financial Management
Juli Wilkerson, Director, Department of Community, Trade and Economic Development
Doug MacDonald, Secretary, Department of Transportation

² Executive Veto Message re: Dwayne Lane Docket Proposal, Index of Record No. 1114.

³ CPSGMHB Case No. 98-3-0033c, *Lane, et al., v. Snohomish County*, Order Granting Motion to Dismiss [Lane], Jan. 20, 1999; and CPSGMHB Case No. 03-3-0019c, *1000 Friends v. Snohomish County*, FDO, March 22, 2004.

⁴ Snohomish Superior Court Case No. 96-2-03675-5, Nov. 19, 1997.

⁵ *Lane v. Central Puget Sound Growth Management Hearings Board*, 2001 WL 244384 (Wash.App.Div. 1, Mar. 12, 2001).