97233-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

COURT OF APPEAL CAUSE NO: 50363-8-II

SUMMIT-WALLER COMMUNITY ASSOCIATION,

Petitioners,

v.

PIERCE COUNTY and INTERVENERS,

Respondents,

PETITION FOR REVIEW

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Note: Pages 16, 17, and 18 of the Hearing Board decision relates to "Issue Four" regarding Economic Development and RCW 35.70A.020(5). Issue Four begins at the top of page 16.

The Court of Appeals decision is attached as appendix "B"

PCC 19C.10.065(A)(1-8)

RCW 36.70A.020

RCW 70A.070;

RCW 36.70A.011

RCW 36.70A.130;

I. IDENTITY OF PETITIONERS.

The Summit-Waller Community Association, a non-profit Community Association and party of record, is the Petitioner.

II. COURT OF APPEALS DECISION.

The decision at issue is the unpublished opinion in *Summit-Waller Community Association, et.al. v. Pierce County, et. al.*, Case No. 50363-8-II, April 23, 2019.

III. ISSUES PRESENTED FOR REVIEW.

Whether the Court of Appeals opinion conflicts with Washington State Supreme Court decisions which require a county to amend its Comprehensive Land Use Plan in compliance with the State Growth Management Act (GMA) and County regulations. The Court of Appeals opinion is attached as appendix "B"

Whether the Court of Appeals opinion presents an issue of substantial public interest because the Court's opinion allows Pierce County to amend its Comprehensive Plan without the substantive and procedural requirements of the GMA and County regulations.

Whether the Court of Appeals opinion presents an issue of substantial public interest because the Petitioners have been denied due process, notice, and the ability to effectively participate in the process to protect their property values, rights, and community.

IV. INTRODUCTION.

On September 1, 2015, the Pierce County Council amended the Pierce County Comprehensive Land Use Plan to allow an 800-unit apartment complex adjacent to the County's officially designated "Rural" lands. AR 67-75. The Court of Appeals correctly held that the County Council amendment constituted an amendment to the County's Comprehensive Plan.[1] The Court of Appeals, however, failed to require the County to comply with the substantive and procedural requirements necessary to amend the Comprehensive Plan. The Court's opinion is in conflict with Washington State Supreme Court decisions which require Comprehensive Plan amendments to comply with the State Growth Management Act and to be internally consistent. *Kittitas County* and *Thurston County,* cited infra.

The Court also failed to require the County to provide public notice of the Comprehensive Plan Amendment. Citizens from across Pierce County appealed the County Council's decision because of the substantial public interest in preventing the County from amending its Comprehensive Plan without notice and compliance with applicable law and regulations. AR 63-66 and AR 106.

V. STATEMENT OF THE CASE.

Pierce County's "Mid-County Community" is one of the County's unincorporated planning areas and which includes designated "rural" lands known as the "Rural Separator." [2] Pierce County's "Rural

[1] See footnote no. 3 of COA opinion, dated April 23, 2019.

[2] The Mid-County Community Plan is presented at AR 193-2068.

Separator" generally separates and buffers the County's rural and agricultural lands from the urban areas of Tacoma, Fife, Puyallup, and Parkland. The residents of the Summit-Waller and North Clover Creek/Collins communities have worked with elected officials for decades to support and maintain the Rural Separator designation. AR 63-66; AR 193-2068.

On September 1, 2015, the Pierce County Council voted to override several Executive vetoes and approve Ordinance No. 2015-40 despite public opposition. AR 63-66 and AR 106. The County Council's decision under Ordinance No. 2015-40 approved Community Plan Map Amendment "M-2" to redesignate eight parcels from EC (Employment Center) to HDR (High Density Residential) to allow a 40 acre, 800 unit apartment complex. AR 67-72 & 73-75, item #106. The M-2 parcels consist of forested, undeveloped land which is located directly adjacent to Pierce County's designated "Rural Separator." AR 75, 80, 91 (Map), AR 29, (Photo).

A) NONCOMPLIANCE WITH THE COMPREHENSIVE PLAN AND GMA.

The Court of Appeals correctly determined that the County Council amendment constitutes an amendment to the County's Comprehensive Plan.[1] It is uncontroverted that the Comprehensive Plan Amendment occurred during the GMA periodic update cycle. The Plan Amendment therefore required an analysis and recommendation under the County's Comprehensive Plan, PCC19C.10.065, as required by the GMA, RCW 36.70A.130(5)(a), which states as follows:

> Applications for comprehensive plan amendments considered pursuant to the required GMA periodic update cycle as required by RCW 36.70A.130(5)(a) shall not be subject to the application requirements of PCC19C.10.050E or 19C.10.055 **but shall include an analysis and recommendation pursuant to PCC19C.10.065** (emphasis added).

The Comprehensive Plan analysis and recommendation criteria required by the GMA, RCW 36.70A.130(5)(a), is provided under PCC19C.10.065(A)(1-8) and referenced in the attached appendix as follows:

A. During a required GMA periodic update, the Planning and Land Services Department **shall** evaluate Council-initiated amendments based upon the following:

1. Is there a community or countywide need for the proposed amendment? If so, what is that need?

2. Is the infrastructure available to support the requested amendment, such as sewer, water, roads, schools, fire support?

3. Would the requested amendment provide public benefits? If so, what sorts of public benefits?

4. Are there physical constraints on the property?

5. Are there environmental constraints, such as noise, access, traffic, hazard areas on or adjacent to the proposed amendment?

6. What types of land use or activities are located on the property?

7. What types of land use or activities are located on neighboring properties?

8. Is the proposed amendment consistent with all applicable state and local planning policies?

D. Planning and Land Services shall forward the amendments to the Planning Commission with their recommendation, as part of the larger update proposal (emphasis added).

The Court of Appeals' failure to require the Comprehensive Plan Amendment to be evaluated under PCC 19C.10.065(A)(1-8) was based on the following erroneous rationale:

1) The "GMA does not require an evaluation of the eight factors enumerated under former PCC 19C.10.065(A)." (COA opinion, p. 22).

2) PCC 19C.10.065(A) requires that PALS evaluate a Council-initiated amendment, not the factors or facts related to those factors. (COA opinion, page 25).

3) Even if the County failed to evaluate amendment M-2 as required by former PCC 19C.10.065(A), the Communities have failed to show that alleged failure means that amendment M-2 to the Comprehensive Plan does not conform to the GMA. (COA opinion, page 22).

In addition, because the Comprehensive Plan Amendment proposed to eliminate an Economic Center designation, the County was required to consider "Economic Development" under RCW 36.70A.020(5). The Court failed to consider the Petitioner's argument regarding Economic Development, however, because the Court overlooked the Hearing Board's published conclusion regarding "Economic Development" located at pages 16-18 of the Board's decision. Specifically, the Court of Appeals' opinion was based on the wrong page of the Board's decision[3] and which caused the Court to make the following erroneous conclusions at page 19 of its decision:

[3] The Court apparently referred to the Board's decision related to Issue One, regarding "No net Loss" and economic development, but failed to refer to the Board's decision related to Issue Four, regarding Economic Development under RCW 35.70A.020(5) which is published at pages 16-18 of the Board's decision (See Appendix No. A).

1) The Board made no conclusion regarding economic development under RCW 36.70A.020(5),

2) The Board concluded that the Communities abandoned their argument on this issue,

3) The Communities did not assign error to that conclusion.

B) Public Notice and Participation.

In the original application, Pierce County proposed to redesignate the M-2 parcels from an Employment Center (EC) designation to a Community Center (CC) designation. AR 81-91. On December 4, 2014, however, Pierce County issued a report which concluded that "Staff does not support the change to CC..." because the proposal to redesignate the parcels from EC to CC is "not consistent with comprehensive plan policies...." AR 76. Five days later, on December 9, 2014 - without public notice - the Pierce County planning staff abruptly issued a modified proposal to instead redesignate the M-2 parcels from EC to HDR to allow an 800 unit apartment complex. AR 92. The County changed the proposed redesignation from EC to HDR without the evaluation required by the Comprehensive Plan to consider the Rural Separator and EC designations. AR 92.

Because public notice was never provided regarding redesignation of the M-2 parcels from EC to HDR, the Community was unable to participate in the process until the final hearing before the Pierce County Council. See argument, infra. The Pierce County Council - without public

notice - approved the redesignation from EC to HRD without the evaluation required by the Comprehensive Plan by inserting random "findings of fact" into the final Ordinance No. 2015-40. AR 67-72 & 73-74, item #106.

The Community then appealed Comprehensive Plan Amendment "M-2" to the Growth Management Hearings Board. AR 2072-2086. The Petitioner's argument before the Board focused on the County's failure to evaluate redesignation of the M-2 parcels under PCC19C.10.065(A)(1-8). AR 54-56, 1910-1913, 1933-34; Board RP 7-29, 48-56. The Board's decision addressed the areas north, east, and west of the M-2 parcels, but did not address the adjacent "Rural Separator" lands directly to the south under PCC19C.10.065 (A)(1-8). AR 2073-74.

During the March 31, 2016 hearing before the Growth Management Hearings Board, Respondents attempted to suggest that "public notice" was somehow unnecessary because "everybody" knew the proposal was changed "to apartments instead of the commercial center." Board RP, p. 57, lines 12-25. It was not until the hearing before the Thurston County Superior Court that Respondents admitted that public notice was not provided to allow the redesignation from EC to HRD. As indicated in the trial court transcript, Pierce County admitted that the public notice "was for the change from EC to CC, not HRD." Specifically:

> (Court RP, p. 3, lines 11-19):
>
> THE COURT: I would like one of you to address for the court the notice issue, because I'm concerned that a party that doesn't have adequate notice can't necessarily raise something below. So I, being familiar with the case law, I know that if notice was inadequate, it can certainly be addressed later, because the whole point is that there was no notice. So I would like that area to be addressed.

(Court RP, p.6, lines 9-13):

MR. CAMPBELL: Thank you, your honor, for clarifying that. That makes it more easy for me to respond to. The notice that went out was for the change from EC to CC, not HRD, and HRD was part of the evaluation process. (emphasis added).

Even though Respondents admitted that notice was "for a change from EC to CC, not HRD," the Court concluded without explanation that "notice was sufficient as it included the consideration of the amendment as adopted." (CP 238, lines 1-7).

VI. ARGUMENT

A) The Court of Appeals opinion creates a conflict with Washington State Supreme Court decisions.

Plan Amendment M-2 constitutes an amendment to the County's Comprehensive Plan.[1] Plan Amendment criteria PCC 19C.10.065(A)(1-8) is part of the Comprehensive Plan and "shall" be included because the Comprehensive Plan was amended during the GMA periodic update cycle. RCW 36.70A.130(5)(a). Moreover, a Comprehensive Plan Amendment must conform to the GMA.[4] The Plan Amendment must also be internally consistent,[5] and not thwart other provisions of the Plan Amendment.[6]

[4] RCW 36.70A.130(1)(d)

[5] RCW 36.70A.070; Spokane County v. Eastern Washington Growth Management Hearings Bd., 160 Wn. App. 274, 281, 250 P.3d 1050, 1053 (2011) review denied Spokane County v. Eastern Washington Growth Management Hearings Bd., 171 Wn.2d 1034, 257 P.3d 662 (2011).

[6] City of Spokane v. Spokane County, EWGMHB Case No. 02-1-0001, Final Decision and Order (July 3, 2002), at 32.

The Court of Appeals, however, declined to require compliance with the Comprehensive Plan, Section PCC 19C.10.065(A)(1-8), and the GMA, RCW 36.70A.130(5)(a), based on the following five (5) erroneous reasons:

Reason No.1: The Court of Appeals opinion at page 22 states as follows:

> "The "GMA does not require an evaluation of the eight factors enumerated under former PCC 19C.10.065(A)." (COA opinion, p. 22, emphasis added).

The Court of Appeals opinion is incorrect and in conflict with several Washington State Supreme Court decisions, including *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 347, 190 P.3d 38, 46 (2008) which held as follows:

> If a county amends a **comprehensive plan**, the amendment must comply with the GMA and may be challenged within 60 days of publication of the amendment adoption notice (emphasis added).

The Court of Appeals opinion is also in conflict with *Kittitas Cty. v. E. Washington Growth Mgmt. Hearings Bd.*,172 Wn.2d 144 (2011) which held as follows:

> ¶32 County development regulations must also comply with the requirements of the GMA. *See* RCW 36.70A.130 (l) (a) ("a county or city shall . . . ensure the plan and regulations comply with the requirements of this chapter.") [7] (emphasis added).

[7] *Kittitas Cty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 164, 256 P.3d 1193, 1203 (2011).

As indicated in *Kittitas County*, the internal consistency requirement applies to development regulations and since comprehensive plans and development regulations must both be consistent,[8] both the comprehensive plan amendment and zoning amendment must comply with PCC 19C.10.065(A)(1-8) which is part of the Plan.

Reason No. 2: The Court of Appeals opinion at page 25 states as follows:

> PCC 19C.10.065(A) requires that PALS evaluate a Council-initiated amendment, not the factors or facts related to those factors. (COA opinion, page 25, emphasis added).

Contrary to the Court of Appeals, the explicit language of PCC 19C.10.065(A)(1-8) requires that "the Planning and Land Services Department shall evaluate Council-initiated amendments based upon the following (eight criteria)" (emphasis added). The Court of Appeals' failure to apply the operative language: "based upon the following (eight criteria)" caused the Court to not consider the required Comprehensive Plan amendment criteria listed in PCC 19C.10.065(A)(1-8). The Court's opinion is therefore contrary to *Kittitas County* and *Thurston County*, as well as RCW 36.70A.130(l)(a) and RCW 36.70A.040(5)(d) because, again, PCC 19C.10.065(A)(1-8) is an essential part of the Comprehensive Plan.

Reason No. 3: The Court of Appeals opinion at page 22 states as follows:

[8] RCW 36.70A.040(5)(d).

> Even if the County failed to evaluate amendment M-2 as required by former PCC 19C.10.065(A), the Communities have failed to show that alleged failure means that amendment M-2 to the Comprehensive Plan does not conform to the GMA. (COA opinion, page 22, emphasis added).

Contrary to the Court of Appeals, the Petitioners did show that the County's failure to evaluate the Plan Amendment under PCC 19C.10.065(A)(1-8) means that the Amendment does not conform to the GMA. For example, the County failed to evaluate the Plan Amendment under criterion no. 8 of PCC 19C.10.065(A)(1-8) which requires the Amendment to be "consistent with all applicable state and local planning policies." The Petitioners' COA brief, pages 26-29, argued that allowing an apartment complex adjacent to the "neighboring" rural lands without the evaluation required under PCC19C.10.065(A) (7) and (8) is inconsistent with Pierce County's Mid-County Community Plan and, therefore, violates the GMA. As argued by Petitioners, RCW 36.70A.070(2) provides that a comprehensive plan shall include a "housing element ensuring the vitality and character of established residential neighborhoods." Similarly, RCW 36.70A.011 provides that Pierce County should "help preserve... traditional rural lifestyles...and enhance the rural sense of community and quality of life." The Petitioners argued that redesignation of the M-2 parcels from EC to HRD without the required "evaluation and recommendation" required under PCC19C.10.065(A)(7) and (8) is inconsistent with RCW 36.70A.011 related to Rural Lands; RCW 36.70A.070(2) related to Housing; RCW 36.70A.020(4) also related to Housing; County Policy MC LU-12.5 and, therefore, RCW 36.70A.130(1)(d). (Petitioner's COA brief, pages 26-29.)

The Petitioners briefed and argued issues related to "Housing" and criteria nos. 7 and 8 before the Board at AR 54-55 and RP 16, RP 18-19, and RP 53. The Petitioners also argued and briefed these issues before the Court of Appeals at pages 26-29 and at page 23, as follows:

> Pierce County's failure to comply with PCC19C.10.065(A)(1-8) is inconsistent with the Pierce County Comprehensive Plan and the GMA. RCW 36.70A.130(1)(d) requires that "[a]ny amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan." This is consistent with the Washington Supreme Court's holdings in the *Thurston County* decision: "If a county amends a **comprehensive plan**, the amendment must comply with the GMA and may be challenged within 60 days of publication of the amendment adoption notice." [9] One of the requirements of the GMA is that the comprehensive "plan shall be an internally consistent document ...."[5] "Consistency means comprehensive plan provisions are compatible with each other. One provision may not thwart another."[6] RCW 36.70A.040(5)(d) also provides that Pierce County must adopt "development regulations that are consistent with and implement the comprehensive plan ...." Pierce County failed to evaluate redesignation of the M-2 parcels under the criteria required under PCC19C.10.065(A)(1-8) and, therefore, violated RCW 36.70A.130(1)(d). (emphasis added).

Reason No. 4: The Court of Appeals opinion, page 25, declined to consider the Petitioner's argument regarding the eight evaluation criteria because PCC 19C.10.065(A) does not require that a proposal "satisfy each and every criterion," ...that "no one factor listed in PCC 19C.10.065(A)(1-8) is determinative," and "...did not require more than a recommendation based on

[9] Thurston County v. Western Washington Growth Management Hearings Bd., 164 Wn.2d 329, 347, 190 P.3d 38, 46 (2008).

the review." The Court's rationale, however, does not relieve the Board's or Court's obligation to determine whether the Plan Amendment criteria was at least evaluated under PCC 19C.10.065(A)(1-8) which is part of the Comprehensive Plan under *Kittitas County* and *Thurston County*, as well as RCW 36.70A.130(l)(a) and RCW 36.70A.040(5)(d).

Reason No. 5: The Court of Appeals opinion at page 25 states that the Petitioners "failed to raise those arguments before the Board and thus waived them or they do not support the arguments with authority here." Contrary to the Court, each of the eight evaluation criteria under PCC19C.10.065(A)(1-8) were briefed and argued with authority before the Hearing Board and before the Court of Appeals. Specifically, evaluation criteria nos.1-7 were briefed before the Board at AR 54-55, 57-58 and argued before the Board at RP14-15 and RP53. Each evaluation criterion was argued and briefed before the Court of Appeals at pages 21-36. In addition, evaluation criterion no. 8 regarding consistency "with all applicable state and local planning policies" was briefed before the Board at AR 54-55 and argued before the Board at RP16, RP 51 and RP53. Criterion no. 8 was argued and briefed before the Court of Appeals at pages 26-30.

B) The Court of Appeals improperly declined to consider the Petitioner's argument regarding Economic Development under RCW 36.70A.020(5).

The Hearing Board's conclusion regarding Economic Development under RCW 36.70A.020(5) was published at pages 16-18 of the Board's decision and was overlooked by the Court of Appeals. The Hearing Board's decision, pages 1-18, is attached as appendix no. A. Unfortunately, the Court's opinion was

based on the wrong page of the Board's decision[10] and which caused the Court to make the following erroneous conclusions at page 19 of its decision:

> 1) The Board made no conclusion regarding economic development under RCW 36.70A.020(5),
>
> 2) The Board concluded that the Communities abandoned their argument on this issue,
>
> 3) The Communities did not assign error to that conclusion.

As indicated at pages 16-18 of the Hearing Board's decision (appendix no. A), the Board reviewed "Issue Four" regarding Economic Development Goals under RCW 36.70A.020(5) and issued a decision with discussion, findings and conclusions. Contrary to the Court, the Board did not conclude that Petitioners had abandoned "Issue Four" regarding Economic Development. In fact, the Board confirmed at page 16 of its decision, footnotes nos. 61, 62, and 63 that "Issue Four" regarding Economic Development was properly identified, briefed, and argued by the Petitioners.

Because the Hearing Board did not conclude that the Petitioners had abandoned their argument regarding Economic Development under Issue Four it was unnecessary for the Petitioners to assign error to nonexistent abandonment. Instead, the Petitioner's COA brief properly assigned error to the Board's published conclusions regarding Economic Development as follows:

[10] The Court apparently referred to the Board's decision related to Issue One, regarding "No net Loss" and economic development, but failed to refer to the Board's decision related to Issue Four, regarding Economic Development under RCW 35.70A.020(5) which is published at pages 16-18 of the Board's decision (See Appendix No. A).

> Assignment of Error 1: The Board erred in concluding that Map Amendment M-2 conformed with Pierce County's procedural and substantive requirements for amending the Comprehensive Plan, including PCC19C.10.050(F) and PCC19C.10.065 (A)(1-8), as required by RCW 36.70A.130(1)(d) and RCW 36.70A.020. (Emphasis added).
>
> Assignment of Error 2: The Board erred in concluding that Pierce County's approval of Map Amendment M-2 complied with RCW 36.70A.020 and with RCW 36.70A.130(1)(d), which requires development regulations to be consistent with the comprehensive plan. (Emphasis added).

The record indicates that the Petitioners argued and briefed RCW 36.70A.020(5) related to Economic Development before the Hearing Board at AR 54-55 and 59-60 and RP18-19. The Economic Development issue was also briefed and argued before the Court of Appeals with pertinent authority at pages 34-36, in part, as follows:

> Pierce County violated GMA "Goal" 5 (RCW 36.70A.020(5) because redesignation of the M-2 parcels from EC to HDR did not disclose or evaluate the impacts to Economic Development caused by redesignation of an official Employment Center (EC) to HDR to allow an apartment complex. An apartment complex is inconsistent with the goals of Employment Center (EC) designated lands because under PCC 18A.27.010, Multi-Family Residential (HDR and MHR) are not allowed within the EC designation lands (AR 102). Pierce County's redesignation of the M-2 parcels from EC to HDR without the evaluation of "need" and "benefit" required under PCC19C.10.065(A)(1) and (3) is in violation of, or inconsistent with RCW 36.70A.010; RCW 36.70A.020(5) related to Economic Development and, therefore, RCW 36.70A.130(1)(d).

C) The Petitioner's right to Notice and Participation is of substantial public interest.

Respondents are unable to show that the required notice for redesignation from EC to HRD was provided to the public. As admitted by Mr. Campbell, County Attorney, before the Thurston County Superior Court:

> (Court RP, p.6, lines 9-13)
>
> The notice that went out was for the change from EC to CC, ***not HRD***, and HRD was part of the evaluation process. (emphasis added).

The Community participated in the hearing process only after it discovered third-hand, without public notice, that the proposed re-designation was being changed from EC to HRD to allow apartment development. Respondents argue that the Petitioners failed to raise the notice and participation issues, however, Appellate courts are allowed to consider and apply "a statutory commandment, or an established precedent" not raised by the parties when "necessary for decision." *City of Seattle v. McCready*, 123 Wn.2d 260, 269, 868 P.2d 134 (1994); see, e.g., *Hall v. Am. Nat'l Plastics, Inc.*, 73 Wn.2d 203, 205, 437 P.2d 693 (1968) (noting that courts "frequently decide crucial issues which the parties themselves fail to present," *Conard v. Univ. of Wash.*, 119 Wn.2d 519, 527-28, 834 P.2d 17 (1992) (considering due process claim raised sua sponte that addressed the same underlying dispute actually raised and argued on appeal). Appellate courts are also allowed to seek out briefing regarding issues deemed important to proper adjudication. RAP 10.6(c); RAP 12.1(b).

It is the duty of reviewing courts to apply the law, even where the parties have argued their case under different theories. *Maynard Inv. Co. v. McCann*,

77 Wn.2d 616, 623, 465 P.2d 657 (1970). Thus, when the parties have ignored a governing statute, a court may raise the issue sua sponte or allow the parties to raise it for the first time on appeal. Id. The court in *Maynard Investment* stated that "'the courts have frequently recognized that error may be considered for the first time on appeal where the matter in question affects the public interest.'" Id. at 622 (quoting 5 Am. Jur. 2d Appeal and Error §§ 548-549, 551 (1962)).

Pierce County's failure to notify the public that the proposed redesignation had been changed from EC to HDR, rather from EC to CC, completely blinded-sided the Petitioners. Because of the lack of notice, the Petitioners were unable to participate in an "early and continuous manner" as required by RCW 36.70A.020(11). The lack of notice and ability to participate in the process crippled the Petitioner's ability to oppose, or even comment on the proposed redesignation until very late in the process. Co-Petitioner, James L. Halmo, also raised the issue of Map Amendment M-2 before the Growth Management Hearing Board as well as issues related to public notice and public participation. AR 106, AR 109-111. As presented in Co-Petitioner Halmo's brief before the Board at AR 109-111:

> The Review Process. RCW 36.70A.020(11) calls for the involvement of citizen participation in the whole planning process. RCW 36.70A.140 calls for "early and continuous public participation in the development and amendments of comprehensive land use plans and development regulations." Such participation is predicated upon proper public notification and the availability of documentation which can be understood and evaluated in order to render a rational decision. (Emphasis added).

Impeding Public Participation. Pierce County has failed to abide by RCW 36.70A.020(11) by creating stumbling blocks for a valid public review of the comprehensive plan update document..... Having a meaningful public participation involves purposeful and valid action. When data or information is obscured or difficult to find, that does not mean it was necessarily hidden from view, are falsified. However, participation by definition envisages involvement and/or engagement where there is some form of transparency, and where access to data and information is not hindered procedurally. Thus, when a process hinders procedurally that search to validate some information, then the data or information actually presented is not necessarily meaningful. Participation is not necessarily fully available when some questionable structural procedures come into play. That occurred here. The public participation rights of Pierce County citizens have been abridged. Those rights call for full and continuous public participation, as required by RCW 36.70A.140 and are to be consistent with the RCW's public participation goal, RCW 36.70A.020(11).

RCW 36.70A.035(1) specifically requires that "the public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals...". It is virtually impossible for the public to participate in a meaningful manner when, without public notice, the County arbitrarily changes one proposed redesignation (CC) to another proposed redesignation (HDR) without the required "analysis and evaluation" necessary to form the basis of the public's participation. In this case, the proposed redesignation of the M-2 parcels from EC to HDR began at the staff level and then continued - without public notice – through the Planning Commission and Pierce County Council hearing. The Community's substantive and due process rights have been effectively denied because the "citizen participation and coordination" Goals of RCW 36.70a.020(11) have been denied. The Community was

not allowed to participate in the required process because the required process never occurred. The Community's "Rural" designated properties are located directly south of the M-2 parcels and Community members have been denied participation as well as the required evaluation, including an evaluation related to schools, sewers, traffic, roads, compatibility, property values, safety, and the loss of an important "Employment Center." The Petitioners right to public notice and participation have been seriously abridged. Those rights call for public notice and full and continuous public participation, as required by RCW 36.70A.140, RCW 36.70A.035, and are to be consistent with the GMA public participation goals of RCW 36.70A.020 (11).

VII. CONCLUSION.

Petitioners respectfully request this Court to grant Discretionary Review of this matter. The lower Court's decision conflicts with Washington State Supreme Court decisions and has created issues of substantial public interest which this Court should resolve so that County Land Use and Environmental administrators do not feel authorized to amend Comprehensive Land Use Plans contrary to the GMA and without proper notice and public participation.

Respectfully Submitted

/s/ Daniel Haire, WSBA 15922
Daniel Haire, representing
Summit-Waller Community Association

Certificate of Service

I, Daniel Haire, declare under penalty of perjury and the laws of the State of Washington that, on MAY 17, 2019, I served an original and true and correct copies of the following document on the persons listed below in the manner shown: Petition for Review by the Washington State Supreme Court by: Petitioners Summit-Waller Community Association.

1) Court of Appeals: served and filed on MAY 17, 2019

2) William Lynn, 1201 Pacific Ave Ste 2100,Tacoma WA 98402: by hand delivery of hard copy and email.

3) Todd Campbell, Pierce County Prosecutor's Office-Civil Division, 955 Tacoma Avenue S., #301, Tacoma, WA. 98402-2160: by hand delivery of hard copy and email.

/s/ Daniel Haire 05/17/2019

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Appendix

The GMA Hearings Board Decision, pages 1-18 is attached as appendix "A."
Note: Pages 16, 17, and 18 of the Hearing Board decision relates to "Issue Four" regarding Economic Development and RCW 35.70A.020(5). Issue Four begins at the top of page 16.

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BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

SUMMIT-WALLER COMMUNITY ASSOCIATION, ET AL., Petitioners, v. PIERCE COUNTY, Respondent, And BETHEL SCHOOL DISTRICT, ET AL. Intervenors.	**Case No. 15-3-0010c** **FINAL DECISION AND ORDER** **and** **Case No. 12-3-0002c** **ORDER FINDING CONTINUING NONCOMPLIANCE RE: AMENDMENT M3**

SYNOPSIS

Petitioners challenged various provisions of Pierce County's Ordinance No. 2015-40, amending its comprehensive plan and development regulations. The Board dismissed the majority of the issues raised by petitioners and remanded Ordinance 2015-40 for corrections to protect rural character and revise LAMIRD boundaries. The challenged ordinance also relates to the Board's remand of Ordinance No. 2011-60s2, Amendment M-3, GMHB No. 12-3-0002c. The Board determined the provisions for siting urban schools in rural areas in Ordinance 2015-40 do not comply with RCW 36.70A.100, 110, and 210. In Case No. 12-3-0002c, the Board entered an order of continuing noncompliance.

EXHIBIT "A"

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APPENDIX "A"

INTRODUCTION

In early 2014, the County began a process to reformat and consolidate its eleven community plans to clarify "the relationship between the Comprehensive Plan and the individual community plans by: consolidating all of the policies that apply countywide, retaining the policies associated with community plan areas that are specific and unique to that particular geography, retaining the background and community character narrative, and retaining existing and desired conditions."[1] The County's position was that it did not make substantive changes to the policies of the community plans.[2] In reviewing community plans, unique policies that a community wanted to keep were identified but relocated to the 2015 Pierce County Comprehensive Plan document.[3] More general policies were moved to the county-wide policy sections of the Comprehensive Plan (Comp Plan).[4]

Also in 2014, the County began its bi-annual program for amendments with the review of 27 proposed changes to the Comp Plan.[5] The processes for reformatting the community plans and reviewing proposed comprehensive plan amendments were combined.[6] Additionally, Pierce County was in the process of completing the periodic review of its Comp Plan and development regulations required by RCW 36.70A.130(5)(a), with a statutory deadline of July 2015.[7] These changes were included in the same ordinance.

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[1] Exhibit I to Ordinance No. 2015-40, Finding of Fact Nos. 59 and 142 (February 1, 2016) at 6, 23.
[2] *Id.*; Respondent's Prehearing Brief (March 8, 2015) at 1.
[3] Exhibit I to Ordinance No. 2015-40, Finding of Fact Nos. 145, 146 (February 1, 2016) at 23.
[4] *Id.*
[5] Respondent's Prehearing Brief at 2.
[6] Respondent's Prehearing Brief at 2.
[7] RCW 36.70A.130(5)(a) reads:

> (5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:
> (a) On or before June 30, 2015, and every eight years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties;

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After the Executive vetoed a similar, earlier measure citing concerns about net loss of industrial land, the Council passed this modified ordinance updating and amending the County Comprehensive Plan. The Executive's second veto was overridden by the Council and Petitioners brought this challenge. The Council passed Ordinance 2015-86, delaying the effective date of Ordinance 2015-40 to July 1, 2016.

Petitioners Summit-Waller, et al. challenge Map Amendment M-2, which rezoned eight parcels of land from Employment Center (EC) to High Density Residential (HDR). Petitioners Sanders, et al. challenge Map Amendment M-2, provisions related to subarea plans, preserving rural lands and character, and siting schools outside the Urban Growth Area (UGA). The cases were consolidated and, where issues coincided, the parties consolidated their issues. School siting provisions at issue were also meant to address compliance issues remaining from GMHB No. 12-3-0002c and thus that compliance case was coordinated with the consolidated case.

JURISDICTION

After the Council's September 1, 2015, vote to override the Executive's veto, the challenged ordinance ultimately became effective February 1, 2016, and the Board received Petitions for Review filed on November 5, 2015, and November 9, 2015. The Board finds the Petitions for Review were timely filed within 60 days as required by RCW 36.70A.290(2). The Board finds Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2)(b).[8]

The Board finds it has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1).

[8] RCW 36.70A.280(2): "A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested . . . ."

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MOTION TO DISMISS

In its prehearing brief, the County moved to dismiss Issues 7C, 9A, and 11A. The Board deferred consideration of the motion until after the hearing on the merits. For the reasons set forth in the discussion below, the Board dismissed these issues.

BURDEN OF PROOF AND STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption. This presumption creates a high threshold for challengers as the burden is on the petitioners to demonstrate that any action taken by the City is not in compliance with the GMA.

The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.[9] The scope of the Board's review is limited to determining whether a County has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.[10] The GMA directs that the Board, after full consideration of the petition, shall determine whether there is compliance with the requirements of the GMA. The Board shall find compliance unless it determines that the County's action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3) . In order to find the County's action 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).*

ANALYSIS AND DISCUSSION

Amendment M-2

County Action

[9] RCW 36.70A.280, RCW 36.70A.302.
[10] RCW 36.70A.290(1).

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Map Amendment M-2 to Ordinance 2015-40, rezoning eight parcels of land (totaling 34 acres) from Employment Center (EC) to Moderate High Density Residential (MHR), was initiated by an application submitted July 30, 2014, by Scott Edwards, the managing member of Intervenors Apogee Capital, LLC and High Valley Investment, LLC (Apogee et al.).[11] Several of these properties were the subject of a vested application for multifamily development, but the vested application had expired and the County, meanwhile, had rezoned the properties from Mixed Use District (MUD) [12] to EC.[13] Mr. Edwards' initial application requested that the properties be rezoned from EC to Community Center (CC).[14] The CC designation is designed to meet shopping, service, and multi-family housing needs and areas are to be large enough to serve more than one neighborhood.[15]

The properties in question are immediately north of 121st E, within the UGA, and bordered to the east by railroad tracks to which there is no access for transporting goods. Diagonally adjacent to the properties, but separated by the railroad tracks, was an area of CC designation and another of EC designation.[16] To the west was a large area of Moderate Density Single Family (MSF)/Residential Resource.[17] To the north along 112th St. E. exists light industrial development.[18] With the adoption of the challenged action, the land to the

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[11] County's Prehearing Brief at 11; Ex. PC #6-1, Edwards Application for Area-wide Map Amendment (July 30, 2014).

[12] PCC 18A.10.080(C) Urban Zone Classifications reads in pertinent part:

> The Mixed Use District (MUD) zone classification includes areas that are concentrations of commercial, office, and multi-family developments located along major arterials, state highways, and major transit routes and between Major Urban, Activity, or Community Centers. Commercial activity in Mixed Use Districts caters to a customer base beyond the surrounding neighborhoods or community due to its placement on a roadway used by residents of more than one community. Auto-oriented commercial and land-intensive commercial with a low number of employees per acre is the primary use within Mixed Use Districts.

[13] County's Brief at 11; Ordinance 2005-93.

[14] Ex. PC #6-1, Edwards Application for Area-wide Map Amendment (July 30, 2014).

[15] Ex. PC #6-6 Staff Report to Planning Commission (December 4, 2014) at 3.

[16] Ex. PC #6-1, Edwards Application for Area-wide Map Amendment (July 30, 2014) map attachment.

[17] *Id.*

[18] Intervenor's Illustrative Exhibit Map Document.

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north and east of the properties is rezoned Community Employment, the diagonally adjacent (NE) area remains CC, and the area to the west is rezoned Residential Resource.[19]

Applications for zoning amendments received by the July 31, 2014, deadline[20] were then reviewed by the Planning and Lands Services Department (PALS) against the acceptance criteria in PCC 19C.10.050F and forwarded to the Council as "Council Initiated Amendments."[21] Thus "Council-Initiated Amendment" is more a term of art indicating that the application for the amendment was received by the established deadline and subsequently evaluated and recommended by PALS than a representation that the Council spontaneously generated the rezone idea. The Council subsequently screened the PALS-accepted plan amendments through the public hearing process before the Community Development Committee and full Council and selected the amendments it wanted to "initiate" for the 2015 cycle.[22] The initiated amendments are next sent back to PALS for environmental review and evaluation. PALS then forwards the associated reports to the Planning Commission and affected Land Use Advisory Commissions (LUAC) for review and recommendation.[23]

Mr. Edwards application was originally designated PA-21 and became Map Amendment 2 (M-2) when it was "initiated" by the Council in Resolution R2014-94s.[24] M-2 was considered by the Mid-County Land Use Advisory Commission (MCAC) at its November 4, 2014, meeting, where PALS staff suggested that the properties did not fit the proposed CC or existing EC designation and proposed an alternate designation.[25] The MCAC voted to move the application forward with the expectation that staff would work toward an appropriate designation that would accommodate multi-family development on

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[19] Exhibit H to Ordinance 2015-40 at 209.
[20] Ex. PC #6-1, PALs Application for Area-wide Map Amendment at 1.
[21] Ex. PCC #230, Resolution No. R2014-94s (September 30, 2014) at 2.
[22] *Id.*, at 3.
[23] *Id.*
[24] *Id.*, Exhibit A to Resolution R2014-94s at 1.
[25] Ex. PC-27-6, Minutes of MCAC (Nov. 4, 2014) at 6.

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the site.[26] A month later, PALS presented an analysis of M-2 to the Planning Commission using the factors in PCC 19C.19.065.A (discussed further below) and noted that the area may have been inappropriately designated EC as it did not meet the criteria, nor was the proposal consistent with the Comp Plan policies for expanding CC designation, and suggested a "higher density residential designation."[27] Additionally, the Commission noted that six additional properties were surrounded by the properties proposed for rezone.[28] (Ultimately, those parcels were also rezoned MHR following a separate public process for Map Amendment 121st St. E. and 20th Ave. E.[29]) The Commission voted to have staff prepare an alternative recommendation to accommodate high density residential development.[30] Staff prepared a modified M-2 that included text amendments adding, *inter alia*, Moderate High Density Residential designations to the Mid-County Community Plan and recommended its adoption.[31] M-2 (along with Map Amendment 121st St. E. and 20th Ave. E. rezoning the additional 6 properties to MHR) was adopted as part of the 2015 Comp Plan Update.[32]

The County deferred to Intervenor Apogee; et al. and incorporated the Intervenors' brief by reference and in its response brief. At the Hearing on the Merits, the Respondent's argument was presented by William Lynn, counsel for Apogee; et al.

For the reasons set forth below, the Board upholds the County's M-2 redesignation and rezoning.

Issue One: Did Pierce County's adoption of map amendment M-2 fail to comply with RCW 36.70A.010 and RCW 35.70A.020(5) because the amendment is inconsistent with the

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[26] *Id.*
[27] Ex. PC #30-23, Staff Report to Planning Commission (December 4, 2014) at 3-4.
[28] Ex. PC #37-69, Minutes of Planning Commission (December 4, 2014) at 3-4.
[29] Respondent's Brief at 12-13.
[30] Ex. PC #37-69, Minutes of Planning Commission (December 4, 2014) at 3-4.
[31] Ex. PC #30-8, Modified Staff Recommendation of M-2.
[32] Ex. PCC #216, Ordinance No. 2015-40.

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Comprehensive Plan Goal LU-56 and Policies LU-56.3, LU 56.3.1 and Pierce County Code (PCC) 19A.30.030(H) ("Ensure no net loss of land designated for industrial uses").[33]

Petitioners' Objection

Petitioners complain that the County's redesignation of the parcels was inconsistent with PCC 19A.30.030(H) and Comprehensive Plan Goals LU-56, LU-56.3, and LU-56.3.1 because it failed to require a companion application to ensure "no net loss" of total acreage in the EC designated lands[34] in violation of GMA requirements that the comprehensive plan amendments be consistent with and implement the comprehensive plan. RCW 36.70A.130(d).[35]

Applicable Law

PCC 19A.30.030(H) Employment Centers and LU-EC Objective 9[36] call for the provision of large planned Employment Center development sites, properly zoned and serviced with infrastructure. To ensure "no net loss of land designated as Employment Center," the Code calls for reclassification of parcels from the Employment Center

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[33] Issue One per Summit Waller, et.al. Second Amended Petition for Review (December 15, 2015) and Issue VIII per Sanders, et al., Motion to Amend PFR (December 16, 2015) - condensed from Sanders First Amended PFR (December 08, 2015) at 5, which read:

> Did Pierce County violate its Comprehensive Plan Policy LU-56.3 (current policy 19A.30.030H) which calls for 'no net loss' of lands for industrial uses (Employment Centers) by changing eight (8) land parcels totaling approximately 34 acres within the Mid-County Community Plan area from Employment Center (EC) to High Density Residential District (HRD), under Area-Wide Map Amendment M-2 (Scott Edwards), without including an equivalent area of suitable land to be added to the EC land use designation?

[34] Summit-Waller Brief p. 6.

[35] **RCW 36.70A.130 Comprehensive plan review procedures and schedules**, reads:

> (1)(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

[36] **PCC 19A.30.030 Employment** Centers, reads in pertinent part:

> LU-EC Objective 9. Provide large planned Employment Center development sites, properly zoned and serviced with infrastructure.
>
> ***
>
> H. Ensure no net loss of land designated as Employment Center. Reclassify parcels from the Employment Center designation to another designation only when an equivalent area of suitable land is added to the Employment Center designation in the same Comprehensive Plan Amendment cycle or through a community plan adopted within the prior two years.

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designation to another designation only when an equivalent area of suitable land is added to the Employment Center designation in the same Comprehensive Plan Amendment cycle (or through a community plan adopted within the prior two years).

The Pierce County Comprehensive Plan Land Use Element provides[37]:

> **GOAL LU-56**: Provide a diverse range of goods and services to ensure that as the economy changes, employment opportunities are balanced with a wide range of other land uses.
>
> **LU-56.3** reads, "Ensure no net loss of land designated for industrial uses."
>
> **LU-56.3.1**[38] provides that the Council may consider redesignating a parcel when it is "unlikely developable for industrial uses due to adjacent incompatible uses, the amount of critical areas on the parcel, or if the parcel is determined to be of insufficient size or proper location for industrial use."

Board Discussion

Respondents argue that the no net loss requirement does not apply because the County adopted LU-56.3.1 as an exception to the "no net loss" standard to facilitate redesignation of parcels deemed unsuitable for industrial use due to insufficient size or location.[39] Although the language of LU-56.3.1 could more explicitly define an exception, the Board can construe no other meaning as it would otherwise merely restate LU-56.3.

The Board finds that LU-56.3.1 allows the Council to redesignate EC land without replacing it with "developable acreage" in those instances where the land has been determined to be unsuitable for industrial use in the first place.

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[37] Ex. PC #216, Ordinance No. 2015-40, Pierce County Comprehensive Plan Land Use Element at 2-36, 2-37.

[38] LU-56.3.1 reads:

> Redesignate parcels from the EC designation to another designation only when an equivalent area of suitable land is added to the EC designation in the same Comprehensive Plan amendment cycle, or through a community plan adopted within the prior two years. In the event a parcel is determined to be unlikely developable for industrial uses due to adjacent incompatible uses, the amount of critical areas on the parcel, or if the parcel is determined to be of insufficient size or proper location for industrial use, then the legislative body may consider redesignating the parcel.

[39] Respondent's Brief at 15.

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In any event, the Board notes that **PCC 19C.10.055(C)** seeks to prevent net loss of "developable acreage," not "total acreage" as Petitioners allege. "Developable lands" are vacant, undeveloped, and underdeveloped lands which exclude lands that have environmental constraints." PCC 18.25.030. Here, a portion of the land the County redesignated included a critical area of indeterminate size,[40] but the "developable land" is something less than the 34-acre total. Throughout the LUAC and Planning Commission process, it was repeatedly noted that the EC designation may have been mistaken[41] and that the area's small size, the lack of access to the railway, and the lack of access to the 112th St. E. business corridor, were barriers in developing the properties under EC. The Council's legislative findings contained in Ordinance 2015-40 concur.[42]

The Board concludes petitioners have failed to show an inconsistency between the County's development regulations and its Comp Plan in violation of RCW 36.70A.130(d).

Petitioners also allege, but do not brief, a violation of RCW 36.70A.010 (legislative findings that unplanned growth is a threat to sustainable economic development)[43] and violation of RCW 36.70A.020(5)[44] (GMA Goal 5 encouraging economic development).

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[40] Ex. PC #6-1, Edwards Rezone Application, attached map.
[41] See e.g., Ex. PC #30-8 at 1; Ex. PC #27-6 at 6.
[42] Ex. PCC #216, Exhibit I to Ordinance No. 2015-40 at 16, 25-26.
[43] RCW **36.70A.010 Legislative findings**, reads:

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

[44] **RCW 36.70A.020(5) Planning goals**, reads in pertinent part:

> The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:
> (5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas

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These unbriefed allegations are deemed abandoned as to Issue One. WAC 242-03-590(1).[45]

Issue One is **dismissed.**

Issue Two: Did Pierce County's adoption of map amendment M-2 changing multiple parcels within the Mid-County Community Plan area from Employment Center (EC) to High Density Residential (HDR) fail to comply with RCW 36.70A.130(2), RCW 36.70A.130(1)(d), and the County's procedures for amending comprehensive plans because the County failed to evaluate the amendment pursuant to the criteria identified in PCC 19C.10.065A, PCC 19C.010.050E(3) and PCC 19C.10.055(A)(C)?[46]

Issue Three: Did Pierce County's adoption of map amendment M-2 fail to comply with RCW 36.70A.130(2), RCW 36.70A.130(1)(d), and the County's procedures for amending comprehensive plans because the amendment is inconsistent with PCC 18A.27.010 and the criteria identified in PCC 19C.10.065A?[47]

(Petitioners' Issues Two and Three overlap and are considered together.)

Petitioners' Objection

Petitioners acknowledge that PCC 19C.10.050(F)[48] and 19C.10.065(A) [49]allow for amendments to EC lands without the companion application if the amendment is "initiated"

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experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

[45] WAC 242-03-590(1) reads:

A petitioner, or a moving party when a motion has been filed, shall submit a brief addressing each legal issue it expects the board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order.

[46] Issue 2 per Summit-Waller, et al. Second Amended Petition for Review, December 15, 2015.

[47] Issue 3 per Summit-Waller, et al. Second Amended Petition for Review, December 15, 2015.

[48] **PC 19C.10.050(F) Initiation of Comprehensive Plan Amendments** reads in pertinent part:

F. Applications for Comprehensive Plan amendments considered pursuant to the required GMA periodic update cycle as required in RCW 36.70A.130 (5)(a) shall not be subject to the application requirements of PCC 19C.10.050 E. or 19C.10.055 but shall include an analysis and recommendation pursuant to PCC 19C.10.065.

[49] **PCC 19C.10.065 GMA Periodic Update-Review and Evaluation of Council Initiated Amendments** provides:

A. During a required GMA periodic update, the Planning and Land Services Department shall evaluate Council-initiated amendments based upon the following:

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by the Council during a required GMA periodic update of the Comp Plan, but argue that the County failed to do so. At the Hearing on the Merits, there was some confusion about the meaning of "initiated" by the Council. As explained *supra*, "initiated by the Council is something of a term of art and, taken as such, describes the Council's process for sending timely amendment applications to the Land Use Advisory Committees and Planning Commission for evaluation. Petitioners advance three theories for finding this process inconsistent with the County Code: (1) the evaluation was insufficient because it began as an evaluation of a redesignation from EC to CC and not the EC to MHR that was ultimately recommended;[50] (2) PALS staff answered "Undetermined" regarding whether a community or countywide need for the amendment existed; and (3) the evaluation did not happen before the June 30, 2015, statutory deadline for the County's adoption of its periodic update under RCW 36.70A.130(5)(a).[51]

Applicable Law

RCW 36.70A.130(5)(a) Comprehensive plan review procedures and schedules, reads:

> (5) ... [C]ounties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

> 1. Is there a community or countywide need for the proposed amendment? If so, what is that need?
> 2. Is the infrastructure available to support the requested amendment, such as sewer, water, roads, schools, fire support?
> 3. Would the requested amendment provide public benefits? If so, what sorts of public benefits?
> 4. Are there physical constraints on the property?
> 5. Are there environmental constraints, such as noise, access, traffic, hazard areas on or adjacent to the proposed amendment?
> 6. What types of land use or activities are located on the property?
> 7. What types of land use or activities are located on neighboring properties?
> 8. Is the proposed amendment consistent with all applicable state and local planning policies?

[50] Summit-Waller Brief at 7-8.
[51] *Id.*, at 9-10.

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(a) On or before June 30, 2015, and every eight years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties. (Emphasis added).

PCC 19C.10.055(C)[52] requires that applications for Map Amendments requesting redesignation of existing Employment Center parcels to another designation shall include a companion application proposing redesignation of other specific urban parcels, currently designated or zoned for non-residential use, that are currently undeveloped or not being used for uses permitted in an Employment Center zone in order to ensure no net loss of "developable acreage" on the parcels.

PCC 19C.10.050(E)(3) states that applications for map amendments to Employment Centers will not be accepted without the companion application required in PCC 19C.10.055(C).[53]

Board Discussion

As explained *supra,* Mr. Edwards's amendment application requested that the properties be rezoned from EC to CC.[54] When the Council resolved to initiate proposed amendments, it did so by resolution directing:

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[52] **PCC 19C.10.055(C)** reads:

C. Map Amendments – Employment Center. Applications for Map Amendments requesting redesignation of existing Employment Center parcels to another designation shall include a companion application proposing to redesignate other parcels to Employment Center. The companion application shall propose redesignation of other specific urban parcels that are currently designated or zoned for non-residential use and meet the following criteria: (1) the parcel is currently undeveloped; or (2) is not currently being used for uses permitted in an Employment Center zone. The intent is to ensure no net loss of total acreage in Employment Center designated lands in the County. No net loss shall be measured using the "net developable acreage" on the parcels, as defined in PCC 18.25.030. Each application shall indicate how the proposal meets the locational criteria for the requested designation.

[53] **PCC 19C.10.050(E)(3)** reads in pertinent part:

3. Map Amendment applications for Employment Centers, Planned Communities or Agricultural Resource Lands technical corrections, that do not include the required components listed in 19C.10.055 C., D. or E., as applicable, will not be accepted;

[54] Ex. PC #6-1, Edwards Application for Area-wide Map Amendment (July 30, 2014).

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> Section 4. The County Council requests that the Planning and Land Services Department forward the relevant parts of the reports referenced in section 3. to the affected Land Use Advisory Commissions for review and recommendation. The County Council requests that each Land Use Advisory Commission submit its recommendations to the Planning Commission for attachment to the Planning Commission's report being forwarded to the Council by February 15, 2015.

Petitioners apparently envision this evaluation/recommendation process as one where a proposal must be accepted as is or rejected, in which case the applicant must presumably wait until the next cycle to try again. The Board disagrees. The language of the resolution directs the PALS staff and the Commissions to review the proposal and make recommendations. Nowhere is there a prohibition against modification of a proposal in light of the review and recommendation. In this case, following the requirements of PCC 19C.10.065A for Council initiated amendments, PALS staff evaluated the M-2 proposal *"based on"* the eight criteria identified in the code.[55] The fact that the existence of a community need was considered "undetermined" does not, in the Board's view, negate the evaluation – particularly where there is no showing that the County requires more than a recommendation based on the review. In other words, it does not appear that a proposal must necessarily "satisfy" each and every criterion.

Here, the staff evaluation determined that the proposal was not consistent with the CC designation, *but that the existing EC designation was not consistent with Comp Plan policies either.*[56] According to the minutes of the Planning Commission, PALS staff suggested that High Density Residential (HRD) implemented with a Moderate High Density Residential (MHR) classification would be more appropriate.[57] As Petitioners point out, HDR was not a designation then allowed in the Mid County Community Plan.[58] Thus, PALS staff

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[55] Ex. PC #6-6 Staff Report to Pierce County Planning Commission (December 4, 2014).
[56] *Id.*
[57] Ex. PC#37-69, Minutes of Special Meeting of Planning Commission (December 4, 2014) at 3.
[58] Summit-Waller Brief at 8.

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recommended further discussion to address the area as part of the 2015 Comp Plan update.[59]

Notwithstanding Petitioners' complaint that a new checklist evaluation for redesignation from EC to MHR was not completed, the Pierce County Council made several Findings of Fact in adopting M-2 that indicate the proposal was reviewed and that attention was given to ensuring consistency with Comp Plan policies:[60]

- The Amendment redesignates an area that was inappropriately designated as EC and (1) is not large enough to accommodate rail spurs or heavy transportation infrastructure; (2) is not connected with the business pattern of EC along 112th St. E.; (3) is encumbered by critical areas, and (4) has surrounding incompatible uses and zoning which could limit EC use.

- While current policies do not allow for the reduction of EC without compensatory expansion (no-net-loss), this area does not meet the criteria for EC, thus it is appropriate to be evaluated for re-designation.

- The amendment adds a new allowed land use designation within the Mid-County Community Plan.

- Includes new policies in the Mid-County Community Plan that recognize the MHR zone classification.

In sum, **the Board finds** that Petitioners have not shown that the County failed to evaluate the amendment as required by PCC 19C.10.065.A or that the adoption of M-2 was inconsistent with the Comp Plan in violation of RCW 36.70A.130(1)(d).

The Board believes Petitioners did not allege a violation of 36.70A.130(5)(a) in Issue Two. Regardless, the allegation is essentially a failure to act challenge and moot at this time as the County has completed its update.

Petitioners allegation that M-2 violated RCW 36.70A.130(2) was not briefed and is deemed abandoned.

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[59] *Id.* at 1-2.
[60] *Id.;* Ex. PCC #216, Exhibit I to Ordinance No. 2015-40, Finding 165, at 25-26.

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Issue Two and Issue Three are **dismissed.**

Issue Four: Did Pierce County's adoption of map amendment M-2 fail to comply with RCW 36. 70A.010, RCW 36.70A.130(1)(d) and the goals in RCW 35.70A.020(5) (Economic Development), by changing land designated as employment center to residential?[61]

Petitioners' Objection

Petitioners emphasize that GMA includes the encouragement of economic development as an important goal and assert, without authority, that Multi-Family Residential (HDR and MHR) was not allowed within the EC designation *because* such use is inconsistent with the economic development goals of Employment Center designated lands.[62] Petitioners also assert that the MCAC failed to "show its work" and acted in an arbitrary and capricious manner in concluding that the property should be redesignated from EC.[63]

Applicable Law

RCW 36.70A.010 Legislative findings, states that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth.[64]

RCW 36.70A.020(5) Planning goals, provides that jurisdictions shall encourage economic development that is consistent with adopted comprehensive plans and promote the retention and expansion of existing businesses and recruitment of new businesses. [65]

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[61] Issue 4 per Summit-Waller, et al. Second Amended Petition for Review (December 15, 2015).
[62] Summit-Waller Brief at 12.
[63] Summit-Waller Brief at 12-14.
[64] **RCW 36.70A.010 Legislative findings**, reads:

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

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RCW 36.70A.3201 directs that:

> [T]he legislature intends for the board to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. *Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action* in full consideration of local circumstances.

Board Discussion

First, Petitioners may be correct that MHR is inconsistent with EC, but the point is irrelevant where the land in question has been redesignated to MHR *instead* of EC.

Petitioners next seem to construe the findings in RCW 36.70A.010 and GMA Goal (5) as prohibiting the redesignation of EC land but, as the Respondents argue, "no net loss of EC land" is a County policy that can, and was modified by County action.[66] Petitioners have not shown how the redesignation violates GMA.

Although Petitioners allege that the MCAC failed to "show its work" and acted in an arbitrary and capricious manner, they have done no more than imply that the redesignation from EC to MHR was done for reasons other than to remediate an area-wide designation that the Council decided was inappropriate because it was "(1) is not large enough to accommodate rail spurs or heavy transportation infrastructure; (2) is not connected with the business pattern of EC along 112th St. E.; (3) is encumbered by critical areas, and (4) has surrounding incompatible uses and zoning which could limit EC use."[67] Importantly, the

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[65] **RCW 36.70A.020(5) Planning goals**, reads:

> The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations ...
> (5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

[66] Respondents' Brief at 17.

[67] Ex. PCC #216, Exhibit I to Ordinance No. 2015-40, Finding 165, at 25-26.

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MCAC made a recommendation, with which PALS staff and the Planning Commission concurred, but the redesignation was done by the County Council.

Respondents correctly point out that GMA goals are not listed in order of priority and, under RCW 36.70A.3201, the responsibility for balancing priorities and options in light of the goals rests with the legislative body.

The Board finds and concludes Petitioners have not shown that the Council's action in adopting M-2 violated GMA goals or requirements.

Issue Four is **dismissed**.

Issue Thirteen: Whether Pierce County's adoption of map amendment M-2 should be found invalid because it substantially interferes with the fulfillment of RCW 36.70A.020(5)?[68]

Issues One –Four having been dismissed, **the Board finds** that there is no basis for an order of invalidity.

Issue 13 is dismissed.

Community Planning

Issue Five: Did Pierce County's "reformatting" of Community Plans, which are to be amended in accordance with Title 19C Comprehensive Plan Procedures, violate the GMA, including RCW 36.70A.020(11), RCW 36.70A.070, RCW 36.70A.130 and or RCW 36.70A.140 by:

(A) Deleting and/or amending goals and policies in a manner which impeded full, continuous, and meaningful public participation by the citizens of the County?

(B) Failing to ensure internal consistency with Comprehensive Plan goals and policies, including LU-131, LU-132, and LU-133 (current policies 19A.110.010, 19A.110.020, and 19A.110.040)?

(C) Failing to protect the community's rural character, rural lifestyle, and rural visual aesthetics?[69]

[68] Issue 5 per Summit-Waller, et al. Second Amended Petition for Review (December 15, 2015).
[69] Issue VI per Sanders, et al. Motion to Amend PFR (December 16, 2015).

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5. The parties have stipulated to the County's withdrawal and redesignating the McKenna LAMIRD while petitioner retains the right to challenge the RAC designation when re-adopted. Ordinance 2015-40 is non-compliant with the GMA as regards the inclusion of vacant lands within the McKenna Rural Activity Center.
6. All other issues raised by Petitioners are **dismissed.**
7. The Board remands Ordinance 2015-40 to the County for action to achieve compliance as set forth above.
8. The Board sets the following schedule for the County's compliance:

Item	Date Due
Compliance Due	September 12, 2016
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	September 26, 2016
Objections to a Finding of Compliance	October 10, 2016
Response to Objections	October 20, 2016
Telephonic Compliance Hearing 1 (800) 704-9804 and use pin code 4472777#	**November 1, 2016 10:00 A.M.**

SO ORDERED this 9th day of May, 2016.

Cheryl Pflug, Board Member

Margaret Pageler, Board Member

Raymond L. Paolella, Board Member

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Filed
Washington State
Court of Appeals
Division Two

April 23, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SUMMIT-WALLER COMMUNITY ASSOCIATION, NORTH CLOVER CREEK/COLLINS COMMUNITY COUNCIL, Appellants, v. PIERCE COUNTY Respondent, and BETHEL SCHOOL DISTRICT, SUMNER SCHOOL DISTRICT, PENINSULA SCHOOL DISTRICT, EATONVILLE SCHOOL DISTRICT, and GRAHAM MC, LLC and APOGEE CAPITAL, LLC and HIGH VALLEY INVESTMENT, LLC and TACOMA SCHOOL DISTRICT, Respondents.	No. 50363-8-II ORDER AMENDING UNPUBLISHED OPINION

The Appellants have moved for reconsideration of the court's unpublished opinion filed February 6, 2019. The court now rules as follows:

1. The first full sentence at the top of page 2 is amended to read as follows:

APPENDIX "B"

The Communities argue that the Board erred as a matter of law, that its order was unsupported by substantial evidence, and that the Board's decision was arbitrary and capricious.

2. The last two paragraphs on page 14 are amended to read as follows:

The Communities abandoned their arguments based on alleged violations of RCW 36.70A.010 and .130(2). The Communities also "did not allege a violation of [RCW] 36.70A.130(5)(a)." CP at 24. Even if they had alleged a violation of RCW 36.70A.130(5)(a), it would "essentially [have been] a failure to act challenge and moot" because "the County ha[d] completed its update." CP at 24.

The Communities failed to show that the Board's approval of amendment M-2 was inconsistent with the Comprehensive Plan, violated RCW 36.70A.020(5), .130(1)(d), or violated the GMA generally. There was "no basis for an order of invalidity" related to amendment M-2. CP at 27. The Board "dismissed" all of the issues raised by the Communities. CP at 27-28.

3. The paragraph following section III on page 19 is amended to read as follows:

The Communities assign error to the Board's conclusions related to the County's evaluation of amendment M-2 under the criteria for comprehensive plan amendments set forth under former PCC 19C.10.065(A).

4. Sections A and B starting on page 19 through page 20 are amended to read as follows:

A. GMA PROVISIONS THE COMMUNITIES CITED WITHOUT AN ASSIGNMENT OF ERROR

The Communities cite to several GMA provisions when discussing the County's evaluation of amendment M-2.[1] However, the Communities did not include these provisions in their assignments of error, and they raise them in conclusory fashion.

[1] RCW 36.70A.010 ("Legislative findings" on the GMA, including the public interest in coordinating comprehensive land use planning and economic development.); RCW 36.70A.011 (Legislative findings on the GMA's rural lands provisions.); RCW 36.70A.020(1), (4), and (12) (GMA planning goals for urban growth, housing, and public facilities and services); RCW 36.70A.040(5)(d) (counties "shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan"); RCW 36.70A.070(2)-(4), (6) (comprehensive plan mandatory elements, specifically housing, capital facilities, utilities, and transportation).

"Issues not raised before [the Board] may not be raised on appeal." RCW 34.05.554(1). Additionally, a party "is deemed to have waived any issues that are not raised as assignments of error and argued by brief." *State v. Sims*, 171 Wn.2d 436, 441, 256 P.3d 285 (2011); RAP 10.3(a)(4), (g)-(h)

The Board concluded that the Communities abandoned their argument based on RCW 36.70A.010, and the Communities do not assign error based on RCW 36.70A.010. Additionally, the Communities did not raise arguments before the Board based on RCW 36.70A.011, .020(1), (4), (12), .040(5)(d), or .070(2)-(4), (6). Thus, we do not reach the Communities' argument based on these GMA provisions.

B. RCW 36.70A.020(5) AND .130(1)(d) – CONFORMANCE WITH THE GMA REQUIREMENTS AND CONSISTENCY WITH THE COMPREHENSIVE PLAN

The Communities argue that the Board erred by concluding that amendment M-2 complied with the GMA planning goal of encouraging economic development under RCW 36.70A.020(5).

The Communities have the burden to show that the County's approval of amendment M-2 violates the GMA. *Kittitas County*, 172 Wn.2d at 156; RCW 36.70A.320(2). GMA goals are adopted "exclusively for the purpose of guiding the development of comprehensive plans." RCW 36.70A.020(5). Contrary to RAP 10.3(a)(6),[2] the Communities fail to cite facts or legal authority that show that the County failed to properly consider economic development or that the adoption of amendment M-2 violated RCW 36.70A.020(5).

We give "substantial weight to the Board's interpretation of the GMA." *Whatcom County*, 186 Wn.2d at 667. The Board concluded that the Communities failed to show that the adoption of amendment M-2 violates the GMA. We hold that the Board did not err.

The Communities also assign error to the Board's conclusion that the Communities failed to show that the County violated RCW 36.70A.130(1)(d). The Communities argue that because the County allegedly failed to evaluate amendment M-2 as required by former PCC 19C.10.065(A), the County violated RCW 36.70A.130(1)(d). We disagree.

5. Subsequent footnotes following footnote 12 are renumbered beginning with footnote 13.

[2] "Citations to legal authority and references to relevant parts of the record" must support an argument on appeal. RAP 10.3(a)(6).

6. In all other respects the motion for reconsideration is denied.

IT IS SO ORDERED.

JOHANSON, J.P.T.

We concur:

WORSWICK, P.J.

MELNICK, J.

Filed
Washington State
Court of Appeals
Division Two

February 6, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SUMMIT-WALLER COMMUNITY ASSOCIATION, NORTH CLOVER CREEK/COLLINS COMMUNITY COUNCIL, Appellants, v. PIERCE COUNTY Respondent, and BETHEL SCHOOL DISTRICT, SUMNER SCHOOL DISTRICT, PENINSULA SCHOOL DISTRICT, EATONVILLE SCHOOL DISTRICT, and GRAHAM MC, LLC and APOGEE CAPITAL, LLC and HIGH VALLEY INVESTMENT, LLC and TACOMA SCHOOL DISTRICT, Respondents.	No. 50363-8-II UNPUBLISHED OPINION

JOHANSON, J. — Summit-Waller Community Association, North Clover Creek, and the Collins Community Council (collectively the "Communities") appeal an order of the Central Puget Sound Region Growth Management Hearings Board (Board). The Board upheld Pierce County's

approval of an area-wide map amendment M-2 to a land use designation map in the Pierce County Comprehensive Plan (Comprehensive Plan),[3] which redesignated eight parcels of land within the County. The Communities argue that the Board erred as a matter of law that its order was unsupported by substantial evidence and that the Board's decision was arbitrary and capricious. The Communities also contend that the Board erred when it concluded that their timeliness challenge to amendment M-2 was moot. Finally, the Communities raise some arguments here that they did not raise before the Board, thus we do not consider them. Finding no error, we affirm.

FACTS

The Communities challenge the redesignation of eight parcels of land[4] located in an area covered by the Comprehensive Plan. The County redesignated the land use of the eight parcels from "Employment Center" (EC) to "High Density Residential" (HRD). Clerk's Papers (CP) at 12. The Pierce County Council (Council) approved the redesignation in amendment M-2 by passing Ordinance No. 2015-40.

Amendment M-2 allowed an HRD land use designation for the eight parcels, which in turn allowed "multifamily and high density single-family and two-family housing" development with up to "25 dwelling units per acre." Administrative Record (AR) at 1894, 1892. An HRD land use designation allows for "limited neighborhood commercial retail and service uses." AR at 1892.

[3] Amendment M-2 was an amendment to the Mid-County Community Plan, which is part of the Comprehensive Plan. A community plan is a local development plan that adds to, but cannot conflict with, "the Countywide Comprehensive Plan." For ease of reference, we describe amendment M-2 as an amendment to the Comprehensive Plan, rather than as an amendment to the Mid-County Community Plan.

[4] The eight parcels cover approximately 34 acres in Pierce County between Tacoma and Puyallup. The parcels are within an Urban Growth Area (UGA) boundary.

Before the amendment, the eight parcels consisted of mostly vacant property. The Communities were located in a rural separator land use designated area south of the eight parcels.

I. 2014 AMENDMENTS TO THE PIERCE COUNTY CODE (PCC)

In 2014, the Council amended chapter 19C.10 PCC, titled "Procedures for Amendments to the Comprehensive Plan." AR at 1675. The Council adopted former PCC 19C.10.050(F) (2014), which provided that applications for amendments to the Comprehensive Plan proposed as part of the periodic update under GMA provision RCW 36.70A.130(5)(a) "shall not be subject to the application requirements of [former PCC] 19C.10.050 E [(2014)] or [former PCC] 19C.10.055 [(2009)] but shall include an analysis and recommendation pursuant to [former] PCC 19C.10.065 [(2014)]." AR at 1678. As part of the amendment to chapter 19C.10 PCC, the Council adopted former PCC 19C.10.065(A), which provided that

> [d]uring a required [Growth Management Act (GMA), ch. 36.70A RCW,] periodic update, the Planning and Land Services [(PALS)] Department shall evaluate Council-Initiated amendments based upon [a list of factors].

CP at 214. The amendments to chapter 19C.10 PCC were approved in Ordinance 2014-31s, which became effective on July 1.

II. AMENDMENT M-2 TO THE COMPREHENSIVE PLAN

A. APPLICATION FOR AMENDMENT M-2

On July 30, Scott Edwards, the managing member of Apogee Capital LLC and High Valley Investment LLC (collectively "Intervenors"), filed an application for amendment M-2. Amendment M-2 was an area-wide map amendment, which the County defined as "a proposed change or revision to the Comprehensive Plan Generalized Land Use Map." Former PCC 19C.10.030(A) (2005). "An Area-Wide Map amendment, unlike a parcel or site-specific land use

reclassification proposal, is of area-wide significance and includes many separate properties under various ownerships." Former PCC 19C.10.030(A).

As proposed in the application, amendment M-2 sought to amend the land use designation and zone classification for the eight parcels at issue. The application suggested that the Council approve an "Urban Center"[5] land use designation with an implementing "Community Center" (CC) zone classification. CP at 155. A CC land use designation "has as its focus a significant traffic generator around which develops a concentration of other commercial office, services, and some high-density residential development." AR at 1892.

At the time of the application, the eight parcels had an EC land use designation with an implementing Community Employment (CE) zone classification.

B. RESOLUTION R2014-94S

In September, the Council initiated a number of proposed amendments to the Comprehensive Plan as part of the "continuing review and evaluation" required under GMA provision RCW 36.70A.130. CP at 147. One such Council-initiated amendment was amendment M-2.[6] In Resolution No. R2014-94s, the resolution initiating amendment M-2, the Council directed PALS to "evaluate Council initiated amendments pursuant to [former PCC] 19C.10.065." CP at 148. The Council also noted that "all applications received for Council initiation by July 31,

[5] There was no Urban Center *land use* designation at the time, but there was an Urban Center *zoning category* in the Zone Classifications Table, which included a CC zone classification. Former PCC 18A.27.010 (2014).

[6] The Council initially referred to amendment M-2 as Map Amendment PA-21.

2014, were reviewed against the acceptance criteria adopted in [former PCC] 19C.10.050[(F)]" and that "applications that did not meet the criteria were removed from consideration." CP at 148.

C. PALS Initial Staff Report

PALS submitted a staff report to the Pierce County Planning Commission (Planning Commission) analyzing amendment M-2 based on the criteria enumerated under former PCC 19C.10.065(A). PALS (1) answered "[u]ndetermined" in response to whether there was "a community or countywide need" for amendment M-2 and whether the amendment would "provide public benefits"; (2) noted that there was infrastructure available and summarized the nearby sewers, water utilities, roads, schools, and fire district; (3) noted a physical constraint on the eight parcels that "development regulations address[ed]"; (4) noted an environmental constraint that "could generate noise impacts to adjacent properties"; (5) listed the land uses and activities on the eight parcels; (6) listed the land uses and activities on neighboring properties; and (7) concluded that amendment M-2 was "not consistent with the policies in the Comprehensive Plan for expanding an existing area designated as [CC]." CP at 130-31.

PALS also concluded that the eight parcels "may have been inappropriately [re]designated as EC" from a Mixed Use District in 2006, because the land did "not meet [Comprehensive Plan] policies for locating [EC] designations." CP at 130. Instead, PALS "question[ed] whether a *higher density residential designation* may be more appropriate as a transition into the surrounding neighborhood." CP at 130 (emphasis added). PALS' staff report indicates it recommended that the County address the "area as part of the more extensive 2015 Comprehensive Plan update." CP at 130.

D. Mid-County Land Use Advisory Commission Meeting

The Mid-County Land Use Advisory Commission (MCAC) considered amendment M-2 at a public meeting on November 4. At the meeting, MCAC noted that the eight parcels "may have been inappropriately designated as EC" because they did "not meet the standards for a concentration of commercial uses" or "criteria for [an EC]." CP at 144. Because the proposed CC designation and the existing EC designation were inappropriate, "staff was open to consideration of an alternate designation" for the eight parcels. CP at 144.

During public testimony on amendment M-2, Brynn Brady spoke as representative of the Intervenors and indicated that a land use designation permitting "multi-family development" would be satisfactory. CP at 144. Brady also noted that the Intervenors had vested applications for multi-family development that expired due to inactivity during the recession.

MCAC passed a motion to support PALS' recommendation discussed above.

E. Planning Commission Meeting

The Planning Commission considered amendment M-2 at a public meeting on December 4. The Planning Commission noted that the eight parcels did "not meet criteria for [a CC]" and did "not meet [the criteria for an EC] designation." CP at 168.

The Planning Commission noted that PALS would work with MCAC "as part of the Comprehensive Plan update if they want to see [the eight parcels] redesignated to a different [land use] designation more appropriate for the site, such as [HRD] . . . implemented with a[] Moderate High Density Residential (MHR) [zone] classification." CP at 168. The Planning Commission noted that the addition of an HRD land use designation and implementing MHR zone classification

"was vetted with [the] Economic Development Department[,] which agreed that [the eight parcels] may not be appropriately designated" as an EC. CP at 168.

One of the planning commissioners asked if the "additional property owners were notified of the public meeting" and "staff" responded "yes". CP at 169. However, the Planning Commission noted that neighboring property owners were notified of amendment M-2 as proposed in the application, but not that the proposal could change.

The agenda for the meeting noted that the Planning Commission would hear testimony on amendment M-2. The agenda also noted that the County would post staff reports detailing "individual proposed amendments" on its website. AR at 1699.

The Planning Commission approved a motion to have PALS "prepare an alternative recommendation to accommodate high density residential development." CP at 169.

F. PALS' Modified Recommendation

PALS noted that it "reviewed [additional] information and modified its recommendation for [amendment] M-2" in errata to its initial staff report. CP at 172. PALS recommended redesignation from an EC to an HRD land use designation, along with an implementing MHR zoning classification, "as it would be more appropriate as a transition into the surrounding neighborhood." CP at 173.

PALS also recommended text amendments to the Comprehensive Plan adding the HRD designation and MHR zone. The text amendments explained that the proposed HRD designation was "intended to be composed of multi-family and high density single-family and two-family housing and limited neighborhood retail and service commercial uses" and that the proposed

"MHR zone differ[ed] from Pierce County's current HRD zone in that it d[id] not allow for commercial uses." CP at 173.

G. Planning Commission Hearings

The Communities participated in a public hearing before the Planning Commission on April 21, 2015, through their representative, Dan Haire. Haire asked the Planning Commission to reconsider its recommendation that the Council should adopt amendment M-2 with an HRD redesignation of the eight parcels. The meeting minutes do not reflect any argument by Haire that the County denied him the required public notice of the proposed redesignation from an EC to an HRD in amendment M-2.

The Planning Commission held several other public meetings on the periodic review of the Comprehensive Plan, of which amendment M-2 was a part. Although members of the Communities appeared at some of these meetings, there is no indication that the Planning Commission specifically addressed amendment M-2 at those meetings.

H. Communities' Letters

On April 28 and June 2, the Communities sent letters to the Planning Commission and the Council arguing that PALS failed to properly evaluate the criteria under former PCC 19C.10.065(A) in considering amendment M-2 and failed to adhere to the "no net loss policy" for ECs. AR at 65. The Communities did not argue that the County failed to provide them notice of amendment M-2 or denied them an opportunity to participate in the County's consideration of amendment M-2. In the letters, they mentioned that they had historically opposed an EC land use designation for the eight parcels as an inappropriate land use.

I. ORDINANCE 2015-33S

If adopted, Ordinance No. 2015-33s[7] would have completed the County's periodic review of and revisions to the Comprehensive Plan under GMA provision RCW 36.70A.130. As proposed, Ordinance No. 2015-33s (1) would have repealed and replaced the County's Comprehensive Plan,[8] (2) repealed the County's Community Plans,[9] (3) amended the County's development regulations,[10] and (4) incorporated the required regulatory periodic updates.[11]

The Council's Community Development Committee held several public meetings on Ordinance No. 2015-33s during June 2015. Members of the Communities gave public testimony during some of these meetings.

The Council adopted Ordinance 2015-33s on June 30 as part of its periodic review of the Comprehensive Plan. The Pierce County Executive vetoed Ordinance 2015-33s on July 14.

J. ORDINANCE 2015-40

The Council then passed Ordinance No. 2015-40 on August 11. Ordinance No. 2015-40 approved similar changes rejected in Ordinance No. 2015-33s, including approval of amendment

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[7] The record does not include a copy of Ordinance No. 2015-33s. This description comes from the meeting minutes for the Council's public meeting on June 30. It is reasonable to infer that Ordinance No. 2015-33s included amendment M-2 because the ordinance covered the periodic update of which amendment M-2 was a part. The timing of this ordinance is relevant to the Communities' timeliness challenge under the RCW 36.70A.130(5)(a) deadline of June 30, 2015 for periodic update revisions.

[8] Title 19A PCC.

[9] Title 19B PCC.

[10] Titles 18, 18A, 18B, 18F, 18G, and 18J PCC.

[11] RCW 36.70A.130(1)(a).

M-2. The Council approved amendment M-2 as part of its periodic review and revision to the Comprehensive Plan under Ordinance No. 2015-40.

The Council made findings of fact and incorporated them into Ordinance No. 2015-40. In relation to amendment M-2, the Council found that the eight parcels were "inappropriately designated as EC" because the area was "(1) not large enough to accommodate rail spurs or heavy transportation infrastructure; (2) not connected with the business pattern of EC along 112th Street East; (3) encumbered by critical areas; and (4) surrounding incompatible uses and zoning which could limit EC use." CP at 201. The Council found that because the EC land use designation was inappropriate, the area could "be evaluated for re-designation." CP at 201.

The Comprehensive Plan amendments under Ordinance No. 2015-40 became effective on February 1, 2016.

III. GROWTH MANAGEMENT BOARD PROCEEDINGS

The Communities challenged amendment M-2 in an administrative proceeding before the Board. They sought to invalidate Ordinance 2015-40 as inconsistent with the GMA. Apogee and High Valley intervened.

The Board consolidated the Communities' petition for review with other challenges to Ordinance No. 2015-40. James L. Halmo represented the other petitioners in the two cases the Board consolidated with the Communities' case.

A. THE COMMUNITIES' ARGUMENTS BEFORE THE BOARD

The Communities argued that the County's approval of amendment M-2 did not comply with the following GMA provisions: RCW 36.70A.010, .020(5), and .130(1)(d) and (2). The Communities also argued that the County's approval of amendment M-2 was inconsistent with

certain local land use goals and PCC provisions. They did not clearly state why a violation of local policies or procedures for amendments to the comprehensive plan was a GMA violation. The thrust of their argument seemed to be that either the Comprehensive Plan or amendment M-2 was "internally inconsistent" and that amounted to a violation of RCW 36.70A.130(1)(d).[12] AR at 53.

The Communities did not argue that the County failed to provide public notice of amendment M-2 or that the County denied them the opportunity to participate in the proceedings related to amendment M-2. They also did not argue that the County's approval of amendment M-2 substantially prejudiced them.

B. THE COUNTY'S AND INTERVENORS' ARGUMENTS BEFORE THE BOARD

The County responded that the approval of amendment M-2 was consistent with the GMA and PCC provisions cited by the Communities. It argued that the "no net loss requirement" did not apply to amendment M-2 because it "was adopted as part of the County's periodic update cycle" and because the County "evaluat[ed] the amendment using the factors identified in [former] PCC 19C.10.065[(A)]." AR at 1610. Additionally, it argued that amendment M-2 furthered the GMA's "goal of promoting a variety of residential densities and housing types . . . under RCW 36.70A.020(4)." AR at 1610. During oral argument before the Board, the following exchange occurred:

> [Intervenors' Attorney]: . . . [T]he very first time [amendment M-2] saw the light of day, the staff recommended apartments only. That then went to the planning commission in December of 2014. They agreed. And that same proposal continued until it was adopted by the council in the . . . middle of 2015. So I think

[12] RCW 36.70A.130(1)(d) provides that amendments and revisions to a county's comprehensive plan must conform to the GMA and that amendments or revisions to a county's development regulations must be consistent with and implement that county's comprehensive plan.

> it's fair to say from the very first outing, this proposal was changed by everybody who looked at it to apartments instead of the commercial center.
>
> [Board Member]: And "by everybody," did that include public notice?
>
> [Intervenors' Attorney]: Yes . . . well, the staff reports and everything that would have been done in conjunction with the --
>
> [Board Member]: Were published as part of a comment period?
>
> [Intervenors' Attorney]: Yes, yes.

AR Transcript of Proceedings at 57. The Communities did not contradict the Intervenors' comments about public notice and did not argue that the County failed to provide public notice of the staff reports related to amendment M-2.

C. THE BOARD'S FINDING OF FACTS

The Board entered the following relevant findings.

"Applications for zoning amendments received by the July 31, 2014, deadline were . . . reviewed by [PALS] against the acceptance criteria in [former] PCC 19C.10.050F." CP at 15. The Council "screened the PALS-accepted plan amendments through the public hearing process" before the Council initiated the amendments. CP at 15. Amendment M-2 "was 'initiated' by the Council in Resolution 2014-94s." CP at 15.

MCAC considered amendment M-2 at the November 4 public meeting. PALS advised MCAC "that the properties did not fit the proposed CC or existing EC designation and proposed an alternate designation." CP at 15. "PALS staff evaluated the [amendment] M-2 proposal '*based on*' the eight criteria identified in [former PCC 19C.10.065(A)]." CP at 23. MCAC voted to move forward on amendment M-2 "with the expectation that [PALS] would work toward an appropriate designation" to "accommodate multi-family development" on the eight parcels. CP at 15.

PALS provided the Planning Commission with an analysis of amendment M-2 "using the factors in [former] PCC 19C.19.065[(A)]." CP at 16. PALS advised the Planning Commission

that the eight parcels "may have been inappropriately designated EC as it did not meet the criteria, nor was the proposal consistent with the [Comprehensive] Plan policies for expanding CC designation." CP at 16. PALS "suggested a 'higher density residential designation'" as an alternative for amendment M-2. CP at 16. The Planning Commission directed PALS to prepare an alternative recommendation on amendment M-2 that would "accommodate high density residential development." CP at 16.

PALS prepared a modified staff report on amendment M-2 that "included text amendments [to the Comprehensive Plan]" adding "Moderate High Density Residential designations . . . and recommended its adoption." CP at 16.

The modified version of amendment M-2 "was adopted as part of the 2015 [Comprehensive] Plan Update" in Ordinance 2015-40. CP at 16. The Council's findings of fact attached to Ordinance 2015-40 related to the approval of amendment M-2 "indicate the proposal was reviewed and that attention was given to ensuring consistency with [Comprehensive] Plan policies." CP at 24.

D. THE BOARD'S CONCLUSIONS OF LAW

The Board entered the following relevant conclusions of law.

The plain meaning of Comprehensive Plan Policy LU-56.3.1 provides an exception to the "no net loss requirement" under former PCC 19A.30.030(H) (2007) and Comprehensive Plan Policy LU-56. CP at 18. The exception to the no net loss requirement "allows the Council to redesignate EC land without replacing it with 'developable acreage'" if the County has determined that the land was "unsuitable for industrial use in the first place." CP at 18. Additionally, former

PCC 19C.10.055(C) "seeks to prevent the net loss of 'developable acreage'" as opposed to "'total acreage.'" CP at 19.

The Communities "failed to show an inconsistency between the County's development regulations and its [Comprehensive] Plan in violation of RCW 36.70A.130[(1)](d)." CP at 19. Moreover, review of Council-initiated amendments to the Comprehensive Plan under RCW 36.70A.130(5)(a), former PCC 19C.10.055(C), and former PCC 19C.10.050(E)(3) do not require that a proposed amendment "be accepted as is or rejected." CP at 23.

The plain meaning of former PCC 19C.10.065(A) did not "require[] more than a recommendation based on the review" and did not require that a "proposal must necessarily 'satisfy' each and every criterion." CP at 23. The Communities failed to show that the County did not evaluate amendment M-2 as required under former PCC 19C.10.065(A).

The Communities abandoned their arguments based on alleged violations of RCW 36.70A.010, .020(5), .130(2). The Communities also "did not allege a violation of [RCW] 36.70A.130(5)(a)." CP at 24. Even if they had alleged a violation of RCW 36.70A.130(5)(a), it would "essentially [have been] a failure to act challenge and moot" because "the County ha[d] completed its update." CP at 24.

The Communities failed to show that the Board's approval of amendment M-2 was inconsistent with the Comprehensive Plan, violated RCW 36.70A.130(1)(d), or violated the GMA generally. There was "no basis for an order of invalidity" related to amendment M-2. CP at 27. The Board "dismissed" all of the issues raised by the Communities. CP at 27-28.

IV. THURSTON COUNTY SUPERIOR COURT PROCEEDINGS

The Communities petitioned the Thurston County Superior Court for review of the Board's decision. The superior court affirmed.

ANALYSIS

The Communities argue that (1) the Board erroneously interpreted or applied the law, (2) substantial evidence did not support the Board's order, and (3) the Board's order was arbitrary and capricious. Br. of Appellant at 6-7. We disagree.

I. STANDARDS OF REVIEW

Washington's Administrative Procedure Act (APA), ch. 34.05 RCW, governs our review of the Board's final decision. *Whatcom County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 186 Wn.2d 648, 666, 381 P.3d 1 (2016). "On appeal, we review 'the *Board's* decision, not the decision of the superior court.'" *Feil v. E. Wash. Growth Mgmt. Hr'gs Bd.*, 172 Wn.2d 367, 376, 259 P.3d 227 (2011) (quoting *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000). Our review is limited to "'the record made before the Board.'" *Feil*, 172 Wn.2d at 376 (quoting *King County*, 142 Wn.2d at 553).

Under the APA, we review "the Board's legal conclusions de novo." *Whatcom County*, 186 Wn.2d at 667. However, we give "substantial weight to the Board's interpretation of the GMA." *Whatcom County*, 186 Wn.2d at 667. The challenging party bears the "burden of establishing that the Board's decision is based on an erroneous interpretation of the law." *Whatcom County*, 186 Wn.2d at 667; *King County*, 142 Wn.2d at 553; RCW 34.05.570(3)(d). "Unchallenged conclusions of law become the law of the case." *Rush v. Blackburn*, 190 Wn. App. 945, 956, 361 P.3d 217 (2015).

We review the Board's factual findings for "substantial evidence." *Kittitas County v. E. Wash. Growth Mgmt. Hr'gs Bd.*, 172 Wn.2d 144, 155, 256 P.3d 1193 (2011); *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998). Evidence is substantial if, "when viewed in light of the whole record," RCW 34.05.570(3)(e), there is "'a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness'" of the finding. *Kittitas County*, 172 Wn.2d at 155 (quoting *Thurston County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 164 Wn.2d 329, 341, 189 P.3d 38 (2008)); *see also City of Redmond*, 136 Wn.2d at 46. The challenging party has the burden of showing that the Board's decision is unsupported by substantial evidence. RCW 34.05.570(1)(a).

"'On mixed questions of law and fact, we determine the law independently, then apply it to the facts as found by the [Board.]'" *Thurston County*, 164 Wn.2d at 341 (internal quotation marks omitted) (quoting *Lewis County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 157 Wn.2d 488, 498, 139 P.3d 1096 (2006)). We consider whether the Board's factual findings support its conclusions. *Kittitas County v. Kittitas County Conserv. Coal.*, 176 Wn. App. 38, 55 n.3, 308 P.3d 745 (2013).

We determine whether a Board's order is arbitrary and capricious by reviewing "whether the order represents 'willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.'" *Kittitas County*, 172 Wn.2d at 155 (quoting *City of Redmond*, 136 Wn.2d at 46-47). "'Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.'" *City of Redmond*, 136 Wn.2d at 47 (quoting *Kendall v. Douglas, Grant, Lincoln & Okanogan Counties Pub. Hosp. Dist. No. 6*, 118 Wn.2d 1, 14, 820 P.2d 497 (1991)).

II. LEGAL PRINCIPLES

A. THE GROWTH MANAGEMENT ACT

A purpose of the GMA is to reduce "uncoordinated and unplanned growth." RCW 36.70A.010. Under the GMA provision, Pierce County had to, among other things, (1) "adopt a countywide planning policy," (2) "adopt a comprehensive plan," and (3) adopt "development regulations that [we]re consistent with and implement[ed] the comprehensive plan." RCW 36.70A.040(3)(a), (d).

A comprehensive plan is a county's "generalized coordinated land use policy statement." RCW 36.70A.030(4). "[A] comprehensive plan serves as 'guide[s]' or 'blueprint[s]' to be used in making land use decisions." *Feil*, 172 Wn.2d at 382 (internal quotation marks omitted) (alterations in original) (quoting *Woods v. Kittitas County*, 162 Wn.2d 597, 613, 174 P.3d 25 (2007)). "Development regulations" are a county's "controls placed on development or land use activities, . . . including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances," but excluding "a decision to approve a project permit application." RCW 36.70A.030(7). Development regulations need not "'strictly conform' to the GMA." *Feil*, 172 Wn.2d at 382 (quoting *Woods*, 162 Wn.2d at 613).

The GMA requires that a county's comprehensive plan and development regulations comply with the GMA's requirements. RCW 36.70A.130(1)(a), (d). It also requires that a county's development regulations be consistent with its comprehensive plan. RCW 36.70A.130(1)(a), (d).

B. GROWTH MANAGEMENT HEARINGS BOARD

1. JURISDICTION

A growth management hearings board has "limited jurisdiction and may decide *only* challenges to or amendments of comprehensive plans or development regulations." *Schnitzer W., LLC v. City of Puyallup*, 190 Wn.2d 568, 575, 416 P.3d 1172 (2018). As relevant here, a Board may only determine whether the comprehensive plans or development regulations and amendments thereto comply with the GMA. *Feil*, 172 Wn.2d at 382; RCW 36.70A.280(1)(a).

2. PRESUMPTION OF VALIDITY AND BURDEN OF PROOF

The GMA establishes "a presumption of validity for comprehensive plans and development regulations," *Kittitas County*, 172 Wn.2d at 155, "and amendments thereto." RCW 36.70A.320(1). "[B]oards must consider anecdotal evidence provided by counties and defer to local planning decisions as between different planning choices that are compliant with the GMA." *Kittitas County*, 172 Wn.2d at 157.

A party challenging the validity of a county's comprehensive plan or development regulations may rebut the presumption of validity with "evidence that persuades a board that the action is clearly erroneous." *Kittitas County*, 172 Wn.2d at 156. The Board will review whether the county clearly erred "in view of the entire record . . . and in light of the goals and requirements of [the GMA]." *Whatcom County*, 186 Wn.2d at 667 (quoting RCW 36.70A.320(1), (3)). "To find an action clearly erroneous, the Board must be 'left with the firm and definite conviction that a mistake has been committed.'" *Whatcom County*, 186 Wn.2d at 667 (internal quotation marks omitted) (quoting *King County*, 142 Wn.2d at 552). The challenging party has the burden of

"demonstrate[ing] that any action taken by . . . a county . . . under [the GMA] is not in compliance with the requirements of [the GMA]." RCW 36.70A.320(2).

III. Errors of Law

The Communities assign error to the Board's conclusions related to the County's evaluation of amendment M-2 against the criteria for comprehensive plan amendments set forth under former PCC 19C.10.065(A).

A. Arguments Waived or Abandoned Below Regarding County's Evaluation of Amendment M-2

1. RCW 36.70A.020(5) – GMA Goals

The Communities argue that the Board erred in concluding that the County's approval of amendment M-2 complied with GMA planning goal of encouraging economic development under RCW 36.70A.020(5). The Board made no such conclusion. Instead, the Board concluded that the Communities abandoned their argument on this issue. The Communities did not assign error to that conclusion.

RCW 34.05.554(1) provides that "[i]ssues not raised before [the Board] may not be raised on appeal." "Unchallenged conclusions of law become the law of the case." *Rush*, 190 Wn. App. at 956. Thus, we do not reach the Communities' argument based on RCW 36.70A.020(5).

2. Other GMA Provisions the Communities Cited Without an Assignment of Error

The Communities also cite to several GMA provisions when discussing the County's evaluation of amendment M-2.[13] We address these provisions separately from RCW

[13] RCW 36.70A.010 ("Legislative findings" on the GMA, including the public interest in coordinating comprehensive land use planning and economic development.); RCW 36.70A.011 (Legislative findings on the GMA's rural lands provisions.); RCW 36.70A.020(1), (4), and (12) (GMA planning goals for urban growth, housing, and public facilities and services); RCW

36.70A.020(5) because the Communities did not include these provisions in their assignments of error, but they raise them in conclusory fashion.

"Issues not raised before [the Board] may not be raised on appeal." RCW 34.05.554(1). Additionally, a party "is deemed to have waived any issues that are not raised as assignments of error and argued by brief." *State v. Sims*, 171 Wn.2d 436, 441, 256 P.3d 285 (2011); RAP 10.3(a)(4), (g)-(h)

The Board concluded that the Communities abandoned their argument based on RCW 36.70A.010, and the Communities do not assign error based on RCW 36.70A.010. Additionally, the Communities did not raise arguments before the Board based on RCW 36.70A.011, .020(1), (4), (12), .040(5)(d), or .070(2)-(4), (6). Thus, we do not reach the Communities' argument based on these GMA provisions.

B. RCW 36.70A.130(1)(D) – CONFORMANCE WITH THE GMA REQUIREMENTS AND CONSISTENCY WITH THE COMPREHENSIVE PLAN

The Communities assign error to the Board's conclusion that the Communities failed to show that the County violated RCW 36.70A.130(1)(d). The Communities argue that because the County allegedly failed to evaluate amendment M-2 as required by former PCC 19C.10.065(A), the County violated RCW 36.70A.130(1)(d). We disagree.

36.70A.040(5)(d) (counties "shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan"); RCW 36.70A.070(2)-(4), (6) (comprehensive plan mandatory elements, specifically housing, capital facilities, utilities, and transportation).

RCW 36.70A.130(1)(d) is the only GMA provision under which the Communities preserved an argument related to the County's evaluation of amendment M-2 under former PCC 19C.10.065(A). RCW 36.70A.130(1)(d) provides that

> [a]ny amendment of or revision to a comprehensive land use plan shall conform to [the GMA]. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

However, the GMA establishes "a presumption of validity for comprehensive plans and development regulations," *Kittitas County*, 172 Wn.2d at 155, "and amendments thereto." RCW 36.70A.320(1). The party challenging an amendment to a comprehensive plan or to development regulations has the burden of proving that the County clearly erred. *Kittitas County*, 172 Wn.2d at 156; RCW 36.70A.130(1)(d). Therefore, to establish a violation of RCW 36.70A.130(1)(d), the challenging party must clearly show either that (1) an amendment or revision to the comprehensive plan did not conform to the GMA or (2) an amendment or revision to development regulations was inconsistent with or did not implement the comprehensive plan. *Kittitas County*, 172 Wn.2d at 156; RCW 36.70A.130(1)(d).

Amendment M-2 was an area-wide amendment to the Comprehensive Plan. As such, the second sentence of RCW 36.70A.130(1)(d) does not apply to this case because the Communities do not challenge a development regulation amendment. Instead, the Communities challenge a comprehensive plan amendment and must show that amendment M-2 did not conform to the GMA. RCW 36.70A.130(1)(d).

The Communities cite no authority to support the proposition that a County's alleged failure to adhere to its procedures for amendments to the comprehensive plan violates RCW 36.70A.130(1)(d). It is the Communities' burden to show that the amendment did not conform to

the GMA. *Kittitas County*, 172 Wn.2d at 156; RCW 36.70A.320(2), .130(1)(d). "[B]oards must . . . defer to local planning decisions as between different planning choices that are compliant with the GMA." *Kittitas County*, 172 Wn.2d at 157.

The GMA does not require an evaluation of the eight factors enumerated under former PCC 19C.10.065(A). And the Board concluded that the plain meaning of former PCC 19C.10.065(A) did not "require[] more than a recommendation based on the review" and did not require that a "proposal must necessarily 'satisfy' each and every criterion." CP at 23. The Communities failed to show that the County did not evaluate amendment M-2 as required under former PCC 19C.10.065(A).

Even if the County failed to evaluate amendment M-2 as required by former PCC 19C.10.065(A), the Communities have failed to show that alleged failure means that amendment M-2 to the Comprehensive Plan does not conform to the GMA.

We give "substantial weight to the Board's interpretation of the GMA." *Whatcom County*, 186 Wn.2d at 667. Here, the Board concluded that the Communities failed to show a violation of RCW 36.70A.130(1)(d). We hold that the Board did not err.[14]

IV. SUBSTANTIAL EVIDENCE

The Communities argue that substantial evidence does not support the Board's conclusion that the County evaluated amendment M-2 as required under former PCC 19C.10.065(A). The Communities seem to argue that there is no evidence that PALS evaluated the HRD redesignation

[14] As a result, we do not reach the Communities' specific arguments that the County failed to properly evaluate the amendment under former PCC 19C.10.065(A). In any event, the Communities waived their argument on the Board's interpretation of former PCC 19C.10.065(A) by failing to support it with analysis or authority. RAP 10.3(a)(6).

or "facts and evidence" related to the factors under former PCC 19C.10.065(A)(1)-(3), (5), and (7)-(8). Br. of Communities at 17.

A. BURDEN OF PROOF

The Board concluded that the Communities did not show by clear error "that the County failed to evaluate . . . amendment [M-2] as required by [former] PCC 19C.10.065[(A)]." CP at 24; *Kittitas County*, 172 Wn.2d at 156 (parties challenging a comprehensive plan amendment may rebut the presumption of validity with "evidence that persuades a board that the action is clearly erroneous").

The Communities seem to suggest that the County has the burden of demonstrating that substantial evidence supports the Board's decision. However, the Communities have the burden of showing that substantial evidence did not support the Board's decision. RCW 34.05.570(1)(a).

B. EVALUATION OF THE AMENDMENT

The Communities argue that substantial evidence does not support the Board's decision because there is no evidence that PALS evaluated the HRD redesignation. They argue that PALS' evaluation of the CC redesignation was insufficient because "the answers to the eight questions provided under [former] PCC 19C.10.065(A)[] would be substantively different depending on whether EC was being redesignated to CC . . . or to [HRD]." Br. of Communities at 22-23. We hold that the Communities' argument fails.

The following evidence indicates that PALS evaluated the HRD redesignation. PALS initial staff report "question[ed] whether a *higher density residential designation* may be more appropriate as a transition into the surrounding neighborhood." CP at 130 (emphasis added). Importantly, that report discussed the eight factors under former PCC 19C.10.065(A). The

Planning Commission noted that PALS would work with MCAC "as part of the Comprehensive Plan update if they want to see [the eight parcels] redesignated to a different designation more appropriate for the site, such as High Density Residential (HRD) . . . implemented with a[] Moderate High Density Residential (MHR) [zone] classification." CP at 168. The Planning Commission noted that the addition of an HRD land use designation and implementing MHR zone classification "was vetted with [the] Economic Development Department." CP at 168. The Planning Commission approved a motion to have PALS "prepare an alternative recommendation to accommodate high density residential development." CP at 169.

PALS then "r*eviewed [additional] information* and modified its recommendation for [amendment] M-2" in an errata to its initial staff report. CP at 172 (emphasis added). PALS' modified recommendation was for redesignation of the eight parcels from an EC to an HRD land use designation, along with an implementing MHR zoning classification, "as it would be more appropriate as a transition into the surrounding neighborhood." CP at 173. PALS did not modify the discussion of the eight factors under former PCC 19C.10.065(A) in the errata.

We reject the Communities' challenge because substantial evidence shows that PALS evaluated the HRD designation.

C. USE OF THE FACTORS TO DEVELOP AN EVALUATION OF THE AMENDMENT

The Communities argue that there is no evidence that the County evaluated the factors under former PCC 19C.10.065(A)(1) or (3). They also argue that there is no evidence that the County evaluated "facts and evidence" related to the factors under former PCC 19C.10.065(A)(2), (5), and (7)-(8). Br. of Communities at 17. We hold that the Communities' argument fails.

Former PCC 19C.10.065(A) provides the following factors shall be considered when evaluating an amendment:

1. Is there a community or countywide need for the proposed amendment? If so, what is that need?
2. Is the infrastructure available to support the requested amendment, such as sewer, water, roads, schools, fire support?
3. Would the requested amendment provide public benefits? If so, what sorts of public benefits?
4. Are there physical constraints on the property?
5. Are there environmental constraints, such as noise, access, traffic, hazard areas on or adjacent to the proposed amendment?
6. What types of land use or activities are located on the property?
7. What types of land use or activities are located on neighboring properties?
8. Is the proposed amendment consistent with all applicable state and local planning policies?

The Board concluded that the plain meaning of former PCC 19C.10.065(A) did not "require[] more than a recommendation based on the review" and did not require that a "proposal must necessarily 'satisfy' each and every criterion." CP at 23. And the plain language of former PCC 19C.10.065(A) requires that PALS evaluate a Council-initiated *amendment*, not the factors or facts related to those factors. Additionally, no one factor is determinative.

Moreover, we do not consider the Communities' argument under each of the factors because they failed to raise those arguments before the Board and thus waived them or they do not support the arguments with authority here. RCW 34.05.554(1) (waiver of arguments not raised before the Board); RAP 10.3(a)(6) ("citations to legal authority" must support an argument).

Based on the foregoing, we hold that the Communities failed to meet their burden of showing that substantial evidence did not support the Board's decision.

V. ARBITRARY AND CAPRICIOUS ARGUMENT

The Communities assign error to the Board's alleged failure to consider the fact that the eight parcels redesignated by amendment M-2 are adjacent to rural separator designated lands and argue that the Board's decision was arbitrary and capricious as a result. Again, we disagree.

The Board's order is arbitrary and capricious if it "represents 'willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.'" *Kittitas County*, 172 Wn.2d at 155 (quoting *City of Redmond*, 136 Wn.2d at 46-47). "'Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.'" *City of Redmond*, 136 Wn.2d at 47 (quoting *Kendall*, 118 Wn.2d at 14).

A petitioner challenging a Board decision must include "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). "Unsubstantiated assignments of error are deemed abandoned." *Kittitas County*, 176 Wn. App. at 54. "[R]equiring an actual challenge prior to undertaking appellate review avoids 'the danger of an erroneous decision caused by the failure of parties . . . to zealously advocate their position.'" *Clark County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 177 Wn.2d 136, 144, 298 P.3d 704 (2013) (alteration in original) (quoting *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984)).

Here, the Communities did not set out a separate section in their brief devoted to the arbitrary and capricious argument. Instead, the Communities merely mention the Board's alleged failure to "consider the Rural Separator community to the south" of the eight parcels in the portion

of their brief addressing PALS' evaluation of former PCC 19C.10.065(A)(7) and (8). Br. of Communities at 25.

The Communities do not allege any facts showing that any failure of the Board to consider the rural separator to the south of the eight parcels was willful. They state only that "[t]o the extent that the Board's decision constitutes a 'willful and unreasoning action' to not consider the Rural Separator community to the south, the Board's decision would also appear arbitrary and capricious." Br. of Communities at 25. The Communities also do not support the argument with authority.

Moreover, the Board did consider the land use south of the eight parcels when it determined that PALS properly evaluated amendment M-2. The Board included a finding in its order that the eight parcels "are immediately north of 121st [Street] E[ast], within the UGA." CP at 14. In the portion of its order discussing other adjacent land uses, the Board cited to the application for amendment M-2, which included a map showing the abbreviations for the rural separator designation and zone classification. During oral argument before the Board, the County also mentioned that a rural separator designated lands abutted the eight parcels to the south.

We hold that the Communities abandoned their arbitrary and capricious argument and they failed to meet their burden of proof on the argument.

In sum, the Board did not err when it concluded that the Communities failed to show that the County did not evaluate amendment M-2 as required by former PCC 19C.10.065(A), and therefore the Communities failed to show that amendment M-2 violated the GMA. Substantial evidence supports the Board's conclusion and its decision was not arbitrary nor capricious.

VI. PUBLIC NOTICE AND PARTICIPATION

The Communities assign error to the Board's conclusion that the County's approval of amendment M-2 complied with the GMA's public notice and participation requirements under RCW 36.70A.020(11), .140, and .035.[15] However, the Board made no such conclusion. Because the Communities' argument rests on an incorrect assumption that the Board made a conclusion it did not make, the Communities' argument fails.

The County argues that the Communities waived the issues of public notice and public participation by failing to raise them before the Board. It argues that it did not have a chance to develop the record to demonstrate that it provided the required public notice and opportunity for public participation.

The Communities reply that interests of justice would be served by reviewing the issue of public notice as provided under RCW 34.05.554(1)(d)(ii). Alternatively, the Communities argue that this court should review the issue of public notice because they raised it before the Thurston County Superior Court. They also argue that the issues of public notice and public participation warrant review based on *City of Seattle v. McCready*, 123 Wn.2d 260, 269, 868 P.2d 134 (1994), *Maynard Invest. Co. v. McCann*, 77 Wn.2d 616, 623, 465 P.2d 657 (1970), or RAP 10.6(c) and 12.1(b).

We agree with the County.

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[15] They also assign error to alleged public notice and participation requirements under RCW 36.70A.130(1)(d), but that provision does not discuss public notice and participation.

A. RCW 34.05.554(1)(d)(ii)

"Issues not raised before [the Board] may not be raised on appeal." RCW 34.05.554(1). An exception exists if "[t]he interests of justice would be served by resolution of an issue arising from: . . . [a]gency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency." RCW 34.05.554(1)(d)(ii).

Here, the Communities seem to argue that the Board's one question about public notice during argument satisfied the requirements of RCW 34.05.554(1)(d)(ii). It did not. The County's alleged failure to provide notice, happened *before* the Communities filed their petition with the Board. Thus we cannot conclude that the public notice issue arose from an action *after* the Communities had "exhausted the last feasible opportunity for seeking relief" from the Board. RCW 34.05.554(1)(d)(ii).

Therefore, we decline to extend the exception to the general rule under RCW 35.05.554(1)(d)(ii) to this case.

B. ISSUES RAISED BEFORE THE THURSTON COUNTY SUPERIOR COURT

"On appeal, we review 'the *Board's* decision, not the decision of the superior court.'" *Feil*, 172 Wn.2d at 376 (quoting *King County*, 142 Wn.2d at 553). Our review is limited to "'the record made before the Board.'" *Feil*, 172 Wn.2d at 376 (internal quotation marks omitted) (quoting *King County*, 142 Wn.2d at 553). We hold that the Communities' argument that they preserved the issue of public notice by raising it before the Thurston County Superior Court is meritless.

C. ISSUES NECESSARY TO A DECISION

The Communities rely on *McCready*, 123 Wn.2d at 269,[16] to argue that this court should review the otherwise waived issues of public notice and public participation because they are necessary. In *McCready*, our Supreme Court noted that "[o]rdinarily, the failure of the parties to raise an issue would preclude its examination." 123 Wn.2d at 269. However, the court recognized that appellate courts have "discretionary authority to reach" such issues "if the parties ignore a constitutional mandate, a statutory commandment, or an established precedent" that is "necessary for decision." *McCready*, 123 Wn.2d at 269. The Communities do not analyze whether "the parties ignore[d] a constitutional mandate, a statutory commandment, or an established precedent." *McCready*, 123 Wn.2d at 269. Therefore, we decline to extend the exception to the general rule announced in *McCready* to this case.

D. ISSUES AFFECTING THE PUBLIC INTEREST

The Communities also cite to *Maynard*, 77 Wn.2d at 622-23, for the proposition that this court may review the issues of public notice and public participation because they "'affect[ ] the public interest.'" Amended Reply Br. of Communities at 18 (quoting *Maynard*, 77 Wn.2d at 622). In *Maynard*, our Supreme Court stated that the "ordinary rule" is that "errors not raised below will not be considered on appeal." 77 Wn.2d at 621. The court recognized an exception to that rule, where the issue "affects the public interest" and involves "the present welfare of the people at

[16] The Communities also cite to *Hall v. American National Plastics, Inc.*, 73 Wn.2d 203, 205, 437 P.2d 693 (1968) (permitting courts to reach otherwise waived issues that are "determinative" and "crucial"), and *Conrad v. University of Washington*, 119 Wn.2d 519, 527-28, 834 P.2d 17 (1992) (permitting otherwise waived due process claims). However, the Communities fail to explain how those cases are analogous to this case.

large, or a substantial portion thereof." 77 Wn.2d at 622. The Communities do not argue that the issues of public notice and the opportunity for public participation in this case involve the public interest and present welfare of the public at large. Therefore, we decline to extend the exception to the general rule announced in *Maynard* to this case.

E. Rules of Appellate Procedure

The Communities rely on RAP 10.6(c) and 12.1(b) to argue that this court should review the otherwise waived issues of public notice and public participation because they are "important to proper adjudication." Amended Reply Br. of Communities at 18.

RAP 10.6(c) provides that appellate courts "may ask for an amicus brief at any stage of review." The rule does not apply to this case.

RAP 12.1(b) provides that an appellate court may provide an opportunity for supplemental briefing if the court "concludes that an issue which is not set forth in the briefs should be considered to properly decide a case." We do not consider the issues of public notice and public participation to be necessary to properly decide this case because even with supplemental briefing, our review is limited to "'the record made before the Board.'" *Feil*, 172 Wn.2d at 376 (internal quotation marks omitted) (quoting *King County*, 142 Wn.2d at 553). Because the County did not have an opportunity to develop the record made before the Board on those issues, we decline to request supplemental briefing.

In conclusion, because the Communities have failed to demonstrate that an exception to the general rule of waiver applies, we hold that the Communities have waived the issues of public notice and public participation by failing to raise them below.

VII. TIMELINESS OF COMPREHENSIVE PLAN AMENDMENTS

The Communities assign error to the Board's conclusions that the County's approval of amendment M-2 complied with the statutory deadline under RCW 36.70A.130(5)(a). However, the Board made no such conclusion.

The Board concluded that (1) the Communities "did not allege a violation of [RCW] 36.70A.130(5)(a)"[17] and (2) if they had, "the allegation [wa]s essentially a failure to act challenge and moot at [the] time as the County ha[d] completed its update." CP at 24. Again, because the Communities' argument rests on a conclusion that the Board did not make, their argument fails.

As to the conclusion that the Board did make, the Communities argue that the failure to act challenge was not moot because the County did not provide public notice or an opportunity for public participation as required under the GMA. The Communities did not assign error to the Board's conclusions that (1) the Communities failed to state a RCW 36.70A.130(5)(a) claim or (2) the Communities were instead raising a failure to act challenge. The Communities also argue that substantial evidence did not support the Board's decision on RCW 36.70A.130(5)(a) because the County did not revise the Comprehensive Plan before the June 30 deadline. These arguments fail.

"A case is moot if a court can no longer provide effective relief." *Orwick*, 103 Wn.2d at 253. Under the GMA, the only relief the Board may provide is "a finding of noncompliance'" or "'a finding of invalidity.'" *Whatcom County*, 186 Wn.2d at 694 (quoting *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 174, 322 P.3d 1219 (2014)); RCW 36.70A.300(3)(b), .302.

[17] To state a claim for a County's failure to review and revise a comprehensive plan before the June 30, 2015 deadline under RCW 36.70A.130(5)(a), a party must allege that the legislature "adopted or substantively amended [an underlying GMA provision] since the previous [version of the] comprehensive plan was adopted or updated." *Thurston County*, 164 Wn.2d at 344; *see Save Our Scenic Area v. Skamania County*, 183 Wn.2d 455, 466-67, 352 P.3d 177 (2015).

The County had to review and, if necessary, update its comprehensive plan and development regulations by June 30, 2015. RCW 36.70A.130(5)(a). A party must support its assignments of error with argument and authority. RAP 10.3(a)(6). "Unsubstantiated assignments of error are deemed abandoned." *Kittitas County*, 176 Wn. App. at 54.

The Communities do not argue that the Board can still provide effective relief for the County's failure to review and revise its Comprehensive Plan by the deadline. And the Communities waived any argument based on public notice or an opportunity for public participation by failing to raise those issues before the Board. RCW 34.05.554(1). Even if the Communities had preserved those arguments, they provide no argument or authority explaining how the Board could provide effective relief for the County's alleged failure to make revisions by the June 30 deadline. Therefore, we hold that the Board did not err when it concluded that the Communities' challenge under RCW 36.70A.130(5)(a) was moot.

VIII. SUBSTANTIAL PREJUDICE

The Communities assign error to the Board's conclusion that the County's approval of amendment M-2 did not substantially prejudice them. This assignment of error fails.

A petitioner challenging a Board decision must include "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). "Unsubstantiated assignments of error are deemed abandoned." *Kittitas County*, 176 Wn. App. at 54.

The portion of the Communities' brief addressing prejudice does not explain why they are addressing the issue of prejudice and does not cite to any authority. We hold that the Communities have abandoned the assignment of error based on substantial prejudice.

IX. CONCLUSION

We presume that local planning actions are valid under the GMA. The Communities failed to show that the County's alleged failure to adhere to former PCC 19C.10.065(A) resulted in an amendment M-2 that was inconsistent with the GMA. We hold that the Board did not err as a matter of law, that its order was supported by substantial evidence, and that the Board's decision was not arbitrary nor capricious.

Further, we hold that the Communities waived their public notice and public participation arguments by failing to raise them before the Board. They did not show that any exception to the waiver rule applies. The Communities also did not show that the Board erred in concluding that the Communities' claim regarding the County's alleged failure to review and revise the Comprehensive Plan by the GMA deadline was moot. Finally, the Communities failed to support their substantial prejudice argument with authority or facts. For these reasons, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

JOHANSON, J.

We concur:

WORSWICK, P.J.

MELNICK, J.

19C.10.065 GMA Periodic Update-Review and Evaluation of Council Initiated Amendments. Revised 3/18

A. During a required GMA periodic update, the Planning and Public Works Department shall evaluate Council-initiated amendments based upon the following:

1. Is there a community or countywide need for the proposed amendment? If so, what is that need?

2. Is the infrastructure available to support the requested amendment, such as sewer, water, roads, schools, fire support?

3. Would the requested amendment provide public benefits? If so, what sorts of public benefits?

4. Are there physical constraints on the property?

5. Are there environmental constraints, such as noise, access, traffic, hazard areas on or adjacent to the proposed amendment?

6. What types of land use or activities are located on the property?

7. What types of land use or activities are located on neighboring properties?

8. Is the proposed amendment consistent with all applicable state and local planning policies?

B. UGA amendments shall be evaluated based upon criteria listed in PCC 19C.10.060 C.

C. Comprehensive Plan amendments for Planned Communities shall be evaluated based upon PCC 19C.10.060 D.

D. Planning and Public Works shall forward the amendments to the Planning Commission with their recommendation, as part of the larger update proposal.

(Ord. 2017-12s § 2 (part), 2017; Ord. 2016-18 § 1 (part), 2016; Ord. 2014-31s § 1 (part), 2014)

APPENDIX

RCW 36.70A.020 Planning goals.

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses.

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.

RCW 36.70A.070 Comprehensive plans—Mandatory elements.

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140. Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community. In counties and cities subject to the review and evaluation requirements of RCW 36.70A.215, any revision to the housing element shall include consideration of prior review and evaluation reports and any reasonable measures identified.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within

the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural economic advancement, densities, and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area are subject to the requirements of (d)(iv) of this subsection, but are not subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(16). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(16). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary, the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries, such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the office of financial management's ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride-sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6), "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years. If the collection of impact fees is delayed under RCW 82.02.050(3), the six-year period required by this subsection (6)(b) must begin after full payment of all impact fees is due to the county or city.

(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

RCW 36.70A.011 Findings—Rural lands.

The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

RCW 36.70A.130 Comprehensive plans—Review procedures and schedules—Amendments.

(1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this

chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year, except that, until December 31, 2015, the program shall provide for consideration of amendments of an urban growth area in accordance with *RCW 36.70A.1301 once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under **RCW 43.21C.031(2), provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsection (5) of this section, its

designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) Except as provided in subsection (6) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before December 1, 2004, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before June 30, 2015, and every eight years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties;

(b) On or before June 30, 2016, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(c) On or before June 30, 2017, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before June 30, 2018, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(c) A city that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(d) A county or city that is subject to a deadline established in subsection (4)(d) of this section and that meets the criteria established in (b) or (c) of this subsection may comply with the requirements of subsection (4)(d) of this section at any time within the thirty-six months after the extension provided in (b) or (c) of this subsection.

(e) A county that is subject to a deadline established in subsection (5)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(f) A city that is subject to a deadline established in subsection (5)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(g) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW:

(i) Complying with the deadlines in this section;

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas; or

(iii) Complying with the extension provisions of subsection (6)(b), (c), or (d) of this section.

(b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance

with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.

(b) A county that has made the election under RCW 36.70A.710(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:

(i) A work plan has been approved for that watershed in accordance with RCW 36.70A.725;

(ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;

(iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;

(iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or

(v) Three or more years have elapsed since the receipt of funding.

(c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW 36.70A.710(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW 36.70A.720(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met.