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STATE OF WASHINGTON

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COURT OF APPEALS NO: 50363-8-II

WASHINGTON STATE COURT OF APPEALS
DIVISION II

SUMMIT-WALLER COMMUNITY ASSOCIATION, NORTH CLOVER
CREEK / COLLINS COMMUNITY COUNCIL, et al.,

Appellants,

v.

PIERCE COUNTY and INTERVENERS,

Respondents,

**BRIEF OF SUMMIT-WALLER COMMUNITY ASSOCIATION AND
NORTH CLOVER CREEK / COLLINS COMMUNITY COUNCIL**

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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.

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.

The Board's decision was arbitrary and capricious as a willful and unreasoning action taken without regard to or consideration of the facts, including the fact that the M-2 parcels directly border Pierce County's designated "Rural" lands to the south.

The Board erred in concluding that Pierce County Map Amendment M-2 complied with RCW 36.70A.130(5)(a), which sets deadlines for reviewing and updating comprehensive plans and development regulations.

The Board erred in concluding that Pierce County's adoption of Map Amendment M-2 complied with public notice and participation requirements in RCW 36.70A.020(11), RCW 36.70A.140, RCW 36.70A.035, and RCW 36.70A.130(1)(d).

The Board erred in concluding that the Community has not been substantially prejudiced by Pierce County's failure to provide notice and properly evaluate Map Amendment M-2 under the criteria required by PCC19C.10.065 (A)(1-8), and which resulted in a map amendment to allow an 800 unit apartment directly adjacent to the Community's designated rural lands neighborhood.

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Appendix: Verbatim copies of the following statutes are provided in the Appendix to Appellant's brief:

RCW 36.70A.130;

RCW 70A.070;

RCW36.70A.020

I. Reference to the Record

The Administrative Record before the Growth Management Hearings Board (Board) is identified as AR. The Board's decision is provided at AR 2069-2086. The Report of Proceedings before the Board is identified as "Board RP." The Report of Proceedings before the Trial Court is identified as "Court RP." The Clerks Papers are identified as CP. The pertinent text of the Pierce County Code is identified as PCC. The Appendix provides verbatim copies of statutes. As encouraged by RAP 10.4(e), the Appellants are referred to as "Community" and the Respondents as "Pierce County."

II. Introduction

On September 1, 2015, the Pierce County Council passed Ordinance No. 2015-40 to allow an 800-unit apartment complex adjacent to "Rural" designated lands located between Tacoma and Puyallup. AR 67-75. More specifically, the ordinance amended the Mid-County Community Plan Map to redesignate eight parcels from EC (Employment Center) to HDR (High Density Residential). *Id.* Multiple petitioners from across Pierce County challenged the re-designation from EC to HDR, alleging failure to comply with procedural and substantive requirements to the detriment of the Community. AR 63-66 and AR 106. Because Pierce County violated the Growth Management Act (GMA), Chap. 36.70A RCW, this Court

should reverse the decisions of the Growth Management Hearings Board and Thurston County Superior Court and hold that the map amendment is invalid.

III. Assignments of Error and Issues.

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.

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.

Assignment of Error 3: The Board's decision was arbitrary and capricious as a willful and unreasoning action taken without regard to or consideration of the facts, including the fact that the M-2 parcels border Pierce County's designated "Rural" lands to the south.

Assignment of Error 4: The Board erred in concluding that Pierce County Map Amendment M-2 complied with RCW 36.70A.130(5)(a), which sets deadlines for reviewing and updating comprehensive plans and development regulations.

Assignment of Error 5: The Board erred in concluding that Pierce County's adoption of Map Amendment M-2 complied with public notice and participation requirements in RCW 36.70A.020(11), RCW 36.70A.140, RCW 36.70A.035, and RCW 36.70A.130(1)(d).

Assignment of Error 6: The Board erred in concluding that the Community has not been substantially prejudiced by Pierce County's failure to provide notice and to evaluate Map Amendment M-2 under the criteria required by PCC19C.10.065 (A)(1-8), and which resulted in a map amendment to allow an 800 unit apartment complex directly adjacent to the Community's designated rural lands neighborhood.

Issues Pertaining to Errors:

Issue 1: Did the Board err in concluding that Pierce County followed its own procedural and substantive requirements in adopting Map Amendment M-2, when the record showed that Pierce County failed to evaluate Map Amendment M-2 as required by the County Comprehensive Plan, the County Code, including PCC19C.10.050(F) and PCC19C.10.065 (A)(1-8), and related policies?

Issue 2: Was there a lack of substantial evidence supporting the Board's finding of compliance with Pierce County procedural and substantive requirements, when the record showed no evidence that Pierce County evaluated Map Amendment M-2 as required by the County Comprehensive Plan, the County Code, including PCC19C.10.050(F) and PCC19C.10.065 (A)(1-8), and related policies?

Issue 3: Did the Board err in concluding that Pierce County Map Amendment M-2 is consistent with RCW 36.70A.130(1)(d) and RCW 36.70A.020, when the record showed that Pierce County failed to evaluate Map Amendment M-2 as required by the County Comprehensive Plan, the County Code, including PCC19C.10.050(F) and PCC19C.10.065 (A)(1-8), and related policies?

Issue 4: Was there a lack of substantial evidence supporting the Board's finding of compliance with RCW 36.70A.130(1)(d) and RCW 36.70A.020, when the record showed that Pierce County failed to evaluate Map Amendment M-2 as required by the County Comprehensive Plan, the County Code, including PCC19C.10.050(F) and PCC19C.10.065 (A)(1-8), and related policies?

Issue 5: Was the Board's decision arbitrary and capricious as a willful and unreasoning action taken without regard to or consideration of the facts, including the fact that the M-2 parcels directly border Pierce County's designated "Rural" lands to the south?

Issue 6: Did the Board err in concluding that Pierce County complied with RCW 36.70A.130(5)(a) and RCW 36.70A.130(1)(d) regarding the statutory deadlines for reviewing and updating comprehensive plans and development regulations?

Issue 7: Did the Board err in concluding that Pierce County complied with public notice and participation requirements, when Pierce County failed to provide notice that Map Amendment M-2 was being proposed as a redesignation from the EC designation to HDR, rather than from EC to CC?

Issue 8: Was the Community substantially prejudiced by Pierce County's failure to provide notice and evaluate Map Amendment M-2 under the criteria required by PCC19C.10.065 (A)(1-8), and which resulted in a map amendment to allow an 800 unit apartment complex directly adjacent to the Community's designated "Rural" neighborhood and properties?

IV. 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."¹ Pierce County's "Rural 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 approved Ordinance No. 2015-40 despite public opposition. AR 63-66 and AR 106. The

¹ The Mid-County Community Plan is presented at AR 193-2068.

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 "Rural Separator." AR 75, 80, 91 (Map), AR 29, (Photo).

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 required evaluation necessary to consider the Rural Separator and EC designations. AR 92. Pierce County then referred the newly proposed M-2 redesignation to Pierce County's Mid-County Advisory Committee (MCAC) for review and recommendation. AR 100.

During the November 4, 2014 MCAC hearing, the MCAC chairperson, Terry Wise, a realtor, spoke as the "representative" of one of his clients who then had a land use application before the MCAC. AR 98. Another former MCAC member, Herb Bickle, had his own land use application pending before the November 4, 2014 MCAC. AR 99. It was during the atmosphere of this MCAC hearing that the M-2 parcels were recommended for redesignation from EC to HDR to allow an 800 unit apartment complex. AR 100. The hearing minutes indicate that the MCAC did nothing to address the criteria required to evaluate the Rural Separator and EC designations, but simply opined that the M-2 parcels could be redesignated from EC because the parcels "may have been inappropriately designated as EC" in the first place. AR 100.

The MCAC recommendation to redesignate the parcels from EC to HRD was then approved by the Pierce County Planning Commission without public notice or public participation. 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 discussion, *infra*. The Pierce County Council - without public notice - approved the redesignation from EC to HRD without the required evaluation. AR 67-72 & 73-75, item #106. The Pierce County Council approved the

redesignation from EC to HRD without the required evaluation by simply inserting some "findings of fact" into the final Ordinance No. 2015-40. AR 67-72 & 73-74, item #106. Pierce County also failed to evaluate redesignation of the M-2 parcels from EC to HDR under PCC19C.10.065 (A)(1-8) within the statutory deadline provided by RCW 36.70A.130(5)(a). See discussion, *infra*.

The Community then appealed Community Plan Map Amendment "M-2" to the Growth Management Hearings Board. AR 2072-2086. The Community's argument before the Board focused primarily 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" designated lands directly to the south under PCC19C.10.065 (A)(1-8). AR 2073-2074.

The Community's M-2 appeal before the Board was included as only a small portion of a much larger "consolidated appeal hearing" involving Pierce County and five (5) separate School Districts. AR 103-162. Because of page and time limitations, there is a question as to whether the Board had a fair opportunity to fully consider and appreciate the merits of the Community's concerns. See discussion, *infra*.

The lack of public notice and participation came to a head during the March 31, 2016 hearing before the Growth Management Hearings Board when attorney William Lynn attempted to suggest that "public notice" was somehow unnecessary because "everybody" knew the proposal was changed "to apartments instead of the commercial center." As argued by Mr. Lynn at Board RP, p. 57, lines 12-25:

Mr. Lynn: so I think it's fair to say from the very first outing, this proposal was changed by every body who looked at it to apartments instead of the commercial center.

Presiding board member Pflug: and "by everybody," did that include public notice? (emphasis added).

Mr. Lynn: Yes. That was part of-- well, the staff reports and everything that would have been done in conjunction with the--

Presiding board member Pflug: were published as part of the comment period?

Mr. Lynn: Yes, yes.

Following Mr. Lynn's "Yes, yes" answer, Mr. Campbell, Pierce County, swiftly interjected issues unrelated to the "notice" issue raised by the Board and then concluded his comments by stating: "that may not be what you're inquiring about." Board RP p.57, lines 12-25 thru p. 59, line 1. In order to address the community's concern regarding lack of public notice and participation, Ms. Dee Ferko, president of the North Clover Creek / Collins Community Council, submitted her Notice of Appearance to represent her community

before the Hearings Board, but Mr. Lynn successfully opposed her ability to speak. AR 1917-1919; AR 1939-1945. 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. In the end, the Board was apparently satisfied with Mr. Lynn's answer and disregarded the "notice" issue.

It was not until the hearing before the Thurston County Superior Court that Pierce County finally 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.

Mr. Campbell then spoke in "generalities"² which caused the trial court to politely interrupt and which ultimately led to Mr. Campbell's following admission that "Notice" had not been provided as required:

(Court RP, p.5, lines 18-25 through p. 6, line 8):

THE COURT: Mr. Campbell, maybe I can help. It sounds like were talking in generalities, and it seems like it might be more hopeful (sic) to specify the argument that I am asking for

² Court RP, p.3, lines 20-25 thru p. 5, line 17.

clarification on..... And I understand the argument that's been made that there is no prejudice in redesignating from an EC to HRD, but I want you to look at it from the notice perspective, and that's what my question is. I understand that notice was provided generally, but not specifically as to a potential decision.

(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).

At this point, the Community provided Mr. Lynn and Mr. Campbell an additional opportunity to demonstrate that proper public notice had been provided, but the only response came from the court:

(Court RP, p. 29, lines 18-22):

MR. HAIRE: If there is a notice in the possession of Mr. Lynn or Mr. Campbell to provide notice, legal published notice, regarding the change from EC to HRD, I would like to see it.

THE COURT: We are in recess.

Even though Mr. Campbell 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." (emphasis added). As concluded by the Court:

(CP 238, lines 1-7):

This Court has considered Petitioner's argument regarding the insufficiency of notice under RCW 36.70A.020(11), notwithstanding the argument that it was not timely raised. The Court concludes that the notice was sufficient as it included the consideration of the amendment as adopted. It appears that the parties were not prejudiced by any difference in the notice and the petitioners had the opportunity to be heard. The consideration of different alternatives does not require that the process and notice begin again. (emphasis added).

V. Standard of Review

The Administrative Procedure Act (APA) governs judicial review of challenges to decisions of the Growth Management Hearings Board (Board).³ Under the APA, a party aggrieved by an agency action may appeal to superior court.⁴ Under the judicial review provision of the APA, the "burden of demonstrating the invalidity of [the Board's decision] is on the party asserting the invalidity."⁵ Relief from a Board decision may be granted on nine different grounds – three of which have been asserted by the Community, specifically: RCW 34.05.570(3)(d), RCW 34.05.570(3)(e) and RCW 34.05.570(3)(i).

RCW 34.05.570(3)(d). The Community seeks relief from the Board's decision because the Board erroneously interpreted or applied the law in support of its decision.⁶ Under RCW 34.05.570(3)(d), issues of law are reviewed *de novo*.⁷ Although the court is not bound by a Board's decision, deference is accorded to agency interpretation of the law where the agency has special

³ See *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 233, 110 P.3d 1132 (2005).

⁴ RCW 36.70A.295(1).

⁵ *Thurston County v. Cooper Point Ass'n.*, 148 Wn.2d 1, 7 – 8, 57 P.3d 1156, 1159 – 60 (2002) citing RCW 34.05.570(1)(a).

⁶ RCW 34.05.570(3)(d).

⁷ *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 116 Wn. App. 48, 54, 65 P.3d 337, 340 (2003).

expertise in dealing with such issues.⁸ In this case, the "law" which the Board erroneously interpreted or applied are the pertinent sections of the Pierce County Code, such as PCC19C.10.065(A)(1-8). Notably, the Board did not cite any Court or Board decisions in support of its decision (AR 2069-2086). Moreover, the Code sections which were erroneously interpreted or applied by the Board were recently created by Pierce County and the new Code sections were a matter of first impression before the Board. On this basis, the Board does not have special expertise in dealing with the pertinent sections of the Pierce County Code. Under RCW 34.05.570(3)(d), the Court reviews the Pierce County Code *de novo* and determines whether the Board erroneously interpreted or applied the law and Code to the case facts.

RCW 34.05.570(3)(e). The Community also seeks relief from the Board's decision because the decision is not supported by "substantial evidence" under RCW 34.05.570(3)(e). Substantial evidence is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order."⁹ On mixed questions of law and fact, the court determines the law

⁸ City of Redmond v. Cent. Wash. Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 46, 959 P.3d 1091, 1094 (1998), citing Overton v. Wash. State Econ. Assistance Auth., 96 Wn.2d 552, 555, 637 P.2d 652, 654 (1981).

⁹ *Id.*

independently, and then applies it to the facts as found by the Board.¹⁰ The Community will demonstrate that the Board's decision is not supported by substantial evidence because Pierce County failed to evaluate the facts and evidence which were required to be evaluated under PCC19C.10.050(F) and PCC19C.10.065(A)(1-8) (AR 2069-2086).

RCW 34.05.570(3)(i). The Board's decision also appears to be arbitrary and capricious, a ground authorized by RCW 34.05.570(3)(i). The Community argues that Pierce County and the Board did not reasonably consider the facts and circumstances surrounding the action. The Washington State Supreme Court has explained that:

as to "arbitrary and capricious" agency action for purposes of RCW 34.05.570(3)(i), we mean "willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action. 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." *Kendall v. Douglas, Grant, Lincoln & Okanogan Counties Pub. Hosp. Dist. No. 6*, 118 Wash.2d 1, 14, 820 P.2d 497 (1991) (footnote omitted) (quoting *Abbenhaus v. City of Yakima*, 89 Wash.2d 855, 858, 576 P.2d 888 (1978)).¹¹

¹⁰ *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 8, 57 P.3d 1156, 1160 (2002).

¹¹ *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.*, 136 Wn.2d 38, 46 – 47, 959 P.2d 1091, 1094 (1998).

VI. Argument.

A) The Board erred in concluding that Map Amendment M-2 complied with RCW 36.70A.130(1)(d) and RCW 36.70A.020, and 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) which requires development regulations to be consistent with the comprehensive plan. (Assignment of Error 1, Issue 1, Issue 2; Assignment of Error 2, Issue 3, Issue 4; Assignment of Error 3, Issue 5).

1) Pierce County's "No Net Loss" policy for Employment

Centers. The Washington State Legislature has determined that "it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth." RCW 36.70A.010. Consistent with this Legislative finding, the GMA's planning goals include economic development. RCW 36.70A.020(5), Goal 5, provides as follows:

(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. (emphasis added).

Consistent with Goal 5, Pierce County's Comprehensive Plan encourages economic development through designated Employment Centers (EC designation) and which are codified to include a "no net

loss" policy under PCC19A.30.030(H) as provided below:

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. (emphasis added).

Pierce County's Employment Centers (EC designations) are so important that the County has woven into it's regulations the "no net loss" policy which requires a "companion application" to ensure "no net loss" of total acreage in the Employment Center designated lands of Pierce County. Specifically, PCC19C.10.055(C) requires as follows:

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. (emphasis added).

2) **Exception to Pierce County's "No Net Loss" Policy**. The Pierce County Code provides an exception to PCC19C.10.055(C) which allows redesignation of EC designated parcels without the required "companion application" and "no net loss" policy. PCC19C.10.050(F).¹² Under the exception provided in PCC 19C.10.050(F), an EC designated parcel may be redesignated 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).

In this case, Pierce County decided to invoke the exception under PCC19C.10.050(F) in order to avoid compliance with the "no net loss" and "companion application" requirements. AR 76-77. The exception provided under PCC19C.10.050(F) requires that redesignation of EC designated parcels be evaluated under the eight (8) criteria of PCC19C.10.065(A)(1-8). The Community will demonstrate that Pierce County failed to conduct the required evaluation under the following criteria of PCC19C.10.065(A)(1-8):

¹² AR 2077. The Board's Final Decision and Order at page 9, lines 15-20, refers to the "exception to the no net loss standard...".

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).

3) Pierce County failed to invoke the "No Net Loss" exception.

Pierce County failed to invoke the "No Net Loss" exception because it failed to evaluate redesignation of the M-2 parcels from EC to HDR as required under PCC19C.10.065(A)(1-8). Instead, the County considered redesignation of the M-2 parcels from EC to CC (Community Center). AR 76-77. This substantive error occurred because the

applicant initially proposed that the parcels be redesignated from EC to CC (Community Center). AR 81-90. The proposed redesignation was later changed from EC to HDR without notice and without the evaluation required under PCC19C.10.065(A)(1-8). Compare AR 81-90 and AR 67-72 & 73-74, item #106.

As demonstrated infra, Pierce County's failure to evaluate redesignation of the M-2 parcels from EC to HDR under PCC19C.10.065(A)(1-8) constitutes reversible error under RCW 36.70A.130(1)(d) on the following grounds:

(i) Not only did the County fail to evaluate the M-2 parcels from EC to HDR as required, but in addition, the purported evaluation from EC to CC was never completed as required under PCC19C.10.065(A)(1-8).

(ii) Pierce County's failure to evaluate redesignation of the M-2 parcels from EC to HDR as required under PCC19C.10.065(A)(1-8) fails to establish the condition precedent necessary to invoke the exception to the "no net loss" and "companion application" requirements under PCC 19C.10.050(F).

(iii) As demonstrated infra, the answers to the eight questions provided under PCC19C.10.065(A)(1-8) would be substantively different depending on whether EC was being redesignated to CC

(Community Center) or to HDR (High Density Residential, i.e.: 800 unit apartment complex).

(iv) 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."¹³ One of the requirements of the GMA is that the comprehensive "plan shall be an internally consistent document"¹⁴ "Consistency means comprehensive plan provisions are compatible with each other. One provision may not thwart another."¹⁵ RCW 36.70A.040(5)(d) also provides that Pierce County must adopt "development regulations that are consistent with and implement the comprehensive plan"

¹³ *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 347, 190 P.3d 38, 46 (2008).

¹⁴ 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).

¹⁵ *City of Spokane v. Spokane County, EWGMHB Case No. 02-1-0001, Final Decision and Order* (July 3, 2002), at 32.

The following argument will demonstrate that Pierce County failed to evaluate redesignation of the M-2 parcels under the specific criteria required under PCC19C.10.065(A)(1-8) and, therefore, violated RCW 36.70A.130(1)(d). The Community will first address the failure of the Board and Pierce County to evaluate criterion no. 7 as required under PCC19C.10.065(A)(7).

4) Pierce County failed to conduct the evaluation of criterion no. 7 as required under PCC19C.10.065(A)(7): Under PCC19C.10.065(A)(7), Pierce County was required to identify and evaluate the "types of land use or activities (that) are located on neighboring properties." (emphasis added). In this case, the County failed to identify or evaluate Pierce County's adjacent designated "Rural" lands as required under PCC 19C.10.065(A)(7). AR 77. While Pierce County did identify the land use or activity to the North, East, and West, the County only identified the land use or activity to the South as "121st street East." AR 77. The County failed to disclose that 121st Street is the official boundary of Pierce County's Urban Growth Area and that the lands located directly "South" of the M-2 parcels are the designated "Rural" lands of Pierce County. AR 77.

During the Board hearing, the Community emphasized the existence of the adjacent Rural Separator Community located directly across the street to the south as follows:

(Board RP, p.9, lines 8-11):

Mr. Haire: To the east is the rural separator area, thousands of acres to the east that is rural. To the south, rural. It's rural separator. To the west, rural residential.

In its decision, however, the Board did not identify or consider the adjacent Rural Separator community to the south. The Board simply parroted the County's reference to the land use and activities to the North, East, and West, and completely omitted any reference or consideration to the adjacent Rural Separator community to the South as required under PCC 19C.10.065(A)(7). AR 2073, lines 12-18; 2074, lines 1-2.

In this case, the Board erroneously interpreted or applied PCC19C.10.065(A)(7) to the case facts by omitting consideration of the Rural Separator community located directly across the street to the south. The Board's decision is not supported by substantial evidence because Pierce County failed to evaluate the evidence which was required to be evaluated under criterion no. 7 pursuant to PCC19C.10.065(A)(7). (AR 77). To 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. Pierce County's failure to evaluate criterion no. 7 as required under PCC19C.10.065(A)(7) violates the GMA, including RCW 36.70A.130(1)(d). The County's failure to identify the adjacent Rural Separator community under

criterion no. 7 also resulted in multiple violations of criterion no. 8 as demonstrated in paragraph 5) below.

5) Pierce County failed to conduct the evaluation of criterion no. 8 as required in PCC19C.10.065(A)(8): Under PCC19C.10.065(A)(8), Pierce County was required to evaluate whether the redesignation from EC to HDR was "consistent with all applicable State and local planning policies." In this case, Pierce County failed to evaluate the Urban Residential "Policies" provided in Appendix "H" of the Mid-County Community Plan. AR 1985-1986. Specifically, the following "Policy Goals" of the Mid-County Community Plan were not identified, discussed, or evaluated as required:

(i) Policy Goal MC LU-12.5: "Compatibility with surrounding uses shall be maintained." (emphasis added) AR 1986. In violation of PCC19C.10.065(A)(8), Pierce County failed to evaluate whether the proposed amendment is consistent with "local planning policies," including M CCP policy MC LU-12.5 which requires as follows:

"Compatibility with surrounding uses shall be maintained." (emphasis added) AR 1986.

The opening paragraph of the M CCP land use policies provides the following policy goals:

The communities of Summit-Waller, North Clover Creek Collins, and Summit View strive to emphasize and preserve the rural area within the community. The intensity of new land uses should be consistent with the existing urban or residential character, surrounding activities, development patterns, environment constraints. (emphasis added) AR 1982.

The Mid-County Community Plan also identifies actions necessary to implement the M CCP policies and ensure the integrity of the Rural Separator and which includes: "providing a transition between urban and rural areas and creating standards to promote compatibility between the surrounding uses." (emphasis added) AR 1988.

As previously demonstrated, PCC19C.10.065(A)(7) requires Pierce County to evaluate "what types of land use or activities are located on neighboring properties?" (emphasis added). In this case, Pierce County failed to disclose that the "neighboring properties" to the south are composed of mini-farms and hobby ranches located on 5 acre zoned parcels within the designated "Rural" lands of Pierce County. AR 77. It is not possible to evaluate "compatibility with surrounding uses" under Policy Goal Mc LU-12.5 unless those "surrounding uses" and "neighboring properties" are first identified as required under PCC19C.10.065(A)(7).

Pierce County's redesignation of the M-2 parcels from EC to HRD to allow an 800 unit 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. Specifically, RCW 36.70A.070(2) provides in relevant part 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 County also failed to evaluate whether a "transition" between the urban and rural areas would promote compatibility between the surrounding uses. It is apparent that the redesignation from EC to HRD does not ensure the vitality and character of the adjacent established "Rural" neighborhoods to the south.

On this basis, redesignation of the M-2 parcels from EC to HRD without the required "disclosure, 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; Policy MC LU-12.5 and, therefore, RCW 36.70A.130(1)(d).

In this case, the Board erroneously interpreted or applied PCC19C.10.065(A)(8) to the case facts related to Policy Goal MC LU-12.5 and the designated "Rural" lands to the south. The Board's

decision is not supported by substantial evidence because Pierce County failed to evaluate "compatibility with surrounding uses" as required under Policy Goal MC LU-12.5 pursuant to criterion no. 8 of PCC19C.10.065(A)(8). AR 76- 77. Again, to 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.

(ii) Policy Goal MC LU-10.2: "High density residential should be located where infrastructure is available." AR 1985. Pierce County failed to discuss or acknowledge that no sewers, storm water facilities, or urban standard arterial roads are located at or near the M-2 parcels. AR 76-77. See related discussion in paragraph (iii), infra.

(iii) Policy Goal MC LU-12.4: "For any rezone request to allow higher densities, the site must be located on an arterial within 1,000 feet of a transit stop." AR 1986. Pierce County failed to disclose or discuss that the M-2 parcels are not located on an arterial or within 1,000 feet of a transit stop. AR 76-77; AR 75, 80, 91(Map); AR 29 (Photo). The Board erroneously interpreted or applied PCC19C.10.065(A)(8) without evaluation of the facts related to infrastructure and urban standard roads. Because the M-2 parcels were redesignated without evaluation of Policy Goals MC LU-10.2

and 12.4 as required by PCC19C.10.065(A)(8), the Board's decision is erroneous and not supported by substantial evidence. The County and Board decision is inconsistent with RCW 36.70A.020(1)(12) related to Urban Growth and Public Facilities and Services; RCW 36.70A.070(3)(4) related to Capital Facilities and Utilities; RCW 36.70A.070(6) related to Transportation, and, therefore RCW 36.70A.130(1)(d).

6) Pierce County failed to conduct the evaluation of criteria nos. 2 and 5 as required under PCC19C.10.065(A)(2) and (5). The evaluation which is required under PCC19C.10.065(A)(2) for "Sewer, Water, Roads, Schools, and Fire" would vary depending upon whether the proposed redesignation was to CC (Community Center) or to HDR (800 unit apartment development). The Community requested Pierce County to make the required evaluation, but Pierce County failed to evaluate redesignation of the M-2 parcels from EC to HDR as required under PCC19C.10.065(A)(2). AR 63-66, AR 76-77. Similarly, Pierce County did not evaluate site access and traffic issues as required under PCC19C.10.065(A)(5), (AR 77). The M-2 parcels are located directly adjacent to Pierce County's designated "Rural" lands with severe access limitations to 121st Street, a semi-primitive County road. AR 75, 80, 91 (Map), AR 29 (Photo).

As previously demonstrated in paragraphs 5)(ii) and (iii), Pierce County Policy MC LU-10.2 provides that: "High density residential (HDR) should be located where infrastructure is available." In addition, County Policy MC LU-12.4 provides that: "For any rezone request to allow higher densities, the site must be located on an arterial within 1,000 feet of a transit stop." Contrary to these Pierce County policies, the M-2 parcels are: 1) located adjacent to Pierce County's "Rural" designated lands. AR 75, 80, 91 (Map), AR 29 (Photo); 2) are without available sewer utilities or storm water facilities. AR 2063-2064; 3) are not located on an arterial within 1,000 feet of a transit stop; and 4) may only be accessed by 121st Street, a semi-primitive, oil-mat, open-ditched, County road. AR 75, 80, 91 (Map), AR 29 (Photo).

The Board erroneously interpreted or applied PCC19C.10.065(A)(2) and(5) to the case facts. The Board's decision is not supported by substantial evidence because Pierce County failed to evaluate evidence which was required to be evaluated under criteria nos. 2 and 5 pursuant to PCC19C.10.065(A)(2) and (5). AR 76-77.

Pierce County's redesignation of the parcels from EC to HDR without the "evaluation, analysis, and recommendation" required under PCC19C.10.065(A)(2) and (5) is in violation of, or inconsistent with

RCW 36.70A.010, RCW 36.70A.020(1)(12), goals related to Urban Growth and Public Facilities and Services; RCW 36.70A.070(3)(4), goals related to Capital Facilities and Utilities; RCW 36.70A.070(6), goals related to Transportation, and, therefore, RCW 36.70A.130(1)(d). See paragraph 5)(ii) and (iii), supra for related discussion.

7) **Pierce County failed to conduct the evaluation of criterion no. 1 as required under PCC19C.10.065(A)(1).** In response to the evaluation criteria required in PCC19C.10.065(A)(1), Pierce County answered "undetermined" to the following simple question:

Is there a community or countywide need for the proposed amendment? If so, what is that need? (AR 76) (emphasis added).

Pierce County was unable to evaluate any "community or county-wide need" as required because the redesignation was purportedly evaluated from EC to CC and then later changed - without evaluation - from EC to HDR. Compare AR 81-90 and AR 67-72 & 73-74, item #106. The determination of "community or countywide need" would depend upon whether the proposed redesignation is to CC (Community Center) or to HDR (800 unit apartment complex). In this case, the County failed to evaluate: 1) the "need" for an 800 unit apartment complex, and 2) the "need" for the economic benefit of an official Pierce County "Employment Center." (See related discussion, infra).

The Board erroneously interpreted or applied PCC19C.10.065(A)(1) without evaluation of the case facts related to "community or countywide need." The Board's decision is not supported by substantial evidence because Pierce County failed to evaluate the required evidence related to "need" under criterion no. 1 pursuant to PCC19C.10.065(A)(1) (AR 77). On this basis, redesignation of the M-2 parcels without the required evaluation is inconsistent with the Comprehensive Plan and, therefore, RCW 36.70A.130(1)(d). See paragraph 9, *infra*, for related discussion.

8) Pierce County failed to conduct the evaluation of criterion no. 3 as required under PCC19C.10.065(A)(3). Pierce County failed to evaluate the "public benefits" of redesignation from EC to HDR under PCC19C.10.065(A)(3) as required because, again, the redesignation was purportedly evaluated from EC to CC (Community Center), (AR 81-90). The redesignation was then later changed - without evaluation - from EC to HDR. (AR 67-72 & 73-74, item #106). In this case, Pierce County failed to evaluate: 1) the "public benefits" of an 800 unit apartment complex, and 2) the "public benefits" of maintaining an official Pierce County "Employment Center." Pierce County simply responded to the evaluation required by PCC19C.10.065(A)(3) as follows: "Undetermined." AR 77.

The Board erroneously interpreted or applied PCC19C.10.065(A)(3) to the case facts related to "public benefit." The Board's decision is not supported by substantial evidence because Pierce County failed to evaluate evidence related to "public benefit" required under criterion no. 3 pursuant to PCC19C.10.065(A)(3). AR 77. On this basis, redesignation of the M-2 parcels without the required evaluation is inconsistent with the Comprehensive Plan and, therefore, RCW 36.70A.130(1)(d). See paragraph 9, infra, for related discussion.

9) Pierce County failed to evaluate the M-2 parcel's "Public Benefit" and "Need" as an "Employment Center" as required.

Pierce County's redesignation of the M-2 parcels from EC to HDR without the evaluation required by PCC19C.10.065(A), including criteria nos. (1) and (3) related to "need" and "public benefit," violated GMA "Goal" 5 related to Economic Development under RCW 36.70A.020(5).

Again, Washington State's policy related to economic development is codified in RCW36.70A.020(5) as provided below:

(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. (emphasis added).

It is Pierce County's policy to encourage economic development under Goal 5 through designated Employment Centers (EC designation) and which is codified in PCC19A.30.030, in part, as follows:

LU-EC Objective 9. Provide large planned Employment Center development sites, properly zoned and serviced with infrastructure.

A. Provide for the development of Employment Centers, geographically dispersed throughout the County, to meet the industrial and manufacturing needs of a growing jobs-based economy. (emphasis added).

The Board erroneously interpreted or applied PCC19C.10.065(A)(1)-(8) to the case facts related to "Economic Development." The Board's decision is not supported by substantial evidence because Pierce County failed to evaluate "economic development" evidence which was required to be evaluated under PCC19C.10.065(A), including criteria nos. 1 and 3 related to "need" and "public benefit." AR 77.

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).

B) The Board erred in concluding that Pierce County Map Amendment M-2 complied with RCW 36.70A.130(5)(a), which sets deadlines for reviewing and updating comprehensive plans and development regulations. (Assignment of Error 4, Issue 6).

Pierce County failed to evaluate redesignation of the M-2 parcels from EC to HDR under PCC19C.10.065 (A)(1-8) within the statutory deadline provided by RCW 36.70A.130(5)(a). Pursuant to RCW 36.70A.130(5)(a), the statutory deadline to invoke the exception to the plan amendment process under PCC 19C.10.050(F) was June 30, 2015 as provided below:

(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. (emphasis added).

In this case, Pierce County did not take action to revise its comprehensive plan and development regulations until September 1, 2015.¹⁶ AR 67-72 & 73-74, item #106. The County failed to meet the June 30, 2015 deadline because the proposed redesignation was changed to another zone designation (HDR) after the statutory deadline had passed and without the evaluation required under PCC19C.10.065 (A)(1-8). AR 67-72 & 73-74, item #106. Moreover, during the March 31, 2016 Board hearing, attorney William Lynn admitted that the "development regulations" also had not yet been amended to allow an apartment complex at the 40 acre site. As stated by Mr. Lynn at Board RP, p. 47, lines 8-14:

MR. LYNN: I think that's part of the development regulations, which have not yet been amended. They were in the process of being amended so there will be consistency. There isn't yet, but there necessarily will be. The only zoning the County could adopt would be that which implements its adopted comprehensive plan. (emphasis added).

Contrary to RCW 36.70A.130(5)(a), Pierce County did not take action to revise its comprehensive plan and development regulations

¹⁶ The Pierce County Council approved item M-2 under Ordinance No. 2015-33s on June 30, 2015. On July 14, 2015, the County Executive vetoed the Ordinance. Unable to override the veto, the Council adopted an alternate ordinance on August 11, 2015 referred to as Ordinance No. 2015-40. On August 28, 2015 the County Executive vetoed that Ordinance. The Council's override veto vote passed 5-2 at the September 1, 2015 Council meeting.

until after the statutory deadline. During its review, the Board failed to apply the law and simply concluded that: "the allegation is essentially a failure to act challenge and moot at this time as the County has completed its update" (emphasis added) AR 2083.

There is nothing "moot" about failure to comply with the statutory deadline because Pierce County's untimely action was made without required notice¹⁷ and because it thwarted and confused the "citizen participation and coordination" goals of RCW 36.70a.020(11) and is, therefore, inconsistent with RCW 36.70A.130(1)(d). The Board erroneously interpreted or applied the GMA and County Code. The Board's decision is not supported by substantial evidence because Pierce County failed to revise its comprehensive plan and development regulations under the required criteria and within the statutory deadline.

C) The Board erred in concluding that Pierce County's adoption of Map Amendment M-2 complied with public notice and participation requirements in RCW 36.70A.020(11), RCW 36.70A.140, RCW 36.70A.035, and RCW 36.70A.130(1)(d). (Assignment of Error 5, Issue7).

As admitted by Mr. Campbell, the County was unable to find any "Public Notice" in the record that the M-2 parcels would be redesignated from EC to HDR through the evaluation process required

¹⁷ The Community is unable to find any Pierce County Notice in the record that indicates that the subject parcels were redesignated from EC to HDR through the evaluation process required under PCC19C.10.065 (A)(1-8).

under PCC19C.10.065 (A)(1-8). As admitted by Mr. Campbell before the Thurston County Superior Court:

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).

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 Community. Because of the lack of notice, the Community was 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 Community'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 and MCAC level and then continued - without public notice - through the Planning Commission and Pierce County Council hearing. The

Community's 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).

The Community's M-2 appeal before the Board was only a small portion of a much larger "consolidated appeal hearing" involving Pierce County and five (5) separate School Districts. AR 103-162. The Community respectfully submits that the Board may not have had a fair opportunity to fully consider and appreciate the merits of their concerns because of constricting page and time limitations. For example, the Board directed argument to stop as soon as the Community attempted to address the issue related to the Statute of Limitations. Board RP, p. 61, lines 18-24. The Board also directed argument to stop as soon as the Community attempted to address the probable consequences of Pierce County's M-2 decision. As stated by Mr. Haire at Board RP, p. 55, lines 7-12:

We only make appeals that we're concerned about, and we know that, in Pierce County if this is approved, it's going to happen countywide on other EC lands. And the unintended consequences could be putting economic centers in farmland areas.

PRESIDING BOARD MEMBER PFLUG: Thank you. Your time is up.

D) The Community has been substantially prejudiced by Pierce County's failure to provide notice and properly evaluate Map Amendment M-2 under the criteria required by PCC19C.10.065 (A)(1-8), and which resulted in a map amendment to allow an 800 unit apartment directly adjacent to the Community's designated Rural Separator neighborhood. Assignment of Error 6, Issue 8.

In considering this appeal, it is important to note that appeals by citizens and citizen groups is the mechanism the Governor and Legislature adopted to enforce the GMA.¹⁸ Unlike some laws, such as Washington's Shoreline Management Act, there is no state agency that reviews and approves or disapproves GMA comprehensive plans and zone redesignations. The responsibility to appeal noncompliant comprehensive plans and redesignations to the Board and Court is that of citizens and citizen groups such as the Summit-Waller Community Association and North Clover Creek / Collins Community Council.

In this case, the Community provided testimony and submitted letters to Pierce County and the Board which document the manner in which they and their members, area landowners and residents, would be damaged and prejudiced by the proposed redesignation from EC to HDR. AR 63-66. As indicated, the evaluation required to redesignate the M-2 parcels to HDR under PCC19C.10.065(A)(1-8) never occurred and the Community has been damaged and

¹⁸ King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 138 Wn.2d 161, 175 – 77, 979 P.2d 374, 380 – 82 (1999).

prejudiced because their right to have their interests evaluated as required have been denied. 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."

VII. Conclusion

If the County's actions in this case are allowed to become the norm, virtually any zone designation in Pierce County could be arbitrarily redesignated to another zone without notice and without evaluation of the required factual or legal issues. E.g.: AR 98-100. Not only did the County fail to show its work, but it appears to have acted in an arbitrary and capricious manner, without public notice and participation, and through an MCAC operating under an apparent

conflict of interest.¹⁹ In this case, Pierce County's approval of the M-2 amendment is an erroneous interpretation and application of the GMA and County Code, is not supported by substantial evidence, and appears arbitrary and capricious.

Pierce County made the decision to invoke the exception provided under PCC19C.10.050(F) in order to avoid compliance with the "no net loss" and "companion application" requirements. In order to invoke the exception, Pierce County must comply with the requirements necessary to invoke the exception, including notice, statutory deadlines, and the evaluation required under PCC19C.10.065(A)(1-8). In this case, Pierce County not only failed to evaluate the M-2 parcels from EC to HDR as required under PCC19C.10.065 (A)(1-8), but in addition, the purported evaluation from EC to CC was never completed as required.

The Community has met their burden of proof on the issues before the Court. The Board's decision was not based on substantial evidence because Pierce County and the Board failed to evaluate the evidence which was required to be evaluated under PCC19C.10.065 (A)(1-8) in order to invoke the exception allowed under PCC19C.10.050(F). The Board's conclusions are clearly erroneous because the Board erroneously interpreted or applied the "law" to the facts. In this case, the "law" which the Board erroneously interpreted or

¹⁹ While the Pierce County Executive has made changes to the MCAC membership, the public's only recourse is to seek remand to properly evaluate redesignation of the parcels under PCC19C.10.065(A)(1-8).

applied in support of its decision are the pertinent sections of the Pierce County Code, such as PCC19C.10.065(A)(1-8). Specifically, under the GMA, Pierce County is required to follow and comply with its own rules, codes, policies, and regulations.

The Community respectfully requests the Court of Appeals to reverse and remand the Board's decision so that Pierce County may comply with the requirements necessary to invoke the exception provided under PCC19C.10.050(F) and PCC19C.10.065(A)(1-8).

RESPECTFULLY SUBMITTED this 22 day of November, 2017

Daniel H Haire

Daniel Haire, representing Appellants
WSBA # 15922

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.

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Certificate of Service

I, Daniel Haire, declare under penalty of perjury and the laws of the State of Washington that, on November 22, 2017, I served an original and true and correct copies of the following document on the persons listed below in the manner shown: Brief of Appellants Summit-Waller Community Association and the North Clover Creek/Collins Community Council.

- 1) Court of Appeals: ~~-efile on~~ 11/22/2017 *hand delivered dit*
- 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* 11/22/2017

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