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NO. 57253-9-1
COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CITY OF ARLINGTON, DWAYNE LANE,
and SNOHOMISH COUNTY,

Appellants,

vs

CENTRAL PUGET SOUND GROWTH MANAGEMENT
HEARINGS BOARD, STATE OF WASHINGTON; 1000 FRIENDS
OF WASHINGTON nka FUTUREWISE; STILLAGUAMISH FLOOD
CONTROL DISTRICT; PILCHUCK AUDUBON SOCIETY; THE
DIRECTOR OF THE STATE OF WASHINGTON DEPARTMENT
OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT;
and AGRICULTURE FOR TOMORROW,

Respondents.

BRIEF OF APPELLANTS CITY OF ARLINGTON
AND DWAYNE LANE

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A. INTRODUCTION

The issue presented by this case is whether or not a county planning under the GMA has the ability and authority to make land designations which differ from those made in earlier planning processes. If a county determines there is need for urban land, what is the Growth Management Act standard required to be met to remove an agricultural designation from land originally included in an Urban Growth Area in a Comprehensive Plan; what are the working definitions of “urban” and “urban characteristics” within the GMA for changing land designations; and what becomes an appropriate means of expansion of an Urban Growth Area?

The land at issue, Island Crossing, is bounded by the State Route 530 to the north, Interstate 5 to the west, Smokey Point Boulevard to the east and abuts the current City of Arlington Urban Growth Area to the south.

B. ASSIGNMENTS OF ERROR

Trial Court Decision

No. 1. The trial court erred when it affirmed the Central Puget Sound Growth Management Hearings Board’s (hereinafter “Board”) Corrected Final Decision and Order dated March 22, 2004, in case number 03-3-0019c. (Decision on Appeal, CP 21-34).

No. 2. The trial court erred when it affirmed the Board's Order Finding Continuing Noncompliance and Continuing Invalidity and Recommending Gubernatorial Sanctions in case number 03-3-0019c, dated June 24, 2004.

No. 3. The trial court erred when it held that in order to change the land designation at issue in the Island Crossing area, Snohomish County (hereinafter "Snohomish County" or "County") was required to show a material change in circumstances to sustain its action.

No. 4. The trial court erred when it held the Stillaguamish Flood Control District (hereinafter "District") and Futurewise's Motion to Dismiss Appeals based on the grounds of res judicata and/or collateral estoppel was properly before the trial court.

No. 5. The trial court erred when it held that the doctrines of res judicata and collateral estoppel apply to review by the trial court of legislative actions of Snohomish County and granted the District and Futurewise's Motion to Dismiss Appellants' Petitions for Review.

No. 6. The trial court erred when it denied the consolidated petition for review of the City of Arlington, Snohomish County and Dwayne Lane.

Agency Decision

Ordinances 03-063 and 04-057

No. 7. The Central Puget Sound Growth Management Hearings Board (hereinafter "Board") erred when it found Snohomish County Ordinances No. 03-063 and 04-057 did not comply with the goals and requirements of the Growth Management Act (hereinafter "GMA") and were clearly erroneous. (Corrected FDO, CP 2562-2602; Order on Compliance, CP 2885-2920).

No. 8. The Board erred when it failed to apply the appropriate standard of review to the actions of Snohomish County in planning under the GMA.

No. 9. The Board erred when it failed to give proper deference to the decisions of Snohomish County's planning process.

No. 10. The Board erred when it reweighed the evidence presented to Snohomish County through the hearing process.

No. 11. The Board erred when it held the redesignation of the land in Island Crossing violated the GMA.

No. 12. The Board erred when it held 75.5 acres of land in Island Crossing was "devoted to" agriculture and has long-term

agricultural commercial significance within the meaning of the GMA.

No. 13. The Board erred when it found Island Crossing did not meet the locational and sizing criteria for inclusion in Arlington's UGA.

No. 14. The Board erred in finding inclusion of Island Crossing in Arlington's UGA violated the GMA and was clearly erroneous.

No. 15. The Board erred in finding the actions of Snohomish County expanding Arlington's UGA was clearly erroneous.

No. 16. The Board improperly created a new standard of analysis to determine agricultural designations of land calling for an "area-wide" pattern of land use inquiry for the Stillaguamish River Valley rather than a localized parcel analysis to determine agricultural viability.

No. 17. The Board erred in requiring the county prove substantial change in circumstances to justify its planning decision.

No. 18. The Board erred in relying on permitting or development issues to find Snohomish County's actions did not comply with the GMA.

No. 19. The Board erred in holding the land capacity

analysis supporting expansion of Arlington's UGA was self-imposed and could not be justification for Ordinance 04-057.

Issues Pertaining to Assignments of Error

No. 1. Did the Board and the Superior Court apply the appropriate standard of review to analysis of Ordinances 03-063 and 04-057, including proper granting of deference to the local planning authority?

No. 2. Does the record when reviewed as a whole contain evidence sufficient to support the determination of Snohomish County to adopt Ordinances 03-063 and 04-057?

No. 3. Does the record support a finding that the actions of Snohomish County were not "clearly erroneous"?

No. 4. Does the record show Snohomish County was guided by the GMA when it adopted Ordinances 03-063 and 04-057?

No. 5. Do the concepts of res judicata and/or collateral estoppel apply to review of legislative acts taken by local planning authorities making comprehensive plan amendments pursuant to the GMA?

C. STATEMENT OF THE CASE

This matter involves an area of land in Snohomish County

commonly known as Island Crossing. The primary issue for this Court is whether or not the Snohomish County Council, as a legislative body, may make a legislative decision regarding the classification of land under the GMA notwithstanding a different decision by a prior Council. Island Crossing consists of approximately 110.5 acres and was initially included in the City of Arlington's Urban Growth Area as Urban Commercial in 1995 when Snohomish County's Comprehensive Plan was developed. That designation was approved by the Snohomish County Council. This initial designation was upheld by the Board. (CP 1822; CP 1852).

Upon remand by a reviewing trial court for a closer examination, the County reversed itself and re-designated the area as agricultural. The matter proceeded through further review, ultimately reaching this Court. The Court affirmed the designation of Island Crossing as Riverway Commercial Farmland and Rural Freeway Service.¹

On July 9, 2003, the Snohomish County Council adopted Amended Ordinance No. 03-072. That Amended Ordinance altered Snohomish County's Countywide Planning Policy (CPP)

¹ This became the unreported decision subsequently relied upon by the Board and the trial court, *Lane v. Central Puget Sound Growth Management Hearings Board*, WL 244384 (2001).

UG-14 relating to Urban Growth Areas. (CP 23; CP 533-6).

Thereafter, on September 10, 2003, as part of its annual GMA docketing process,² the Snohomish County Council adopted Amended Ordinance No. 03-063, which revised the City of Arlington's Urban Growth Area by amending the Future Land Use Map of the County's General Policy Plan. The amendment expanded Arlington's UGA to again include the 110.5 acres in Island Crossing. The Amended Ordinance re-designated the land in Island Crossing from Riverway Commercial Farmland and Rural Freeway Service, to Urban Commercial, and rezoned the 110.5 acres from Rural Freeway Service and Agricultural-10 Acres, to General Commercial. That Ordinance was recommended to the Council by the Snohomish County Planning Commission by a vote of 7-1. (CP 692-708).

On October 23, 2003, an appeal of this action to the Central Puget Sound Growth Management Hearings Board was filed, later joined by the Director of the State of Washington Department of Community, Trade and Economic Development.

The Board held a hearing on the merits on February 2, 2004. On March 22, 2004, the Board entered its Final Decision and Order

² See RCW 36.70A.470(2).

(FDO and Corrected FDO, CP 2508-2550; CP 2562-2602). The FDO held that Amended Ordinance 03-063 failed to be guided by, and did not comply with, RCW 36.70A.020(8), and that it failed to comply with RCW 36.70A.040, .060(1) and .170(1)(a). The Board found the land in Island Crossing was not properly de-designated from agricultural and the actions of Snohomish County were clearly erroneous. (Corrected FDO at 30, CP 2591).

The Board also found the area was not properly included in Arlington's UGA and the action was not supported by a land capacity analysis. (Corrected FDO at 36, CP 2597). The Ordinance was also found to violate RCW 36.70A.110, .210(1) and .215, and the Board found the actions regarding the UGA expansion were clearly erroneous. (Corrected FDO at 38, CP 2599).

The Board entered a Finding of Invalidity with regard to certain provisions of the Ordinance and set a deadline of May 24, 2004 for Snohomish County to take actions to comply with the ruling of the Board. (Corrected FDO at 40, CP 2601).

The Board specifically declined to address issues regarding Critical Areas and no party timely moved for reconsideration or appeal of that decision. (Corrected FDO at 38, CP 2599).

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filed timely Petitions for Review of that FDO. (CP 3146-3195; CP 2986-3088).

Upon remand, the County reopened the hearing process and took new testimony with regard to the character of the land in Island Crossing. In addition, the County reviewed and adopted a newly developed land capacity analysis titled *Buildable Lands Report 2003 Update, City of Arlington UGA, Analysis of Availability of Commercial Parcels and Land Supply*, May 5, 2004. As a result of the receipt of this new evidence, the Snohomish County Council adopted Emergency Ordinance 04-057 by a vote of 4-1. (CP 513-31).

A Compliance Hearing was held by the Board. On June 24, 2004, the Board entered an Order Finding Continuing Noncompliance and Invalidity and Recommendation for Gubernatorial Sanctions. (Order on Compliance, CP 2885-2920).

In that Order, the Board found the County was required to engage in an analysis of “*area-wide patterns of land use*, not localized parcel ownerships” in order to make agricultural designations. (Order on Compliance at 18, emphasis in original, CP 2903.) The Board held the county failed to make an “area-wide” analysis, rather than an analysis of the area at issue. (CP 2903-04).

In its Order on Compliance, the Board did find that the land capacity analysis utilized by the County corrected the land capacity defects found in the previous FDO, thereby rectifying problems with RCW 36.70A.215. However, the Board concluded that the locational criteria of the GMA and what it called the “self-imposed” nature of the need for expansion did not coincide with the mandates of the GMA. (Order on Compliance at 22-23, CP 2907-8).

Because none of the original petitioners appealed the lack of action by the Board in the original FDO with regard to Critical Areas, the Board concluded it no longer had jurisdiction to address petitioners’ arguments and claims in the Order on Compliance.³ (Order on Compliance at 8, CP 2983.)

Timely Petitions for Review were filed in Snohomish County Superior Court by the appellants herein regarding the Order on Compliance. By Motion, the Petitions for Review of the FDO and the Petitions for Review of the Order on Compliance were consolidated before the trial court. (CP 2976-83).

At the trial court level, the District and 1000 Friends (by then known as “Futurewise”) brought a Motion to Dismiss based on the

³ This issue was not subject to a Motion for Reconsideration or appeal to Superior Court.

doctrines of res judicata and collateral estoppel. On May 11, 2005, the trial court, the Honorable Linda C. Krese, granted the Motion to Dismiss. Judge Krese held the res judicata argument had been sufficiently raised at the Board level in the District's reply brief, and that even if the Board had not ruled on the matter, it had been sufficiently raised to avoid a waiver argument. She held that the trial court was the first opportunity the District had to meaningfully address the issue. (Oral Decision at 12-13, CP 159-60). Judge Krese ruled the actions of the County in adopting Ordinances 03-063 and 04-057, although legislative in nature as amendments to a comprehensive plan, were nevertheless subject to res judicata and collateral estoppel principles. (Oral Decision at 15, CP 162).

The trial court held that a "substantial change in circumstances" or "material change" must be shown to overcome the res judicata argument with regard to the designation of the land as agricultural. (Oral Decision at 18, CP 165). The court concluded the record showed no material change in circumstances from the 1998 designation decision. (Oral Decision at 22-25, CP 169-72).

With regard to Ordinance 04-057, the trial court concluded that there was no evidence regarding an "area-wide" inquiry to support the change, and that there was no "material change in

circumstances” since 1998, upholding the Board’s ruling. (Oral Decision at 30, CP 177). The trial court held the Ordinance failed to meet the locational requirements of the GMA, based upon the conclusion that the area is agricultural, contrary to the County's designation. (Oral Decision at 33-34, CP 179-80).

The trial court granted in part and denied in part Snohomish County’s Motion for Reconsideration in Part with respect to the res judicata finding. The trial court ruled that the actions involved in adopting the Ordinances amending a comprehensive plan in question were indeed legislative in nature, and thus Snohomish County was not subject to the principles of res judicata or collateral estoppel when enacting the Ordinances. However, the court went on to hold that on appeal, the Ordinances would be subject to the principles of res judicata and collateral estoppel and the requirement of showing a substantial change of circumstances by the trial court. (Memorandum Decision at 6, 8, CP 31, 33). On October 13, 2005, the trial court entered its final Order upholding the actions of the Board. (CP 21-25).

Timely Notices of Appeal were filed and this matter is now properly before this Court. (CP 6-15).

D. SUMMARY OF ARGUMENT

The decisions of the Board and the trial court improperly applied the GMA. The rulings created standards which do not exist, and placed burdens and requirements on Snohomish County and Arlington which neither appear in the GMA, nor are supported by the GMA.

This appeal presents a two-pronged question. The first is whether the land in Island Crossing was properly designated as Urban Commercial. The second is whether the land was properly placed in Arlington's UGA.

The Board erred by applying the wrong legal standard to the actions of Snohomish County when it reviewed Ordinances 03-063 and 04-057. The Board failed to give proper legal deference to the decisions of the planning agency and failed to view the adopted ordinances with a statutory presumption of validity. In addition, the Board erred in concluding that the record developed before Snohomish County in its adoption of the ordinances failed to support the decision of the County.

In applying the incorrect standard, the Board also improperly created tests which do not exist in the GMA. The Board's requirement of "area-wide" analysis of farming in the Stillaguamish River Valley, rather than parcel specific analysis, is not supported

anywhere in the GMA. The Board's rejection of a land capacity analysis on the ground the subsequent showing of need is "self-imposed" is not supported in the GMA.

The record shows the land in Island Crossing does not meet the statutory and regulatory guides to designate the land as agricultural. The record shows the land has urban characteristics, is adjacent to land which is urban in nature and was properly included in Arlington's UGA. The Board failed to show how Snohomish County was not guided by the GMA when it adopted the ordinances in question.

The trial court erred when it applied the doctrines of res judicata and collateral estoppel to the legislative action of Snohomish County. By applying the doctrines of res judicata and collateral estoppel, the trial court failed to properly oversee and review the actions of the Board as required by the GMA.

The actions of the Board and trial court constitute errors under the Administrative Procedure Act. The Board and trial court engaged in unlawful procedure and decision-making processes and failed to follow the prescribed procedure for superior court review of agency decisions under the GMA (RCW 34.05.570(3)(c)); the Board erroneously interpreted and applied the law as required

under the GMA (RCW 34.05.570(3)(d)); the orders of the Board and the trial court are not supported by substantial evidence when viewed in light of the whole record (RCW 34.05.570(3)(e)); and the orders are arbitrary and capricious (RCW 34.05.570(3)(i)).

E. ARGUMENT

1. Standard of Review

This matter comes before this Court pursuant to the GMA and the Administrative Procedure Act, Chapter 34.05 RCW. The Court of Appeals directly reviews the record which was presented to the Board. Questions of law are reviewed de novo. *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 116 Wn.App. 48, 54, 65 P.3d 337, rev. den. 150 Wn.2d 1007, 77 P.3d 651 (2003). The reviewing court may grant deference to the Board's interpretation of the law, but such interpretations are not binding. *Id.* at 54. The burden is on the party challenging the actions of the Board. (RCW 34.05.570(1)(a)).

When the Board fails to properly apply presumptions of validity and deference to agencies planning under the GMA and decisions made with regard to growth, the Board is not entitled to any deference by the reviewing court. *Quadrant Corporation v. Growth Management Hearings Board*, 154 Wn.2d 224, 238, 110

P.3d 1132 (2005).

With regard to the Board's duty under the GMA, the Board is *required* to presume the agency plans are valid, and the burden is on the party challenging the plans to show they do not comply with the GMA. *City of Redmond, supra.* at 55; RCW 36.70A.320. The only way plans may be found invalid is if, upon review of the entire record and in light of the goals and requirements of the GMA, the Board finds the plan to be clearly erroneous. RCW 36.70A.320. To be "clearly erroneous" requires that the reviewing body to be left with a firm and definite conviction a mistake has been made. In addition, the reviewing body may not substitute its judgment for the decision making body. *Association of Rural Residents v. Kitsap County*, 141 Wn.2d 185, 196, 4 P.3d 115 (2000). (Internal citations omitted).

This case presents a two-pronged analysis. When the Board reviewed Ordinance 03-063, all the presumptions identified above applied to the actions of the Board. When the Board reviewed Ordinance 04-057, all the same presumptions still applied to the Board's review obligation; however, due to the fact the Board made a Finding of Invalidity with regard to portions of Ordinance 03-063, the County had the burden to show their planning actions

would not substantially interfere with the fulfillment of the goals of the Growth Management Act. RCW 36.70A.320(4). That burden did not, however, lessen the obligation of the Board to presume the actions of the County were valid and the Board was still required to apply appropriate GMA standards to review of the county's planning actions.

2. The Board Failed to Grant Deference to the Actions of Snohomish County.

The GMA was amended in 1997 to emphasize and increase the degree of deference to be given to a county's decision making under the GMA. Under the GMA, local planning entities are responsible for their futures. RCW 36.70A.3201.⁴ The concept of local control and deference to local decision making as a cornerstone of the GMA has existed from the outset. *Manke Lumber Company, Inc. v. Diehl*, 91 Wn.App. 793, 959 P.2d 1173 (1998).

The Board's invalidation of Ordinances 03-063 and 04-057 was based on a failure by the Board to grant proper deference to Snohomish County's planning process. Instead of presuming the actions of the County were valid, the Board created three new

⁴ Throughout this brief, when a statute or WAC is cited but the text of same does not appear in the body of the brief, the text appears in the Appendix of the brief.

standards, none of which appear in the GMA, and placed the burden on the County to show how it met those standards. The Board then held the county failed to meet the new, Board mandated burdens. The actions of the Board, and subsequently the trial court, are clearly in error. The Board and trial court required the county to show (1) there was material change in circumstances to justify changing the agricultural designation; (2) there needed to be an area-wide analysis before a determination of the agricultural nature of the land in Island Crossing could be made; and (3) the county could not rely on a need for land by utilizing a "self-imposed" standard to justify placing Island Crossing in Arlington's UGA. By requiring Snohomish County to meet those new standards, the Board improperly shifted the burden in the case to Snohomish County to prove why their actions were proper, especially with regard to Ordinance 03-063, and created planning burdens and analysis which do not exist in the GMA. Such action is grounds to vacate the Board's decision.

In *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 116 Wn.App. 48, 65 P.3d 337, *rev. den.* 150 Wn.2d 1007, 77 P.3d 651 (2003) (*Redmond II*), Redmond attempted to change designation of land from agricultural to

recreational use. In rejecting the Board's decision, ruling the action invalid, the Court of Appeals noted:

The Board characterized the City's attempt to make the urban recreational designation permanent as an attempt to "remove the agricultural land designation it had previously adopted". The Board held such a "de-designation" could occur only where the City conclusively demonstrates that the GMA's "definitions and criteria for designation are no longer met." With respect to the Benaroya and Muller properties, the Board held the City "failed to point to facts to justify removing these parcels from an agricultural designation".

The Court found that this was an improper shift of the burden of proof under the GMA and was evidence that the Board failed to apply the proper standard of deference to the City's planning decisions. Under the GMA, the Board is required to presume the acts of the City are valid. (RCW 36.70A.320 and .3201).

In *Redmond II*, the Board compounded its error in creating an artificial burden for the City of Redmond to change land designations. That Court also rejected the Board standard in which the Board held:

"De-designation of agricultural lands is a serious matter with potentially very long-term consequences. *Such de-designation may only occur if the record shows demonstrable and conclusive evidence that the Act's definitions and criteria for designation are no longer met.* The documentation of changed conditions that prohibit the continued designation, conservation and protection of agricultural lands *would need to be specific and rigorous.* If such a de-designation action were challenged, it would be

subject to *heightened scrutiny* by the Board.

Id. at 55, (Quoting from Board decision, emphasis in original). This is precisely the standard the Board and the trial court applied in this case. The heightened standard was applied to both Ordinance 03-063, and Ordinance 04-057, adopted in response to the Board's Finding of Invalidity with regard to portions of Ordinance 03-063. The Board found the County failed to meet this heightened standard through either ordinance.

The *Redmond II* Court went on to note the inappropriate burden shifting was also exemplified in the Board's conclusions of law, which found the City had presented:

"...demonstrable and conclusive evidence of changed circumstances to justify the de-designation" of some of the agricultural land in question, but not that of the Benaroya or Muller parcels, and as a result, the City failed to "...point to facts to justify removing these parcels from an agricultural designation".

Id. at 56. (Emphasis in original). The Court of Appeals flatly rejected the Board's standard and reiterated the requirement that the Board is to presume the challenged ordinance is valid and the challenger has the burden of establishing invalidity.⁵ *Id.* at 56. If, in

⁵ Even where the law actually requires showing a substantial change of circumstances to allow a zoning change, Washington does not require a "strong showing of change" and looks to a case by case analysis. *Bassani v. Board of*

making its decision, a Board fails to grant proper deference to an agency's planning, that Board decision is entitled to no deference. *Quadrant Corporation v. Growth Management Hearings Board*, 154 Wn.2d 224, 110 P.3d 1132 (2005). (Deference to county planning actions which are consistent with the goals and requirements of the GMA supersede deference to be granted to administrative bodies. At 238).

In the instant case, the Board decided that there was not sufficient showing of change in circumstances to justify de-designating the land in Island Crossing from agricultural to commercial.⁶ (FDO at 27, CP 2588). That is not a standard for comprehensive plan amendments. Not only did the Board fail to give appropriate deference to the planning decisions of Snohomish County, the Board applied an improper standard. The record, when applied to GMA standards, shows Island Crossing was properly designated commercial and properly placed in Arlington's UGA.

County Commissioners for Yakima County, 70 Wn.App. 389, 394, 853 P.2d 945, rev. den. 122 Wn.2d 1027, 866 P.2d 40 (1993).

⁶ This reasoning continued at the trial court level with Judge Krese. Her Order Affirming the Board's ruling stated: "In order to re-designate the land, the County must show that there has been a change in circumstances since 1998, and that the property is no longer properly designated as agricultural resource land and Rural Freeway service." (Decision on Appeal, ¶4.2, CP 23-24). "The Petitioners (Snohomish County, Arlington and Lane) have failed to demonstrate any material change in circumstances justifying a change in the designation of the land." (Decision on Appeal, ¶4.3, CP 24). This is precisely the standard held to be erroneous by this Court in *Redmond v CPSGMHB (Redmond II)*, *supra*.

Interestingly, even if a showing of material change in circumstances as identified by the Board was required under the GMA, the record in the instant case contains exactly that type of evidence sufficient in scope and character to meet that test. Material change from the time of the prior designation includes the now existing presence of a methadone treatment clinic on the property. The property tax assessment now lists the property in the area as “on city water” and “highway influence.” The area is included in the municipal sewer system in Arlington’s capital facilities plan. Building permits have been grandfathered and the traffic impediment to actual agricultural use has increased. (CP 1822-25; CP 1839-41; CP 1882-91). It is clear there have been substantial and material changes to the land in question, and the county made those changes part of the hearing record prior to its determination to change the designation of the land to Urban Commercial and include it in Arlington’s UGA.

Ironically, when these material changes did not exist, the county initially placed the land in the Urban Growth Area in Snohomish County’s Comprehensive Plan and did not designate the land as agricultural. After being challenged and then changing the designation to agricultural, upon review of that decision, the

Court of Appeals noted that the record contained evidence to support a different conclusion, i.e., that the land was not agricultural, however, the Court of Appeals would not reweigh the evidence.⁷ With the presence of these changed circumstances, the record shows the actions of Snohomish County and Arlington were proper, even under the Board's newly created standards.

The Board also imposed a new "area-wide" analysis standard on the county to justify its actions. (Order on Compliance cite). This standard does not exist in the GMA, has no support in the GMA, and is contraindicated by the specific guides and language of the GMA. Rather than rely on an area-wide analysis of farming to make an agricultural designation, the GMA directs planning agencies to consider local, parcel specific analysis, which Snohomish County did when it designated Island Crossing as not agricultural, but commercial.

In giving guidance under the GMA, the GMA specifically directs the use of an "adjacency" analysis to assist planning and determine land characteristics and designations. (RCW 36.70A.030(18); RCW 36.70A.110(1)). The GMA unquestionably

⁷ *Lane v. Central Puget Sound Growth Management Hearings Board*, WL 244384 (2001) at p.6. That is the unreported case upon which the Board and the trial court relied in part to make their decisions in this case.

contemplates a parcel by parcel analysis which relates specific parcels to land which is adjacent to, or near the parcel in question, for purposes of designating and defining urban growth. The artifice adopted by the Board to require an area-wide analysis is an incorrect reading of the GMA, fails to give deference to local planning, and fails to presume the validity of the actions of Snohomish County.⁸

The same defect applies to the Board's reasoning that the land capacity analysis which showed the need for expansion of Arlington's UGA was "self-imposed". (Order on Compliance at 23, CP 2908). The standard does not appear in the GMA, has no support in the GMA, and is contrary to planning required under the GMA. Imposition of this new approach inappropriately placed a burden on Snohomish County and Arlington in violation of the guides of the GMA.

The GMA was established not only to allow, but to require, local governments to adopt "self-imposed" methods of planning which take the guides of the GMA into consideration when land use needs are identified. Every act of planning under the GMA results in "self-imposed" actions. The question is not whether the result is

⁸ The trial court adopted and applied this same approach. (CP 23-24).

“self-imposed.” The question is whether the local planning process has been guided by the GMA. Our Supreme Court has held that planning under the GMA does *not* require local governments to use any *particular* methods.

As long as their plans are guided by the GMA goals and tailored to local conditions, the plans are valid. Second, the GMA does not require local governments to devise “the best” plan, but rather, a plan that complies with the GMA and that is suitable for that local government. Finally, the GMA allows local governments wide discretion in developing their plans because they must abide by those plans.

Manke Lumber Co., Inc., v. Central Puget Sound Growth Management Hearings Board, 113 Wn.App. 615, 625, 53 P.3d 1011 (2002), *rev. den* 148 Wn.2d 1017, 64 P.3d 649 (2003).

The Board concluded the planning acts of the county and Arlington violated the terms of the GMA and were clearly erroneous. The basis of that determination was the Board’s conclusion the county and Arlington failed to meet their burden to show significant and material change in circumstances in the area to justify the designation, the county failed to utilize an area-wide analysis of farming in the Stillaguamish River Valley rather than focus on the parcels actually involved in the designation question, and that the county improperly relied on “self-imposed” needs for more urban land. The Board improperly placed the burden on the

county and Arlington to meet those standards, and more importantly, the standards *do not exist as part of the planning process under the GMA*. The entire foundation of the Board's decision is based on an erroneous interpretation and application of the law, is not supported by substantial evidence in light of the whole record, and is arbitrary and capricious.⁹

3. The Land Is Not Agricultural.

a. Designation of the Land in the Island Crossing Area as Commercial Conforms with the Guidelines of the Growth Management Act.

i. Initial determinations of agricultural land.

Counties planning under the GMA are required to identify Urban Growth Areas which may include land outside of a city if the land is already characterized by urban growth or is adjacent to land characterized by urban growth.

RCW 36.70A.110(1).

In addition, in order to be agricultural land under the GMA, the land *cannot be characterized by urban growth and also must have long-term commercial production value.*¹⁰ RCW

⁹ Because the trial court essentially adopted the reasoning and findings of the Board, the same error applies to the trial court's actions.

¹⁰ If the Court agrees the land in Island Crossing is characterized by urban growth, pursuant to the GMA, it is irrelevant whether or not it has long term commercial significance.

36.70A.170(1)(a).

Island Crossing was initially placed in Arlington's Urban Growth Area in 1995. The 110.5-acre site involved in Ordinances 03-063 and 04-057 already contains several businesses and public utilities and services, including municipal water and sewer.

Water and sewer services run through and are adjacent to Island Crossing. The presence of those facilities, as a matter of law, classifies the entire section of land as urbanized in character. *Thurston County v. Cooper Point Association*, 148 Wn.2d 1, 57 P.3d 1156 (2002). (Extension of a sewer line through a rural area would be an improper extension of urban services in violation of RCW 36.70A.110(4), even if the rural properties would not be part of the service area unless septic systems failed).

Island Crossing is within a sewer district, contains businesses, public utilities and services, and is clearly urbanized in character.

b. Changes in Designation.

City of Redmond v. Central Puget Sound Management Hearings Board, State of Washington, 116 Wn.App. 48, 55, 65 P.3d 337, *rev. den.* 150 Wn.2d 1007, 77 P.3d 651 (2003) (*Redmond II*) *supra* requires any change in designation involving an area wide

comprehensive plan amendment must be viewed with fresh eyes, untainted by any prior designations. The new plan and designations must be presumed to be valid, and the only test to be applied is whether or not the planning agency was guided by the GMA and whether the amended plan comports with the GMA.

Land use planning is a dynamic process. WAC 365-190-040(2)(g). That process includes application of GMA standards and changes may include public policy considerations as well as actual land characteristics. WAC 365-190-040(2)(g)(i). With the foregoing in mind, examination of the record shows that designation of the land in Island Crossing as Commercial conforms with the guides of the GMA.

c. The Land in Island Crossing Is Not Agricultural In Nature.

To be agricultural land under the GMA, land must be primarily devoted to the commercial production of agricultural products and it must have long term commercial significance. (RCW 36.70A.030(2) and (10)).

The GMA directed the Department of Community, Trade and Economic Development to adopt guidelines to assist in classification of agricultural land (RCW 36.70A.050), and those

guidelines are to be considered when land may be subject to an agricultural designation. (RCW 36.70A.170(2)). CTED has promulgated such guides which appear in WAC 365-190-050. Comparing CTED guides to the land in Island Crossing shows the land is not agricultural under the guides of the GMA.

i. Devoted to agriculture (RCW 36.70A.030(2)).

Land is "devoted to" agriculture if it is actually used or capable of being used for agricultural production. *City of Redmond v Central Puget Sound Growth Management Board*, 136 Wn.2d 38, 53, 959 P.2d 1091 (1998) (*Redmond I*). However, a review of the record shows the land in Island Crossing is not, and has not been, devoted to agriculture. Aside from the GMA guides, plain language identifies "devote" as "...to concentrate on a particular pursuit, occupation, purpose, cause, etc." *Webster's Encyclopedic Unabridged Dictionary of the English Language*, 1989. As early as 1984, the County was aware the property had not been productive for its owners for several years. Further, the parcel owned by Intervenor Lane has not been actively farmed for nearly thirty years. (CP 1843-4).¹¹ Evidence of record also shows that small scale

¹¹ In reaching its decision, the Board chose to reweigh the evidence, and more importantly, chose to dismiss the evidence presented by a consulting firm as simply an expression of land owner intent. (Corrected FDO at 28-29, CP 2589-

farms have not been commercially successful in the area for a number of years. (CP 1851-2). Due to the heavy use of roads surrounding the property, farming the land at Island Crossing is not only unproductive, it is hazardous. (CP 1835-7; CP 1852).¹² There is absolutely no substantial or credible evidence of record that the land in Island Crossing has been, or is, “devoted” to agriculture in any sense of the word, let alone be shown to be primarily devoted to the commercial production of agricultural products and have long term commercial significance.

Though the Board concluded (erroneously) that the area was commercially productive, it is noteworthy that the record is devoid to support this conclusion, including no evidence of who has been successfully producing crops on a commercially viable basis. The record is devoid of information regarding historic production levels, types of crops and the income derived as a result of that

90). This constituted error and the Board failed to point to any reason or justification which would allow dismissal of this evidence. The evidence was properly presented to the county and properly relied on by the county prior to making its decision. The county is the fact finder and is the proper body that determines the weight to be given evidence presented. It is improper for the Board to substitute its judgment for that of the county. The Board failed to cite to any authority for its decision or evidence of record which would support its decision.

¹² Ironically, the PDS report which initially recommended denial of the application did so in part in reliance on finding the traffic in the area is heavily congested. The report, however, fails to analyze how this could impact the practical attempts to farm the area inside the triangle. (CP 1627).

production. The GMA and common sense requires that the only rational conclusion is the land in Island Crossing is *not devoted to agriculture*.

ii. The availability of public facilities.

Available:

1. suitable or ready for use; of use or service; at hand:
2. readily obtainable; accessible

Webster's Encyclopedic Unabridged Dictionary of the English Language, 1989.

Island Crossing is served by water, power, telecommunications and gas. The City of Arlington has amended its capital facilities area plan for water, utilities and sewage which includes the land in Island Crossing. (CP 1823; CP 1835; CP 1840; CP 1854). It is undisputed that water and sewer are present in the area and serve businesses in the Freeway Commercial zone. *Id.* Issues regarding potential and actual hook up to the system may not be relied upon to make a land designation. Those issues are handled through the permitting process under the Shoreline Management provisions, although several residences in Island Crossing are presently connected to municipal water service. *Id.* The GMA has mandated that the permitting process is not to be

used as a comprehensive planning process. Therefore, reliance on, or reference to permitting problems cannot be considered in making land use decisions under the GMA. (RCW 36.70A.470(1)(a)). Public facilities are readily available in Island Crossing.

iii. Tax status.

The record shows that only 32% of the properties in the area are currently taxed as agricultural land. All but one parcel is smaller than the minimum of 20 acres for open space classification. Properties are now assessed as "on public water" and "freeway influence." (CP 1193-94; CP 1816; CP 1840; CP 1853-55).

iv. Availability of public services.

RCW 36.70A.030(13) defines the term "public services" to include "fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services." These services are already provided to the area by Snohomish County Fire Protection District 19, the Snohomish County Sheriff, the Snohomish Health District, the Lakewood School District, and Sno-Isle Regional Library System. (CP 1884).

v. Relationship or proximity to urban growth areas.

Island Crossing is adjacent to the Arlington City UGA and

less than a mile from the Arlington City limits. In the original planning process, the area at issue was included in the City of Arlington's Urban Growth Area. (CP 1193-94; CP 1822; CP 1855).

vi. Predominant parcel size.

There are five parcels in the area which range in size from 20.7 acres to 2.9 acres. (Parcels of 20.7 acres, 15.8 acres, 14.6 acres, 8.1 acres, and 2.9 acres.) (CP 1194). The record shows that small-scale, independent farms in the 20-acre size range, much less those substantially smaller, have not been able to actively operate in a commercially productive manner for a number of years. (CP 1823; CP 1843-4)

Early on, the County recognized the need to consider the size of parcels when determining the viability of farms.¹³ (CP 1825). The current goal for agricultural land is 40 acres. (GPP in section LU 7.D.1 for Riverway Commercial farmland, the designation of the Island Crossing property prior to Amended Ordinances 03-063 and 04-057). Not a single parcel in Island Crossing meets this goal.

vii. Land use settlement patterns and their compatibility with agricultural practices.

A portion of Island Crossing is developed as Freeway

¹³ The 1982 Snohomish County Agricultural Preservation Plan (SCAPP) developed an optimum size of normal agricultural parcels as 40 acres, with 20 acres if adjacent to other large parcels. (CP 1855).

Service. It is made up of approximately 35 acres and contains three gas stations, three restaurants, a motel, an espresso stand, hay harvesting and two single-family homes. In addition, roadside services including a pharmacy, smoke shop, police station, community center, and a methadone treatment clinic are operated by the Stillaguamish Tribe on a 2.5-acre triangular parcel at the Smokey Point Boulevard and State Route 530 intersection. (CP 426; CP 1855).

The traffic patterns in the vicinity are not compatible with agricultural uses of Island Crossing. The area is land locked between Smokey Point Boulevard, State Route 530 and Interstate 5. It is not commercially feasible to purchase liability insurance for raising livestock because of safety issues with traffic. (CP 1816; CP 1843-44).

viii. Intensity of nearby land uses.

Island Crossing is truly an island unto itself in both geographic terms and usability terms. The area contains urbanized development, has urbanized facilities and is adjacent to the Arlington City UGA to the south. It is less than a mile from the Arlington City limits and adjacent to a UGA. (CP 1194; CP 1816; CP 1855).

ix. History of land development permits issued nearby.

Over 200 homes have been constructed in the nearby vicinity. (CP 1824).

x. Land values under alternative uses.

The record shows that under alternative uses, the land value would be dramatically, exponentially increased. The impacts on the area and economy are more than significant and would in fact amount to substantial benefit.¹⁴ (CP 1959-60).

xi. Proximity of markets.

Island Crossing abuts the Arlington UGA to the south and is nearby Arlington's city limits. (CP 1194; CP 1816). The City of Marysville is nearby.

There is substantial evidence in the record to support the conclusion of Snohomish County that the land in Island Crossing is not agricultural within the guides and meaning of the GMA. The designation of the land as agricultural is the lynch pin of both the Board and trial court's holdings. If this Court agrees the record contains substantial evidence showing that the agricultural

¹⁴ Testimony shows potential land value under alternative impacts which reflects land valuation in excess of \$28 million, sales of \$19 million annually and property taxes of approximately \$400,000 annually. (CP 1959).

designation was not proper, the rest of the Board's holding also must fail because it is based on the fact Snohomish County attempted to include agricultural land in Arlington's UGA.

Given the presumptions of validity which must be applied to Snohomish County Ordinance 03-063, and the fact the burden was solely on the challengers to that ordinance to show the planning acts failed to comply with the GMA, the record in this case clearly supports the actions of Snohomish County. The error of the Board finding the actions of the County to be clearly erroneous is compounded by the fact the Board also adopted and applied three newly developed tests the Board required the county to meet to justify its planning decisions, none of which appear in the GMA. Further, in adopting and applying those newly created tests, the Board inappropriately shifted the burden to the county to justify its acts to compare them to standards which simply do not exist in the statutory guides even if the action was taken in response to a partial Finding of Invalidity.

If this Court agrees the Board's actions violated the GMA with regard to Ordinance 03-063 and the agricultural designation, then the only problem with that Ordinance was the purported lack of a land capacity analysis. The Board found that problem was cured

in Ordinance 04-057. Thus, with a finding of non-agricultural land in Ordinance 03-063 and a proper land capacity analysis found by the Board through Ordinance 04-057, the Board's rejection of Snohomish County's actions cannot stand and the county's planning decisions must be upheld. The actions of the Board are in error.¹⁵

4. Inclusion of Island Crossing in the Arlington Urban Growth Area Does Not Violate Locational Criteria of the GMA.

The north end of Island Crossing contains three gas stations, three restaurants, a motel, an espresso stand, single-family homes and a methadone treatment clinic. It has water service running under the land, is included in a sewer district and is surrounded by Interstate 5, Smokey Point Boulevard, and State Route 530. The Board found that placing Island Crossing in Arlington's UGA violated the locational criteria of the GMA because the above identified characteristics were not "urban" in nature.¹⁶ Put another

¹⁵ Recall that the Board's claim of locational violation rests on the presumption the land is properly designated agricultural. If the land is not agricultural, the locational objection also must be in error.

¹⁶ (FDO at p. 36; CP 2597; Order on Compliance at 22, CP 2907). In addition, at the Hearing on Compliance, the Board agreed the Large Parcel Analysis on compliance cured any inconsistencies with UG-14 and showed the need to expand Arlington's UGA. (Order on Compliance at 22, CP 2907). UG-14 itself was found to be a valid mechanism by which to make planning decisions in Snohomish County. The Board, however, rejected Amended Ordinance 04-057 because the Board found it violated locational criteria of the GMA as identified in RCW 36.70A.110. (*Id.*).

way, the Board's decision that Island Crossing is agricultural precluded it from inclusion in the UGA. If the land is not agricultural, the preclusion fails.

The GMA locational criteria requires urban growth land to be characterized by urban growth or adjacent to land characterized by urban growth. RCW 36.70A.110(1)¹⁷ (See discussion *infra* Section 3(a)(i)).

The GMA gives guidance to determine what is “urban” for planning purposes. Those guides show the nature of services present are a main determining factor to identify an “urban” area under the GMA.¹⁸

The planning goals of the GMA address “urban growth” and state:

Urban Growth. Encourage development in urban areas where adequate public facilities and *services exist or can be provided in an efficient manner.*

RCW 36.70A.020(1) (Emphasis added).

Urban areas are characterized by the presence of public

¹⁷ See also, WAC 365-195-335(c).

¹⁸ This analysis is in addition to the obvious fact that structures such as gas stations, restaurants, motels and residences, parking areas and roadways are without question characteristic of urban growth.

facilities and services. The GMA further provides:

“Public facilities” include streets, roads, highways, sidewalks street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

“Public services” include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

RCW 36.70A.030(11) and (12); WAC 365-195-200(12) and (13).

Further guidance regarding public facilities under the mandates of the GMA shows:

“Available public facilities” means that facilities or services are in place or that a financial commitment is in place to provide the facilities or services within a specified time. ..

WAC 365-195-210.

Under the GMA, the presence of some or all of the above characteristics indicates the land is urban in nature for purposes of planning. Island Crossing was shown to have all the public facilities necessary to allow three gas stations, three restaurants, a motel, an espresso stand, two single-family homes and a methadone clinic to operate. There is a water and sewer system currently in the ground with adequate capacity to handle further growth. The area is served by power, telecommunications and gas. The City of Arlington will provide a service area for utilities which includes

portions of Island Crossing. (CP 1886-7). The southern end of the Island Crossing area is adjacent to the City of Arlington Urban Growth Area.

If the above elements were not enough to show Island Crossing is characterized by urban growth, the statutory definition itself clearly shows Island Crossing is characterized by urban growth.

“Urban growth” refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, ... “Characterized by urban growth” refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

RCW 36.70A.030(18) (emphasis added); WAC 365-195-200(14).

It is untenable to look at the development on Island Crossing and conclude the area may be “freeway services” but is not characterized by “urban growth.” (Order on Compliance at 22, CP 2907). Further, the portion of Island Crossing which does not currently play host to motels, restaurants, gas stations and drug treatment clinics is sandwiched between land to the north that does contain those entities (actually a portion of Island Crossing involved in the de-designation, and that portion of Island Crossing is

bounded by the Stillaguamish River to the north); the Arlington Urban Growth Area to the south; Interstate 5 to the west, and Smokey Point Boulevard to the east. That locational aspect of Island Crossing makes it unquestionably the type of land contemplated by the GMA when it set forth guides to determine what land would be appropriate for urban growth.

Given the guides of the GMA, the action of Arlington and Snohomish County to place Island Crossing in Arlington's UGA was appropriate. First, the land capacity analysis utilized by the County showed there was a need for additional commercial property in Arlington. Second, there was no adequate land inventory in Arlington which could meet the need for the commercial property.

Further RCW 36.70A.110(3) provides:

Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. ..

Island Crossing has all the characteristics of urban growth as contemplated by the GMA.

As a matter of law, the presence of water and sewer

services characterizes an area as being urbanized. *Thurston County v. Cooper Point Association*, 148 Wn.2d 1, 57 P.3d 1156 (2002). (*Supra* at p. 27.)

Island Crossing has the requisite public facilities, urban services and character of urban growth. The area is adjacent to the Arlington UGA. The area is effectively land locked by Interstate 5, Old Highway 99 (Smokey Point Boulevard), and Highway 530. The land meets the locational criteria of the GMA.

One of the locational defects identified by the Board included lack of adjacency. By claiming Island Crossing is not sufficiently adjacent to Arlington's city limits to include the area in its UGA, the Board contradicts previous decisions it has made regarding adjacency determinations. In *Tacoma v. Pierce County*, Consolidated Case No. 99-3-0023c, Central Puget Sound Growth Management Hearings Board, 2000 WL 107591S, the Central Puget Sound Board rejected an attempt by Tacoma to create a Rural Area of More Intensive Development (RAID, referred to by the Board as a LAMIRD, Limited Area of More Intensive Rural Development). The driving purpose behind Tacoma's action was the need for sewer service on a farm. The property was immediately adjacent to a UGA which made it, in the Board's

consideration, an appropriate candidate for UGA expansion. *Id.* at p. 5. The Board examined the requirements of Tacoma's RAID program and noted the farm in question was also less than 400 feet from Tacoma's city limits in addition to being adjacent to a UGA. In rejecting the LAMIRD designation, the Board stated:

Proximity to the UGA alone suggests to the Board that if the area were to be urban, adjustments to the UGA would be a more appropriate means of accomplishing this objective.

Tacoma v. Pierce County, supra, at p. 7 (emphasis added).

Thus, on one hand, the Board finds fault with a city for not trying to expand an urban growth area when the land in question is 360 feet from a city's boundary, but finds that when the property abuts a UGA, that is not sufficiently adjacent to allow expansion of a UGA! Such inconsistent, arbitrary analysis flies in the face of the mandate of the GMA, which is to allow local governmental entities to plan for their growth while taking into account the unique local characteristics facing those planning entities.

The locational criteria of the GMA is addressed to urban characteristics of land. Island Crossing has virtually all of the urban identifiers mentioned in the GMA, and is adjacent to land which exhibits urban characteristics. Looking at the land as it actually and currently exists requires that at some point reality be applied to the

designation. Island Crossing is virtually land locked by highways, contains businesses, has urban facilities and services, does not produce economically viable agricultural product and has no long term capacity for producing economically viable agricultural product. The land is adjacent to a UGA. The land meets the criteria for inclusion in an urban growth area.

Island Crossing is not a piece of pristine rural farm land which is being subject to rampant urban consumption. This is exactly the type of land the GMA anticipated would be considered by planning agencies for urban growth when they are forced to make planning decisions under the guides of the GMA. The actions of the county and Arlington were reasoned and guided by the mandates of the GMA. The record contains substantial evidence to justify the actions of Snohomish County and Arlington when they classified the land as urban and included it in Arlington's UGA. The actions of the Board and trial court are in error.

5. The Superior Court Erred When it Applied Res Judicata to Dismiss Review and Affirm the Board Decision.

The doctrines of res judicata and collateral estoppel were not

raised before the Board.¹⁹ If an issue is not raised before the agency making the determination in question, it cannot be raised before the reviewing court. *Steward v. Washington State Boundary Review Board for King County*, 100 Wn.App. 165, 175, 996 P.2d 1087 (2000); RCW 34.05.554.

In addition, even if the question of res judicata and collateral estoppel were properly part of this inquiry, it is clear the doctrines do not apply to these legislative actions of Snohomish County.²⁰ Legislative acts of local government entities are not subject to res judicata and collateral estoppel principles. To hold otherwise would, in effect, violate the separation of powers doctrine mandated by the State Constitution.

The Washington Constitution clearly delineates three powers to guide the state, the first being the legislative power through a Legislature (Constitution, Article 2, Section 1), executive power through an Executive branch (Constitution, Article 3, Section 1) and

¹⁹ The trial court found the issue had been raised by the District in its Reply Brief before the Board. An issue cannot be raised for the first time in a Reply Brief. *Nakatani v. State*, 109 Wn.App. 622, 625, 36 P.3d 1116 (2001).

²⁰ While there was some initial confusion among the parties regarding Judge Krese's first Opinion regarding her designation of Amended Ordinances 03-063 and 04-057 being legislative or quasi-judicial acts, upon reconsideration, Judge Krese ultimately concluded and clarified that they were legislative acts and Snohomish County was not subject to res judicata or collateral estoppel principles when adopting them. The court, however, was not so constrained when reviewing the decisions and Judge Krese granted dismissal of Snohomish County, Arlington and Lane's Petition for Review on those grounds.

judicial power through a Judicial branch (Constitution, Article 4, Section 1). The impact of this division is that:

Each branch of government wields only the power it is given. The purpose of the doctrine is to prevent one branch of government from aggrandizing itself or encroaching upon the “fundamental functions” of another.

State v. Moreno, 147 Wn.2d 500, 505, 58 P.2d 265 (2002). If a judiciary applies res judicata and collateral estoppel to legislative acts, it will impede the ability of the legislative body to function in its proper manner.

As part of this separation of powers, judicial review of legislative acts is limited in scope. For example, in a constitutional challenge, it is the court’s function to compare the act to the Constitution and determine if it meets constitutional standards. It is not an opportunity for the court to exercise substantive power to review and/or nullify the acts of the legislature beyond determining conformance with the Constitution. Once that determination has been made, the court’s duty ends. Courts are not to act as a “super legislature.” *Aetna Life Insurance Co. v. Washington Life and Disability Insurance Guaranty Ass’n.*, 83 Wn.2d 523, 527-28, 520 P.2d 162 (1974).

Further, it has been stated that in reviewing legislative acts,

...it is not the prerogative nor the function of the judiciary to substitute what they may deem to be their better judgment for that of the electorate in enacting initiatives or for the judgment of duly elected legislators unless the errors in judgment clearly contravene state or federal constitutional provisions.

Fritz v. Gorton, 83 Wn.2d 275, 287, 517 P.2d 911 (1974).

Courts reviewing actions under the GMA must operate in the same fashion. The GMA has specifically identified the role of a reviewing court with respect to Board decisions.²¹ Like a constitutional challenge to legislation, courts are limited to determining whether or not planning under the GMA is guided by the GMA and that plans adopted meet the mandates of the Act. There is no place for application of the principles of res judicata or collateral estoppel by the judiciary.

When reviewing a planning decision, there is a presumption of validity to be afforded the legislative acts adopted. Judicial review is to determine whether or not the Board has applied proper standards and deference, whether the record supports the decision of the legislative body, and whether or not the agency was guided by the GMA. Judicial review will examine whether the adopted legislation complies with the GMA. The guides for judicial review

²¹ RCW 36.70A.300(5) placing review in the APA with limits of RCW 34.05.570(3).

“are more than mere rules of judicial convenience. They mark the line of demarcation between legislative and judicial functions.” *Lenci v. City of Seattle*, 63 Wn.2d 664, 668, 388 P.2d 926 (1964); *In re Binding Declaratory Ruling of Dept. of Motor Vehicles*, 87 Wn.2d 686, 691, 555 P.2d 1361 (1976).

If res judicata and collateral estoppel are applicable to legislative acts of planning under the GMA, it would have the potential impact of precluding any subsequent legislative action with regard to designation of land. Local planning decisions cannot be dictated or precluded by the fact there was a similar, or even identical ordinance in the past. Changes made in land designations must be subject to complete review in light of the circumstances surrounding the legislative act in question, including the impact of any local conditions. To hold otherwise would allow the judiciary to usurp the legislative functions of local governments required to plan under the GMA and consider local conditions while doing so.

F. CONCLUSION

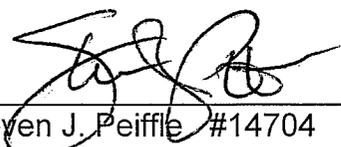
Snohomish County and the City of Arlington engaged in planning under the auspices of the GMA and determined there was a need for urban growth land for Arlington. Pursuant to the GMA, the county held a number of hearings. Following analysis of the

material produced through that hearing process, the County changed the designation of Island Crossing to Urban Commercial and placed the land in Arlington's UGA.

In striking down this action, the Board and trial court failed to give proper deference to the planning decisions of Snohomish County and Arlington. The Board adopted new standards for compliance with the GMA which do not appear in the Act. The Board improperly reviewed and reweighed evidence. The Board failed to operate as required by the GMA. As a result, the decision of the Board must be reversed and Snohomish County's actions are to be considered proper planning under the GMA.

Respectfully submitted this 27 day of January, 2006.

BAILEY, DUSKIN, PEIFFLE & CANFIELD, P.S.



Steven J. Peiffle #14704
Attorney for Petitioner City of Arlington

COGDILL NICHOLS REIN WARTELLE ANDREWS



By: Todd C. Nichols #15366
Attorney for Petitioner Dwayne Lane

G. APPENDIX

Amended Ordinance No. 03-063.....	A-1
Emergency Ordinance No. 04-057.....	B-1
Chapter 36.70A RCW (excerpts cited)	C-1
Chapters 365-190 & -195 WAC (excerpts cited)	D-1

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

AMENDED ORDINANCE NO. 03-063

REVISING THE EXISTING URBAN GROWTH AREA
FOR THE CITY OF ARLINGTON; ADOPTING MAP AMENDMENTS
TO THE GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN;
AND ADOPTING COUNTY-INITIATED AREA-WIDE REZONES
PURSUANT TO CHAPTER 30.74 SCC; AND AMENDING AMENDED
ORDINANCE 94-125, ORDINANCE 94-120, AND
EMERGENCY ORDINANCE 01-047

WHEREAS, the Growth Management Act, chapter 36.70A RCW (GMA) requires Snohomish County to designate an urban growth area (UGA) within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature (RCW 36.70A.110(1)); and

WHEREAS, the county council designated a Final UGA for Arlington (Amended Ordinance 94-120) on June 28, 1995, after holding public hearings from April 19, 1994, through January 18, 1995, in conformance with the requirements of the GMA; and

WHEREAS, on June 28, 1995, the county council approved Amended Ordinance 94-125 which adopted a GMA Comprehensive Plan including a General Policy Plan (GPP) and Future Land Use (FLU) map; and

WHEREAS, the county council amended the Final UGA for Arlington on July 23, 2001 (Emergency Ordinance 01-047) in conformance with the requirements of the GMA; and

WHEREAS, RCW 36.70A.130 and 36.70A.470 direct counties planning under the GMA to adopt procedures for interested persons to propose amendments and revisions to the comprehensive plan or development regulations; and

WHEREAS, the county council adopted chapter 30.74 SCC to comply with the requirements of RCW 36.70A.130 and .470 to allow interested persons to propose amendments to the GMA comprehensive plan and/or development regulations; and

WHEREAS, Snohomish County Department of Planning and Development Services (PDS) staff, pursuant to the SCC 30.74.030, reviewed all proposals on the docket and determined that twenty-one of the proposals could be reviewed and analysis could be

completed within the time frame of the 2003 final docket review cycle, including the proposal by Dwayne Lane to amend the Arlington UGA boundary; and

WHEREAS, the 2003 final docket – Phase 1 includes proposals to amend the GPP FLU map submitted by Jerry Booker, City of Everett, Frank Heath, NORETEP, Snohomish County Department of Public Works, Dwayne Lane, Eddie Bauer, and Wellington Morris; and

WHEREAS, pursuant to Chapter 30.74 SCC, PDS completed final review and evaluation of the 2003 final docket – Phase 1, including rezones to implement proposals to amend the GPP FLU map, and forwarded a recommendation to the Snohomish County Planning Commission; and

WHEREAS, the planning commission held hearings on the Dwayne Lane proposal including the proposal to amend UGA boundaries, on February 25 and March 4, 2003, and forwarded a recommendation to the county council; and

WHEREAS, the county council held a public hearing on July 9, 2003, continued to July 30, August 13, and September 10, 2003, to consider the entire record and hear public testimony on Ordinance 03-063, adopting revisions to the Arlington UGA.

NOW, THEREFORE, BE IT ORDAINED:

Section 1: The county council makes the following findings of fact and conclusions:

- A. The county council hereby adopts and incorporates by reference the findings and conclusions adopted and the legislative records developed in adopting Amended Ordinance 94-120, Amended Ordinance 94-125, Ordinance 97-076, and Emergency Ordinance 01-047.
- B. The proposal by Dwayne Lane to amend the FLU map of the GPP to expand the Arlington UGA to include 110.5 acres to be redesignated from Riverway Commercial Farmland and Rural Freeway Service to Urban Commercial and rezone 110.5 acres from Rural Freeway Service and Agriculture-10 Acres to General Commercial more closely meets the policies of the GPP than the existing plan designation based on the planning commission's following findings of fact and conclusions:
 1. When Dwayne Lane purchased the subject property, the General Policy Plan designation was Urban Commercial.
 2. Water and sanitary sewer lines running along the west side of Smokey Point Boulevard are available adjacent to the subject property. This

system is owned by the City of Arlington which has invested in utilities in the area because it believes the area is "destined for more intense urban development."

3. The Island Crossing freeway interchange currently supports commercial uses.
 4. The subject property is adjacent to Interstate-5, SR 530, and Smokey Point Boulevard.
 5. The permit process for commercial projects requires higher development standards for critical areas than is the case for development on agricultural lands. The 150 foot buffer requirements associated with new commercial development will better preserve Portage Creek.
 6. Ragnar soils are the best soils for production of commercial crops and there are no Ragnar soils at Island Crossing. The Island Crossing area consists primarily of Puget soils that are adequate for hay, green chop and pasture, but are not suitable for more valuable crops like berries and corn. The Puget soils are considered "prime" only when artificially drained, which the land at the site is not, and even when drained the Puget series is considered of low productivity.
 7. Farming is no longer financially viable at Island Crossing. Busy highways, high assessed value, small parcel size and safety issues eliminate the viability of the Island Crossing Interchange site as agricultural land.
 8. Snohomish County is growing rapidly and it is inevitable that sites like Island Crossing will be converted from agricultural uses to commercial uses.
 9. The Commission has concerns about the history of floods in this area and the associated impacts. However, the Commission believes that the impacts can be mitigated as is clearly shown in the DSEIS.
 10. The Commission also has concerns about traffic impacts at Island Crossing as a result of future urban development. The Commission believes that the impacts can be mitigated. The DSEIS shows that traffic impacts can be fully mitigated.
- C. The proposed expansion to the Arlington UGA is consistent with GPP Policies LU 1.A.3 and LU 2.C.3, which require that new development within UGAs are provided with adequate infrastructure and services, including sanitary sewers.
- D. The proposed area-wide rezone (Exhibit C, Map 7a) is consistent with the following initial criteria for rezone requests in SCC 30.74.040:

1. Where applicable, the proposed rezones are necessary because an amendment to the future land use map of the GPP has also been proposed that meets the initial evaluation criteria listed in SCC 30.74.030.
 2. Public facilities and services necessary for development are available or programmed to be provided to the sites of the proposed rezones, consistent with the GMA comprehensive plan or development regulations as determined by applicable service providers.
 3. The proposed rezones do not require a concurrent site plan approval because there is an absence of special site conditions and applicable GPP or subarea policies.
- E. The proposed area-wide rezone (Exhibit C, Map 7a) is consistent with the GMA comprehensive plan and consistent with the provisions of the GMA.
- F. The county council concludes that the proposed area-wide rezone (Exhibit C, Map 7a) implements the county's GMA comprehensive plan.
- G. The county council concludes that the proposed area-wide rezone (Exhibit C, Map 7a) bears a substantial relationship to the public health, safety and welfare.
- H. The proposed UGA amendment is consistent with the following final review and evaluation criteria of SCC 30.74.060:
1. The proposed amendment maintains consistency with other elements of the GMA comprehensive plan;
 2. All applicable elements of the GMA comprehensive plan support the proposed amendment;
 3. The proposed amendment meets the goals, objectives, and policies of the GMA comprehensive plan as discussed in the specific findings; and
 4. The proposed UGA amendment is consistent with the countywide planning policies.
- I. The amendment to the GMA comprehensive plan satisfies the procedural and substantive provisions of and is consistent with the GMA.
- J. The amendment maintains the GMA comprehensive plan's consistency with the multi-county policies adopted by the Puget Sound Regional Council and with the countywide planning policies for Snohomish County.
- K. Cities have been notified and consulted with regarding proposed amendments that affect UGAs or GPP FLU map designations within UGAs.

- L. There has been early and continuous public participation in the review of the proposed amendments.
- M. A Draft Supplemental Environmental Impact Statement (DSEIS) was issued on February 19, 2003, for the Dwayne Lane proposal. A Final SEIS, including response to comments on the DSEIS, was prepared following the 30-day comment period and was issued on July 1, 2003. The purpose of the SEIS was to analyze potential significant adverse environmental impacts of the proposals and any alternatives that were not previously identified in the two EIS documents and a series of addenda prepared for the Snohomish County GMA Comprehensive Plan – General Policy Plan and Transportation Element between 1994 and 2003.
- N. The recommended amendments are within the scope of analysis contained in the SEIS and associated adopted environmental documents and result in no new significant adverse environmental impacts. The SEIS performs the function of keeping the public apprised of the refinement of the original GMA comprehensive plan proposal by adding new information, but does not substantially change the analysis of significant impacts and alternatives analyzed in the existing adopted environmental documents.
- O. The SEPA requirements with respect to this proposed action have been satisfied by these documents.
- P. The county council held a public hearing on July 9, 2003, continued to July 30, August 13, and September 10, 2003, to consider the planning commission's recommendations.
- Q. The public was notified of the public hearings held by the planning commission and the county council by means of published legal notices in The (Everett) Herald and local newspapers.
- R. The proposal has been broadly disseminated and opportunities have been provided for written comments and public hearing after effective notice.
- S. Approval of the Island Crossing Interchange Docket Proposal is not precedent for redesignation of Agricultural land in the Stillaguamish Valley. This proposal is approved entirely on its own merits. These include:
 - (1) This proposal is supported by the Snohomish County Planning Commission.
 - (2) Bringing this land into the Arlington Urban Growth Area is fully supported by the City of Arlington.
 - (3) This proposal is supported by the Stillaguamish Tribe.

- (4) This land is located at an I-5 interchange between an interstate highway and a state highway, and is uniquely located for commercial needs of the area.
- (5) This land has unique access to utilities. Redesignation of adjacent properties to the east will not occur because utilities are unavailable to the east.

T. The land contained within the Island Crossing Interchange Docket Proposal is not agricultural land of long term commercial significance. Although some of the soils may be of a type appropriate for agricultural use, soil type is only one factor among many others in the legal test for agricultural land of long term commercial significance. The County Council has addressed the question as to whether the land is:

"primarily devoted to the commercial production of agricultural products and has long term commercial significance for agricultural production"

and has found that it is not.

At the public hearing, the testimony of Mrs. Roberta Winter (Exh. 111) was very persuasive on this point. Since the mid-1950's, she and her husband had a dairy farm in the very location of the Island Crossing Interchange Docket Proposal site. Locating and then expanding I-5 put them out of the dairy business. They soon discovered that crops generated less revenue than the property taxes. The Winters sold the land because the land could not be profitably farmed.

Council finds that this land cannot be profitably farmed, and is not agricultural land of long term commercial significance.

U. The Island Crossing Interchange Docket Proposal site has episodically flooded in the past and will continue to episodically flood in the future, whether or not the proposal is approved, and whether or not the site is developed. The relevant question is not whether the proposal site experiences floods, but rather does the site experience significant adverse flood impacts which cannot be reasonably mitigated.

The Draft Supplemental Environmental Impact Statement (Exh. 22) clearly states, at p. 2-24:

Assuming effective implementation of applicable regulations and recommended mitigation measures, no significant unavoidable adverse surface water quantity or quality impacts would be anticipated associated with the future development of the site.

V. In Exh. 135, applicant of the Island Crossing Interchange Docket Proposal states various development techniques and plans which will be voluntarily used to minimize the prospect of flood impacts. These techniques include the following:

- Excavation to create additional storage.
- Building pads and access roads will only be filled to the 100-year floodplain level.
- Minimize the amount of fill brought on-site.
- Most fill will be excavated onsite.
- Water passage to South Slough and Portage Creek will remain unimpeded.
- Parking lots will be built below Base Flood Elevation.
- Parking lots may be built of permeable surface.
- Impermeable surface will be minimized.

Section 2. The county council bases its findings of facts and conclusions on the entire record of testimony and exhibits, including all written and oral testimony before the planning commission and county council.

Section 3. The county council hereby amends Amended Ordinance 94-120 as adopted on June 28, 1995, last amended by Emergency Ordinance 01-047 as adopted on July 23, 2001, to modify Exhibits A and C which were therein incorporated. The county council hereby adopts two new exhibits for Amended Emergency Ordinance 01-047: (1) Exhibit A, Map 7 ("Proposed Comprehensive Plan Amendment, Dwayne Lane") which is a map that depicts the modified UGA boundary for the Arlington UGA; and (2) Exhibit C which is a county assessor's map that accurately depicts the revised UGA boundary for the Arlington UGA. Exhibits A and C are attached hereto and incorporated herein by this reference. After the effective date of Ord. 03-063, development in the Island Crossing Interchange Docket Proposal area added to the Arlington UGA by Ord. 03-063 should be conditioned upon use of the flood protection measures outlined above in finding V of Section 1, provided such flood protection measures are technically feasible and do not defeat the purpose of the development.

Section 4. Based on the foregoing findings and conclusions, the Snohomish County GMA Comprehensive Plan Future Land Use Map adopted as Map 4 of Exhibit A in Section 4 of Amended Ordinance No. 94-125 on June 28, 1995, and last amended by Ordinance No. 03-001 on January 27, 2003, is amended as depicted in Exhibit A, Map 7 which is attached hereto and incorporated by reference into this ordinance as if set forth in full.

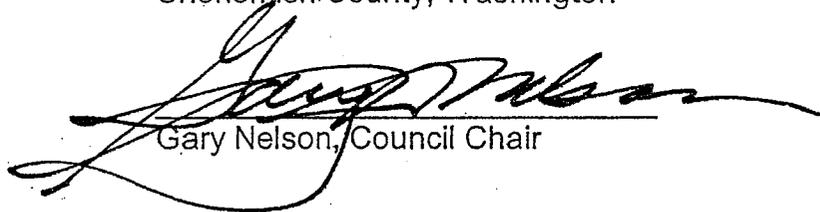
Section 5. Based on the foregoing findings and conclusions, the county council hereby adopts the area-wide rezone as mapped in the following documents which are attached hereto and incorporated by reference into this ordinance as if set forth in full:

- A. Assessor map showing the rezone incorporated herein as Exhibit C; and
- B. Map 7a and incorporated herein as Exhibit B.

Section 6. Severability. If any provision of this ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remainder of this ordinance. Provided, however, that if any provision of this ordinance is held invalid or unconstitutional, then the provision in effect prior to the effective date of this ordinance shall be in full force and effect for that individual provision as if this ordinance had never been adopted.

PASSED this 10th day of September, 2003.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



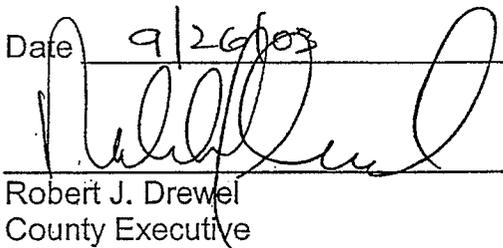
Gary Nelson, Council Chair

ATTEST:



Sheila McAllister
Clerk of the County Council, asst.

- () Approved
- () Emergency
- () Vetoed

Date 9/26/03


Robert J. Drewel
County Executive

APPROVAL AS TO FORM ONLY

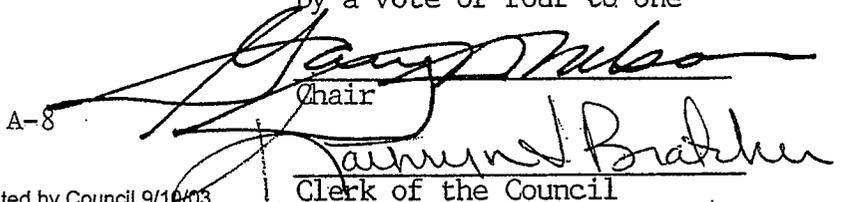
Deputy Prosecuting Attorney

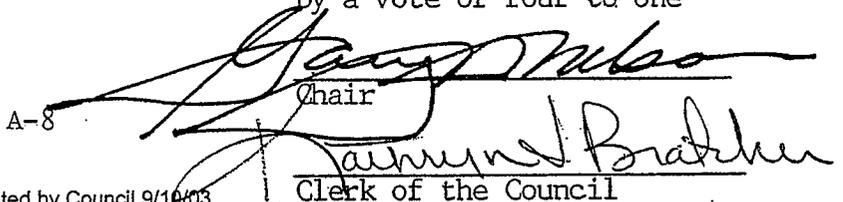
ATTEST:



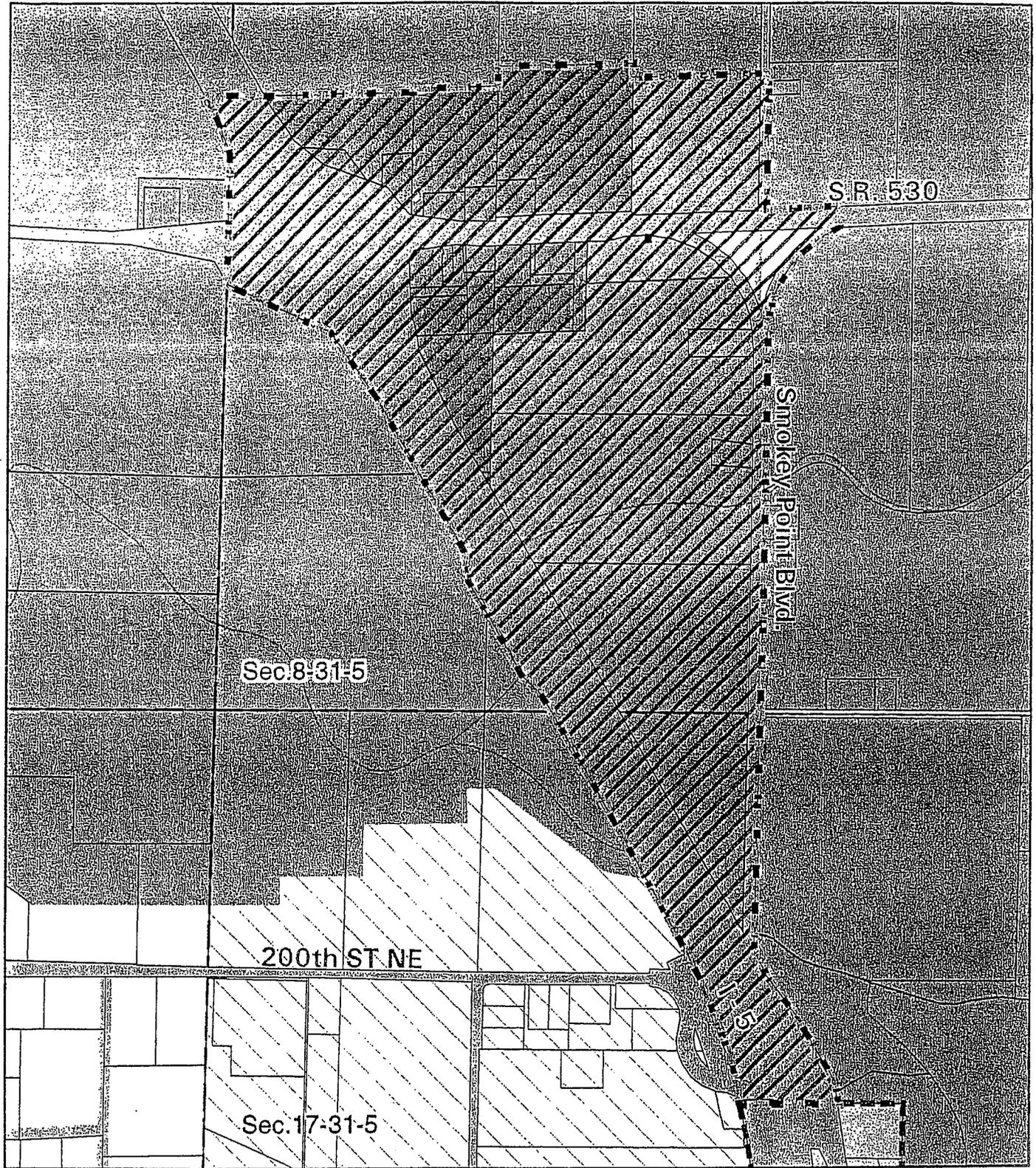
Hanna Nelson Date 9/26/03

Veto Overridden on Oct. 22, 2003
by a vote of four to one

A-8 

Chair


James Bracken
Clerk of the Council



Snohomish County 2003 Docket
Proposed Comprehensive Plan Amendment
Dwayne Lane



January 2003

LEGEND

Existing County Plan Designations

- Riverway Commercial Farmland
- Rural Residential (1 DU/5 Acres Basic)
- Urban Low Density Residential (4 - 6 DU/Acre)
- Rural Freeway Service
- Tribal Trust Lands
- Rural/Urban Transition Area

Proposed Plan Amendment

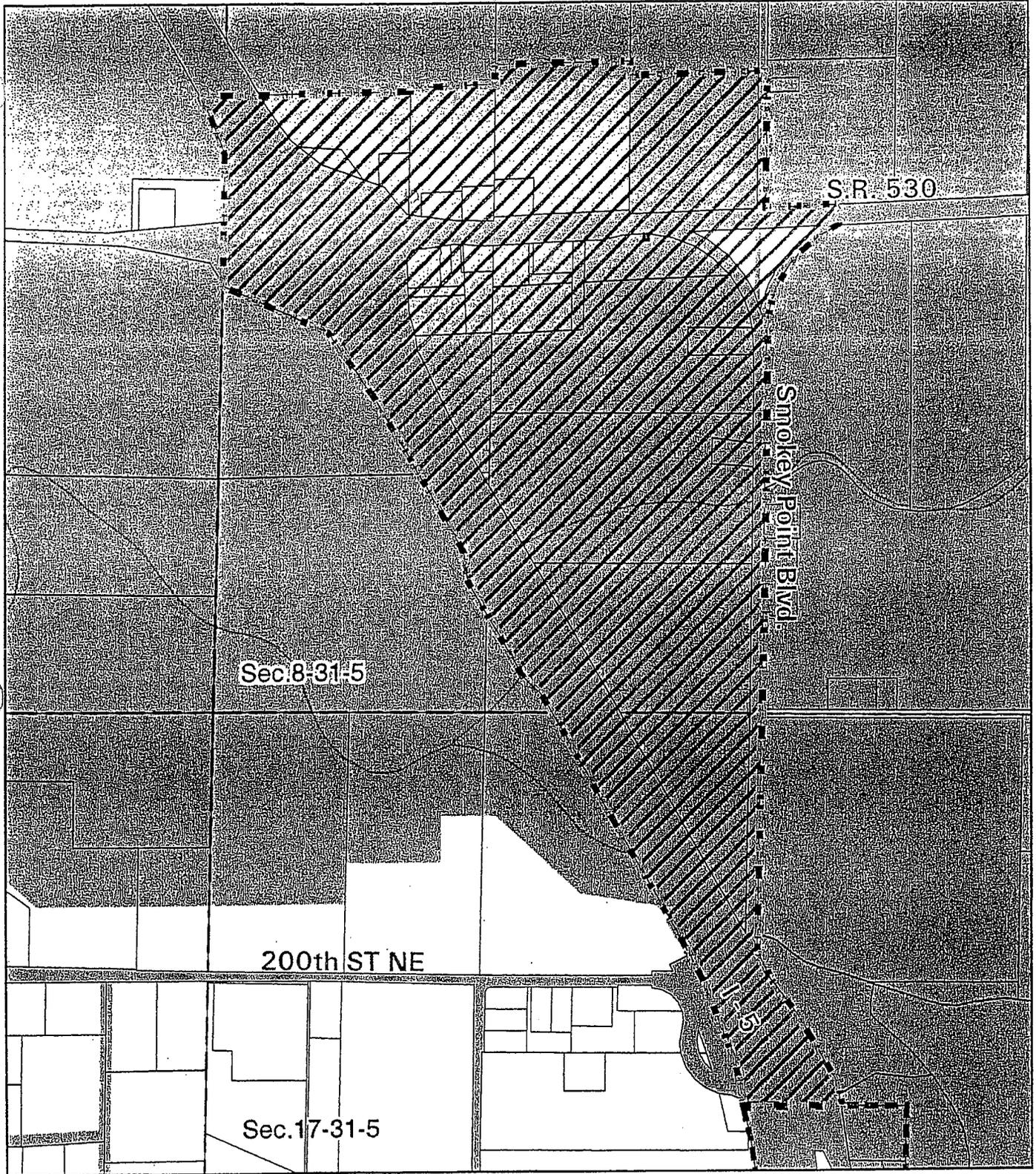
- Dwayne Lane: Redesignate Riverway Commercial Farmland, and Rural Freeway Service to Urban Commercial
- A-9

Expand Arlington UGA.

- Incorporated Cities
- Existing Urban Growth Area I

This map is a graphic representation derived from the Snohomish County Geographic Information System. It does not represent survey accuracy. Property lines are for illustrative purposes and depict only generalized parcels. Produced by Snohomish County Planning Div. GIS Team; cbl; c:\dock\dock03\lane-flu_map7-050503.amf

Scale in Feet
 350 700 1050



Snohomish County 2003 Docket
 Implementing Rezone
Dwayne Lane



January 2003



LEGEND

Existing Zoning

- Agriculture-10 Acre
- Tribal Trust Lands
- Rural-5 Acre
- Rural Freeway Service

Proposed Rezone

- Dwayne Lane:
Rezone from
Rural Freeway Service and
Agriculture-10 Acre to
General Commercial
- A-10

Expand Arlington UGA.

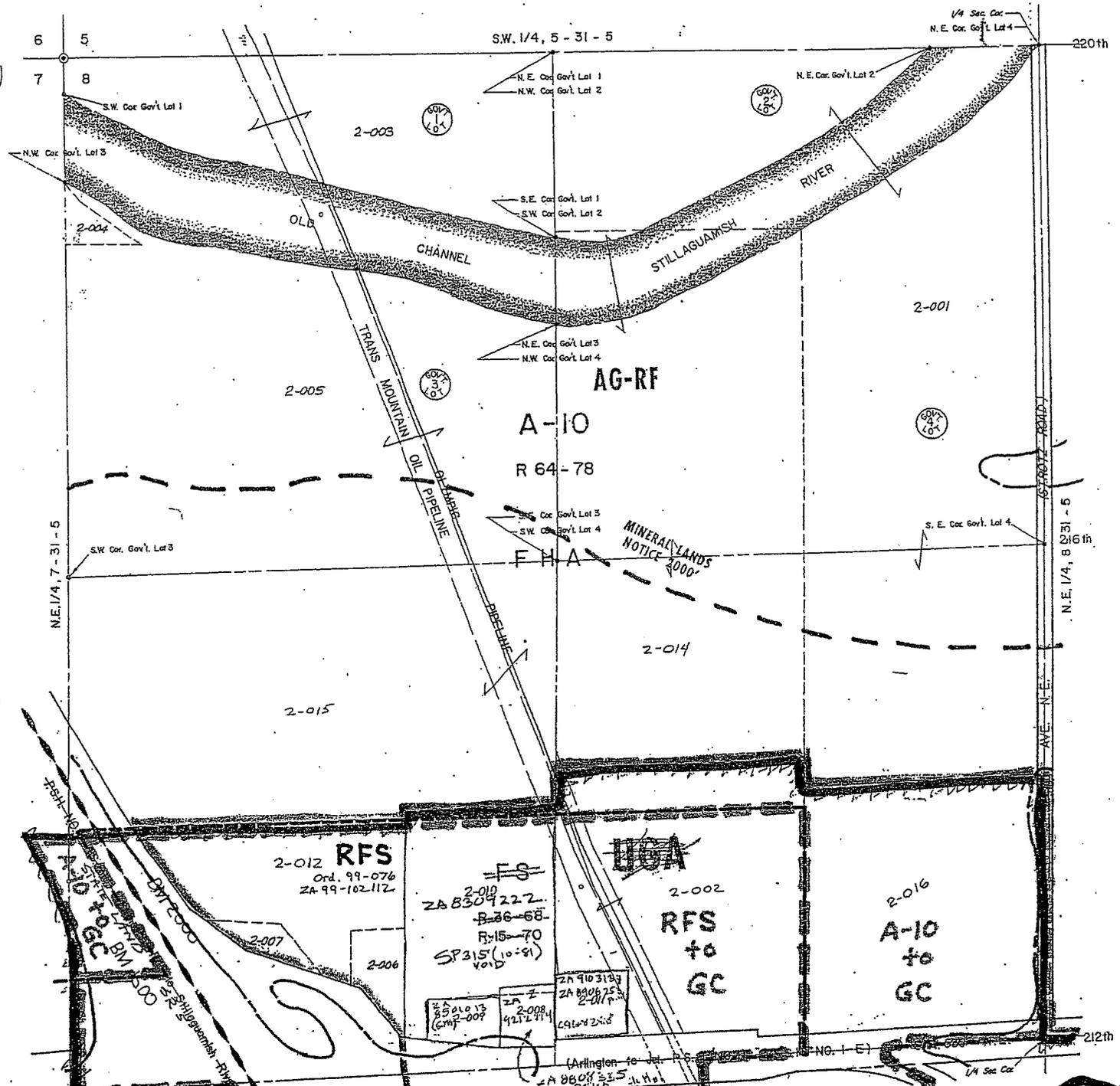
- Incorporated Cities
- Existing Urban Growth Area Bdy.

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Scale in Feet

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1" = 200'



1/4 Sec. Cor.
 HISTORICAL NAME - ()
 ROAD DESIGN LIMITS
 FHA BDRY.
 AG PRESERVATION
 SHORELINE ENVIRONMENT
 COMP PLAN SITE SENSITIVE SECTION

ARLINGTON C.P.
 NORTHWEST C.P.

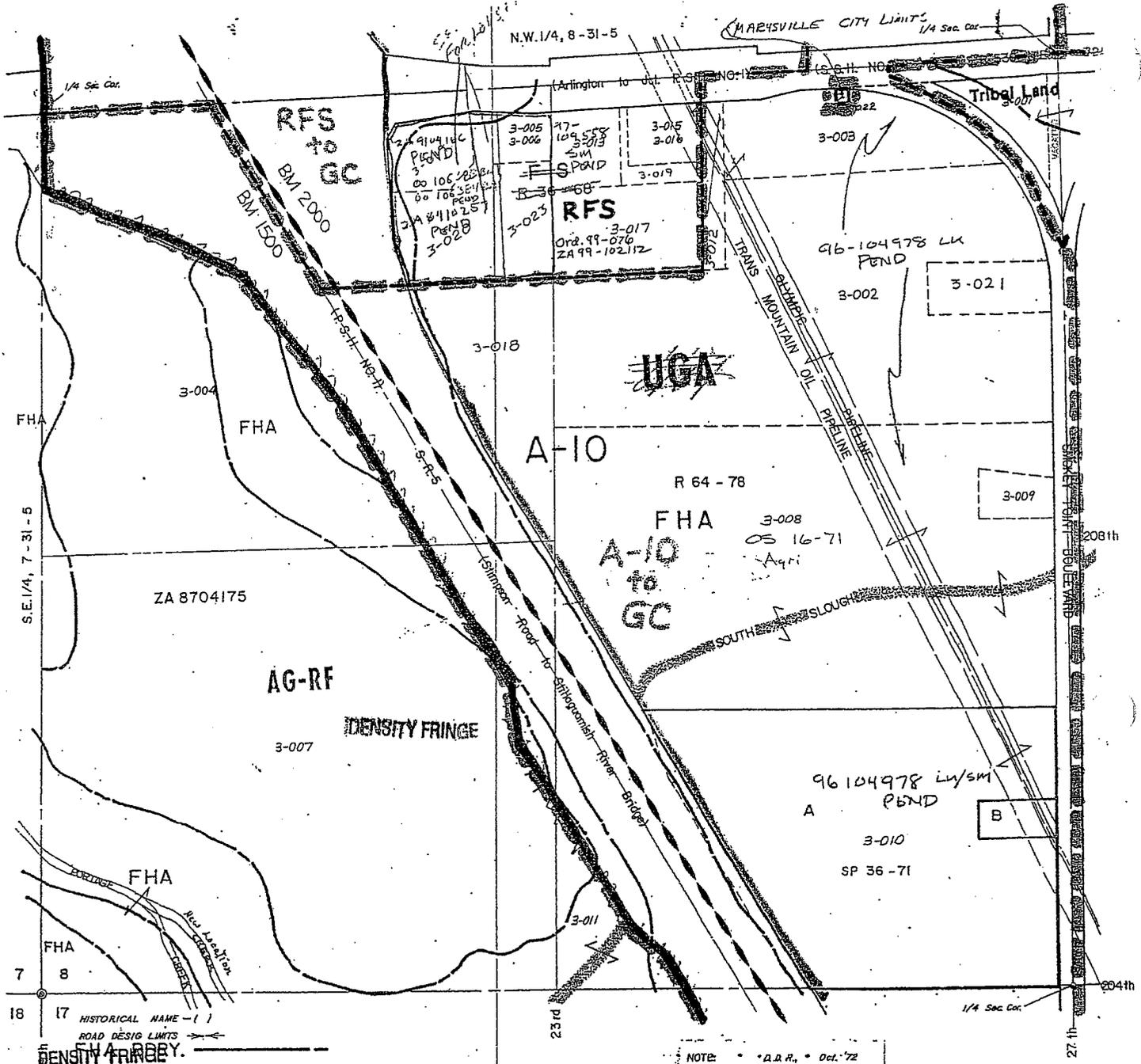
N.W. 1/4, 8 - 31 - 5

S.W. 1/4, 8 - 31 - 5
 GENERAL FLOOD HAZARD
 AREAS ARE REPRESENTED FOR
 SPECIFIC INFORMATION, SEE
 STUDY:
 5356-01-010 B

NOTE: D.A.R. Oct. 72
 This is not a survey, it is a parcel map
 used for location of property only

Scale 1" = 200'

21



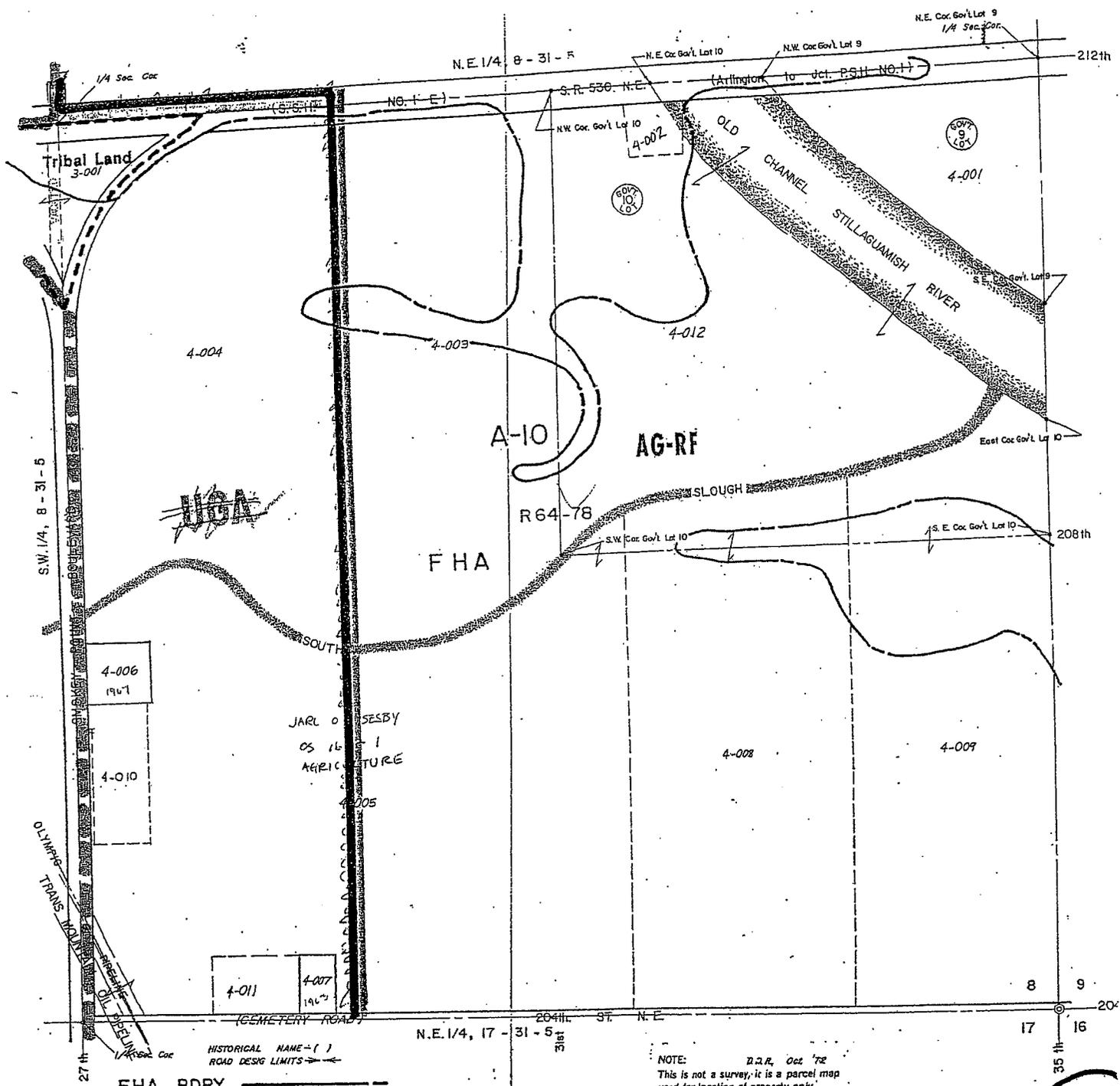
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 SHORELINE ENVIRONMENT
 COMP PLAN SITE SENSITIVE SECTION

GENERALIZED FLOOD HAZARD
 AREAS ARE REPRESENTED FOR
 SPECIFIC INFORMATION, SEE
 STUDY:
 535934-0040B

NOTE: * A.D.R. * Oct. '72
 This is not a survey, it is a parcel map
 used for location of property only

Scale 1" = 200'
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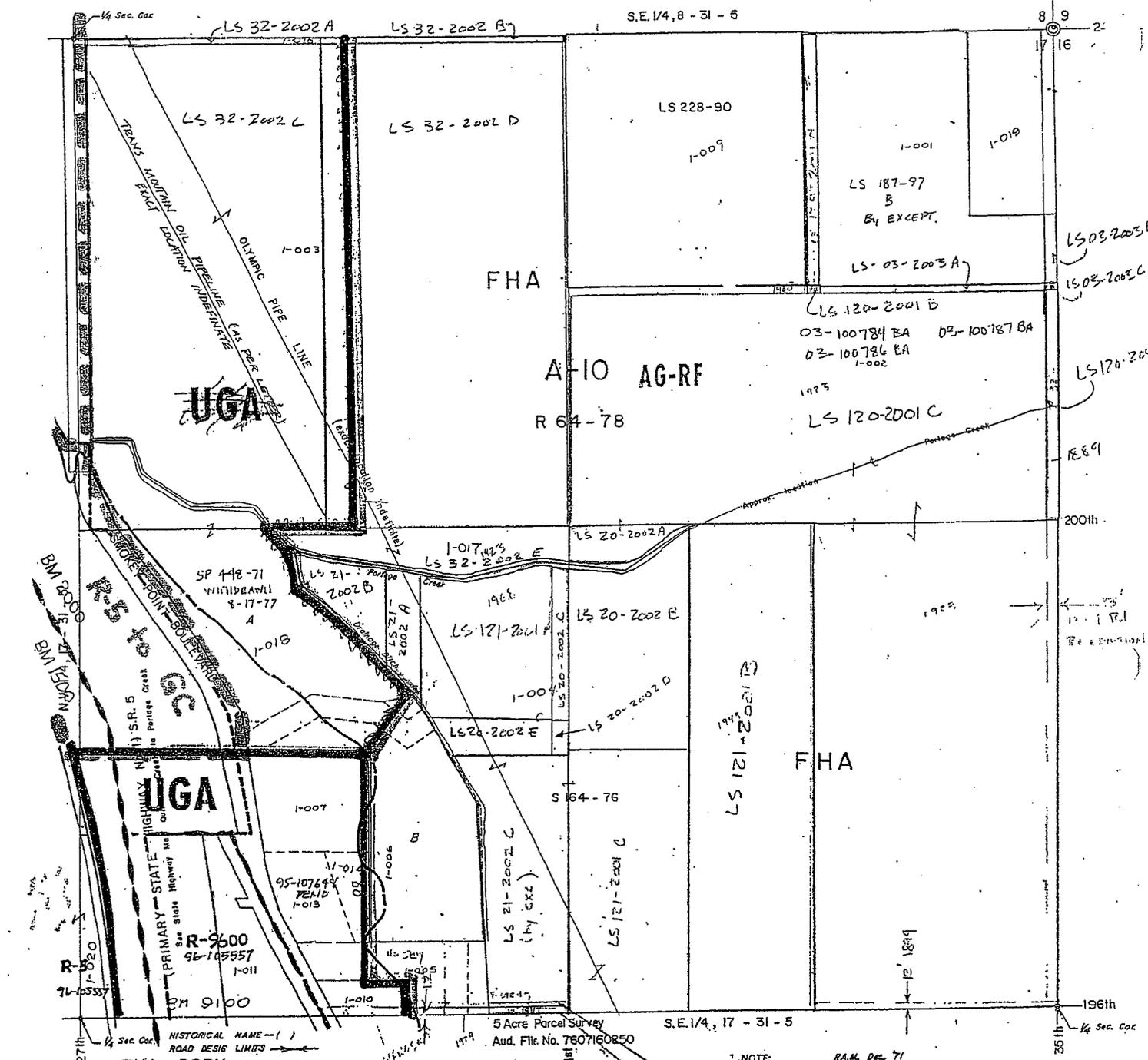
NOTE: D.D.R. Oct '78
 This is not a survey, it is a parcel map
 used for location of property only

Scale 1" = 200'

S.E. 1/4, 8 - 31 - 5

23

1" = 200'



FHA BDRY.
 ARLINGTON C.P. NORTHWEST C.P.
 AG PRESERVATION
 COMP PLAN SITE SENSITIVE SECTION

GENERALIZED FLOOD HAZARD
 AREAS ARE REPRESENTED. FOR
 SPECIFIC INFORMATION, SEE
 STUDY.
 FROM 535534-00408 LS 117-2002 A-C

NOTE:
 This is not a survey, it is a parcel map
 used for location of property only

Scale 1" = 200'

N.E. 1/4, 17 - 31 - 5

45

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

AMENDED EMERGENCY ORDINANCE NO. 04-057

RELATING TO GROWTH MANAGEMENT; REVISING THE EXISTING URBAN GROWTH AREA FOR THE CITY OF ARLINGTON; ADOPTING MAP AMENDMENTS TO THE GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN; AND ADOPTING COUNTY-INITIATED AREA-WIDE REZONES PURSUANT TO CHAPTER 30.74 SCC; AND AMENDING AMENDED ORDINANCE 94-125, ORDINANCE 94-120, AND EMERGENCY ORDINANCE 01-047

WHEREAS, the Growth Management Act, chapter 36.70A RCW (GMA) requires Snohomish County to designate an urban growth area (UGA) within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature (RCW 36.70A.110(1)); and

WHEREAS, the County Council designated a Final UGA for Arlington (Amended Ordinance 94-120) on June 28, 1995, after holding public hearings from April 19, 1994, through January 18, 1995, in conformance with the requirements of the GMA; and

WHEREAS, on June 28, 1995, the County Council approved Amended Ordinance 94-125 which adopted a GMA Comprehensive Plan including a General Policy Plan (GPP) and Future Land Use (FLU) map; and

WHEREAS, the County Council amended the Final UGA for Arlington on July 23, 2001 (Emergency Ordinance 01-047) in conformance with the requirements of the GMA; and

WHEREAS, RCW 36.70A.130 and 36.70A.470 direct counties planning under the GMA to adopt procedures for interested persons to propose amendments and revisions to the comprehensive plan or development regulations; and

WHEREAS, the County Council adopted chapter 30.74 SCC to comply with the requirements of RCW 36.70A.130 and .470 to allow interested persons to propose amendments to the GMA comprehensive plan and/or development regulations; and

WHEREAS, Snohomish County Department of Planning and Development Services (PDS) staff, pursuant to the SCC 30.74.030, reviewed all proposals on the docket and determined that twenty-one of the proposals could be reviewed and analysis could be completed within the time frame of the 2003 final docket review cycle, including the proposal by Dwayne Lane to amend the Arlington UGA boundary; and

B- 1

WHEREAS, the 2003 final docket – Phase 1 included proposals to amend the GPP FLU map submitted by Jerry Booker, City of Everett, Frank Heath, NORETEP, Snohomish County Department of Public Works, Dwayne Lane, Eddie Bauer, and Wellington Morris; and

WHEREAS, pursuant to Chapter 30.74 SCC, PDS completed final review and evaluation of the 2003 final docket – Phase 1, including rezones to implement proposals to amend the GPP FLU map, and forwarded a recommendation to the Snohomish County Planning Commission; and

WHEREAS, the Planning Commission held hearings on the Dwayne Lane proposal including the proposal to amend UGA boundaries, on February 25 and March 4, 2003, and forwarded a recommendation to the County Council; and

WHEREAS, the County Council held a public hearing on July 9, 2003, continued to July 30, August 13, and September 10, 2003, to consider the entire record and hear public testimony on Ordinance 03-063, adopting revisions to the Arlington UGA; and

WHEREAS, the County Council approved Amended Ordinance 03-063 on September 10, 2003; and

WHEREAS, the County Executive vetoed Amended Ordinance 03-063 on September 26, 2003; and

WHEREAS, the County Council overrode the veto by a vote of 4-1 and adopted Amended Ordinance 03-063 on October 22, 2003; and

WHEREAS, 1000 Friends of Washington, the Washington Department of Community, Trade and Economic Development, and The Stillaguamish Flood Control District appealed Amended Ordinance 03-063 to the Central Puget Sound Growth Management Hearings Board (CPSGMHB) in Case No. 03-3-0019c; and

WHEREAS, the CPSGMHB issued its Final Decision and Order on March 22, 2004, finding that the County's action did not comply with the GMA and invalidating Amended Ordinance 03-063, and setting a deadline of May 24, 2004, for the County to take legislative action to comply with the Final Decision and Order; and

WHEREAS, Section 6 of Amended Ordinance 03-063 contained a severability clause that provided "if any provision of this ordinance is held invalid or unconstitutional, then the provision in effect prior to the effective date of this ordinance shall be in full force and effect for that individual provision as if this ordinance had never been adopted"; and

WHEREAS, the County, the City of Arlington, and the proponent Dwayne Lane appealed the CPSGMHB's Final Decision and Order to Snohomish County Superior Court; and

WHEREAS, the County wishes to comply with the CPSGMHB's Final Decision and Order in a manner that will make its Superior Court appeal unnecessary; and

WHEREAS, the County has received a new analysis supporting the expansion of the Arlington UGA boundaries to include large parcels that have high visibility for commercial use and that will provide additional employment capacity; and

WHEREAS, the County has considered reasonable measures as they relate to large commercial properties that have high visibility and found none applicable; and

WHEREAS, the County Council held a public hearing on May 19, 2004, continued to May 24, 2004, to consider the entire record and hear public testimony on Emergency Ordinance 04-057, adopting revisions to the Arlington UGA; and

WHEREAS, pursuant to Section 30.73.090 of the Snohomish County Code, the County Council finds that the adoption of this ordinance is necessary for the immediate preservation of public peace and safety, and for the support of county government and its existing public institutions; and

NOW, THEREFORE, BE IT ORDAINED:

Section 1: The County Council makes the following findings of fact and conclusions:

- A. The County Council hereby adopts and incorporates by reference the findings and conclusions adopted and the legislative records developed in adopting Amended Ordinance 94-120, Amended Ordinance 94-125, Ordinance 97-076, and Emergency Ordinance 01-047.
- B. The proposal by Dwayne Lane to amend the FLU map of the GPP to expand the Arlington UGA to include 110.5 acres to be redesignated from Riverway Commercial Farmland and Rural Freeway Service to Urban Commercial and rezone 110.5 acres from Rural Freeway Service and Agriculture-10 Acres to General Commercial more closely meets the policies of the GPP than the existing plan designation based on the planning commission's following findings of fact and conclusions:
 1. When Dwayne Lane purchased the subject property, the General Policy Plan designation was Urban Commercial.

2. Water and sanitary sewer lines running along the west side of Smokey Point Boulevard are available adjacent to the subject property. This system is owned by the City of Arlington which has invested in utilities in the area because it believes the area is "destined for more intense urban development."
3. The Island Crossing freeway interchange currently supports commercial uses.
4. The subject property is adjacent to Interstate-5, SR 530, and Smokey Point Boulevard.
5. The permit process for commercial projects requires higher development standards for critical areas than is the case for development on agricultural lands. The 150 foot buffer requirements associated with new commercial development will better preserve Portage Creek.
6. Ragnar soils are the best soils for production of commercial crops and there are no Ragnar soils at Island Crossing. The Island Crossing area consists primarily of Puget soils that are adequate for hay, green chop and pasture, but are not suitable for more valuable crops like berries and corn. The Puget soils are considered "prime" only when artificially drained, which the land at the site is not, and even when drained the Puget series is considered of low productivity.
7. Farming is no longer financially viable at Island Crossing. Busy highways, high assessed value, small parcel size and safety issues eliminate the viability of the Island Crossing Interchange site as agricultural land.
8. Snohomish County is growing rapidly and it is inevitable that sites like Island Crossing will be converted from agricultural uses to commercial uses.
9. The Commission has concerns about the history of floods in this area and the associated impacts. However, the Commission believes that the impacts can be mitigated as is clearly shown in the DSEIS.
10. The Commission also has concerns about traffic impacts at Island Crossing as a result of future urban development. The Commission believes that the impacts can be mitigated. The DSEIS shows that traffic impacts can be fully mitigated.

C. The proposed expansion to the Arlington UGA is consistent with GPP Policies LU 1.A.3 and LU 2.C.3, which require that new development within UGAs are provided with adequate infrastructure and services, including sanitary sewers.

D. The County has received a new analysis prepared by the Higa Burkholder Associates, LLC, ("Buildable Lands Report 2003 Update, City of Arlington UGA", County Council Exhibit 12) that analyzes commercial and industrial land capacity in

the Arlington UGA, and that also analyzes the availability of large parcels of commercial or industrial lands that have high visibility for commercial uses. This analysis shows a deficiency of parcels or aggregations of parcels of 20 acres or greater within the Arlington UGA that have high visibility for commercial uses, and that have traffic access to Interstate 5. This analysis also includes a refined analysis of employment capacity in the Arlington UGA, and identifies and corrects certain errors regarding parcel potential for development that were contained within the County's Final Buildable Lands Report, adopted by Motion 03-080 in January 2003. The City of Arlington has adopted this report in their Resolution 679 of May 17, 2004. See Exhibit 13. Part IV(A) of Exhibit 12 shows a deficiency of parcels or aggregations of parcels of 20 acres or greater within the Arlington UGA that have high visibility for commercial uses, and that have traffic access to Interstate 5. Part IV(B) of Exhibit 12 argues that the Arlington UGA has possibly consumed 50% or more of the employment land it had available in 1990. The Snohomish County Department of Planning and Community Development has expressed discomfort with the reliability of the employment data upon which the analysis of Part IV(B) is based. Therefore the County Council adopts the report of Exhibit 12 pursuant to UG-14(d) and RCW 36.70A.110, except for the employment data used in Part IV(B) thereof and the conclusions that depend upon this data, and relies upon this adopted analysis in the formulation of its findings and conclusions herein. From this analysis the Council concludes the Arlington UGA experiences a deficiency of larger parcels within that UGA to accommodate the remaining commercial or industrial growth projected for that UGA

- E. The proposed expansion of the Arlington UGA is consistent with County-wide Planning Policy UG-14.d.4, which provides for UGA expansion "to include additional commercial or industrial land if the expansion is based on an assessment that concludes there is a deficiency of larger parcels within that UGA to accommodate the remaining commercial or industrial growth projected for that UGA" and which also takes into account characteristics relevant to the assessment of the adequacy of the remaining commercial or industrial land base.
- F. The proposed expansion of the Arlington UGA is consistent with GPP Policy LU 1.A.9, which provides for UGA expansion "to include additional commercial or industrial land capacity if the expansion is based on an assessment that concludes there is a deficiency of larger parcels within that UGA to accommodate the remaining commercial or industrial growth projected for that UGA" and which also takes into account characteristics relevant to the assessment of the adequacy of the remaining commercial or industrial land base.
- G. The County Council has considered reasonable measures adopted as an appendix to the County-wide Planning Policies and has concluded that no reasonable measures could be applied to the Arlington UGA that could be taken to increase

commercial or industrial capacity of larger parcels without expanding the boundaries of the UGA.

H. The proposed area-wide rezone (Exhibit C, Map 7a) is consistent with the following initial criteria for rezone requests in SCC 30.74.040:

1. Where applicable, the proposed rezones are necessary because an amendment to the future land use map of the GPP has also been proposed that meets the initial evaluation criteria listed in SCC 30.74.030.
2. Public facilities and services necessary for development are available or programmed to be provided to the sites of the proposed rezones, consistent with the GMA comprehensive plan or development regulations as determined by applicable service providers.
3. The proposed rezones do not require a concurrent site plan approval because there is an absence of special site conditions and applicable GPP or subarea policies.

I. The proposed area-wide rezone (Exhibit C, Map 7a) is consistent with the GMA comprehensive plan and consistent with the provisions of the GMA.

J. The County Council concludes that the proposed area-wide rezone (Exhibit C, Map 7a) implements the county's GMA comprehensive plan.

K. The County Council concludes that the proposed area-wide rezone (Exhibit C, Map 7a) bears a substantial relationship to the public health, safety and welfare.

L. The proposed UGA amendment is consistent with the following final review and evaluation criteria of SCC 30.74.060:

1. The proposed amendment maintains consistency with other elements of the GMA comprehensive plan;
2. All applicable elements of the GMA comprehensive plan support the proposed amendment;
3. The proposed amendment meets the goals, objectives, and policies of the GMA comprehensive plan as discussed in the specific findings; and
4. The proposed UGA amendment is consistent with the countywide planning policies.

M. The amendment to the GMA comprehensive plan satisfies the procedural and substantive provisions of and is consistent with the GMA.

N. The amendment maintains the GMA comprehensive plan's consistency with the multi-county policies adopted by the Puget Sound Regional Council and with the countywide planning policies for Snohomish County.

- O. Cities have been notified and consulted with regarding proposed amendments that affect UGAs or GPP FLU map designations within UGAs.
- P. There has been early and continuous public participation in the review of the proposed amendments.
- Q. A Draft Supplemental Environmental Impact Statement (DSEIS) was issued on February 19, 2003, for the Dwayne Lane proposal. A Final SEIS, including response to comments on the DSEIS, was prepared following the 30-day comment period and was issued on July 1, 2003. The purpose of the SEIS was to analyze potential significant adverse environmental impacts of the proposals and any alternatives that were not previously identified in the two EIS documents and a series of addenda prepared for the Snohomish County GMA Comprehensive Plan – General Policy Plan and Transportation Element between 1994 and 2003.
- R. The County Council finds that the amendments adopted by this ordinance fall within the range of alternatives studied in the SEIS and are within the scope of analysis contained in the SEIS and associated adopted environmental documents and result in no new significant adverse environmental impacts. The SEIS performs the function of keeping the public apprised of the refinement of the original GMA comprehensive plan proposal by adding new information, but does not substantially change the analysis of significant impacts and alternatives analyzed in the existing adopted environmental documents.
- S. The SEPA requirements with respect to this proposed action have been satisfied by these documents.
- T. The County Council held a public hearing on July 9, 2003, continued to July 30, August 13, and September 10, 2003, to consider the Planning Commission's recommendations.
- U. The County Council held a public hearing on May 19, 2004, to consider new information regarding this proposal.
- V. The public was notified of the public hearings held by the Planning Commission and the County Council by means of published legal notices in The (Everett) Herald and local newspapers.
- W. The proposal has been broadly disseminated and opportunities have been provided for written comments and public hearing after effective notice.

X. Approval of the Island Crossing Interchange Docket Proposal is not precedent for redesignation of Agricultural land in the Stillaguamish Valley. This proposal is approved entirely on its own merits. These include:

- (1) This proposal is supported by the Snohomish County Planning Commission.
- (2) Bringing this land into the Arlington Urban Growth Area is fully supported by the City of Arlington.
- (3) This proposal is supported by the Stillaguamish Tribe.
- (4) This land is located at an I-5 interchange between an interstate highway and a state highway, and is uniquely located for commercial needs of the area.
- (5) This land has unique access to utilities. Redesignation of adjacent properties to the east will not occur because utilities are unavailable to the east.
- (6) This land is already characterized by urban development. Infrastructure already present includes water & sewer and three urban highways: I-5, SR 530, and Smoky Point Boulevard. Commercial establishments already present include one hotel, 4 restaurants, 5 gas stations, a smokeshop and a fireworks retail store, and a methadone treatment facility.
- (7) The 5/19/04 hearing testimony of John Henken shows that the fallow farmland there is not taxed as agricultural land.
- (8) The 5/19/04 hearing testimony of Duke Otter and Orin Barlund shows that there are 22 to 30 existing grandfathered legal lots in the proposal area that are not constrained by the current A-10 zoning and which can be developed at a density at or near urban density.

Y. The land contained within the Island Crossing Interchange Docket Proposal is not agricultural land of long term commercial significance. Although some of the soils may be of a type appropriate for agricultural use, soil type is only one factor among many others in the legal test for agricultural land of long term commercial significance. The County Council has addressed the question as to whether the land is:

"primarily devoted to the commercial production of agricultural products and has long term commercial significance for agricultural production"

and has found that it is not.

At the public hearing, of May 19, 2004, the testimony of Mrs. Roberta Winter amplified on her previous testimony and resubmitted her earlier letter (Exh. 111) as hearing Exhibit 8. Mrs. Winters was very persuasive on this point that she and her husband and family loved their farm and their rural life and made every effort to make the farm prosper, but were unable due to various factors beyond their control, including in no small part the pressure of encroaching urbanization. Since the mid-

1950's, she and her husband had a dairy farm in the very location of the Island Crossing Interchange Docket Proposal site. Locating and then expanding I-5 put them out of the dairy business. They soon discovered that crops generated less revenue than the property taxes. The Winters sold the land because the land could not be profitably farmed.

Council finds that this land cannot be profitably farmed, and is not agricultural land of long term commercial significance.

- Z. The Island Crossing Interchange Docket Proposal site has episodically flooded in the past and will continue to episodically flood in the future, whether or not the proposal is approved, and whether or not the site is developed. The relevant question is not whether the proposal site experiences floods, but rather does the site experience significant adverse flood impacts which cannot be reasonably mitigated.

The Draft Supplemental Environmental Impact Statement (Exh. 22) clearly states, at p. 2-24:

Assuming effective implementation of applicable regulations and recommended mitigation measures, no significant unavoidable adverse surface water quantity or quality impacts would be anticipated associated with the future development of the site.

In addition, Mrs. Roberta Winter testified at the May 19, 2004 hearing that during her years on the farm the property never flooded, except for the 1990 flood, and even that flood never reached her house, was only 2 to 4 inches deep except in the natural drainage areas, and receded as fast as it rose. See Exhibit 8.

- AA. In Exh. 135, applicant of the Island Crossing Interchange Docket Proposal states various development techniques and plans which will be voluntarily used to minimize the prospect of flood impacts. These techniques include the following:

- Excavation to create additional storage.
- Building pads and access roads will only be filled to the 100-year floodplain level.
- Minimize the amount of fill brought on-site.
- Most fill will be excavated onsite.
- Water passage to South Slough and Portage Creek will remain unimpeded.
- Parking lots will be built below Base Flood Elevation.
- Parking lots may be built of permeable surface.
- Impermeable surface will be minimized.

Section 2. The County Council bases its findings of facts and conclusions on the entire record of testimony and exhibits, including all written and oral testimony before the planning commission and county council.

Section 3. The County Council hereby amends Amended Ordinance 94-120 as adopted on June 28, 1995, last amended by Emergency Ordinance 01-047 as adopted on July 23, 2001, to modify Exhibits A and C which were therein incorporated. The County Council hereby adopts two new exhibits for Amended Emergency Ordinance 01-047: (1) Exhibit A, Map 7 ("Proposed Comprehensive Plan Amendment, Dwayne Lane") which is a map that depicts the modified UGA boundary for the Arlington UGA; and (2) Exhibit C which is a county assessor's map that accurately depicts the revised UGA boundary for the Arlington UGA. Exhibits A and C are attached hereto and incorporated herein by this reference. After the effective date of Emergency Ord. 04-057, development in the Island Crossing Interchange Docket Proposal area added to the Arlington UGA by Emergency Ord. 04-057 should be conditioned upon use of the flood protection measures outlined above in finding AA of Section 1, provided such flood protection measures are technically feasible and do not defeat the purpose of the development.

Section 4. Based on the foregoing findings and conclusions, the Snohomish County GMA Comprehensive Plan Future Land Use Map adopted as Map 4 of Exhibit A in Section 4 of Amended Ordinance No. 94-125 on June 28, 1995, and last amended by Ordinance No. 03-001 on January 27, 2003, is amended as depicted in Exhibit A, Map 7 which is attached hereto and incorporated by reference into this ordinance as if set forth in full.

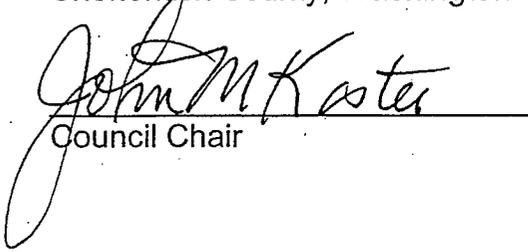
Section 5. Based on the foregoing findings and conclusions, the County Council hereby adopts the area-wide rezone as mapped in the following documents which are attached hereto and incorporated by reference into this ordinance as if set forth in full:

- A. Assessor map showing the rezone incorporated herein as Exhibit C; and
- B. Map 7a and incorporated herein as Exhibit B.

Section 6. Severability. If any provision of this ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remainder of this ordinance. Provided, however, that if any provision of this ordinance is held invalid or unconstitutional, then the provision in effect prior to the effective date of this ordinance shall be in full force and effect for that individual provision as if this ordinance had never been adopted.

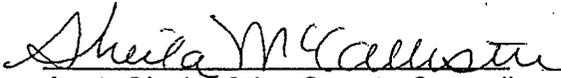
PASSED this 24th day of May, 2004.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Council Chair

ATTEST:



Asst. Clerk of the County Council

- () Approved
- (X) Emergency
- () Vetoed

DATE: _____, 2004

County Executive

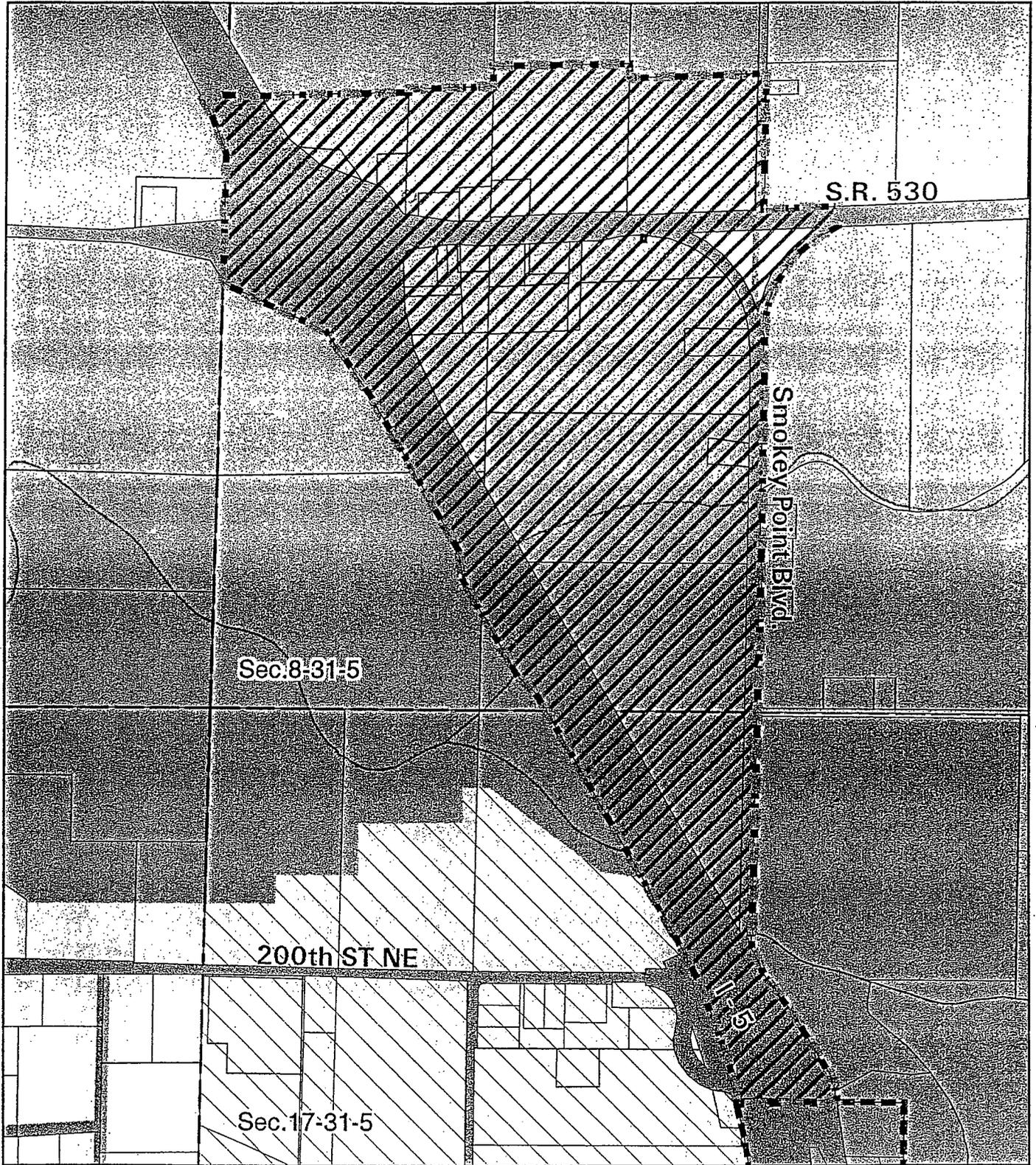
ATTEST: _____

Approved as to form only:

Deputy Prosecuting Attorney

D-1

Map 7



Snohomish County 2003 Docket
Proposed Comprehensive Plan Amendment
Dwayne Lane



January 2003

LEGEND

Existing County Plan Designations

- Riverway Commercial Farmland
- Rural Residential (1 DU/5 Acres Basic)
- Urban Low Density Residential (4 - 6 DU/Acre)
- Rural Freeway Service
- Tribal Trust Lands
- Rural/Urban Transition Area

Proposed Plan Amendment

- Dwayne Lane:**
Redesignate Riverway Commercial Farmland, and Rural Freeway Service to Urban Commercial
- B-12** Expand Arlington UGA.

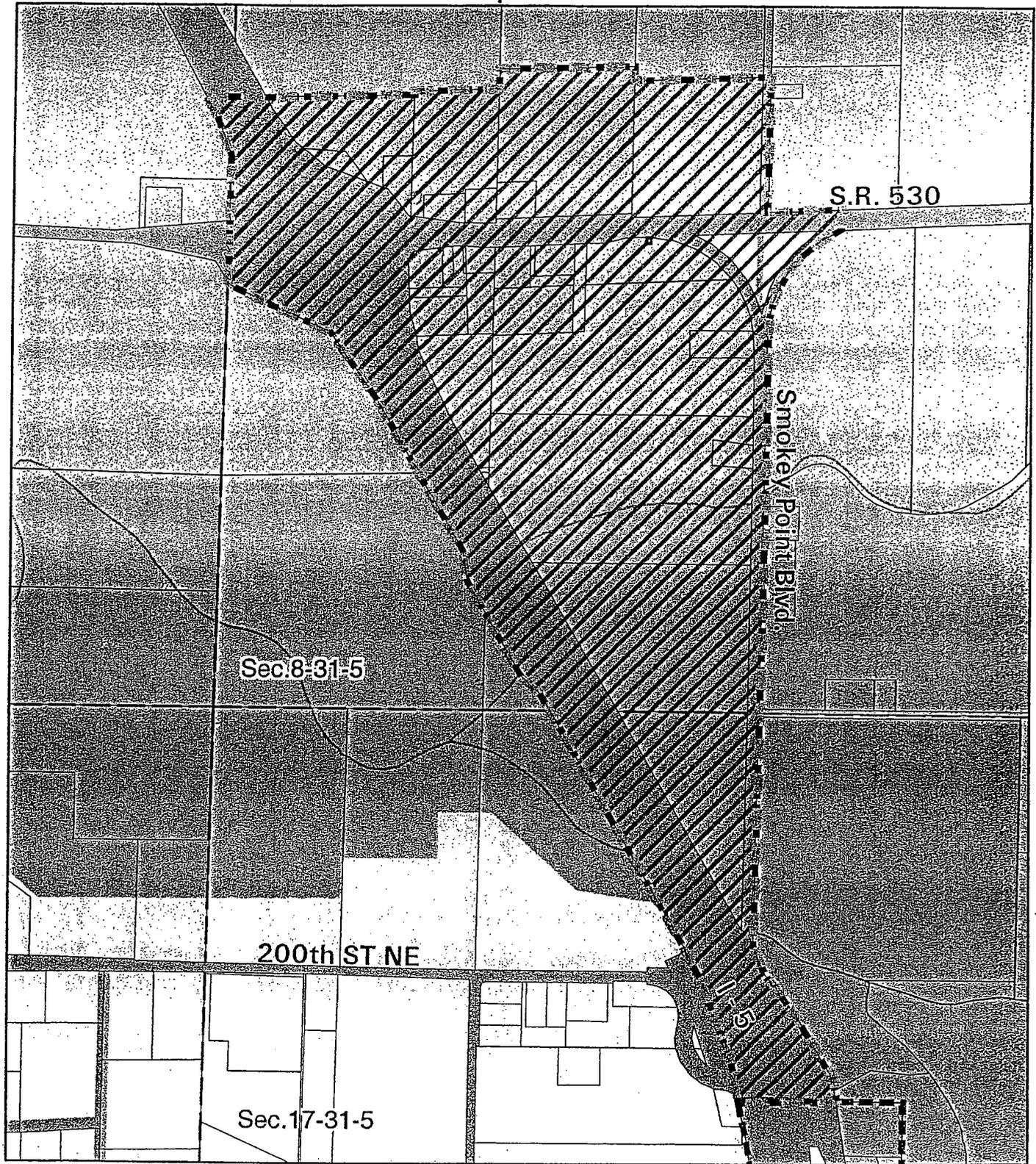
- Incorporated Cities
- Existing Urban Growth Area Bdy.

This map is a graphic representation derived from the Snohomish County Geographic Information System. It does not represent survey accuracy. Property lines are for illustrative purposes and depict only generalized parcels. Produced by Snohomish County Planning Div., GIS Team; cbl; c:\dock\dock03\lane-flu_map7-050503.aml

Scale in Feet



Map 7a



Snohomish County 2003 Docket
 Implementing Rezone
Dwayne Lane



January 2003

LEGEND

Existing Zoning

- Agriculture-10 Acre
- Rural-5 Acre
- Rural Freeway Service
- Tribal Trust Lands

Proposed Rezone

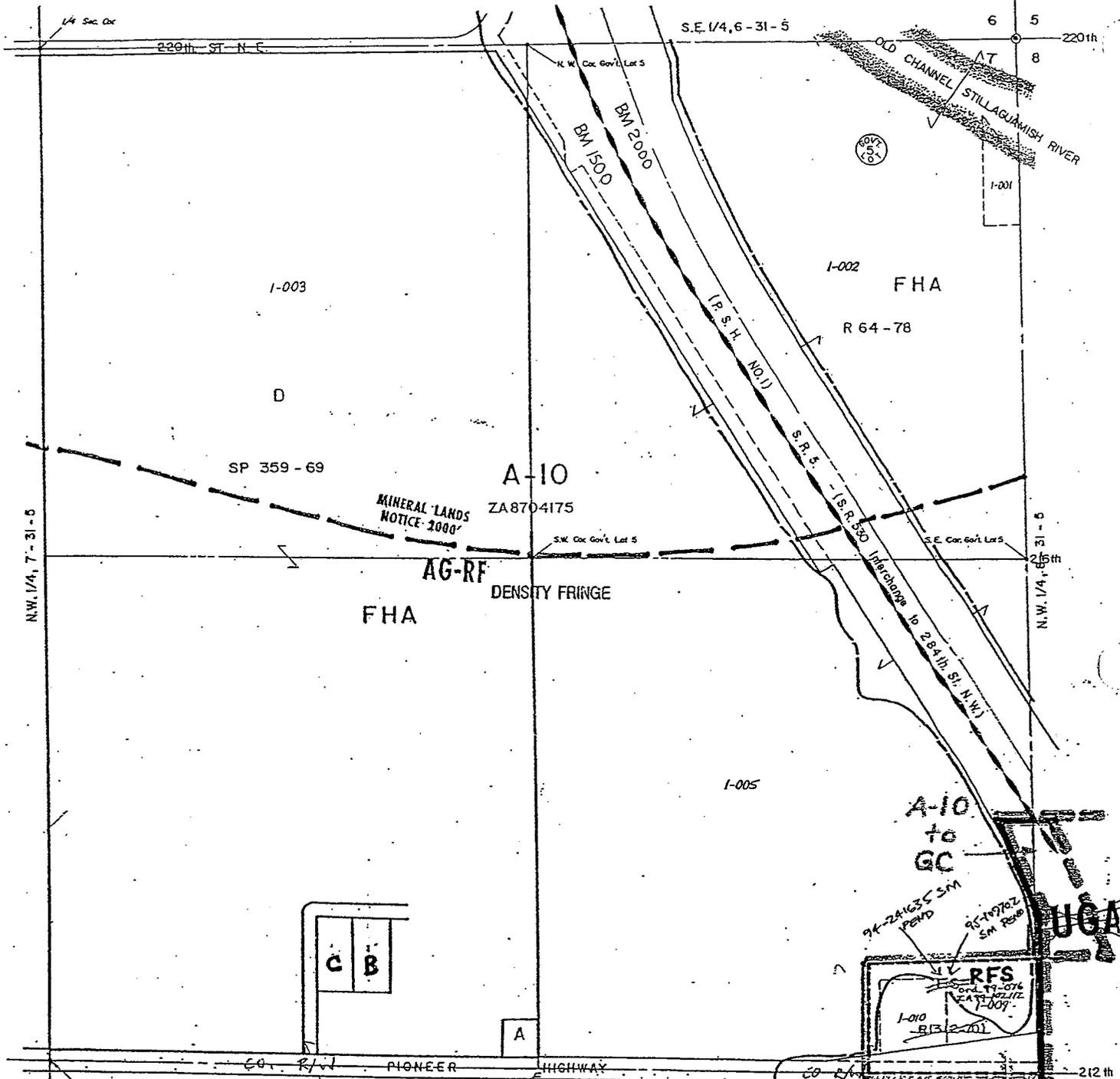
- Dwayne Lane:
Rezone from
Rural Freeway Service and
B-13 Agriculture-10 Acre to
General Commercial

- Incorporated Cities
- Existing Urban Growth Area Bdy.

This map is a graphic representation derived from the Snohomish County Geographic Information System. It does not represent survey accuracy. Property lines are for illustrative purposes and depict only generalized parcels. Produced by Snohomish County Planning Div., GIS Team; cbl; c:\dock\dock03\lane_rez.aml

Expand Arlington UGA.

Scale in Feet
 0 350 700 1050



1/4 Sec. Ctr. HISTORICAL NAME - ()
 FEA BDRY. ROAD DESIGN LIMITS
ARLINGTON C.P. NORTHWEST C.P.
AG PRESERVATION
SHORELINE ENVIRONMENT
COMP PLAN SITE SENSITIVE SECTION

S.E. 1/4, 7-31-5
 GENERALIZED FLOOD HAZARD
 AREAS ARE REPRESENTED FOR
 SPECIFIC INFORMATION SEE
 STUDY:
 E-2-10-138 P. 78
 FIRM 0040B

NOTE: D.D.R. Oct 72
 This is not a survey, it is a parcel map
 used for location of property only.

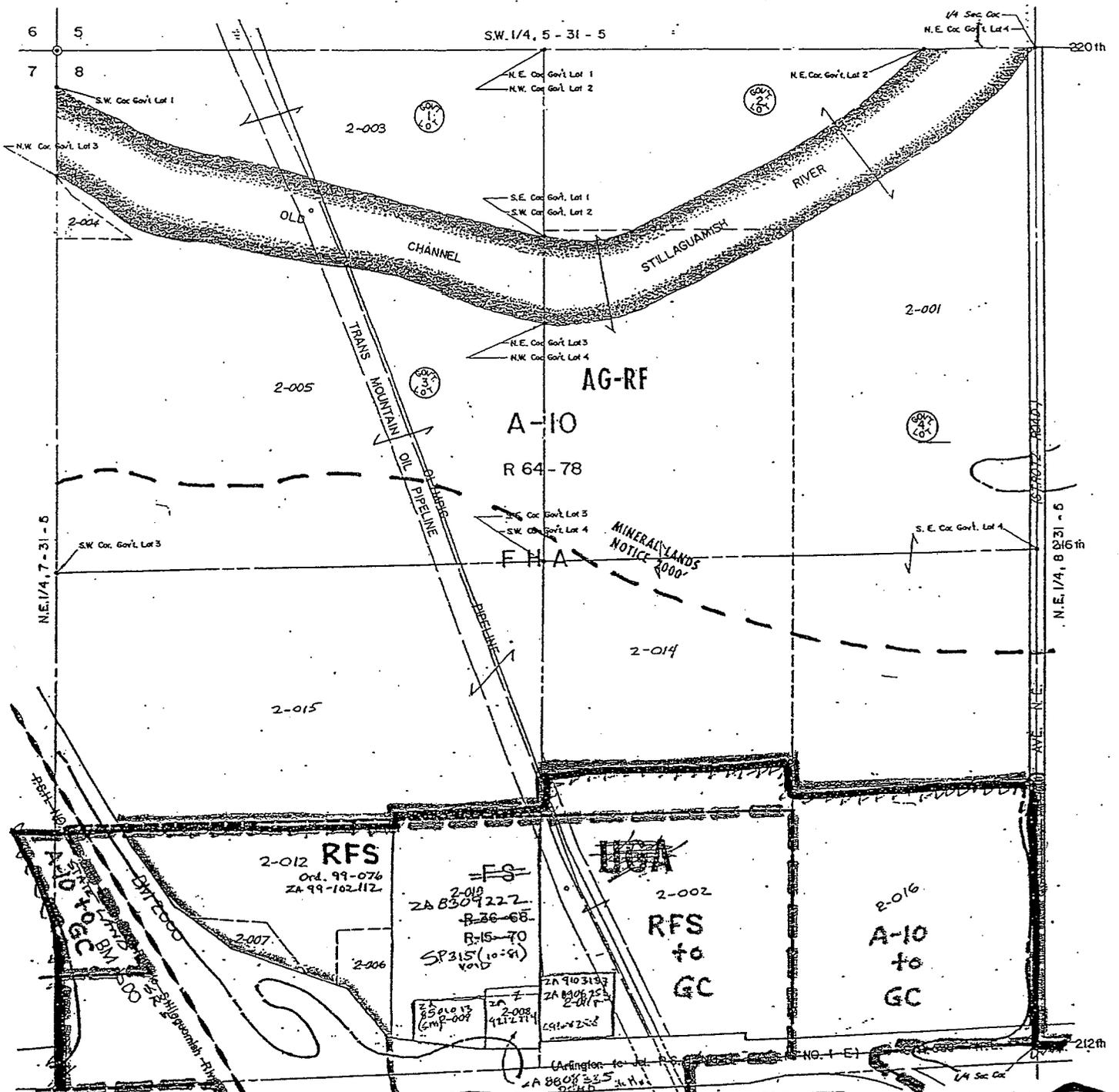
Scale: 1" = 200'

DENSITY FRINGE **N.E. 1/4, 7 - 31 - 5**
 THIS 1/4 "ENVIRONMENTALLY SENSITIVE"

MAY 8 4 1998

16

1" = 200'

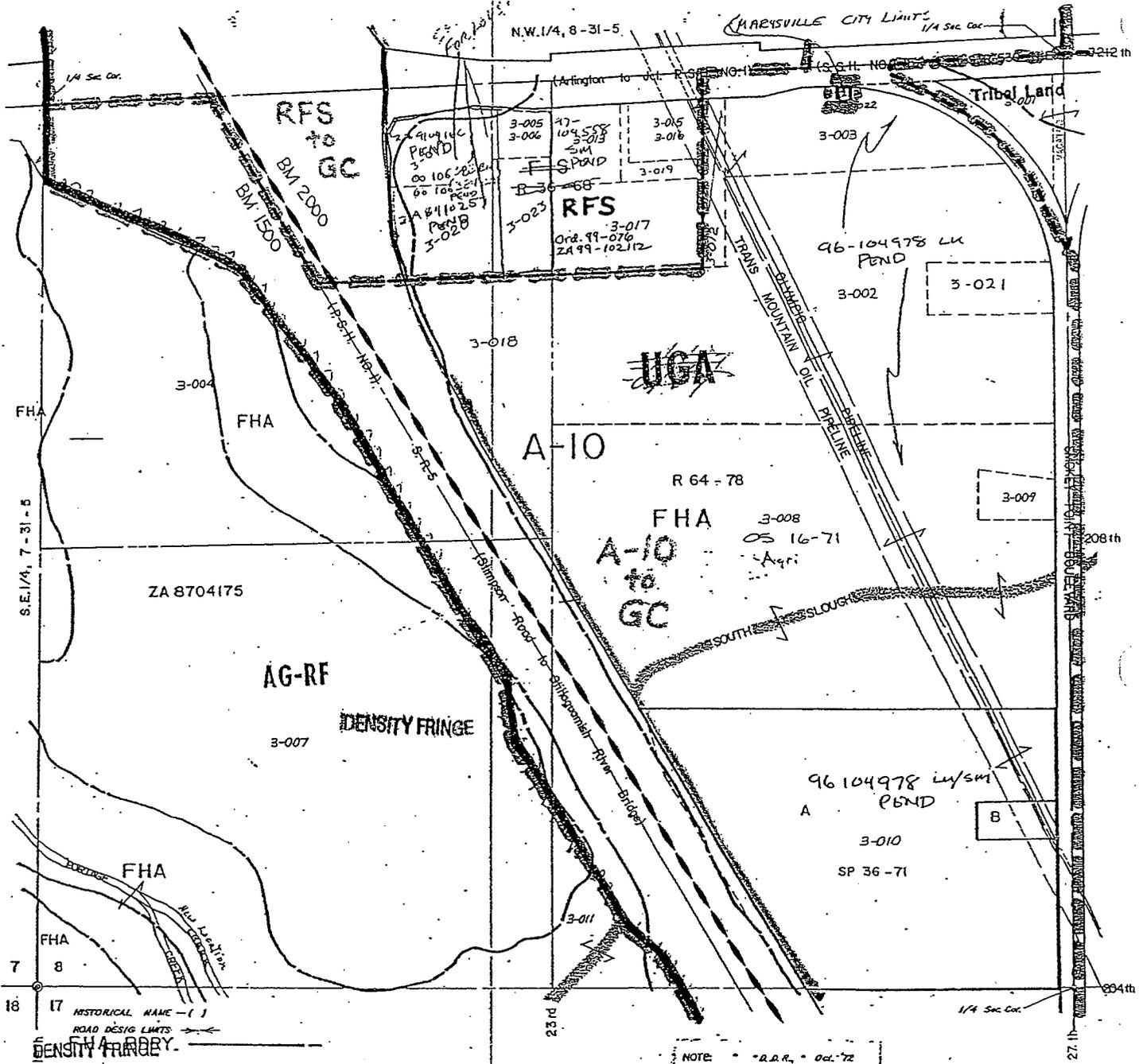


FHA BDRY
 AG PRESERVATION
 SHORELINE ENVIRONMENT
 COMP PLAN SITE SENSITIVE SECTION

ARLINGTON C.P.
 NORTHWEST C.P.
 N.W. 1/4, 8 - 31 - 5

NOTE: This is not a survey, it is a parcel map used for location of property only.
 Scale 1" = 200'

21



ARLINGTON C.P.
 NORTHWEST C.P.
 AG PRESERVATION
 SHORELINE ENVIRONMENT
 COMP PLAN SITE SENSITIVE SECTION

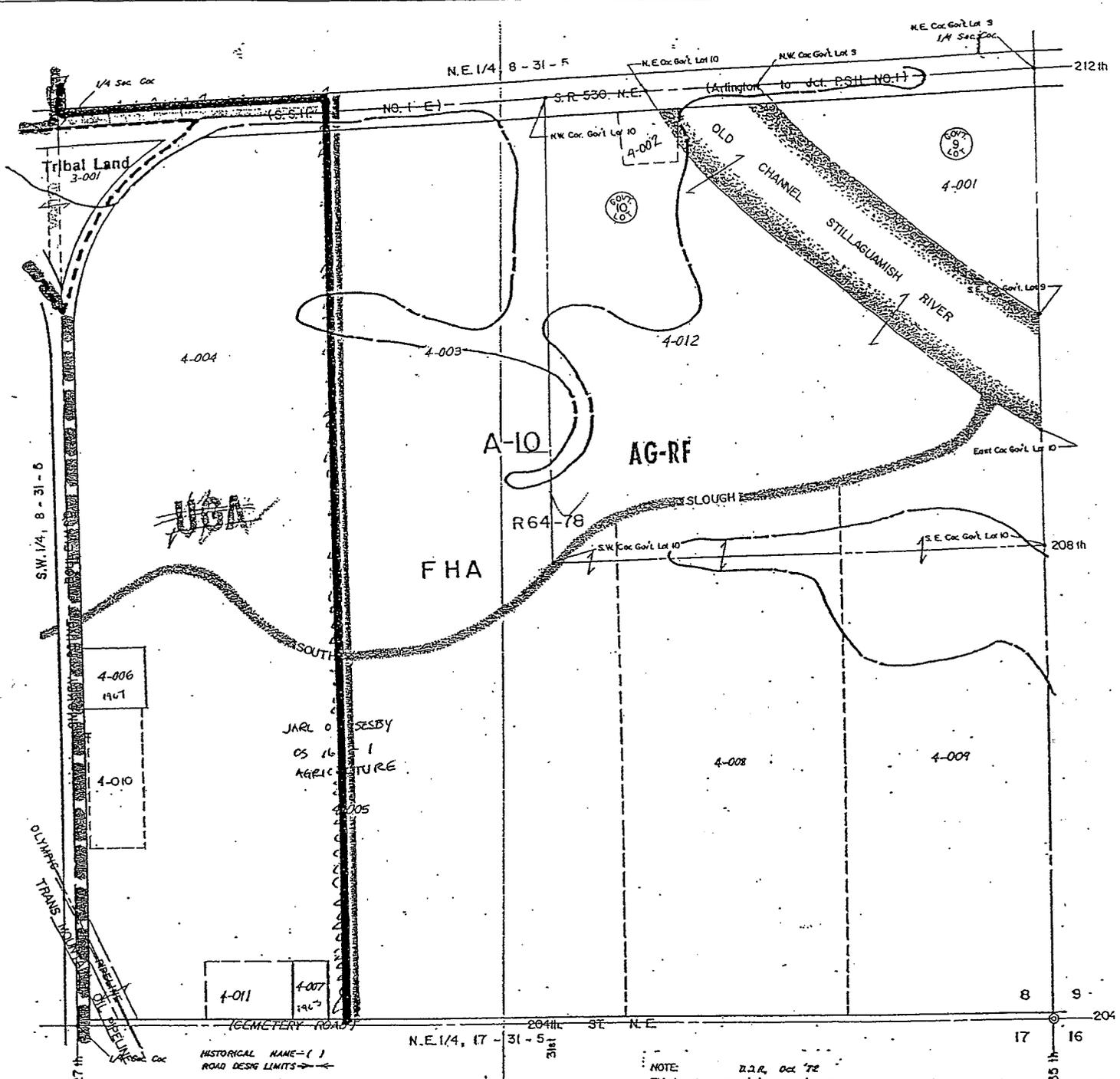
GENERALIZED FLOOD HAZARD
 AREAS ARE REPRESENTED. FOR
 SPECIFIC INFORMATION, SEE
 STUDY:
 535934-00406

S.W. 1/4, 8 - 31 - 5

Scale 1" = 200'

22

MAR 03 1972



FHA BDRY.
 ARLINGTON C.P.
 AG PRESERVATION
 SHORELINE ENVIRONMENT

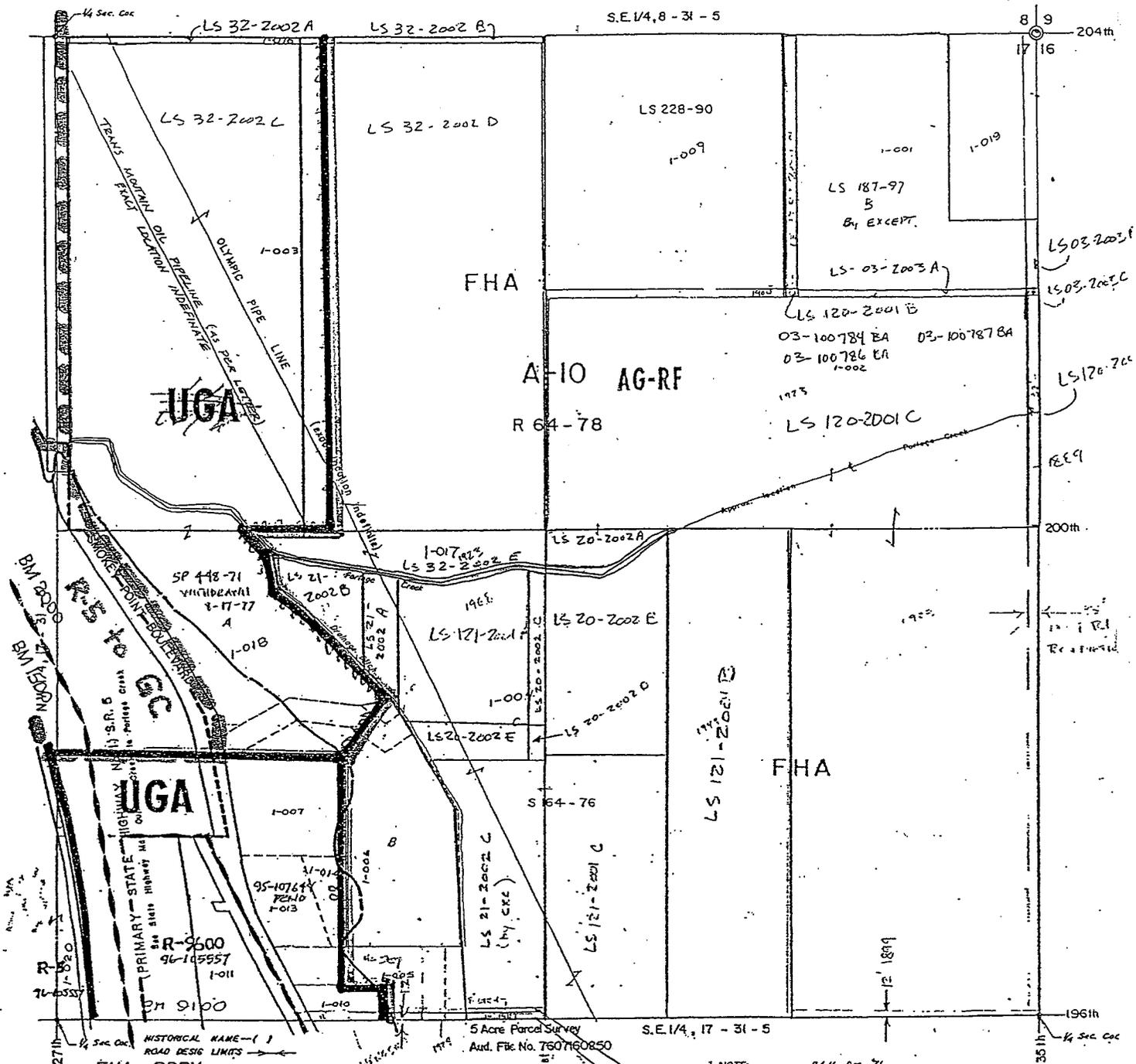
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 AREAS ARE REPRESENTED. FOR
 SPECIFIC INFORMATION, SEE
 STUDY:
 File 53534-0040B

NOTE: D.R. Oct '72
 This is not a survey, it is a parcel map
 used for location of property only

Scale 1" = 200'

S.E. 1/4, 8 - 31 - 5

1" = 200'



FHA BDRY.
 ARLINGTON C.P. NORTHWEST C.P.
 AG PRESERVATION
 COMP PLAN SITE SENSITIVE SECTION

5 Acre Parcel Survey
 Aud. Fic. No. 760760850
 FRM 57554-00408

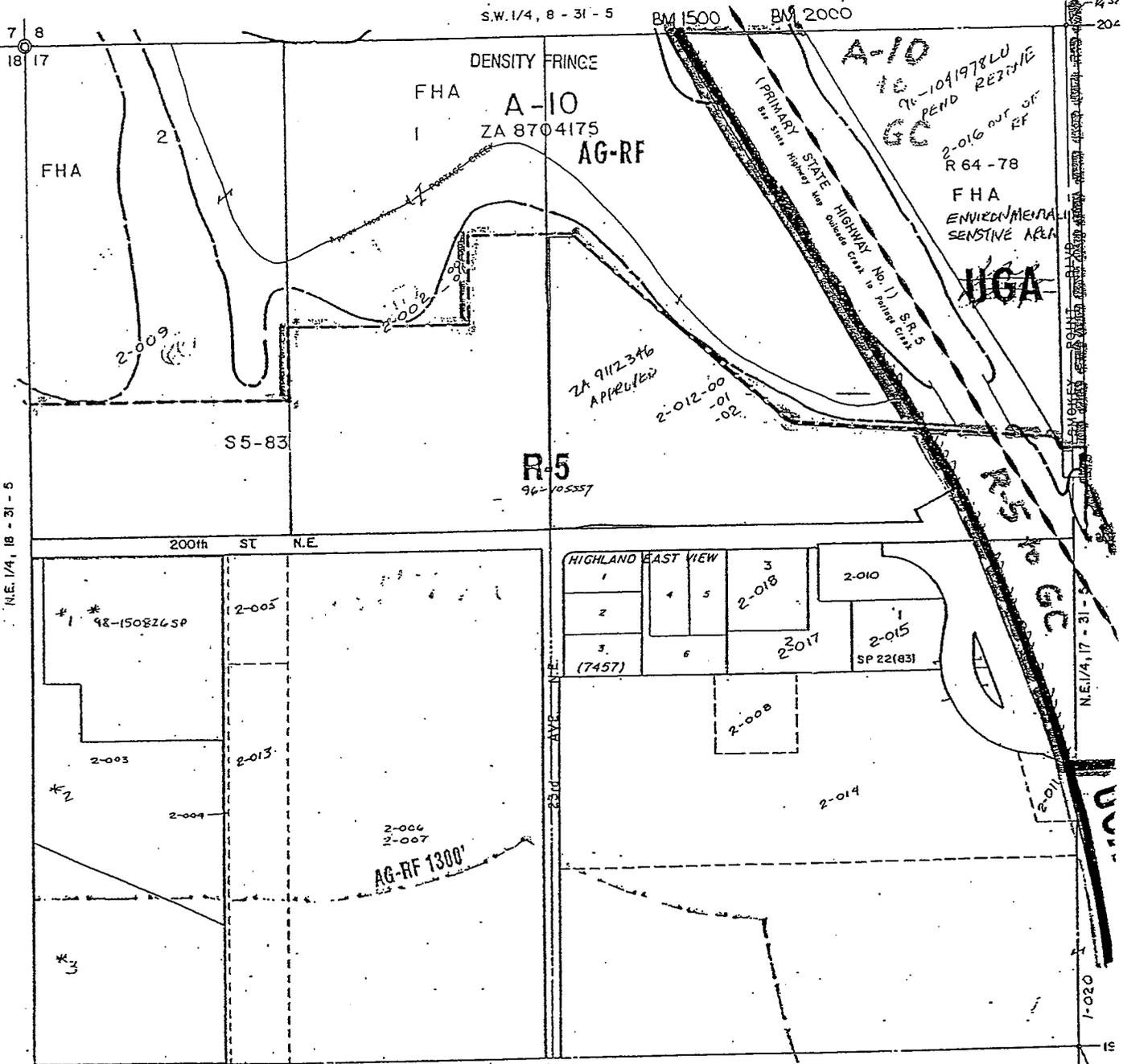
NOTE:
 E.A.M., Dec. 71
 This is not a survey, it is a parcel map
 used for location of property only

Scale 1" = 200'

45

N.E. 1/4, 17 - 31 - 5

1" = 200'



ARLINGTON C.P. NORTHWEST C.P.
 AG PRESERVATION
 SHORELINE ENVIRONMENT
 COMP PLAN SITE SENSITIVE SECTION

GENERALIZED FLOOD HAZARD
 AREAS ARE REPRESENTED FOR
 SPECIFIC INFORMATION SEE
 STUDY:
 FIRM 535534-0040B

NOTE: D.M., Dec. '77
 This is not a survey, it is a parcel map
 used for location of property only

Scale 1" = 200'
 N.W. 1/4, 17 - 31 - 5

4

MAY 04

West's RCWA 36.70A.020

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

→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 forest lands 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.

West's RCWA 36.70A.030

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

➔36.70A.030. Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.
- (2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.
- (3) "City" means any city or town, including a code city.
- (4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.
- (5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.
- (6) "Department" means the department of community, trade, and economic development.
- (7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.
- (8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity

of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(17) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(18) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(19) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(20) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(21) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

West's RCWA 36.70A.040

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

→36.70A.040. Who must plan--Summary of requirements--Development regulations must implement comprehensive plans

(1) Each county that has both a population of fifty thousand or more and, until May 16, 1995, has had its population increase by more than ten percent in the previous ten years or, on or after May 16, 1995, has had its population increase by more than seventeen percent in the previous ten years, and the cities located within such county, and any other county regardless of its population that has had its population increase by more than twenty percent in the previous ten years, and the cities located within such county, shall conform with all of the requirements of this chapter. However, the county legislative authority of such a county with a population of less than fifty thousand population may adopt a resolution removing the county, and the cities located within the county, from the requirements of adopting comprehensive land use plans and development regulations under this chapter if this resolution is adopted and filed with the department by December 31, 1990, for counties initially meeting this set of criteria, or within sixty days of the date the office of financial management certifies that a county meets this set of criteria under subsection (5) of this section. For the purposes of this subsection, a county not currently planning under this chapter is not required to include in its population count those persons confined in a correctional facility under the jurisdiction of the department of corrections that is located in the county.

Once a county meets either of these sets of criteria, the requirement to conform with all of the requirements of this chapter remains in effect, even if the county no longer meets one of these sets of criteria.

(2) The county legislative authority of any county that does not meet either of the sets of criteria established under subsection (1) of this section may adopt a resolution indicating its intention to have subsection (1) of this section apply to the county. Each city, located in a county that chooses to plan under this subsection, shall conform with all of the requirements of this chapter. Once such a resolution has been adopted, the county and the cities located within the county remain subject to all of the requirements of this chapter.

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994, and if the county has a population of less than fifty thousand, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan by January 1, 1995, but if the governor makes written findings that a county with a population of less than fifty thousand or a city located within such a county is not making reasonable progress

toward adopting a comprehensive plan and development regulations the governor may reduce this deadline for such actions to be taken by no more than one hundred eighty days. Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(4) Any county or city that is required to conform with all the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forest lands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four years from the date the county legislative authority adopts its resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(5) If the office of financial management certifies that the population of a county that previously had not been required to plan under subsection (1) or (2) of this section has changed sufficiently to meet either of the sets of criteria specified under subsection (1) of this section, and where applicable, the county legislative authority has not adopted a resolution removing the county from these requirements as provided in subsection (1) of this section, the county and each city within such county shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall adopt development regulations under RCW 36.70A.060 conserving agricultural lands, forest lands, and mineral resource lands it designated within one year of the certification by the office of financial management; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city located within the county shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan within four years of the certification by the office of financial management, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(6) A copy of each document that is required under this section shall be submitted to the department at the time of its adoption.

(7) Cities and counties planning under this chapter must amend the transportation element of the comprehensive plan to be in compliance with this chapter and chapter 47.80 RCW no later than December 31, 2000.

West's RCWA 36.70A.050

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

36.70A.050. Guidelines to classify agriculture, forest, and mineral lands and critical areas

- (1) Subject to the definitions provided in RCW 36.70A.030, the department shall adopt guidelines, under chapter 34.05 RCW, no later than September 1, 1990, to guide the classification of: (a) Agricultural lands; (b) forest lands; (c) mineral resource lands; and (d) critical areas. The department shall consult with the department of agriculture regarding guidelines for agricultural lands, the department of natural resources regarding forest lands and mineral resource lands, and the department of ecology regarding critical areas.
- (2) In carrying out its duties under this section, the department shall consult with interested parties, including but not limited to: (a) Representatives of cities; (b) representatives of counties; (c) representatives of developers; (d) representatives of builders; (e) representatives of owners of agricultural lands, forest lands, and mining lands; (f) representatives of local economic development officials; (g) representatives of environmental organizations; (h) representatives of special districts; (i) representatives of the governor's office and federal and state agencies; and (j) representatives of Indian tribes. In addition to the consultation required under this subsection, the department shall conduct public hearings in the various regions of the state. The department shall consider the public input obtained at such public hearings when adopting the guidelines.
- (3) The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions, but also shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170.
- (4) The guidelines established by the department under this section regarding classification of forest lands shall not be inconsistent with guidelines adopted by the department of natural resources.

West's RCWA 36.70A.060

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

➔**36.70A.060. Natural resource lands and critical areas--Development regulations**

(1)(a) Except as provided in RCW 36.70A.1701, each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

West's RCWA 36.70A.110

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

➔**36.70A.110. Comprehensive plans--Urban growth areas**

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

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth

areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110. Such action may be appealed to the appropriate growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

West's RCWA 36.70A.170

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

➔**36.70A.170. Natural resource lands and critical areas--Designations**

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

(a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;

(b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;

(c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and

(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050.

West's RCWA 36.70A.210

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

➔**36.70A.210. County-wide planning policies**

(1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

(2) The legislative authority of a county that plans under RCW 36.70A.040 shall adopt a county-wide planning policy in cooperation with the cities located in whole or in part within the county as follows:

(a) No later than sixty calendar days from July 16, 1991, the legislative authority of each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040 shall convene a meeting with representatives of each city located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy. In other counties that are required or choose to plan under RCW 36.70A.040, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management.

(b) The process and framework for adoption of a county-wide planning policy specified in (a) of this subsection shall determine the manner in which the county and the cities agree to all procedures and provisions including but not limited to desired planning policies, deadlines, ratification of final agreements and demonstration thereof, and financing, if any, of all activities associated therewith.

(c) If a county fails for any reason to convene a meeting with representatives of cities as required in (a) of this subsection, the governor may immediately impose any appropriate sanction or sanctions on the county from those specified under RCW 36.70A.340.

(d) If there is no agreement by October 1, 1991, in a county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or if there is no agreement within one hundred twenty days of the date the county adopted its resolution of intention or was certified by the office of financial management in any other county that is required or chooses to plan under RCW 36.70A.040, the governor shall first inquire of the jurisdictions as to the reason or reasons for failure to reach an agreement. If the governor deems it appropriate, the governor may immediately request the assistance of the department of community, trade, and economic development to mediate any disputes that preclude agreement. If mediation is unsuccessful in resolving all disputes that will lead to agreement, the governor may impose appropriate sanctions from those specified under RCW 36.70A.340 on the county, city, or cities for failure to reach an agreement as provided in this section. The governor shall specify the reason or reasons for the imposition of any sanction.

(e) No later than July 1, 1992, the legislative authority of each county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or no later than fourteen months after the date the county adopted its resolution of intention or was certified by the office of financial management the county legislative authority of any other county that is required or chooses to plan under RCW 36.70A.040, shall adopt a county-wide planning policy according to the process provided under this section and that is consistent with the agreement pursuant to (b) of this subsection, and after holding a public hearing or hearings on the proposed county-wide planning policy.

(3) A county-wide planning policy shall at a minimum, address the following:

(a) Policies to implement RCW 36.70A.110;

(b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;

(c) Policies for siting public capital facilities of a county-wide or statewide nature, including transportation facilities of statewide significance as defined in RCW 47.06.140;

(d) Policies for county-wide transportation facilities and strategies;

(e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;

(f) Policies for joint county and city planning within urban growth areas;

(g) Policies for county-wide economic development and employment; and

(h) An analysis of the fiscal impact.

(4) Federal agencies and Indian tribes may participate in and cooperate with the county-wide planning policy adoption process. Adopted county-wide planning policies shall be adhered to by state agencies.

(5) Failure to adopt a county-wide planning policy that meets the requirements of this section may result in the imposition of a sanction or sanctions on a county or city within the county, as specified in RCW 36.70A.340. In imposing a sanction or sanctions, the governor shall specify the reasons for failure to adopt a county-wide planning policy in order that any imposed sanction or sanctions are fairly and equitably related to the failure to adopt a county-wide planning policy.

(6) Cities and the governor may appeal an adopted county-wide planning policy to the growth management hearings board within sixty days of the adoption of the county-wide planning policy.

(7) Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among

the counties and cities within the affected counties throughout the multicounty region.

West's RCWA 36.70A.215

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

➔**36.70A.215. Review and evaluation program**

- (1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review and evaluation program shall be to:
- (a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and
 - (b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.
- (2) The review and evaluation program shall:
- (a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;
 - (b) Provide for evaluation of the data collected under (a) of this subsection every five years as provided in subsection (3) of this section. The first evaluation shall be completed not later than September 1, 2002. The county and its cities may establish in the county-wide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;
 - (c) Provide for methods to resolve disputes among jurisdictions relating to the county-wide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and
 - (d) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.
- (3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land to accommodate the county-wide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;

(b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(c) Based on the actual density of development as determined under (b) of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the county-wide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to county-wide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.

(5)(a) Not later than July 1, 1998, the department shall prepare a list of methods used by counties and cities in carrying out the types of activities required by this section. The department shall provide this information and appropriate technical assistance to counties and cities required to or choosing to comply with the provisions of this section.

(b) By December 31, 2007, the department shall submit to the appropriate committees of the legislature a report analyzing the effectiveness of the activities described in this section in achieving the goals envisioned by the county-wide planning policies and the comprehensive plans and development regulations of the counties and cities.

(6) From funds appropriated by the legislature for this purpose, the department shall provide grants to counties, cities, and regional planning organizations required under subsection (7) of this section to conduct the review and perform the evaluation required by this section.

(7) The provisions of this section shall apply to counties, and the cities within those counties, that were greater than one hundred fifty thousand in population in 1995 as determined by office of financial management population estimates and that are located west of the crest of the Cascade mountain range. Any other county planning under RCW 36.70A.040 may carry out the review, evaluation, and amendment programs and procedures as provided in this section.

West's RCWA 36.70A.300

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

→36.70A.300. Final orders

(1) The board shall issue a final order that shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2)(a) Except as provided in (b) of this subsection, the final order shall be issued within one hundred eighty days of receipt of the petition for review, or, if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

(b) The board may extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve a settlement, and 8(i) an extension is requested by all parties, or 8(ii) an extension is requested by the petitioner and respondent and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute. The request must be filed with the board not later than seven days before the date scheduled for the hearing on the merits of the petition. The board may authorize one or more extensions for up to ninety days each, subject to the requirements of this section.

(3) In the final order, the board shall either:

(a) Find that the state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county, or city is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the affected state agency, county, or city. The board shall specify a reasonable time not in excess of one hundred eighty days, or such longer period as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply with the requirements of this chapter. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

(4) Unless the board makes a determination of invalidity as provided in RCW 36.70A.302, a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand.

(5) Any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of the final order of the board.

West's RCWA 36.70A.320

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

➤36.70A.320. Presumption of validity--Burden of proof--Plans and regulations

- (1) Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.
- (2) Except as otherwise provided in subsection (4) of this section, the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.
- (3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.
- (4) A county or city subject to a determination of invalidity made under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standard in RCW 36.70A.302(1).
- (5) The shoreline element of a comprehensive plan and the applicable development regulations adopted by a county or city shall take effect as provided in chapter 90.58 RCW.

West's RCWA 36.70A.3201

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

➔**36.70A.3201. Intent--Finding--1997 c 429 § 20(3)**

In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws of 1997, the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

West's RCWA 36.70A.470

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

→36.70A.470. Project review--Amendment suggestion procedure--Definitions

(1) Project review, which shall be conducted pursuant to the provisions of chapter 36.70B RCW, shall be used to make individual project decisions, not land use planning decisions. If, during project review, a county or city planning under RCW 36.70A.040 identifies deficiencies in plans or regulations:

(a) The permitting process shall not be used as a comprehensive planning process;

(b) Project review shall continue; and

(c) The identified deficiencies shall be docketed for possible future plan or development regulation amendments.

(2) Each county and city planning under RCW 36.70A.040 shall include in its development regulations a procedure for any interested person, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest plan or development regulation amendments. The suggested amendments shall be docketed and considered on at least an annual basis, consistent with the provisions of RCW 36.70A.130.

(3) For purposes of this section, a deficiency in a comprehensive plan or development regulation refers to the absence of required or potentially desirable contents of a comprehensive plan or development regulation. It does not refer to whether a development regulation addresses a project's probable specific adverse environmental impacts which the permitting agency could mitigate in the normal project review process.

(4) For purposes of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan or development regulations in a manner that will ensure such suggested changes will be considered by the county or city and will be available for review by the public.

WAC 365-190-040

Wash. Admin. Code 365-190-040

WASHINGTON ADMINISTRATIVE CODE
TITLE 365. COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT, DEPARTMENT OF
(COMMUNITY DEVELOPMENT)
CHAPTER 365-190. MINIMUM GUIDELINES TO CLASSIFY AGRICULTURE, FOREST, MINERAL
LANDS AND CRITICAL AREAS
PART THREE GUIDELINES

Current with amendments adopted through December 7, 2005

365-190-040. Process.

The classification and designation of natural resource lands and critical areas is an important step among several in the overall growth management process. Together these steps comprise a vision of the future, and that vision gives direction to the steps in the form of specific goals and objectives. Under the Growth Management Act, the timing of the first steps coincides with development of the larger vision through the comprehensive planning process. People are asked to take the first steps, designation and classification of natural resource lands and critical areas, before the goals, objectives, and implementing policies of the comprehensive plan are finalized. Jurisdictions planning under the Growth Management Act must also adopt interim regulations for the conservation of natural resource lands and protection of critical areas. In this way, the classification and designation help give shape to the content of the plan, and at the same time natural resource lands are conserved and critical areas are protected from incompatible development while the plan is in process.

Under the Growth Management Act, preliminary classifications and designations will be completed in 1991. Those planning under the act must also enact interim regulations to protect and conserve these lands by September 1, 1991. By July 1, 1992, counties and cities not planning under the act must bring their regulations into conformance with their comprehensive plans. By July 1, 1993, counties and cities planning under the act must adopt comprehensive plans, consistent with the goals of the act. Implementation of the plans will occur by the following year.

(1) Classification is the first step in implementing RCW 36.70A.050. It means defining categories to which natural resource lands and critical areas will be assigned.

Pursuant to RCW 36.70A.170, natural resource lands and critical areas will be designated based on the defined classifications. Designation establishes, for planning purposes: The classification scheme; the general distribution, location, and extent of the uses of land, where appropriate, for agriculture, forestry, and mineral extraction; and the general distribution, location, and extent of critical areas.

Inventories and maps can indicate designations of natural resource lands. In the circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be readily identified, these areas should be designated by performance standards or definitions, so they can be specifically identified during the processing of a permit or development authorization.

Designation means, at least, formal adoption of a policy statement, and may include further legislative action. Designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of specific parcels for conservation and protection.

Classifying, inventorying, and designating lands or areas does not imply a change in a landowner's right to use his or her land under current law. Land uses are regulated on a parcel basis and innovative land use management techniques should be applied when counties and cities adopt regulations to conserve and protect designated natural resource lands and critical areas. The department of community development will provide technical assistance to counties and cities on a wide array of regulatory options and alternative land use management techniques.

These guidelines may result in critical area designations that overlay other critical area or natural resource land classifications. That is, if two or more critical area designations apply to a given parcel, or portion of a given parcel, both or all designations apply. For counties and cities required or opting to plan under chapter 36.70A RCW, reconciling these multiple designations will be the subject of local development regulations adopted pursuant to RCW 36.70A.060.

(2) Counties and cities shall involve the public in classifying and designating natural resource lands and critical areas.

(a) Public participation:

(i) Public participation should include at a minimum: Landowners; representatives of agriculture, forestry, mining, business, environmental, and community groups; tribal governments; representatives of adjacent counties and cities; and state agencies. The public participation program should include early and timely public notice of pending designations and regulations.

(ii) Counties and cities should consider using: Technical and citizen advisory committees with broad representation, press releases, news conferences, neighborhood meetings, paid advertising (e.g., newspaper, radio, T.V., transit), newsletters, and other means beyond the required normal legal advertising and public notices. Plain, understandable language should be used. The department of community development will provide technical assistance in preparing public participation plans, including: A pamphlet series, workshops, and a list of agencies available to provide help.

(b) Adoption process. Statutory and local processes already in place governing land use decisions are the minimum processes required for designation and regulation pursuant to RCW 36.70A.060 and 36.70A.170. At least these steps should be included in the process:

(i) Accept the requirements of chapter 36.70A RCW, especially definitions of agricultural lands, forest lands, minerals, long-term commercial significance, critical areas, geologically hazardous areas, and wetlands as mandatory minimums.

(ii) Consider minimum guidelines developed by department of community development under RCW 36.70A.050.

(iii) Consider other definitions used by state and federal regulatory agencies.

(iv) Consider definitions used by the county and city and other counties and cities.

(v) Determine recommended definitions and check conformance with minimum definitions of chapter 36.70A RCW.

(vi) Adopt definitions, classifications, and standards.

(vii) Apply definitions to the land by mapping designated natural resource lands.

(viii) Establish designation amendment procedures.

(c) Intergovernmental coordination. The Growth Management Act requires coordination among communities and jurisdictions to reconcile conflicts and strive for consistent definitions, standards, and designations within regions. The minimum coordination process required under these guidelines may take one of two forms:

(i) Adjacent cities (or those with overlapping or adjacent planning areas); counties and the cities within them; and adjacent counties would provide each other and all adjacent special purpose districts and special purpose districts within them notice of their intent to classify and designate natural resource lands and critical areas within their jurisdiction. Counties or cities receiving notice may provide comments and input to the notifying jurisdiction. The notifying jurisdiction specifies a comment period prior to adoption. Within forty-five days of the jurisdiction's date of adoption of classifications or designations, affected jurisdictions are supplied a copy of the proposal. The department of community development may provide mediation services to counties and cities to help resolve disputed classifications or designations.

(ii) Adjacent jurisdictions; all the cities within a county; or all the cities and several counties may choose to cooperatively classify and designate natural resource lands and critical areas within their jurisdictions. Counties and cities by interlocal agreement would identify the definitions, classification, designation, and process that will be used to classify and designate lands within their areas. State and federal agencies or tribes may participate in the interlocal agreement or be provided a method of commenting on designations and classifications prior to adoption by jurisdictions.

Counties and/or cities may begin with the notification option ((c)(i) of this subsection) and choose to change to the interlocal agreement method ((c)(ii) of this subsection) prior to completion of the classification and designations within their jurisdictions. Approaches to intergovernmental coordination may vary between natural resource land and critical area designation. It is intended that state and federal agencies with land ownership or management responsibilities, special purpose districts, and Indian tribes with interests within the jurisdictions adopting classification and designation be consulted and their input considered in the development and adoption of designations and classifications. The department of community development may provide mediation services to help resolve disputes between counties and cities that are using either the notification or interlocal agreement method of coordinating between jurisdictions.

(d) Mapping. Mapping should be done to identify designated natural resource lands and to identify

known critical areas. Counties and cities should clearly articulate that the maps are for information or illustrative purposes only unless the map is an integral component of a regulatory scheme. Although there is no specific requirement for inventorying or mapping either natural resource lands or critical areas, chapter 36.70A RCW requires that counties and cities planning under chapter 36.70A RCW adopt development regulations for uses adjacent to natural resource lands. Logically, the only way to regulate adjacent lands is to know where the protected lands are. Therefore, mapping natural resource lands is a practical way to make regulation effective.

For critical areas, performance standards are preferred, as any attempt to map wetlands, for example, will be too inexact for regulatory purposes. Standards will be applied upon land use application. Even so, mapping critical areas for information but not regulatory purposes, is advisable. (e) Reporting. Chapter 36.70A RCW requires that counties and cities annually report their progress to department of community development. Department of community development will maintain a central file including examples of successful public involvement programs, interjurisdictional coordination, definitions, maps, and other materials. This file will serve as an information source for counties and cities and a planning library for state agencies and citizens.

(f) Evaluation. When counties and cities adopt a comprehensive plan, chapter 36.70A RCW requires that they evaluate their designations and development regulations to assure they are consistent with and implement the comprehensive plan. When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and public participation.

(g) Designation amendment process. Land use planning is a dynamic process. Procedures for designation should provide a rational and predictable basis for accommodating change.

Land use designations must provide landowners and public service providers with the information necessary to make decisions. This includes: Determining when and where growth will occur, what services are and will be available, how they might be financed, and what type and level of land use is reasonable and/or appropriate. Resource managers need to know where and when conversions of rural land might occur in response to growth pressures and how those changes will affect resource management.

Designation changes should be based on consistency with one or more of the following criteria:

- (i) Change in circumstances pertaining to the comprehensive plan or public policy.
- (ii) A change in circumstances beyond the control of the landowner pertaining to the subject property.
- (iii) An error in designation.
- (iv) New information on natural resource land or critical area status.

(h) Use of innovative land use management techniques. Resource uses have preferred and primary status in designated natural resource lands of long-term commercial significance. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques which minimize land use incompatibilities and most effectively maintain current and future natural resource lands.

Techniques to conserve and protect agricultural, forest lands, and mineral resource lands of long-term commercial significance include the purchase or transfer of development rights, fee simple purchase of the land, less than fee simple purchase, purchase with leaseback, buffering, land trades, conservation easements or other innovations which maintain current uses and assure the conservation of these natural resource lands.

Development in and adjacent to agricultural and forest lands of long-term commercial significance shall assure the continued management of these lands for their long-term commercial uses. Counties and cities should consider the adoption of right-to-farm provisions. Covenants or easements that recognize that farming and forest activities will occur should be imposed on new development in or adjacent to agricultural or forest lands. Where buffering is used it should be on land within the development unless an alternative is mutually agreed on by adjacent landowners.

Counties and cities planning under the act should define a strategy for conserving natural resource lands and for protecting critical areas, and this strategy should integrate the use of innovative regulatory and nonregulatory techniques.

Statutory Authority: RCW 36.70A.050, 91-07-041, S 365-190-040, filed 3/15/91, effective 4/15/91.

WAC 365-190-050

Wash. Admin. Code 365-190-050

WASHINGTON ADMINISTRATIVE CODE
TITLE 365. COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT, DEPARTMENT OF
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CHAPTER 365-190. MINIMUM GUIDELINES TO CLASSIFY AGRICULTURE, FOREST, MINERAL
LANDS AND CRITICAL AREAS
PART THREE GUIDELINES

Current with amendments adopted through December 7, 2005

365-190-050. Agricultural lands.

(1) In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service as defined in Agriculture Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys. These categories incorporate consideration of the growing capacity, productivity and soil composition of the land. Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

- (a) The availability of public facilities;
- (b) Tax status;
- (c) The availability of public services;
- (d) Relationship or proximity to urban growth areas;
- (e) Predominant parcel size;
- (f) Land use settlement patterns and their compatibility with agricultural practices;
- (g) Intensity of nearby land uses;
- (h) History of land development permits issued nearby;
- (i) Land values under alternative uses; and
- (j) Proximity of markets.

(2) In defining categories of agricultural lands of long-term commercial significance for agricultural production, counties and cities should consider using the classification of prime and unique farmland soils as mapped by the Soil Conservation Service. If a county or city chooses to not use these categories, the rationale for that decision must be included in its next annual report to department of community development.

(3) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include consultation with the board of the local conservation district and the local agriculture stabilization and conservation service committee.

These additional lands may also include bogs used to grow cranberries. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

Statutory Authority: RCW 36.70A.050, 91-07-041, S 365-190-050, filed 3/15/91, effective 4/15/91.

WAC 365-195-200

Wash. Admin. Code 365-195-200

WASHINGTON ADMINISTRATIVE CODE
TITLE 365. COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT, DEPARTMENT OF
(COMMUNITY DEVELOPMENT)
CHAPTER 365-195. GROWTH MANAGEMENT ACT--PROCEDURAL CRITERIA FOR ADOPTING
COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS
PART TWO DEFINITIONS

Current with amendments adopted through December 7, 2005

365-195-200. Statutory definitions.

For the convenience of persons using these criteria the definitions contained in RCW 36.70A.030 are set forth below:

- (1) 'Adopt a comprehensive land use plan' means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.
- (2) 'Agricultural land' means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock and that has long-term commercial significance for agricultural production.
- (3) 'City' means any city or town, including a code city.
- (4) 'Comprehensive land use plan,' 'comprehensive plan,' or 'plan' means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.
- (5) 'Critical areas' include the following areas and ecosystems:
 - (a) Wetlands;
 - (b) Areas with a critical recharging effect on aquifers used for potable water;
 - (c) Fish and wildlife habitat conservation areas;
 - (d) Frequently flooded areas; and
 - (e) Geologically hazardous areas.
- (6) 'Department' means the department of community development.
- (7) 'Development regulations' means any controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, subdivision ordinances, and binding site plan ordinances.
- (8) 'Forest land' means land primarily useful for growing trees, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, for commercial purposes, and that has long-term commercial significance for growing trees commercially.
- (9) 'Geologically hazardous areas' means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.
- (10) 'Long-term commercial significance' includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.
- (11) 'Minerals' include gravel, sand, and valuable metallic substances.
- (12) 'Public facilities' include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.
- (13) 'Public services' include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.
- (14) 'Urban growth' refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban

governmental services. 'Characterized by urban growth' refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(15) 'Urban growth area' means those areas designated by a county pursuant to RCW 36.70A.110.

(16) 'Urban governmental services' include those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with nonurban areas.

(17) 'Wetland' or 'wetlands' means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the county or city.

Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, S 365-195-200, filed 11/17/92, effective 12/18/92.

WAC 365-195-210

Wash. Admin. Code 365-195-210

WASHINGTON ADMINISTRATIVE CODE
TITLE 365. COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT, DEPARTMENT OF
(COMMUNITY DEVELOPMENT)
CHAPTER 365-195. GROWTH MANAGEMENT ACT--PROCEDURAL CRITERIA FOR ADOPTING
COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS
PART TWO DEFINITIONS

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365-195-210. Definitions of terms as used in this chapter.

The following are definitions of terms which are not defined in RCW 36.70A.030 but which are defined here for purposes of these procedural criteria. The department recommends that counties and cities planning under the act adopt these definitions in their plans:

'Act' means the Growth Management Act as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington.

'Adequate public facilities' means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

'Affordable housing' means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income.

'Available public facilities' means that facilities or services are in place or that a financial commitment is in place to provide the facilities or services within a specified time. In the case of transportation, the specified time is six years from the time of development.

'Concurrency' means that adequate public facilities are available when the impacts of development occur. This definition includes the two concepts of 'adequate public facilities' and of 'available public facilities' as defined above.

'Consistency' means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

'Coordination' means consultation and cooperation among jurisdictions.

'Contiguous development' means development of areas immediately adjacent to one another.

'Demand management strategies,' or 'transportation demand management strategies (TDM)' means strategies aimed at changing travel behavior rather than at expanding the transportation network to meet travel demand. Such strategies can include the promotion of work hour changes, ride-sharing options, parking policies, telecommuting.

'Domestic water system' means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

'Financial commitment' means that sources of public or private funds or combinations thereof have been identified which will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

'Growth Management Act' - see definition of 'Act.'

'Level of service' means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need.

'Master planned resort' means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

'New fully contained community' is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

'Planning period' means the twenty-year period following the adoption of a comprehensive plan or

such longer period as may have been selected as the initial planning horizon by the planning jurisdiction.

'Public service obligations' means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

'Regional transportation plan' means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

'Regional transportation planning organization (RTPO)' means the voluntary organization conforming to RCW 47.80.020, consisting of local governments within a region containing one or more counties which have common transportation interests.

'Rural lands' means all lands which are not within an urban growth area and are not designated as natural resource lands having long term commercial significance for production of agricultural products, timber, or the extraction of minerals.

'Sanitary sewer systems' means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste.

'Solid waste handling facility' means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

'Transportation facilities' includes capital facilities related to air, water, or land transportation.

'Transportation level of service standards' means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

'Transportation system management (TSM)' means the use of low capital expenditures to increase the capacity of the transportation system. TSM strategies include but are not limited to signalization, channelization, and bus turn-outs.

'Utilities' or 'public utilities' means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

'Visioning' means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

Statutory Authority: RCW 36.70A.190 (4)(b). 93-17-040, S 365-195-210, filed 8/11/93, effective 9/11/93; 92-23-065, S 365-195-210, filed 11/17/92, effective 12/18/92.

WAC 365-195-335

Wash. Admin. Code 365-195-335

WASHINGTON ADMINISTRATIVE CODE
TITLE 365. COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT, DEPARTMENT OF
(COMMUNITY DEVELOPMENT)
CHAPTER 365-195. GROWTH MANAGEMENT ACT--PROCEDURAL CRITERIA FOR ADOPTING
COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS
PART THREE FEATURES OF THE COMPREHENSIVE PLAN

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365-195-335. Urban growth areas.

(1) Requirements.

- (a) Each county planning under the Act shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.
- (b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.
- (c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.
- (d) Based upon the population growth management planning population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.
- (e) Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development.
- (f) Urban growth should be located second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.
- (g) It is appropriate that urban government services be provided by cities and urban government services should not be provided in rural areas.

(2) General procedure.

- (a) The designation process shall include consultation by the county with each city located within its boundaries.
 - (b) Each city shall propose the location of an urban growth area.
 - (c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.
 - (d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.
- (3) Recommendations for meeting requirements. The following steps are recommended in developing urban growth areas:
- (a) County-wide planning policies. In adopting urban growth areas, each county should be guided by the applicable county-wide (and in some cases multicounty) planning policies. To the maximum extent possible, the creation of urban growth areas should result from a cooperative effort among the jurisdictions involved.
 - (b) General considerations. For all jurisdictions planning under the act, the urban growth area should represent the physical area within which that jurisdiction's vision of urban development can be realized over the next twenty years. The urban growth area should be based on densities selected to promote goals of the act -densities which accommodate urban growth served by adequate public facilities and discourage sprawl.
 - (c) Development of city proposals. In developing the proposal for its urban growth area, each city should engage in a process of analysis which involves the steps set forth in (d), (e), and (f) of this

subsection.

(d) Determination of the amount of land necessary to accommodate likely growth. This process should involve at least:

(i) A forecast of the likely future growth of employment and population in the community, utilizing the twenty-year population projection for the county in conjunction with data on current community population, recent trends in population, and employment in and near the community and assumptions about the likelihood of continuation of such trends. Where available, regional population and employment forecasts should be used.

(ii) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(iii) Selection of the densities the community seeks to achieve in relation to its growth goals.

(iv) Estimation of the amount of land needed to accommodate the likely level of development at the densities selected.

(v) Identification of the amount of land needed for the public facilities, public services, and utilities necessary to support the likely level of development.

(vi) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern.

(e) Determination of the geographic area to be encompassed to provide the necessary land. This process should involve at least:

(i) An inventory of lands within existing municipal boundaries which is available for development, including vacant land, partially used land, and land where redevelopment is likely.

(ii) An estimate of lands within existing municipal boundaries which are potentially available for public capital facilities and utilities necessary to support anticipated growth.

(iii) An estimate of lands which should be allocated to greenbelts and open space and lands which should be protected as critical areas.

(iv) If the lands within the existing municipal boundaries are not sufficient to provide the land area necessary to accommodate likely growth, similar inventories and estimates should be made of lands in adjacent unincorporated territory already characterized by urban growth, if any such territory exists.

(v) The community's proposed urban growth area should encompass a geographic area which matches the amount of land necessary to accommodate likely growth. If there is physically no territory available into which a city might expand, it may need to revise its proposed densities or population levels in order to accommodate growth on its existing land base.

(f) Evaluation of the determination of geographic requirements. The community should perform a check on the realism of the area proposed by evaluating:

(i) The anticipated ability to finance by all means the public facilities, public services, and open space needed in the area over the planning period.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the plan of the county and of other communities will influence the area needed.

If, as a result of these evaluations, the area appears to have been drawn too small or too large, the city's proposal should be adjusted accordingly.

(g) County actions in adopting urban growth areas. The designation of urban growth areas should ultimately be incorporated into the comprehensive plan of each county that plans under the act.

However, every effort should be made to complete the urban growth area designation process earlier, so that the comprehensive plans of both the county and the cities can be completed in reliance upon it. Before completing the designation process, counties should engage in a process which involves the steps set forth in (h) through (j) of this subsection.

(h) The county should determine how much of its twenty-year population projection is to be allocated to rural areas and other areas outside urban growth areas and how much should be allocated to urban growth.

(i) The county should attempt to define urban growth areas so as to accommodate the growth plans of the cities, while recognizing that physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's

potential growth area. The option of incorporation should be preserved for some unincorporated communities upon the receipt of additional growth.

(j) The total area designated as urban growth area in any county should be sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period, unless some portion of that growth is allocated to a new community reserve established in anticipation of a proposal for one or more new fully contained communities.

(k) Actions which should accompany designation of urban growth areas. Consistent with county-wide planning policies, cities and counties consulting on the designation of urban growth areas should make every effort to address the following as a part of the process:

(i) Establishment of agreements regarding land use regulations and the providing of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(ii) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(iii) Provision for an ongoing collaborative process to assist in implementing county-wide planning policies, resolving regional issues, and adjusting growth boundaries.

(l) Urbanized areas outside of urban growth areas.

(i) New fully contained communities. A county may establish a process, as part of its urban growth area designation, for reviewing proposals to authorize new fully contained communities located outside the initially designated urban growth areas. If such a process is established, the criteria for approval are as set forth in RCW 36.70A.350. The approval procedures shall be adopted as a development regulation. However, such communities may be approved only if a county reserves a portion of the twenty-year population projection for allocation to such communities. When a county establishes a new community reserve it shall reduce the urban growth area accordingly. The approval of an application for a new fully contained community shall have the effect of amending the comprehensive plan to include the new community as an urban growth area.

(ii) Master planned resorts. A county may establish procedures for approving master planned resorts constituting urban growth outside of an urban growth area. Such a resort may be authorized only if the comprehensive plan and development regulations of the county comply with the requirements of RCW 36.70A.360.

Statutory Authority: RCW 36.70A.190 (4)(b). 92-23-065, S 365-195-335, filed 11/17/92, effective 12/18/92.