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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SCOTT E. STAFNE,

Appellant/Petitioner

vs.

SNOHOMISH COUNTY AND
SNOHOMISH COUNTY PLANNING DEPARTMENT,

Appellees/Respondents

SNOHOMISH COUNTY'S RESPONSE BRIEF

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I. INTRODUCTION

This case is about whether Snohomish County has a statutory duty under the Growth Management Act (“GMA”) (chapter 36.70A RCW) docketing process to enact legislation removing a natural resource designation from land when a landowner claims that his land no longer meets the statutory definition of natural resource land. As a matter of law, Snohomish County does not have such a statutory duty under the GMA docketing process, and the trial court’s decision granting Snohomish County’s motion to dismiss should be upheld.

Attorney Scott Stafne, representing himself in this matter, raises myriad issues related to his designated natural resource land. Among other things, he explains how he attempted to reconfigure his property through boundary line adjustments so that the property would no longer meet the statutory definition of natural resource land. He asserts that the County’s GMA docketing process is unconstitutional because County planners are required to provide the Snohomish County Council a written recommendation regarding public-initiated legislative proposals – conduct which he characterizes as engaging in the unauthorized practice of law. But nowhere does Stafne provide legal support for the fundamental premise of his argument: That the County is required under the GMA docketing process to “de-designate” property that no longer meets the

definition of natural resource land. Without such support, the trial court was without a legal basis to grant Stafne the relief he sought, properly granted the County's motion to dismiss, and properly dismissed Stafne's motion for summary judgment. This Court should affirm the trial court's rulings.

II. STATEMENT OF THE CASE

Stafne owns property that is designated forest land, a type of natural resource land, under the GMA. As part of the annual GMA docketing process, Stafne proposed an amendment to the County's GMA comprehensive plan. This amendment would have removed the natural resource land designation from his property and replaced it with a rural residential designation. The Snohomish County Council chose not to adopt Stafne's docket proposal. Stafne disagrees with this decision. The following explains the legal and factual background giving rise to this issue.

A. The County Designated Stafne's Property Natural Resource Land in 1992 Under the GMA.

1. Designation of property under the GMA.

The GMA is a policy-driven, bottoms-up land use planning statute that was adopted in 1990 to reduce the conversion of undeveloped land across the state into sprawling, low-density development. See

RCW 36.70A.020(2). Each county required to plan under the GMA was directed by the legislature to establish a “generalized coordinated land use policy statement of the governing body of the county.” RCW 36.70A.030(4). This policy statement is known as the county’s “comprehensive plan.” A county’s comprehensive plan contains numerous elements, one of which is the county’s future land use map. A county’s future land use map depicts the various land use designations the County’s governing body has assigned to property throughout the County pursuant to the GMA. RCW 36.70A.070.

Two key elements depicted on a county’s future land use map are (1) the county’s urban growth areas, which are those regions of the county within which the majority of population and economic growth is expected to occur over a 20-year planning horizon, and (2) the county’s natural resource lands, which include the county’s agricultural land, forest land and mineral resource land, as such terms are defined by the GMA. RCW 36.70A.020(2), (8) and (11); 36.70A.130(3); 36.70A.040(3)(b); 36.70A.170. Those portions of a county that are neither located in an urban growth area nor designated natural resource land are commonly referred to as “rural lands.”

2. Comprehensive plan designation of Stafne's property.

Snohomish County initially designated natural resource lands pursuant to the GMA in 1992. At that time, the County designated Stafne's property "Interim Commercial Forest," a natural resource land designation, in the County's comprehensive plan. Stafne challenged the County's designation of his property as Interim Commercial Forest to the Central Puget Sound Growth Management Hearings Board.¹ The Growth Board decided in favor of the County, upholding the County's Interim Commercial Forest designation of Stafne's property as consistent with the GMA. Twin Falls, Inc. v. Snohomish County, CPSGMHB Case No. 93-3-0003, Final Decision and Order (Sept. 7, 1993) (1993 WL 839715). The County subsequently changed the designation of Stafne's property from Interim Commercial Forest to Low Density Rural Residential. CP 162.

In 1998, Stafne "traded" some of his land with the State of Washington, Department of Natural Resources. CP 162. The land acquired by Stafne from the State was at the time of transfer, and still remains, designated in the County's comprehensive plan as Commercial Forest, a natural resource land designation. CP 149, 162. After acquiring

¹ The legislature created three growth management hearings boards. RCW 36.70A.250. Snohomish County is within the jurisdiction of the Central Puget Sound Growth Management Hearings Board. *Id.* In this brief, "Growth Boards" will refer to all three boards and "Growth Board" will refer to the Central Puget Sound Growth Management Hearings Board.

this State land, Stafne applied for and obtained multiple ministerial boundary line adjustments involving various portions of both his originally-owned rural residential land and his newly-acquired natural resource land. CP 162.

B. Stafne Proposed Legislation Under the County's Docketing Procedures to Remove the Natural Resource Designation from His Property. The County Council Did Not Adopt Stafne's Docket Proposal.

1. Snohomish County's GMA docketing procedures.

The GMA requires that local jurisdictions regularly hear from citizens regarding the content of the jurisdictions' comprehensive plans. As a part of the County's duty to maintain its comprehensive plan, it must annually provide an opportunity for citizens "to suggest [comprehensive] plan or development regulation amendments." RCW 36.70A.470(2). This public participation process is known as "docketing," and each suggested legislative amendment that is submitted during the docketing process is known as a "docket proposal." Pursuant to the GMA, all docket proposals must be considered by the County Council during a single hearing so that the County Council can consider the cumulative effects of all proposed legislative changes. RCW 36.70A.130(2)(b).

In Snohomish County, the GMA-mandated docketing process is established in chapter 30.74 of the Snohomish County Code (the "SCC" or

the "County code").² Docket proposals are processed under the County's docketing regulations and its regulations for GMA legislative actions established in chapter 30.73 SCC.³ Under these procedures, docketing occurs in two phases. During the first phase, the County's Department of Planning and Development Services, a County administrative department, accepts all docket proposals submitted by members of the public and conducts an initial review and evaluation of those docket proposals based on certain codified criteria. The planning department forwards its initial review and evaluation to the Snohomish County Council. SCC 30.74.020; 30.74.030(1); 30.74.040; 30.74.050(1).

The County Council holds a public hearing regarding all of the docket proposals the County has received during that year's docketing cycle. SCC 30.74.050(2). At the public hearing, the County Council accepts public testimony regarding the docket proposals. SCC 30.74.050(2). The County Council then determines which docket proposals to approve for further processing as potential legislative amendments to the County's comprehensive plan and development regulations. The County code does not specify any substantive standards for the County Council's decision regarding which docket proposals to

² Appendix A contains chapter 30.74 SCC. See RAP 10.4(c). Chapter 30.74 SCC also is located at CP 107-111.

³ Appendix B contains chapter 30.73 SCC. See RAP 10.4(c).

approve for further processing. Docket proposals approved for further processing are collectively known as the "final docket." SCC 30.74.050(2)-(4). Docket proposals not approved for processing to the final docket receive no further consideration.

The second phase of the County's docketing process involves only those docket proposals that have been forwarded onto the final docket. The planning department provides additional review and evaluation of proposals on the final docket. SCC 30.74.060. The planning department's recommendations regarding final docket proposals are forwarded to the Snohomish County Planning Commission, an eleven-member body comprised of citizens appointed by the County Council. SCC 30.74.060(2); 30.73.045. The Planning Commission reviews all of the proposals on the final docket and holds a public hearing regarding those proposals. SCC 30.73.040; 30.73.050(1). At the close of the public hearing, the Planning Commission makes a written recommendation to the County Council regarding which final docket proposals, if any, should be adopted by the County Council as legislative amendments to the County's comprehensive plan and development regulations. SCC 30.73.060. The County code does not specify any substantive standards for the Planning Commission's review of final docket proposals.

From this point forward, final docket proposals are processed by the County Council in the same manner as other GMA-related legislative proposals, in conformance with the procedural and substantive requirements of chapter 30.73 SCC and the GMA.

2. Stafne's docket proposal.

During the first phase of the County's 2008-2009 docketing process, Stafne submitted a docket proposal seeking a change in the designation of his property in the County's comprehensive plan from the natural resource land designation of Commercial Forest (with a Forest Transition Area overlay) to Low Density Rural Residential. CP 149, 199. The planning department performed an initial review of Stafne's docket proposal, and concluded that Stafne's docket proposal was not consistent with, among other things, the GMA and the County's comprehensive plan. CP 199-207.

Stafne disputed the factual veracity of the planning department's initial written evaluation of his docket proposal. After considerable discourse between Stafne and various County personnel, the planning department submitted to the County Council a supplement to its initial review and evaluation of Stafne's docket proposal. This supplement addressed Stafne's factual concerns, but maintained that Stafne's docket

proposal was inconsistent with the GMA and the County's comprehensive plan. CP 209-211.

The County Council held a public hearing regarding all 49 docket proposals that were submitted by the public during the 2008-2009 docketing cycle, including Stafne's proposal. CP 231-232; CP 378 (§ 35). Stafne addressed the County Council at the public hearing, advocating in favor of his docket proposal. CP 771-772. Following the public hearing, the County Council determined by motion to forward seven of the 49 docket proposals to the final docket for further processing and consideration. CP 230-232. Stafne's docket proposal was not one of the seven proposals advanced to the final docket. CP 232. No docket proposal seeking removal of a natural resource land designation from property advanced to the final docket. *Id.* The County Council's decision not to place Stafne's proposed legislative amendment to the County's comprehensive plan on the final docket for further processing is at the root of this lawsuit.

C. The Superior Court Granted the County's Motion to Dismiss and Denied Stafne's Motion for Summary Judgment.

Stafne sought judicial review of the County's decision not to forward his docket proposal to the final docket through the following methods: (1) a constitutional writ of certiorari under article IV, section 6

of the Washington Constitution; (2) the Uniform Declaratory Judgments Act, chapter 7.24 RCW; (3) a statutory writ of mandamus under RCW 7.16.160; and (4) a statutory writ of prohibition under RCW 7.16.300.⁴ CP 3-59.

The County filed a motion seeking dismissal of all causes of action. See CP 60-105. The County's motion provided legal bases for collectively dismissing all causes of action due to (1) failure to state a claim for which relief could be granted (CR 12(b)(6)) and (2) lack of subject matter jurisdiction (CR 12(b)(1)). The motion further addressed, in detail, the legal basis for individually dismissing each separate cause of action.

In addition to responding to the County's motion to dismiss, Stafne filed a motion for summary judgment, to be heard at the same time as the County's motion to dismiss. CP 112-122. Stafne's motion for summary judgment related only to a portion of the property included in his docket proposal to the County. Through his motion, Stafne sought a declaratory judgment "voiding" any areas of designated natural resource land on his property. CP 113, lines 8-10.

⁴ Stafne also sought review via statutory certiorari under RCW 7.16.040 and under the Land Use Petition Act (chapter 30.70C RCW), but he later abandoned those claims. CP 261, 270.

The trial court heard oral argument regarding both the County's motion to dismiss and Stafne's motion for summary judgment on December 8, 2009. RP 1. On December 10, 2009, the trial court issued a decision dismissing Stafne's complaint with prejudice and denying Stafne's motion for summary judgment. CP 235-236. Stafne appealed this decision.

III. ARGUMENT

A. Standard of Review.

Stafne asks this Court to reverse the trial court's dismissal of Stafne's complaint and denial of Stafne's motion for summary judgment. Whether the trial court properly dismissed Stafne's complaint is a question of law that is reviewed de novo. San Juan County v. No New Gas Tax, 160 Wn.2d 141, 164, 157 P.3d 831 (2007). Whether the trial court properly denied Stafne's motion for summary judgment is a question of law that is reviewed de novo. Go2net, Inc. v. Freeyellow.com, Inc., 158 Wn.2d 247, 252, 143 P.3d 590 (2006). This Court may sustain the trial court's decision on any theory established by the pleadings and supported by the record, even if the trial court did not consider it. Burnet v. Spokane Ambulance, 131 Wn.2d 484, 493, 933 P.2d 1036 (1997); LaMon v. Butler, 112 Wn.2d 193, 200-01, 770 P.2d 1027, cert. denied, 493 U.S. 814, 110 S.Ct. 61, 107 L.Ed.2d 29 (1989).

Here, the trial court did not state the grounds upon which it granted the County's motion to dismiss or the grounds upon which it denied Stafne's summary judgment motion. This brief focuses on the primary dispositive legal errors in Stafne's case; it does not attempt to discuss all of the grounds on which the County moved for dismissal before the trial court. The County's motion to dismiss provides a comprehensive analysis of all potential theories supporting the trial court's ruling. See CP 60-105.

B. The Trial Court Did Not Err in Granting the County's Motion to Dismiss.

The action at issue in this lawsuit is the County Council's policy decision not to further process Stafne's docket proposal requesting the elimination of the natural resource land designation from his property. Stafne's brief establishes that the ultimate relief Stafne seeks from this Court is the "de-designation" of his property in the County's comprehensive plan. The de-designation of natural resource land is a legislative policy decision that cannot be mandated by the courts.

Because the trial court could not, as a matter of law, grant Stafne the relief he sought, the trial court properly granted the County's motion to dismiss Stafne's complaint under Civil Rule 12(b)(6) because Stafne failed to state a claim for which relief could be granted. Additionally, because Stafne's lawsuit involved the County's GMA docketing process,

the Growth Board had exclusive jurisdiction over Stafne's claim. Because the Growth Board and not the trial court had subject matter jurisdiction over Stafne's lawsuit, the trial court properly granted the County's motion to dismiss Stafne's complaint under Civil Rule 12(b)(1) for lack of subject matter jurisdiction.

1. The County's motion to dismiss was properly granted under CR 12(b)(6) because the trial court could not grant Stafne the relief he sought.

The County moved to dismiss Stafne's lawsuit under Civil Rule 12(b)(6). A motion to dismiss is properly granted under Civil Rule 12(b)(6) when the plaintiff is not entitled to relief under any set of facts. Clapp v. Olympic View Pub. Co., L.L.C., 137 Wn. App. 470, 154 P.3d 230 (2007), review denied, 162 Wn.2d 1013, 175 P.3d 1093 (2008). Here, the relief Stafne desires – removal of the natural resource land designation from his property – can be achieved only through a legislative amendment to the County's GMA comprehensive plan. The County was under no statutory duty to enact legislation to remove this designation. Thus, the County's decision to deny Stafne's docket proposal was exclusively a policy decision left to the County Council. Because the courts cannot interfere with legislative policy decisions, the judiciary cannot grant Stafne the relief he seeks.

a. There is no statutory requirement to de-designate property that no longer meets the definition of natural resource land.

In its methodology for controlling and regulating growth throughout the state, the GMA emphasizes the protection of natural resource lands. City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 58, 959 P.2d 1091 (1998). The axiom “the land speaks first”⁵ is repeated in numerous Growth Board cases, and is indicative of the statute’s mandate to protect natural resource lands. The GMA requires that local jurisdictions “designate” land as natural resource land when land meets the statutory definition of forest land, agricultural land or mineral land. RCW 36.70A.030(2), (8) and (11); 36.70A.040(3)(b); 36.70A.170. The land at issue in this case was designated forest land. RCW 36.70A.030(8); CP 149, 162.

The process of removing a natural resource land designation from property is commonly referred to as “de-designation.”⁶ See, e.g., City of Arlington v. Central Puget Sound Growth Mgmt. Hearings Bd., 164 Wn.2d 768, 775, 193 P.3d 1077 (2008); Woods v. Kittitas County, 162 Wn.2d 597, 621 n.13, 174 P.3d 25 (2007). Because jurisdictions are

⁵ Bremerton v. Kitsap County, CPSGMHB Case No. 95-3-0039, Final Decision and Order (Oct. 6, 1995) (1995 WL 903165).

⁶ The term “de-designate” is a misnomer. The term “re-designate” is more appropriate, as the land remains designated under the County’s comprehensive plan, just not under a natural resource designation. See, e.g., Yakima County v. Eastern Washington Growth Mgmt. Hearings Bd., 146 Wn. App 679, 688, 192 P.3d 12 (2008).

required by statute to designate property as natural resource land when it meets the applicable statutory criteria, jurisdictions are only permitted to de-designate natural resource land when it is shown that the property does not meet the applicable statutory criteria. See, e.g., Yakima County v. Eastern Washington Growth Mgmt. Hearings Bd., 146 Wn. App. 679, 688, 192 P.3d 12 (2008); T.S. Holdings, LLC v. Pierce County, CPSGMHB Case No. 08-3-0001, Final Decision and Order (Sept. 2, 2008) (2008 WL 4215868).

However, although the GMA permits jurisdictions to de-designate natural resource land under certain circumstances, the GMA does not require jurisdictions to de-designate natural resource land during the docketing process. Stafne's argument in this case is premised on the assumption that the County is required to de-designate property from a natural resource land designation during the docketing process if the property no longer meets the applicable statutory criteria. The GMA contains no such requirement. Thus, Stafne's entire case is founded on an inaccurate supposition. See T.S. Holdings, LLC v. Pierce County, CPSGMHB Case No. 08-3-0001, Final Decision and Order (Sept. 2, 2008) (2008 WL 4215868) ("the GMA does not specify a process or criteria for the 'de-designation' of agricultural resource lands"). Indeed, Stafne himself conceded at oral argument before the trial court that there is no

statutory requirement that the County de-designate his property. RP 26, lines 6-7 (“Well, there is no legislative process in the GMA required for de-designation.”); RP 18, lines 7-9 (“I know of no case where an individual has sought de-designation based on the law.”).

Thus, the pivotal question in this appeal is whether there is statutory support for Stafne’s claim that the County was required to de-designate Stafne’s property as part of its GMA docketing process. Woods v. Kittitas County, 162 Wn.2d 597, 612, 174 P.3d 25 (2007).⁷ There is not. For this reason, even if Stafne’s property no longer meets the statutory definition of forest land, as a matter of law the County is not required to de-designate Stafne’s property as part of the docketing process.

- b. Because the County was not required to de-designate Stafne’s property through the docketing process, the County Council’s decision not to de-designate Stafne’s property was exclusively a matter of policy.**

All components of a county’s comprehensive plan, including the future land use map, must be adopted and amended by legislative action. RCW 36.70A.040(3)(d); 36.70A.130(1)(a). See also Coffey v. City of Walla Walla, 145 Wn. App. 435, 441, 187 P.3d 272 (2008), citing Westside Hilltop Survival Comm. v. King County, 96 Wn.2d 171, 178-79,

⁷ The GMA does not contain a provision that the statute is to be liberally construed. Woods v. Kittitas County, 162 Wn.2d at 612; Skagit Surveyors & Eng’rs, LLC v. Friends of Skagit County, 135 Wn.2d 542, 565, 958 P.2d 962 (1998).

634 P.2d 862 (1981); Raynes v. City of Leavenworth, 118 Wn.2d 237, 821 P.2d 1204 (1992); King County v. Central Puget Sound Growth Mgmt. Hearings Bd., 138 Wn.2d 161, 979 P.2d 374 (1999). In Snohomish County, legislative authority rests with the County Council. Only the County Council may determine whether property designated natural resource land in the County's comprehensive plan will be de-designated. See Raynes v. Leavenworth, 118 Wn.2d at 245 (courts do not have the authority to enact land use ordinances).

Sometimes the GMA provides a clear mandate regarding what legislative action a jurisdiction must take, for example, the mandate to designate natural resource lands or to update its comprehensive plan every seven years.⁸ RCW 36.70A.040(3)(b); 36.70A.130(1)(a); 36.70A.170. However, when no particular legislative action is prescribed, as is the case here, it is exclusively up to the local legislative body to determine what action, if any, is in the best interests of the community. Thus, whether to

⁸ Under the GMA's seven year update requirement, every county planning under the GMA must "take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of [the GMA]." RCW 36.70A.130(1)(a). When a jurisdiction is required to take such legislative action under the GMA and fails to do so, a petition may be filed with the Growth Board seeking corrective action. RCW 36.70A.290; WAC 242-02-220(5); see, e.g., Camwest Development, Inc. v. City of Sammamish, CPSGMHB Case No. 05-3-0012, Order Finding Noncompliance -- Failure to Act (April 1, 2005) (2005 WL 2227918). Such a challenge might be available to Stafne in the future. But see Thurston County v. Western Washington Growth Mgmt. Hearings Bd., 164 Wn.2d 329, 344, 190 P.3d 38 (2008) (seven year update requirement limited to those provisions of a comprehensive plan that are directly affected by new or recently amended GMA provisions).

de-designate Stafne's property is an issue of policy to be decided by the County Council. SR 9 / US 2 LLC v. Snohomish County, CPSGMHB Case No. 08-3-0004, Order Granting Motion to Dismiss (April 9, 2009) (2009 WL 1134039) ("Absent a duty to amend its Plan or development regulation, such [docketing] decisions are within the jurisdiction's discretion.").

The doctrines of judicial restraint and separation of powers, discussed below in pages 22 to 24, mandate that the Court's analysis of Stafne's claim end here. See, e.g., Raynes v. Leavenworth, 118 Wn.2d at 245 ("If the actions before us are legislative in nature, great deference should be afforded them. It is not our role to substitute our judgment for that of duly elected officials."). However, if the Court chooses to review the propriety of the County Council's policy decision, the decision was an appropriate exercise of the County Council's legislative discretion.

Both the legislature and the Supreme Court are clear regarding the substantial deference that must be granted to the County Council in making policy determinations under the GMA. In 1997, the Legislature took "the unusual additional step" of enacting into law its statement of intent regarding such deference. Quadrant Corp. v. Growth Mgmt. Hearings Bd., 154 Wn.2d 224, 237, 110 P.3d 1132 (2005). That statement of intent is expressed in RCW 36.70A.3201, which states, in part:

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.

(Emphasis added). Through RCW 36.70A.3201, the legislature acknowledged the “broad range of discretion” granted to the County Council.

The deference afforded local jurisdictions in planning under the GMA ends only when it is shown that a county's actions constitute a “clearly erroneous” application of the GMA, such as when a county's legislative act is expressly prohibited by the GMA. Quadrant Corp. v. Growth Mgmt. Hearings Bd., 154 Wn.2d at 238. Here, the GMA neither requires nor prohibits the de-designation of natural resource land when that land no longer meets the statutory definition of natural resource land. Absent a plain and unambiguous legislative directive, Stafne cannot demonstrate that the County's denial of his docket proposal was a clearly erroneous application of the GMA.

To the contrary, the County Council's policy decision not to adopt Stafne's docket proposal advances the intent and policy behind the GMA. As previously stated, the GMA specifically emphasizes the protection of natural resource lands in its scheme to control and regulate growth. City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d at 58. One of the GMA's thirteen planning goals specifically addresses natural resources, as follows:

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.

RCW 36.70A.020(8). The purpose of the GMA's requirement to designate such lands and to adopt development regulations protecting them is to assure their conservation. RCW 36.70A.060(1); City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d at 47. The County Council's decision not to de-designate Stafne's property is consistent with these goals.

At oral argument, the trial court questioned why it was important, in the particular case of Stafne's property, for the County not to de-designate natural resource land. RP 10, lines 8-11. The answer lies in one of the fundamental purposes of the GMA, which is coordinated, area-wide planning. 1000 Friends of Washington v. McFarland, 159 Wn.2d 165,

180-81, 149 P.3d 616 (2006). The County Council is required to hear all proposed comprehensive plan amendments concurrently and no more than once a year. RCW 36.70A.130(2)(b). That requirement exists because, by definition, a comprehensive plan is “a generalized coordinated land use policy statement of the governing body of a county or city.” RCW 36.70A.030(4). Proposed amendments to a county’s comprehensive plan must be reviewed as a whole rather than in piecemeal fashion because only by reviewing the sum of docket proposals can a county’s legislative body ascertain their cumulative effects.

Here, Stafne’s docket proposal was processed along with 48 other citizen docket proposals, several of which requested de-designation of natural resource land.⁹ CP 231-232. If the County Council was required to separately evaluate each docket proposal, it would be denied the opportunity to consider the cumulative effects of those proposed amendments. Several de-designation proposals that individually have a de minimis impact might cumulatively have a significant impact on the protection of designated natural resources. The County Council’s policy

⁹ Only seven of these 48 citizen docket proposals advanced to the final docket for further processing. CP 231-232. No proposals requesting de-designation advanced to the final docket. *Id.* As a practical matter, if the trial court’s decision is not sustained, the County annually could be required to defend dozens of lawsuits from citizens dissatisfied with the County Council’s policy decisions. This runs counter to the purpose of the GMA’s docketing requirement: “The GMA requires public participation, but it does not require that a [local jurisdiction] necessarily *act upon* the desires expressed by the public during that participation.” City of Burien v. Central Puget Sound Growth Mgmt. Hearings Bd., 113 Wn. App. 375, 388, 53 P.3d 1028 (2002) (emphasis in original).

decision not to de-designate any natural resource lands through the docketing process advanced the natural resource protection goal of the GMA.

The County Council was not required to de-designate Stafne's property through the GMA docketing process. It made a policy decision not to de-designate Stafne's property that was consistent with GMA requirements and policies. The trial court properly declined to interfere with that policy decision and dismissed Stafne's complaint.

c. The doctrines of judicial restraint and separation of powers require the Court to refrain from altering the County's comprehensive plan.

The doctrines of judicial restraint and separation of powers require courts to refrain from intruding into matters of legislative policy, as otherwise courts would by judicial fiat make policy decisions that are properly the province of the legislative branch of government. "One of the fundamental principles of the American constitutional system is that the governmental powers are divided among three departments – the legislative, the executive, and the judicial – and that each is separate from the other." Carrick v. Locke, 125 Wn.2d 129, 134, 882 P.2d 173 (1994). The separation of powers doctrine serves to ensure that the fundamental functions of each branch are preserved. City of Spokane v. County of Spokane, 158 Wn.2d 661, 679, 146 P.3d 893 (2006).

In determining whether a separation of powers violation exists, Washington courts ask “whether the activity of one branch threatens the independence or integrity or invades the prerogatives of another.” Carrick v. Locke, 125 Wn.2d at 135. The Supreme Court holds “that the Judicial Branch [should] neither be assigned nor allowed tasks that are more properly accomplished by other branches” of government. Id. at 136, citing Mistretta v. United States, 488 U.S. 361, 383, 109 S.Ct. 647 (1989). Accordingly, the Supreme Court cautions lower courts not to review the wisdom of legislative acts or substitute their judicial judgment for legislative judgment. Washington State Public Employees’ Board v. Cook, 88 Wn.2d 200, 206, 559 P.2d 991 (1977).

In this case, determining whether to amend a comprehensive plan when there is no statutory duty to do so is a legislative policy decision with which the judiciary ought not to interfere. When the legislature established the GMA as a new mechanism for setting public policy regarding land use and development, it expressly delegated the authority to make those policy decisions to local legislative bodies. See RCW 36.70A.040; 36.70A.130; 36.70A.3201. Local legislatures, such as the County Council, are granted “the ultimate burden and responsibility for planning, harmonizing the planning goals of [the GMA], and implementing a county’s or city’s future.” RCW 36.70A.3201. Such

policy decisions are inherently political in nature as they require the solicitation and consideration of public input, the balancing of numerous disparate interests, and a determination regarding what approach will best serve the jurisdiction as a whole. Accordingly, any judicial determination regarding the permissible comprehensive plan designations for Stafne's property would improperly encroach into the domain of the legislative branch, violating the separation of powers doctrine and substituting the court's judgment for the legislative judgment of the County Council.

Because the judiciary cannot grant Stafne the legislative relief he desires, the trial court properly dismissed Stafne's complaint for failing to state a claim upon which relief could be granted under Civil Rule 12(b)(6).

d. Stafne's assertions regarding his boundary line adjustments and his allegations regarding the unauthorized practice of law are not relevant to the County Council's policy decision.

Stafne's brief focuses on certain issues which have no legal bearing or effect on his request for de-designation of his property. While Stafne does not explain how any of these tangential issues violates the GMA or otherwise entitles him to relief, the County addresses in this section two such issues to which Stafne devotes significant discussion.

- i. A boundary line adjustment is not a de facto de-designation of property.

Stafne's brief opens with the proposition that this case should be decided on the basis that the County is precluded from challenging Stafne's multiple boundary line adjustments. Stafne Brief at 1, citing Chelan County v. Nykreim, 146 Wn.2d 904, 52 P.3d 1 (2002). The County is not challenging the finality of Stafne's boundary line adjustments. Rather, the County challenges Stafne's assertion that his boundary line adjustments somehow performed a de facto de-designation of his property.

As previously explained, the comprehensive plan designation of property located within the County can be changed only through a legislative amendment enacted by the County Council. A boundary line adjustment, by contrast, is a ministerial land use action approved at the administrative, rather than the legislative, level.¹⁰ See Chelan County v. Nykreim, 146 Wn.2d 916. Stafne appears to believe that the administrative approval of an application for a boundary line adjustment by an official in the planning department is comparable to legislative

¹⁰ Appendix C contains chapter 30.41E SCC, the County's boundary line adjustment administrative process. See RAP 10.4(c).

action taken by the County Council after a public hearing. This belief is inaccurate and unfounded.

Stafne provides no support for the proposition that any action other than legislative amendment of the comprehensive plan can de-designate property. Indeed, such argument runs counter to case law that landowner intent alone cannot determine whether property should be designated natural resource land. See City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d at 53 (a landowner cannot control whether land is primarily devoted to agriculture for a natural resource designation by taking his or her land out of agricultural production). Stafne has mistakenly asserted that his own self-serving actions effectively de-designated his property and that the County has no choice but to adopt legislation ratifying such de-designation. This assertion is without legal support. Stafne's boundary line adjustments do not determine the legal outcome of this case.

- ii. Stafne's complaints regarding the planning department's evaluation of his docket proposal fail to recognize that the County Council exercised its legislative discretion in making the final decision regarding his docket proposal.

The planning department properly carried out its procedural obligations under chapter 30.74 SCC with regards to all docket proposals, including Stafne's. Pursuant to the County's docketing procedures, the

planning department was required to conduct an initial review and evaluation of each docket proposal. SCC 30.74.030. Stafne disagrees with the planning department's substantive conclusions regarding his docket proposal. In particular, he disagrees with the definition of "forest land" used by planning department staff. However, the planning department did not make the final decision regarding Stafne's proposal.

The planning department's recommendation to the County Council regarding Stafne's proposal was an advisory staff report, which was in no way binding on the County Council. Stafne had an opportunity to explain to the County Council, both in writing and verbally, why he believed the staff report was incorrect.¹¹ Stafne submitted written materials to the County Council in support of his docket proposal, and he appeared at the public hearing before the County Council to testify in support of his docket proposal. CP 767-769, 771-772.

¹¹ Planning department staff conducted further research and review regarding the issues raised by Stafne. The additional research and review culminated in a supplemental staff report that was submitted to the County Council as a public record on the day of the public hearing. CP 209-211. Stafne complains about this supplemental staff report, calling it a "secret" memo. See, e.g., Stafne Brief at 17-19. Yet there is nothing inappropriate or even unusual about this supplemental staff report. Stafne's proposal was one of 49 initiated by citizens and considered at the hearing. See CP 231-232. In addition, the County Council considered seven proposals initiated by the County. Id. In such a large legislative undertaking, the planning department is always asked to perform additional research and/or respond to public comment. The planning department often submits last-minute updates to the County Council on the day of the public hearing. Stafne has cited no authority that it is illegal for the County Council to receive and consider public record input from County staff at any time during its deliberations.

When the County Council made its policy decision not to forward Stafne's docket proposal onto the final docket, the County Council had before it not only the planning department's staff report, but also the written materials submitted by Stafne and Stafne's oral testimony. As explained above, the County Council was under no statutory duty to adopt Stafne's proposal. It was free to make a policy determination regarding Stafne's proposal. There were a number of policy reasons why the County Council could have decided to deny Stafne's docket proposal, notwithstanding anything contained in the planning department's staff report. Indeed, Stafne himself admitted to the trial court: "I got rejected because politically it's not what the council wants to do, with regard to natural resource land." RP 29, lines 10-12.

Although the GMA mandates that jurisdictions provide a docketing process, the GMA does not mandate that any particular outcome result from that process. "The GMA requires public participation, but it does not require that a [local jurisdiction] necessarily act upon the desires expressed by the public during that participation." City of Burien v. Central Puget Sound Growth Mgmt. Hearings Bd., 113 Wn. App. 375, 388, 53 P.3d 1028 (2002). The County created a GMA docketing process and properly followed that process. Stafne's dissatisfaction with the policy decisions

resulting from that process is not a cognizable legal claim, and his complaint was properly dismissed.

2. The County's Motion to Dismiss was Properly Granted Under CR 12(b)(1) Because the Trial Court Lacked Subject Matter Jurisdiction over Stafne's Case.

The County moved to dismiss Stafne's amended complaint under Civil Rule 12(b)(1) on the grounds that the trial court lacked subject matter jurisdiction over Stafne's case. Under RCW 36.70A.280(1), the Growth Boards have exclusive jurisdiction to hear appeals related to the adoption or amendment of comprehensive plans and development regulations. RCW 36.70A.280(1) states, in relevant part:

- (1) A growth management hearings board shall hear and determine only those petitions alleging either:
 - (a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or

(Emphasis added). RCW 36.70A.290(2) provides:

All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter . . . must be filed within sixty days after publication by the legislative bodies of the county or city.

(Emphasis added). Thus, any claim that the County failed to comply with the public participation procedures required by and established under RCW 36.70A.140 first must be presented to the Growth Boards, not the courts. Peste v. Mason, 133 Wn. App. 456, 467, 136 P.3d 140 (2006).

Here, Stafne's amended complaint alleged that the County's actions with respect to his docket proposal did not comply with the GMA. Accordingly, the Growth Board had exclusive subject matter jurisdiction over Stafne's claim. Stafne's failure to pursue a remedy before the Growth Board prior to filing this lawsuit deprived the trial court of subject matter jurisdiction over the lawsuit. Torrance v. King County, 136 Wn.2d 783, 786, 966 P.2d 891 (1998) (constitutional writ); Grandmaster Sheng-Yen Lu v. King County, 110 Wn. App. 92, 98-99, 38 P.3d 1040 (2002) (declaratory judgment); RCW 7.16.300 (writ of prohibition). Accordingly, the trial court properly granted the County's motion to dismiss Stafne's amended complaint for lack of subject matter jurisdiction pursuant to Civil Rule 12(b)(1).

The facts of this case are similar to those in Torrance v. King County, 136 Wn.2d 783. In Torrance, as here, a property owner desired to have a natural resource designation removed from his property. The property owner in Torrance submitted a docket proposal to the King County Council requesting that the comprehensive plan designation of his

property be altered. Id. at 786. The King County Council considered the docket proposal and decided not to change the property's natural resource designation. Id. The property owner petitioned the Growth Board to review the King County Council's decision not to de-designate his property. The Growth Board found that the King County Council's decision not to de-designate the property during the docketing process was a legal exercise of legislative discretion. Torrance v. King County, CPSGMHB Case No. 96-3-0038, Order Granting Dispositive Motion (March 31, 1997) (1997 WL 461768).

Although the property owner could have appealed the Growth Board's decision to superior court pursuant to the Administrative Procedures Act ("APA") (chapter 34.05 RCW), the property owner did not do so. Id. at 786. Instead, he filed a new lawsuit against King County in superior court seeking a constitutional writ of certiorari. Id. at 786-87. The trial court granted the requested writ, and King County appealed.

The Supreme Court reversed the trial court's decision, holding that the trial court erred in granting the constitutional writ of certiorari because the property owner had failed to pursue the appropriate avenue of review. The Supreme Court held that the GMA establishes a mandatory administrative review process designed to resolve allegations that a local jurisdiction failed to comply with the GMA. Id. at 788. The GMA

requires that a person making an allegation of non-compliance file a petition with the Growth Board. Id. at 788; RCW 36.70A.280.

The Supreme Court held that while the property owner in Torrance appropriately challenged King County's alleged non-compliance with the GMA before the Growth Board, when the property owner received an unfavorable decision from the Growth Board, he should have appealed that decision to superior court under the APA rather than commencing a lawsuit under a different means of judicial review in superior court. The Supreme Court held that the APA affords full and complete relief from an unfavorable Growth Board decision, and the property owner's failure to appeal the Growth Board's decision under the APA precluded the superior court from granting him a constitutional writ of review. Id. at 791-94.

Here, Stafne alleges that Snohomish County failed to comply with the GMA because the County Council should have adopted his docket proposal. If Stafne did not receive the relief he sought from the Growth

Board, he then could have sought review of the Growth Board's decision in superior court under the APA.¹² Because the Growth Board had exclusive jurisdiction over Stafne's claim, the trial court lacked subject matter jurisdiction over Stafne's lawsuit. Accordingly, the trial court properly dismissed Stafne's amended complaint under Civil Rule 12(b)(1).

3. The Trial Court Did Not Err in Granting the County's Motion to Dismiss Because the County's Planning Department Did Not Engage in the Unauthorized Practice of Law or Judicial Review.

While the legal theory behind Stafne's third assignment of error is not clear, it is clear that Stafne assumes that planning department staff engaged in the practice of law during the County's docketing process. Nowhere in his brief does Stafne substantiate this assumption, or even define the practice of law. Because Stafne does not provide legal argument or authority to support his contention, the Court should not consider Stafne's third assignment of error. Talps v. Arreola, 83 Wn.2d 655, 657, 521 P.2d 206 (1974) (contentions that are not supported by argument or authority are not considered on appeal). Further, to the extent that Stafne argues in his third assignment of error that the planning

¹² Stafne correctly asserts that the Growth Board routinely holds that counties are not required to adopt citizen-initiated legislative proposals as part of the GMA docketing process. Stafne Brief at 36. See SR 9 / US 2 LLC v. Snohomish County, CPSGMHB Case No. 08-3-0004, Order Granting Motion to Dismiss (April 9, 2009) (2009 WL 1134039); Torrance v. King County, CPSGMHB Case No. 96-3-0038, Order Granting Dispositive Motion (March 31, 1997) (1997 WL 461768). However, as determined in Torrance, Stafne's dissatisfaction with these Growth Board decisions does not excuse him from seeking relief from the Growth Board prior to filing suit in superior court.

department's actions constituted judicial review of his docket proposal, this argument was not raised below and also should not be considered. Id. at 658 (courts will not consider a theory as ground for reversal unless it can ascertain from the record that it was first presented to the trial court).

However, in the event the Court decides to consider Stafne's third assignment of error, the County addresses the issue as follows. Stafne's third assignment of error appears to contend that chapter 30.74 SCC is unconstitutional because it authorizes individuals who are not licensed attorneys to perform activities constituting the practice of law.¹³ While it is unclear precisely which of Stafne's original causes of action encompasses this constitutional argument, the County explains below both (1) the legal doctrines upon which such an argument could be based, and (2) why those legal doctrines do not apply to chapter 30.74 SCC.

As previously discussed, every year, as a part of the County's annual docketing process, County employees working in the County's planning department perform an initial review of each docket proposal the County receives. SCC 30.74.030. Planning department staff compare

¹³ Several of the cases cited in Stafne's brief deal with the unauthorized practice of law. See, e.g., Hagan & Van Camp, P.S. v. Kassler Escrow, Inc., 96 Wn.2d 443, 635, P.2d 730 (1981); Jones v. Allstate Ins. Co., 146 Wn.2d 291, 45 P.2d 1068 (2002). However, Stafne repeatedly uses the term "judicial review" in his third assignment of error. Stafne never defines the term or explains how the County's docketing process constitutes judicial review. Thus, the County's brief focuses on the substance of the cases cited by Stafne, which is the unauthorized practice of law. As explained previously on pages 16-17, the County's docketing process is legislative.

each docket proposal to criteria set forth in the County Code and provide the County Council with an advisory memorandum describing the ways in which each particular docket proposal does or does not appear to meet the codified criteria. Stafne characterizes this administrative review of docket proposals by planning department staff as the practice of law. Because the County employees assigned to perform the initial review of docket proposals pursuant to SCC 30.74.030 are not licensed attorneys, Stafne argues that SCC 30.74.030 requires non-lawyers to engage in the unauthorized practice of law.

Stafne's argument ignores the special role administrative agencies play in implementing law in modern American society. While the County agrees with Stafne that neither the legislative nor the executive branches of government may usurp the judicial branch's authority to regulate the practice of law, chapter 30.74 SCC makes no attempt to regulate the practice of law. Chapter 30.74 SCC is instead an administrative statute requiring County employees to assist the County Council in gathering information relevant to the County Council's legislative GMA-based policy decisions. Because chapter 30.74 SCC does not authorize or require non-lawyers to engage in the practice of law, there is nothing unconstitutional about that chapter of the County Code.

a. Non-lawyers are prohibited from engaging in the practice of law.

Both the Supreme Court and the Legislature prohibit non-lawyers from practicing law. APR 3(b); RCW 2.48.170. The primary justification for these rules is “to protect the public from the harm of the lay exercise of legal discretion.” Perkins v. CTX Mortg. Co., 137 Wn.2d 93, 105, 969 P.2d 93, 99 (1999).

Article IV, Section 1 of the Washington Constitution vests in the judicial branch the ultimate power to regulate the practice of law within the state. Washington State Bar Ass’n v. State, 125 Wn.2d 901, 908, 890 P.2d 1047, 1051 (1995); Matter of Washington State Bar Ass’n, 86 Wn.2d 624, 631-32, 548 P.2d 310, 315 (1976). Since the regulation of the practice of law is within the sole province of the judiciary, legislative attempts to govern the profession can pose a separation of powers problem. Hagan & Van Camp, P.S. v. Kassler Escrow, Inc., 96 Wn.2d 443, 453, 635 P.2d 730, 736 (1981). Because the Supreme Court forbids non-lawyers from engaging in the practice of law, if the County Council were to enact legislation purporting to authorize non-lawyers to practice law, such legislation would be unconstitutional. Here, the County Council did no such thing.

The Supreme Court defines the term “the practice of law” in General Rule (“GR”) 24 as follows:

- (a) The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:
 - (1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
 - (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
 - (3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
 - (4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

...

- (e) Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

The review and evaluation of docket proposals by planning department staff pursuant to chapter 30.74 SCC does not fall within the definition of the practice of law set forth in GR 24(a). When reviewing docket proposals, planning department staff do not: (1) give advice or counsel to others as to their legal rights or responsibilities for fees; (2) select, draft or

complete legal documents; (3) represent others in court proceedings; or (4) negotiate legal rights or responsibilities on behalf of another. Thus, the activities that planning department staff are required to perform under chapter 30.74 SCC do not fall within the definition of the practice of law.

b. The planning department is a County government agency covered by the exception in GR 24(e).

Even if chapter 30.74 SCC requires planning department staff to perform activities that fall within GR 24(a)'s definition of "the practice of law," those activities also clearly fall within the "governmental agency" exception set forth in GR 24(e), which provides that "[n]othing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law." The County's planning department is a government agency authorized by Section 3.90 of the Snohomish County Charter¹⁴ and created by chapter 2.01 SCC.¹⁵

A "government agency" is "[a] governmental body with the authority to implement and administer particular legislation." Black's Law Dictionary 63 (7th ed. 1999).

An agency must be created by constitution, by statute, by agency action, or by executive order. Since most agencies have their source in legislative enactments, courts often refer to agencies as creatures of the legislature which act pursuant to specific grants of authority conferred by their

¹⁴ Appendix D contains Section 3.90 of the Snohomish County Charter. See RAP 10.4(c).

¹⁵ Appendix E contains chapter 2.01 SCC. See RAP 10.4(c).

creator. Congress, state legislatures, and municipal corporations may create administrative agencies.

2 Am. Jur. 2d Administrative Law § 23 (2009). In the realm of municipal law, statutes or charters ordinarily provide for various boards, commissions, or departments to assist in the administration of municipal affairs. 56 Am. Jur. 2d Municipal Corporations, Etc. § 289 (2009). The County's planning department is required by its enacting legislation to "manage overall land use planning activities," "develop comprehensive land use plans," "administer zoning and development codes," "coordinate the permit and inspection process," and "perform other resource management functions which may be assigned to it." SCC 2.01.010; 2.01.030. The planning department is also required by ordinance to assist with GMA docketing.

There is nothing unusual, improper or unconstitutional about the County Council's delegation of administrative docketing tasks to a government agency such as the planning department. "It is reasonable for an [elected] official to seek assistance from his or her subordinates in gathering facts and making recommendations, so long as the ultimate decisionmaking power has not been delegated." 63C Am. Jur. 2d Public Officers and Employees § 235 (2009). Here, the County Council requires

the planning department to provide the County Council with the following assistance regarding docket proposals:

[C]onduct an initial review and evaluation of proposed amendments [to the comprehensive plan], and assess the extent of review that would be required under the State Environmental Policy Act (SEPA) prior to county council action. The initial review and evaluation shall include any review by other county departments deemed necessary by the [planning] department, and shall be made in writing.

SCC 30.74.030(1). The County Council delegates none of its decision making authority or its legislative discretion regarding docket proposals to the planning department. The County Council is not bound by any recommendations made or conclusions reached by the planning department. SCC 30.74.050(2). Instead, the County Council retains full legislative discretion regarding which docket proposals to approve for further processing onto the final docket. SCC 30.74.050(2). Therefore, the planning department's role regarding the County's GMA docketing process falls within the "governmental agency" exception set forth in GR 24(e).

Because chapter 30.74 SCC does not purport to authorize non-lawyers to perform activities constituting the practice of law or engage in judicial review, but instead merely directs an administrative agency of the County to assist the County Council in processing docket proposals,

chapter 30.74 SCC is not unconstitutional and does not violate the separation of powers doctrine.

C. **The Trial Court Did Not Err in Denying Stafne's Motion for Summary Judgment.**

Stafne's motion for summary judgment sought a judicial declaration that his property did not meet the statutory definition of natural resource land and, therefore, was de-designated as a matter of law. CP 112-113. The trial court properly denied his motion for two reasons. First, Stafne was not entitled to judicial de-designation of his property as a matter of law. Second, genuine issues of material fact as to whether his property met the statutory definition of natural resource land remained.

Summary judgment is appropriate where the pleadings, depositions, and admissions on file demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c); Kesinger v. Logan, 113 Wn.2d 320, 325, 779 P.2d 263 (1989); Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). A material fact is one upon which the outcome of the litigation depends in whole or in part. Morris v. McNicol, 83 Wn.2d 491, 494, 519 P.2d 7 (1974). Any doubts as to the existence of a genuine issue of material fact are resolved against the moving party. The court should consider all the facts submitted and the reasonable inferences from those

facts in the light most favorable to the non-moving party. Wilson v. Steinbach, 98 Wn.2d at 437.

1. Stafne is not entitled to declaratory judgment as a matter of law.

A motion for summary judgment may be granted only when the moving party is entitled to judgment as a matter of law. CR 56(c); Kesinger v. Logan, 113 Wn.2d at 325; Wilson v. Steinbach, 98 Wn.2d at 437. As the County described in section III.B.1 of this brief, Stafne is not entitled the judgment he seeks. There is no statutory duty for the County to de-designate his property during the docketing process, even if his property no longer meets the definition of natural resource land. The County Council appropriately exercised its legislative discretion in not forwarding Stafne's docket proposal to the final docket. The trial court did not err in denying Stafne's summary judgment motion.

2. Genuine issues of material fact remain that preclude summary judgment.

Stafne's motion for summary judgment rested on two contested factual assertions. First, Stafne claimed that the property lines resulting from his boundary line adjustments were ascertainable. CP 121. Second, Stafne claimed that his property did not meet the definition of "forest land" under RCW 36.70A.030(8). Id. The County presented evidence to the trial court that refuted both assertions. Because the conflicting

evidence presented to the trial court raised questions regarding genuine issues of material fact, Stafne's motion for summary judgment was properly denied.

a. The effect of Stafne's boundary line adjustments is unclear.

Planning department staff used current data from the Snohomish County Assessor in performing their initial review and evaluation of Stafne's docket proposal and in determining that Stafne's property continued to meet the criteria for forest land designation. CP 210-211. Stafne alleged during the docket review process that this data did not reflect "the numerous boundary lines adjustments inside [Twin Falls Estate]'s boundaries" since 1998. CP 15, ¶ 7.

After receiving Stafne's criticism regarding their review of his docket proposal, planning department staff conducted additional research and met with personnel from both the Snohomish County Assessor's Office and the Snohomish County Auditor's Office. In an effort to address Stafne's concerns, the planning department provided the following information to the County Council in a supplemental staff report:

PDS completed each initial staff evaluation using a standard procedure of confirming proposal site location and ownership using the Assessor's information along with information provided with each docket application. This included using the Assessor's website in researching location and ownership of the proposal site. However, PDS

subsequently met with and confirmed with the Assessor's office that the information located on the Assessor's webpage does not reflect the series of recently recorded boundary line adjustments and quit claim deeds which altered the configuration and the ownership patterns within the proposal site. Staff is currently working with the Assessor's office and the Auditor's office to confirm the configuration and ownership of the parcels. Additional parcel and ownership information will be entered into the record once the configuration and ownership of the parcels are confirmed.

CP 210-211.

County staff from the planning department, the assessor's office and the auditor's office were not able to confirm the configuration and ownership of the parcels at issue in Stafne's docket proposal. Stafne did not provide evidence that definitively concluded the issue. Because a genuine issue of material fact regarding the configuration and ownership of the property remained, Stafne's motion for summary judgment was properly denied.

b. The evidence does not conclusively demonstrate that Stafne's property does not meet the statutory definition of natural resource land.

Stafne's property originally was designated forest land because it met the criteria for designation set forth in RCW 36.70A.030(8), WAC 365-190-060, and the County's Comprehensive Plan Policy LU 8.A.2. See CP 140. Any change in the designation of forest lands must be consistent with the designation criteria of the GMA and the County's

comprehensive plan. See, e.g., Yakima County v. Eastern Washington Growth Mgmt. Hearings Bd., 146 Wn. App. at 688. Thus, in order for the County to de-designate Stafne's property, Stafne would have to conclusively demonstrate that his land no longer meets the codified designation criteria for forest land imposed by both the GMA definition of "forest land" and the County's comprehensive plan.

The planning department's review and evaluation of Stafne's proposal determined that Stafne's property continues to meet these designation criteria. CP 202-203, 209-211. Although Stafne disputes the conclusion reached by the planning department, the department's conclusion and supporting documentation raise genuine issues of material fact that precluded the trial court from granting Stafne's motion for summary judgment. Accordingly, Stafne's motion for summary judgment was properly denied.

IV. CONCLUSION

Stafne is clearly frustrated with and disappointed by the County Council's decision to reject his docket proposal and preserve the natural resource designation of his property. He does not agree with that decision. He has spent many years and undoubtedly many hours seeking de-designation of his property. But Stafne's frustration and disappointment do not equate to a cognizable legal claim that the County was required to

de-designate his property during the docketing process. At the end of the day, the key issue in this case is that the County Council made a policy decision to reject Stafne's docket proposal. Because the County Council acted properly, the trial court appropriately granted the County's motion to dismiss and denied Stafne's motion for summary judgment. The County respectfully requests that this Court uphold the trial court's decision in this case.

V. STATUTORY COSTS AND ATTORNEYS' FEES

Pursuant to Rule of Appellate Procedure 18.1, RCW 4.84.010 and 4.84.080, the County requests its statutory costs and attorneys' fees.

Submitted this 12th day of June, 2009.

JANICE E. ELLIS
Snohomish County Prosecuting Attorney

By: 
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Attorneys for Snohomish County

APPENDIX A

30.74 SCC

- (e) To resolve an appeal filed with a growth management hearings board or with the court; or
- (f) Amendment is required by state or federal law.

(2) Except as authorized by SCC 30.73.085(1), the council will consider whether to amend the comprehensive plan annually pursuant to chapter 30.74 SCC. The department shall coordinate county agency and planning commission review of proposed amendments, including amendments proposed pursuant to chapter 30.74 SCC.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.090 Adoption of Type 3 proposal as an emergency action.

(1) The council may adopt a Type 3 action as an emergency action under RCW 36.70A.130(2)(b) or 36.70A.390. All other provisions of this chapter shall not apply to the adoption of a Type 3 action as an emergency action.

(2) Except as provided in SCC 30.73.090(3), the council may adopt a Type 3 action by emergency action only after holding at least one public hearing following public notice as described in SCC 30.73.090(4).

(3) The council may adopt a Type 3 action that is a moratorium, interim zoning map, interim zoning ordinance, or interim official control by emergency action without holding a public hearing prior to taking such action if the council holds a public hearing following public notice as described in SCC 30.73.090(4) within 60 days of adoption and otherwise complies with RCW 36.70A.390.

(4) Public notice of the time, date, place, and general purpose of the public hearing on a Type 3 emergency action under this section shall be provided as follows:

(a) Notice shall be given by one publication, at least 10 days before the hearing in the official county newspaper; and

(b) The county council may, at its discretion, utilize additional methods for providing notice.

(5) An ordinance adopted under this section shall include a statement of the need for emergency action.

(6) This section shall not be construed to limit the council's authority to enact an emergency ordinance pursuant to the county charter, except as expressly provided herein.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.100 Appeal of a Type 3 decision.

A Type 3 action of the council is a final decision, but may be reviewable by filing a petition for review with the growth management hearings board in accordance with RCW 36.70A.290, except as otherwise provided by law.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.110 Compliance with this chapter.

Errors in exact compliance with this chapter shall not render a Type 3 decision invalid if the spirit of the public participation provisions of this chapter is observed.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

Chapter 30.74 GROWTH MANAGEMENT ACT PUBLIC PARTICIPATION PROGRAM DOCKETING

30.74.010 Purpose and applicability.

(1) The purpose of this chapter is to establish procedures for persons to propose amendments and revisions to the comprehensive plan and implementing development regulations adopted under the Growth Management Act (GMA).

(2) Any person may propose amendments to the comprehensive plan and implementing development regulations adopted under the GMA. This chapter applies to proposed amendments to:

- (a) The goals, objectives, policies, and implementation measures of the comprehensive plan;
- (b) The future land use map;
- (c) The urban growth area boundaries;
- (d) The transportation element;
- (e) The capital facilities element;
- (f) The county park plan;
- (g) Subarea plans;
- (h) The Shoreline Management Master Program;
- (i) Any part of the Snohomish County Code adopted to meet the requirements of the GMA; and
- (j) The zoning map if concurrent with a requested future land use map amendment.

(3) This chapter is intended to supplement, and not to limit or replace, existing county authority and procedures for adoption of legislation, including, but not limited to, the county charter and chapter 30.73 SCC. Nothing in this chapter shall be constructed to limit the legislative authority of the county to consider and adopt amendments and revisions to the comprehensive plan and development regulations.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.74.015 Annual Docket Process

Amendments to the comprehensive plan may be proposed by the council no more than once per year as part of the annual docket process established in this chapter, except for amendments authorized by SCC 30.73.085.

(Added Amended Ord. 04-094, November 17, 2004, Eff Date December 10, 2004)

30.74.020 Submittal requirements.

Any person proposing amendments to the comprehensive plan or development regulations under this chapter must submit the following to the department:

- (1) A description of the proposed amendment including proposed map or text changes;
- (2) The location of the property that is the subject of amendment on an assessor map dated and signed by the applicant, if the proposal is for a future land use map amendment;
- (3) A legal description and a notarized signature of one or more owners, if a rezone is requested by owners concurrent with a requested future land use map amendment;
- (4) An explanation of why the amendment is being proposed;
- (5) An explanation of how the proposed amendment is consistent with the GMA, the countywide planning policies, and the goals and objectives of the comprehensive plan;
- (6) If applicable, an explanation of why existing comprehensive plan language should be added, modified, or deleted; and
- (7) A SEPA checklist.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.74.030 Initial review and evaluation.

(1) The department shall conduct an initial review and evaluation of proposed amendments, and assess the extent of review that would be required under the State Environmental Policy Act (SEPA) prior to county council action. The initial review and evaluation shall include any review by other county departments deemed necessary by the department, and shall be made in writing. The department shall recommend to the county council that the amendment be further processed only if all of the following criteria are met, except as provided in SCC 30.74.040:

(a) The proposed amendment is consistent with the countywide planning policies, the GMA, and other state or federal law;

(b) The time required to analyze probable adverse environmental impacts of the proposed amendment is available within the time frame for the annual docketing process;

(c) The time required for additional analysis to determine the need for additional capital improvements and revenues to maintain level of service, when applicable to the proposal, is available within the time frame for the annual docketing process;

(d) Any proposed change in the designation of agricultural and forest lands is consistent with the designation criteria of the GMA and the comprehensive plan;

(e) The proposed amendment does not make a change in an area that is included in a proposed subarea plan scheduled for completion and final action by the council prior to the next docket submittal deadline;

(f) The proposed amendment is not precluded from being considered at the present time by the GMA or comprehensive plan;

(g) The time required for processing any required additional amendments not anticipated by the proponents is available within the time frame of the annual docketing process; and

(h) If the proposed amendment has been reviewed by the planning commission or county council as part of a previous proposal, circumstances related to the current proposal have significantly changed and support a plan or regulation change at this time.

(2) If the department finds that a proposal does not meet initial evaluation criteria, the department will, if appropriate, make recommendations to the applicant of the proposal regarding:

(a) Impact analysis needed;

(b) Possible modifications to the request to meet criteria; and

(c) Likelihood of inclusion of the proposal in the department's work program.

(3) Any person may resubmit a proposal to the department at any time, subject to the timelines contained in this chapter.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.74.040 Initial review of rezone requests.

The department shall recommend to the county council that a rezone be further processed only if all the following criteria are met:

(1) The rezone request is for an implementing zone consistent with a concurrent proposed amendment to the future land use map that meets the criteria of SCC 30.74.030;

(2) Public facilities and services necessary for development of the site, as defined in applicable capital facilities plans, are available or programmed to be provided consistent with the comprehensive plan and development regulations as determined by applicable service providers; and

(3) Site plan approval would not be required concurrent with the rezone under chapters 30.31A, 30.31B, or 30.31F SCC.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.74.050 Council approval of final docket.

- (1) On or before the last business day of March of each year the department shall prepare a recommendation on each of the amendments proposed for consideration, and forward the recommendation to the county council.
- (2) The county council will review the recommendation and determine in a public hearing which of the proposed amendments should be further processed.
- (3) Notice of the council hearing shall be given as required by SCC 30.73.070.
- (4) The proposed amendments approved for further processing by the council shall be known as the final docket.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Ord. 06-077, Oct. 2, 2006, Eff date Oct. 14, 2006)

30.74.060 Processing of final docket.

- (1) The department shall distribute the final docket to any state or local agency which is required by law to review and evaluate proposed amendments and revisions to the comprehensive plan and implementing development regulations. The department shall also conduct any review required by SEPA of the proposed amendments and revisions listed on the final docket.
- (2) The department will process the final docket in accordance with chapter 30.73 SCC. The department shall prepare a report including a recommendation on each proposed amendment and forward the report to the planning commission. The department will recommend approval if all the following criteria are met:
 - (a) The proposed amendment and any related proposals on the current final docket maintain consistency with other plan elements or development regulations;
 - (b) All applicable elements of the comprehensive plan, including but not limited to the capital plan and the transportation element, support the proposed amendment;
 - (c) The proposed amendment more closely meets the goals, objectives and policies of the comprehensive plan than the relevant existing plan or code provision;
 - (d) The proposed amendment is consistent with the countywide planning policies;
 - (e) The proposed amendment complies with the GMA; and
 - (f) New information is available that was not considered at the time the relevant comprehensive plan or development regulation was adopted that changes underlying assumptions and supports the proposed amendment.
- (3) Unless otherwise directed by the county council, any county department that conducts review and evaluation of the proposed amendments, including any necessary environmental review pursuant to SEPA, shall complete its evaluation prior to action by the planning commission on the proposed amendments, except that a final or final supplemental environmental impact statement must be completed no later than seven days prior to final action by the county council.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.74.070 Cost of environmental studies.

Any person with a proposal on the final docket shall pay the cost of environmental review and studies under SEPA for proposed amendments with probable significant adverse environmental impacts that have not been previously analyzed, as required under chapter 30.61 SCC. The person may contribute to the cost of other studies required by existing plan policies or development regulations in order to facilitate the preparation of these studies in a timely manner. The person may, at his or her own expense and to the extent determined appropriate by the responsible official, provide additional studies or other information.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

APPENDIX B

30.73 SCC

temporarily stay the force and effect of all or any part of an issued permit or approval until the final decision of the hearing examiner is issued.

(Added Amended Ord. 05-022, May 11, 2005, Eff date May 28, 2005)

Chapter 30.73

TYPE 3 DECISIONS - LEGISLATIVE

30.73.010 Purpose and applicability.

(1) The purpose of this chapter is to set forth procedures for adoption or amendment of the comprehensive plan and development regulations pursuant to the Growth Management Act, chapter 36.70A RCW.

(2) This chapter is intended to supplement, and not to limit, existing county authority and procedures for adopting legislation. Nothing in this chapter shall be construed to limit the legislative authority of the county council to consider and adopt amendments and revisions to the comprehensive plan and development regulations, except as expressly provided in this chapter.

(3) The provisions of this chapter apply to all Type 3 legislative decisions which include and are limited to adoption or amendment of the comprehensive plan, county-initiated rezones to implement the comprehensive plan, docketing proposals submitted pursuant to chapter 30.74 SCC, and new GMA development regulations or amendment of existing development regulations.

(4) This chapter shall not apply to amendments to the initiative, mini-initiative, or referendum process provided for in Article 5 of the county charter.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.020 Overview of Type 3 legislative process.

(1) Adoption or amendment of the comprehensive plan and development regulations is a legislative decision, rather than a project permit decision. The legislative process includes a public hearing before the county council and may include a public hearing before the planning commission. It is designed to solicit a broad range of public input at all levels.

(2) Appeal of a Type 3 decision is made to the growth management hearings board in accordance with RCW 36.70A.290, except as otherwise provided by law.

(3) Council legislative action on other matters is governed by the county charter and other applicable law, and is not subject to this chapter.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.030 Initiation of Type 3 legislative actions.

Type 3 legislative actions may be initiated by:

- (1) The county council;
- (2) The planning commission; or
- (3) The county executive.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.040 Planning commission hearing on Type 3 proposal.

(1) The planning commission shall hold at least one public hearing to consider a Type 3 proposal, except as provided in this section.

(2) Planning commission review is not required for the following:

- (a) Emergency legislation authorized by RCW 36.70A.130(2)(b) or SCC 30.73.090;
- (b) Procedural legislation, including legislation affecting the planning commission;
- (c) Legislation to implement any state legislation other than the Growth Management Act;
- (d) Legislation to adopt amendments or revisions to the comprehensive plan for the purpose of resolving an appeal of the comprehensive plan filed with the growth management hearings board or a court; and
- (e) Legislation enacted in response to a growth management hearings board decision pursuant to RCW 36.70A.300 declaring all or part of the comprehensive plan or a development regulation invalid; and
- (f) Setting of the final docket pursuant to SCC 30.74.050.

(3) If a Type 3 proposal is referred to the planning commission by the county council, the planning commission shall hold a public hearing within 90 days of the date council refers the proposal to the planning commission, unless:

(a) The county council specifies a different schedule when it refers the proposal to the planning commission;

(b) The proposal is subject to the environmental review procedures of chapter 43.21C RCW and it is determined to have probable significant adverse environmental impacts, in which case the planning commission shall hold a public hearing within 60 days of the completion of the draft environmental impact statement or draft supplemental environmental impact statement prepared under chapter 43.21C RCW; or

(c) The proposal would amend the comprehensive plan, in which case the planning commission shall hold a public hearing within one year of the date council refers the proposal to the planning commission or on the same date as the next planning commission hearing to consider docketing proposals submitted pursuant to chapter 30.74 SCC, whichever comes first.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended by Ord. 08-132, Oct. 22, 2008, Eff date Nov. 16, 2008)

30.73.045 Report of department.

(1) The department responsible for implementing a Type 3 proposal shall prepare a report summarizing the proposal, which shall include findings and recommendations. The report shall include information provided by other county departments, as determined necessary by the department preparing the report, and shall include information regarding the SEPA review process.

(2) At least 10 calendar days prior to the scheduled public hearing, the preparing department shall transmit the report to the planning commission, and make it available for public inspection. Copies shall be provided upon payment of reproduction costs.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.050 Notice of planning commission hearing Type 3 proposal.

(1) The planning commission shall set a public hearing and the department shall provide notice as follows:

(a) Notice of public hearing shall be given by one publication at least 10 days before the hearing in the official county newspaper and, if the proposal is site specific, in a newspaper of general circulation in the area affected;

(b) For public hearings involving a change to a comprehensive plan future land use map designation or a Type 3 rezone action, the planning commission shall also provide the following notice at least 10 days prior to the hearing:

(i) a mailed notice of hearing to each taxpayer of record and known site address within the area proposed

for a Type 3 action and to each taxpayer of record and known site address within 500 feet of any boundary of the area; provided that notice of the hearing shall be mailed to all taxpayers of record and known site addresses within 1,000 feet of said boundaries when the existing zoning of the parcel subject to the Type 3 action is resource, rural, R-20,000, or Rural Use ; and

(ii) conspicuously post two or more signs at least 10 days before the first hearing. Such posting shall be evidenced by a verified statement regarding the date and location of posting; and

(c) The planning commission may prescribe additional methods for providing notice and for obtaining public participation.

(2) Notice required by this section shall contain the following information:

(a) A description of the proposal, including any fundamental policy changes, the assigned county file number and contact person;

(b) A description of any studies or documents assessing the environmental impacts of the proposal and the location where the documents or studies can be reviewed;

(c) The date, time, and place of the public hearing and how an interested party may submit comments on the proposal;

(d) A statement of where the public may obtain the full text of the proposed amendment and, if applicable, a map showing the location of proposed comprehensive plan or official zoning map changes; and

(e) Any other information determined appropriate by the department.

(3) Notwithstanding the foregoing, in adopting legislation in response to a growth management hearings board decision declaring part or all of a comprehensive plan or development regulation invalid, the county will provide for such public participation as is appropriate and effective under the circumstances presented by the board's order.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.060 Planning commission action on Type 3 proposal.

(1) At the conclusion of the public hearing, the planning commission shall make a written recommendation and shall transmit the recommendation to the county council, except as provided in SCC 30.73.060(4).

(2) The planning commission may recommend that the council adopt, amend and adopt, or decline to adopt the Type 3 proposal.

(3) The planning commission recommendation shall be by the affirmative vote of not less than a majority of the total members of the commission.

(4) A planning commission recommendation is not required for a Type 3 proposal initiated and abandoned by the planning commission.

(5) If the planning commission does not adopt and transmit a recommendation to the county council within 45 days following the deadline for a planning commission hearing as specified in SCC 30.73.040(3), council may consider the proposal without a planning commission recommendation as provided in SCC 30.73.070.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended by Ord. 08-132, Oct. 22, 2008, Eff date Nov. 16, 2008)

30.73.070 Council consideration of Type 3 proposal.

(1) The council is not required to take action on a Type 3 proposal. If the council wishes to consider action on a Type 3 proposal, the council shall hold at least one public hearing.

(2) The clerk of the council shall set the date of the public hearing and shall provide notice in the same manner as set forth in SCC 30.73.050.

(3) The council may, in its discretion, direct the clerk to use additional methods for providing notice and obtaining public participation.

(4) At its public hearing, the council may concurrently consider additional proposals relating to the same subject matter, whether or not considered by the planning commission, in accordance with RCW 36.70A.035(2).

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.080 Council action on Type 3 proposal.

(1) At the conclusion of the public hearing, the council may take one of the following actions, or take no action:

- (a) Adopt;
- (b) Amend and adopt;
- (c) Decline to adopt;
- (d) Remand in whole or in part to the planning commission for further consideration;
- (e) Adopt such other proposals or modifications of such proposals as were considered by the council at its own hearing; or
- (f) Take any other action permitted by law.

(2) Any ordinance adopting a Type 3 proposal may include findings and conclusions to support the council's decision.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.083 GMA Schedule for Review of Plans and Regulations

This section establishes a schedule for the county to review and revise comprehensive plans and development regulations with public participation pursuant to the Growth Management Act, chapter 36.70A RCW:

(1) On or before December 1, 2004, and every seven years thereafter, the county will review and evaluate the GMA comprehensive plan and development regulations for compliance with GMA; and

(2) At least every ten years from adoption of the original GMA Comprehensive Plan (June 21, 1995), the county will review its designated urban growth areas and the densities permitted within both the incorporated and unincorporated portions of each urban growth area for accommodation of growth projections to occur in the county for the succeeding twenty-year period; and

(3) No more than once per year, updates, proposed amendments, or revisions to the comprehensive plan may be considered by the council as part of the yearly docket process established in chapter 30.74 SCC except for amendments authorized by SCC 30.73.085.

(Added Amended Ord. 04-094, November 17, 2004, Eff Date December 10, 2004)

30.73.085 Limitation on comprehensive plan amendments.

(1) The comprehensive plan may be amended no more frequently than once each year, except that it may be amended more frequently under the following circumstances:

- (a) The initial adoption of a subarea plan;
- (b) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;
- (c) Amendment of the capital facilities element of the comprehensive plan that occurs concurrently with adoption or amendment of the county budget;
- (d) An emergency exists within the meaning of RCW 36.70A.130(2)(b);

- (e) To resolve an appeal filed with a growth management hearings board or with the court; or
- (f) Amendment is required by state or federal law.

(2) Except as authorized by SCC 30.73.085(1), the council will consider whether to amend the comprehensive plan annually pursuant to chapter 30.74 SCC. The department shall coordinate county agency and planning commission review of proposed amendments, including amendments proposed pursuant to chapter 30.74 SCC.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.090 Adoption of Type 3 proposal as an emergency action.

(1) The council may adopt a Type 3 action as an emergency action under RCW 36.70A.130(2)(b) or 36.70A.390. All other provisions of this chapter shall not apply to the adoption of a Type 3 action as an emergency action.

(2) Except as provided in SCC 30.73.090(3), the council may adopt a Type 3 action by emergency action only after holding at least one public hearing following public notice as described in SCC 30.73.090(4).

(3) The council may adopt a Type 3 action that is a moratorium, interim zoning map, interim zoning ordinance, or interim official control by emergency action without holding a public hearing prior to taking such action if the council holds a public hearing following public notice as described in SCC 30.73.090(4) within 60 days of adoption and otherwise complies with RCW 36.70A.390.

(4) Public notice of the time, date, place, and general purpose of the public hearing on a Type 3 emergency action under this section shall be provided as follows:

(a) Notice shall be given by one publication, at least 10 days before the hearing in the official county newspaper; and

(b) The county council may, at its discretion, utilize additional methods for providing notice.

(5) An ordinance adopted under this section shall include a statement of the need for emergency action.

(6) This section shall not be construed to limit the council's authority to enact an emergency ordinance pursuant to the county charter, except as expressly provided herein.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.100 Appeal of a Type 3 decision.

A Type 3 action of the council is a final decision, but may be reviewable by filing a petition for review with the growth management hearings board in accordance with RCW 36.70A.290, except as otherwise provided by law.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.73.110 Compliance with this chapter.

Errors in exact compliance with this chapter shall not render a Type 3 decision invalid if the spirit of the public participation provisions of this chapter is observed.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

Chapter 30.74 GROWTH MANAGEMENT ACT PUBLIC PARTICIPATION PROGRAM DOCKETING

APPENDIX C

30.41E SCC

created or substantially increased, including increased trip generation of 10 percent or more, or the site plan design is substantially altered; and

(c) Any increase in vehicle trip generation or change in vehicle access points shall be reviewed pursuant to SCC 30.66B.075.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.41D.330 Taxes.

(1) Prior to recording a binding site plan with record of survey, all taxes for the current year must be paid, together with taxes for any delinquent years. Proof of payment must be indicated by the seals and signatures of the county treasurer and deputy treasurer on a certificate shown on the face of the binding site plan with record of survey.

(2) If a binding site plan with record of survey is recorded after May 31 in any year and prior to the date of the collection of taxes, the applicant shall deposit with the county treasurer a sum equal to the product of the county assessor's latest valuation on the unimproved property multiplied by the current year's mileage rate and increased by 25 percent.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.41D.340 Recording with auditor.

(1) The applicant shall file for record the approved original binding site plan and original record of survey as one document with the auditor in accordance with SCC 30.41D.110(6). The auditor shall distribute copies of the recorded document to the department, the department of public works, and the county assessor. All distributed copies shall bear the auditor's recording data.

(2) The auditor shall refuse to accept any binding site plan and record of survey for filing and recording until the director has approved and signed each document.

(3) A binding site plan and record of survey shall take effect upon recording, which must occur within 120 days after both are approved by the director, subject to the conditions contained therein.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.41D.350 Vacation.

The department is authorized to adopt standards and procedures for vacating a binding site plan upon the request of all owners of the subject property. The standards and procedures shall, if determined appropriate by the department, require that all parties having an interest in property subject to the binding site plan consent to vacation and that all legal instruments effecting the division of property into lots be rescinded.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

Chapter 30.41E

BOUNDARY LINE ADJUSTMENTS

30.41E.010 Purpose and applicability.

The purpose of this chapter is to allow for adjustment to boundary lines of existing lots where no new lot is created pursuant to SCC 30.91B.180. This chapter applies to all boundary line adjustment (BLA) applications.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 05-042, July 6, 2005, Eff date Aug. 8, 2005)

30.41E.020 Procedure and special timing requirements.

- (1) Boundary line adjustments shall be approved, approved with conditions, or denied as follows:
 - (a) The department shall process the BLA as a Type 1 decision; or
 - (b) If accompanied by a concurrent Type 2 application, the BLA application may, at the applicant's request, be processed as a Type 2 permit application pursuant to the provisions of SCC 30.41E.100(6). In order to be considered concurrent, the Type 2 application must be submitted to the county at the same time as the BLA application and involve the same property or adjacent property.
 - (c) The BLA is exempt from notice provisions set forth in SC 30.70.050 and 30.70.060(2) except that the BLA shall comply with 30.70.045(4)(d) when applicable.
- (2) The department shall decide upon a BLA application within 45 days following submittal of a complete application or revision, unless the applicant consents to an extension of such time period.
- (3) The department or hearing examiner may deny a BLA application or void a BLA approval due to incorrect or incomplete submittal information.
- (4) Multiple boundary line adjustments are allowed to be submitted under a single BLA application if:
 - (a) the adjustments involve contiguous parcels;
 - (b) the application includes the signatures of every parcel owner involved in the adjustment; and
 - (c) the application is accompanied by a record of survey.
- (5) The legal descriptions of the revised lots, tracts, or parcels, shall be certified by a licensed surveyor or title company.
- (6) A boundary line adjustment shall be not approved for any property for which an exemption to the subdivision provisions set forth in SCC 30.41A.020(6) or 30.41A.020(7) or an exemption to the short subdivision provisions set forth in SCC 30.41B.020(6) or 30.41B.020(7) has been exercised within the past five years.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 05-042, July 6, 2005, Eff date Aug. 8, 2005)

30.41E.100 Decision criteria.

In reviewing a proposed boundary line adjustment, the department or hearing examiner shall use the following criteria for approval:

- (1) The proposed BLA is consistent with applicable development restrictions and the requirements of this title, including but not limited to the general development standards of subtitle 30.2 SCC and any conditions deriving from prior subdivision or short subdivision actions;
- (2) The proposed BLA will not cause boundary lines to cross a UGA boundary, cross on-site sewage disposal systems, prevent adequate access to water supplies, or obstruct fire lanes;
- (3) The proposed BLA will not detrimentally affect access, access design, or other public safety and welfare concerns. The evaluation of detrimental effects may include review by the health district, the department of public works, or any other agency or department with expertise;
- (4) The proposed BLA will not create new access which is unsafe or detrimental to the existing road system because of sight distance, grade, road geometry, or other safety concerns, as determined by the department of public works. The BLA shall comply with the access provision set forth in SCC 30.41E.200;
- (5) When a BLA application is submitted concurrently with a type 2 application pursuant to SCC 30.41E.020(1)(b), and frontage improvements are required for the area subject to the BLA and the concurrent application, the improvements must be agreed to prior to approval of the BLA;

(6) If within an approved subdivision or short subdivision, the proposed BLA will not violate conditions of approval of that subdivision or short subdivision;

(7) The proposed BLA will not cause any lot that conforms with lot area or lot width requirements to become substandard;

(8) The proposed BLA may increase the nonconformity of lots that are substandard as to lot area and/or lot width requirements provided that the proposed BLA satisfies the other requirements of this chapter and the nonconforming condition is not increased by more than 50 percent; and

(9) The proposed BLA will not result in lots with less than 1000 square feet of an accessible area suitable for construction when such area existed before the adjustment. This requirement shall not apply to lots that are zoned commercial or industrial zones identified in SCC 30.21.025(1)(c), 30.21.025(1)(d), and 30.21.025(2)(d) through 30.21.025(2)(g).

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 05-042, July 6, 2005, Eff date Aug. 8, 2005)

30.41E.200 Design standards - access.

If proposed lots within a BLA result in reduced public road frontage and/or changes in access, the department of public works may require verification that all lots have safe access points. In such cases, the applicant shall stake approximate proposed access points and property lines along the public road frontage within five days of receipt of a request by the department of public works to do so.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 05-042, July 6, 2005, Eff date Aug. 8, 2005)

30.41E.300 Future development approvals.

The applicant shall acknowledge by signature on the application form that county approval of a BLA proposal does not guarantee or imply that the subject property may be developed or subdivided, and that boundary line adjustment approval may not be grounds for approval of subsequent modification or variance requests.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.41E.400 Recording.

To finalize an approved BLA, the applicant must record with the county auditor the BLA application, certified legal descriptions, and the BLA map within one year of approval or the application and approval shall lapse. The department may grant up to one one-year extension for good cause. If the BLA affects more than one property owner, a conveyance document(s) shall be recorded at the same time as the BLA documents. The conveyance document(s) shall establish ownership consistent with the approved, adjusted boundaries. When a BLA is recorded subsequent to a record of survey for the same property, the recording number of the record of survey shall be noted on the BLA map. Recording fees and applicable state fees shall be paid by the applicant. Immediately after recording, copies of the recorded BLA documents shall be provided to the department by the applicant. The BLA shall not take effect until recorded.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.41E.410 Correcting errors on an approved BLA.

Typographical errors in recorded legal descriptions or minor discrepancies on recorded BLA maps may be corrected by filing an Affidavit of Correction of Boundary Line Adjustment with the department. The affidavit shall be on a form supplied by the department. The department shall review the affidavit for compliance with applicable code provisions. If approved, the applicant shall record the affidavit with the county auditor within 45 days. Immediately after recording, copies of the recorded Affidavit of Correction shall be provided to the department by the applicant.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

Chapter 30.41F

SINGLE FAMILY DETACHED UNITS

30.41F.010 Purpose and Applicability.

(1) This chapter establishes and describes development standards and review procedures for single family detached units residential development created outside the traditional subdivision process.

(2) The provisions of this chapter shall apply to single family detached units developed on properties designated in the comprehensive plan for medium and high density residential development. Any combination of two or more detached single family dwelling units, two or more duplexes on one lot, or one or more detached single family dwelling unit and one or more duplexes, whether alone or in combination with multifamily dwellings (e.g., triplexes or larger multi-family units, etc.) on the same lot, may be created. Multiple lots may be combined to create one development site.

(3) Single family detached units may be located in the following zones: LDMMR (Low Density Multiple Residential), MR (Multiple Residential), NB (Neighborhood Business), CB (Community Business), and GC (General Commercial):

(4) This chapter and all other applicable chapters of this title ensure development is consistent with the intent and function of each zone. Unless specifically modified by this chapter, all bulk requirements of the underlying zone shall apply.

(5) The purpose of this chapter is to allow an alternative method for developing higher density single family housing within urban growth areas outside the traditional subdivision process and lot ownership patterns. This alternative may be used to infill existing single family neighborhoods where infrastructure exists to deliver efficient land use and cost-effective delivery of urban services or may be used to develop larger scale higher-density single family housing where infrastructure may be developed in areas designated in the county's comprehensive plan for medium and high density development.

(Added Amended Ord. 07-022, April 23, 2007, Eff date June 4, 2007)

30.41F.020 Procedures.

(1) Single family detached units applications shall be processed as a Type 1 administrative decision pursuant to SCC 30.71.030.

(2) Public notice of applications shall be provided as set forth in chapter 30.70 SCC for Type 1 applications.

(3) At the request of the applicant, applications may be combined with other types of permits or be processed concurrently with other types of permits pursuant to SCC 30.70.120.

(4) The department will process an administrative site plan according to the procedures for Type 1 administrative decisions. Submittal requirements are established and implemented per SCC 30.70.030.

APPENDIX D

Snohomish County Charter

Section 3.60 Appointments by the Chief Officers

The chief officer of each executive department shall appoint all officers and employees of the office or department and shall comply with the rules of the personnel system when appointing officers and employees to positions covered by the personnel system.

Section 3.70 Qualifications

The chief officers of appointed executive departments shall be selected on the basis of their abilities, qualifications, integrity and prior experience concerning the duties of the office to which they shall be appointed.

Section 3.90 The Executive Departments

The executive departments shall consist of the departments of the county assessor, the county auditor, the county clerk, the county sheriff, the county treasurer and those agencies of the executive branch which are primarily engaged in the execution and enforcement of ordinances and statutes concerning the public peace, health and safety and which furnish or provide governmental services directly to or for the residents of Snohomish county.

Section 3.100 Election and Term of Office

There is hereby created by the adoption of this charter the offices of county assessor, county auditor, county clerk, prosecuting attorney, county sheriff and county treasurer. These elected officers shall be nominated and elected by the voters of the county, and their terms of office shall be four years and until their successors are elected and qualified.

(Amended during General Election Nov. 7, 2006, Eff date Jan. 1, 2007)

Section 3.110 Powers and Duties

The county assessor, auditor, clerk, treasurer and sheriff established under this charter shall have the powers and duties established by ordinance. All executive departments and elected officers shall be subject to the personnel, budgeting, expenditure and any other policies established by the county council.

Section 3.120 County Prosecuting Attorney

The county prosecuting attorney shall have all the powers, authorities and duties granted to and imposed upon a prosecuting attorney by state law and as provided by this charter.

Article 4 — Elections

Section 4.10 Election Procedures

Except as provided in this article, primaries and elections shall be conducted in accordance with general law governing the election of county officials.

APPENDIX E

Chapter 2.01 SCC

Title 2
GOVERNMENT

*Code reviser's note: For community mental health program administrative board, see chapter 7.48 SCC.

Chapter 2.01
DEPARTMENT OF PLANNING AND DEVELOPMENT SERVICES

2.01.010 Creation and Purpose.

There is hereby established a Snohomish county department of planning and development services. It shall be the purpose of this department to manage overall land use planning activities, provide coordination of the associated permit and inspection process, and perform other resource management functions which may be assigned to it. The department will be responsible for implementing land use and resource management policies as defined by the county council.

(Ord. 82-130 § 2, adopted December 10, 1982; Ord. 95-004, § 1, Feb. 15, 1995, Eff date Feb. 27, 1995).

2.01.020 Definitions.

The following definitions shall apply to terms used in this chapter:

- (1) "Department" means the Snohomish county department of planning and development services.
- (2) "Director" means the director of the department of planning and development services.
- (3) "County personnel system" means those statements of policy and procedure contained in Title 3A SCC or its successor.
- (4) "Exempt personnel system" means the conditions of employment under the provisions of chapter 3.68 SCC and amendments thereto.

(Ord. 82-130 § 2, adopted December 10, 1982; Ord. 95-004, § 2, Feb. 15, 1995, Eff date Feb. 27, 1995).

2.01.030 Authority and functions.

The department shall have the authority to develop comprehensive land use plans, administer zoning and development codes, and coordinate the permit and inspection process. The department's scope of authority shall include, but not be limited to, the following functional areas:

- (1) Administration of the community planning process;
- (2) Coordination of the development technical review process;
- (3) Administration of the resource planning process;
- (4) Coordination and administration of the permit issuance, inspection and compliance process;
- (5) Coordination of the State Environmental Policy Act review process;

(6) Perform such other planning, technical review, permit issuance, inspection, and compliance functions as are delegated by the county executive.

(Ord. 82-130 § 2, adopted December 10, 1982; Amended Ord. 05-107, November 21, 2005, Eff date July 1, 2006; Ord. 06-090, November 20, 2006, Eff date Jan. 1, 2007).

2.01.035 Buildable lands program.

The department shall work with cities to develop buildable lands analysis procedures reports and five-year buildable lands review and evaluation reports in accordance with RCW 36.70A.215 and county-wide planning policy UG-14, subject to their review and adoption on behalf of the county by the county council. Council review of five-year review and evaluation reports shall be consistent with the methodology of the applicable buildable lands analysis procedures report and include at least one public hearing. Council action of a report under this section shall not limit the county executive's ability to comment on the report for dispute resolution or other purposes.

(Added Amended Ord. 02-033, July 24, 2002, Eff date Aug. 9, 2002).

2.01.040 Director.

- (1) The director shall organize, manage and administer the activities of the department. He or she shall advise the executive and the council with regard to programs managed by or affecting the activities of the department.
- (2) The director may, upon approval by the executive, issue rules as may be necessary to carry out the purposes of this chapter, and upon approval by the executive and/or council, enter into contracts on behalf of the county to carry out the purposes of this chapter.
- (3) The director shall prepare and submit to the executive annual budget estimates for the department as provided in SCC 4.26.030.
- (4) The director shall appoint all officers and employees of the department in accordance with the rules of the county personnel system and exempt personnel system and shall implement service improvements and cost reductions where possible.
- (5) The director shall have the power to accept on behalf of the county, deeds and other conveyances or covenants of real property when such conveyances or covenants are tendered in compliance with conditions of land use or development permit, and it consistent with adopted land use, development or engineering standards and regulations.
 - (a) Right-of-Way (ROW) conveyances shall be approved and accepted by the director of the department of public works or county engineer.
 - (b) Road establishments are accepted under separate authority and procedures in accordance with chapters 36.81 RCW and 13.90 SCC.
 - (c) Dedications of real property within the boundaries of a final subdivision are accepted under separate procedure in accordance with the provisions of SCC 19.40.010(8).
- (6) The director may delegate functions, powers, and duties to other officers and employees of the department as deemed expedient to further the purposes of this chapter.

(Ord. 82-130 § 2, adopted December 10, 1982; Ord. 02-026, Eff. Date August 9, 2002; Amended Ord. 07-015, March 21, 2007, Eff date April 7, 2007).

2.01.050 Appointment of Director.

The director shall be appointed by the executive subject to confirmation by the county council. The director shall serve at the pleasure of the executive and shall be subject to the county exempt personnel system.

(Ord. 82-130 § 2, adopted December 10, 1982).

2.01.060 Organization by Director.

The director may create divisions and reassign positions and functions within the department; PROVIDED, That any budget transfers required by such actions are approved by the council; and PROVIDED FURTHER, That personnel assignments and changes shall be made in conformance with the personnel rules and policies of Snohomish county.

(Ord. 82-130 § 2, adopted December 10, 1982).

2.01.070 Severability.

If any provision of this chapter is held invalid, the remainder of the chapter shall not be affected.

(Ord. 82-130 § 2, adopted December 10, 1982).

2.01.080 Effective Date.

This chapter shall be effective on January 1, 1983.

(Ord. 82-130 § 2, adopted December 10, 1982).

Chapter 2.02 HEARING EXAMINER

2.02.010 Purpose.

The purpose of this chapter is to establish a quasi-judicial hearing system which will ensure procedural due process and appearance of fairness in regulatory hearings; provide an efficient and effective hearing process for quasi-judicial matters; and comply with state laws regarding quasi-judicial land use hearings.

(Ord. 80-115 § 2, adopted December 29, 1980; Amended Ord. 96-003, § 2, Feb. 21, 1996, Effective April 1, 1996).

2.02.020 Creation of Hearing Examiner.

Pursuant to those powers inherent in the home rule charter county, the office of Snohomish county hearing examiner, hereinafter referred to as examiner, is hereby created. The examiner shall interpret, review and implement land use regulations as provided by ordinance and may perform such other quasi-judicial functions as are delegated by ordinance. Unless the context requires otherwise, the term examiner as used herein shall include deputy examiners and examiners pro tem.

(Ord. 80-115 § 1, adopted December 29, 1980).