

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 CENTRAL PUGET SOUND REGION
3 STATE OF WASHINGTON
4

5 FRIENDS OF PIERCE COUNTY, et al., CITY
6 OF BONNEY LAKE, and MARILYN
7 SANDERS, et al.,

8 Petitioners,

9
10 v.

11 PIERCE COUNTY,

12 Respondent,

13 and
14

15 ORTON FARMS, et al., CITY OF SUMNER,
16 BETHELL SCHOOL DISTRICT, PUYALLUP
17 SCHOOL DISTRICT, and FORTERRA NW,

18 Intervenors,

19 and

20 WASHINGTON SUSTAINABLE FOOD AND
21 FARMING NETWORK, et al.,

22 Amicus
23
24

CASE NO. 12-3-0002c

(Friends of Pierce County)

FINAL DECISION AND ORDER

25 **SYNOPSIS**

26 Pierce County amended its Comprehensive Plan with the adoption of Ordinance No.
27 2011-60s2. Amendments U-3a, U-3b and C-5 de-designated agricultural resource
28 lands of long-term commercial significance (ARL) and expanded the urban growth area
29 (UGA) at a freeway intersection to allow for commercial and residential development.
30 The Board found the agricultural land continued to meet Pierce County's ARL criteria
31 and satisfied most of the designation factors in the WAC 365-190-050 minimum
32

1 guidelines. The County's de-designation of the ARL lands, however, relied primarily on
2 consideration of factors beyond the guidelines. The Board found the County's action
3 not fully supported by facts in the record nor by the considerations of WAC 365-190-
4 040(10) and WAC 365-190-050(5). The UGA expansion also failed to fully comply with
5 Pierce County's Comprehensive Plan requirements, though the Board rejected
6 Petitioners' challenge based on flood plains and environmentally sensitive lands. The
7 Board remanded Amendments U-3a and C-5 to the County.
8

9
10 Amendment M-3 re-classified Rural Farm (RF) land to provide a multi-school campus
11 site in a rural area. The Board found the County's land use policies require the County
12 to locate schools consistent with its growth management plans. Because the record
13 contained no evidence of that review, the Board remanded Amendment M-3 to the
14 County.
15

16 Amendments C-2 and C-3 allowed electronic billboards in two community plan areas.
17 The communities are both urban, and the Board concluded Petitioners failed to
18 demonstrate any basis in the GMA for challenging the County's decision. The issues
19 were dismissed.
20

21 I. PROCEDURAL BACKGROUND

22 On October 25, 2011, the Pierce County Council adopted Ordinance No. 2011-60s2,
23 adopting the 2011 amendments to the Pierce County Comprehensive Plan. Three
24 petitions for review were timely filed before the Board. Friends of Pierce County,
25 Tahoma Audubon Society, American Farmland Trust, PCC Farmland Trust, and
26 Futurewise (collectively "Friends") filed Case No. 11-3-0011, challenging Amendments
27 U-3a, U-3b and C-5 – the Orton Junction amendments. The City of Bonney Lake filed
28 Case No. 12-3-0001, also challenging Amendment U-3a. The Orton Junction
29 amendments de-designate agricultural resource lands and extend the UGA at a freeway
30 intersection south of the City of Sumner. Case No. 12-3-0002 was filed by Marilyn K.
31
32

1 Sanders, James L. Halmo, William J. Rehberg, George F. Wearn, Bryson V. Ahlers, and
2 William E. Gilpin (collectively “Sanders”¹). Sanders challenges Amendments M-3, C-2
3 and C-3, initiated by the Bethel and Puyallup School Districts. Pursuant to RCW
4 36.70A.290(5), the Board consolidated the three petitions as Case No. 12-3-0002c.²
5

6 At the prehearing conference, Pierce County indicated it would not provide briefing and
7 argument in support of the challenged amendments but would rely on various
8 intervenors. The City of Sumner intervened in response to the Friends and Bonney
9 Lake issues concerning Orton Junction. Orton Farms, LLC and Investco Financial
10 Corporation (collectively “Orton”) also intervened on the side of the County with respect
11 to the Orton Junction issues. Bethel School District intervened in support of the
12 County’s enactment of Amendments M-3 and C-3. Puyallup School District intervened
13 in support of Amendment C-2.³
14
15

16 The City of Bonney Lake, Pierce County, City of Sumner and Orton reached a
17 settlement with respect to Bonney Lake’s challenge to Amendment U-3a and filed a
18 Stipulated Joint Motion for Dismissal on March 20, 2012. Pursuant to WAC 242-03-720,
19 the Board dismissed the Bonney Lake legal issues from the case.⁴
20

21 The Board received two motions for amicus standing. The Board granted the request of
22 a group of Farm Interest Organizations⁵ to file a brief *amicus curiae* in support of the
23 Friends’ opposition to farmland de-designation. The Board denied the request of
24
25
26

27
28 ¹ These *pro se* petitioners are sometimes referred to by the parties as “Halmo” in recognition that Mr.
Halmo is their primary spokesperson.

29 ² Prehearing Order, Consolidation and Order Granting Intervention, January 27, 2012.

30 ³ Prehearing Order Correction and Order Granting Intervention, February 28, 2012.

31 ⁴ Order of Dismissal re: Bonney Lake Legal Issues, March 23, 2012.

32 ⁵ Washington Sustainable Food and Farming Network, Cascade Harvest Coalition, Organically Grown
Company, Tilth Producers, Terra Organics, Tahoma Farms, Let Us Farm, Washington State Farmers
Market Association, and Charlie’s Produce.

1 Forterra NW to participate as *amicus* but granted Forterra permission to intervene on
2 the side of the County with respect to the Orton Junction issues.⁶

3
4 There were no dispositive motions or motions to supplement the record.

5
6 The Hearing on the Merits was convened May 1, 2012, in the City of Sumner City Hall
7 by Margaret Pageler, Presiding Officer, and Board panelists Raymond Paoella and
8 William Roehl. Pierce County Deputy Prosecutor Peter Philley represented the County
9 answering questions from the Board but providing no argument. During the morning
10 session, the Board heard the Orton Junction issues.⁷ Tim Trohimovich of Futurewise
11 appeared for Petitioners Friends of Pierce County, et al. City Attorney Brett Vinson
12 represented the City of Sumner. Jay P. Derr appeared for Intervenor Orton,
13 accompanied by Tadas Kiselius. Anne Gygi appeared for Intervenor Forterra NW.

14
15 In the afternoon session, the Board heard the Sanders issues.⁸ James Halmo spoke for
16 the Sanders petitioners, with petitioners Marilyn Sanders, William Rehberg and William
17 Gllpin also in attendance. Mary Urback appeared for Intervenors Bethel School District
18 and Puyallup School District. Court reporting services were provided by Kim Dore-
19 Hackbarth of Buell Realtime Reporting.

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21
22
23 ⁶ Order on Amicus and Intervention, April 5, 2012.

24 ⁷ The Board had before it

- 25
- 26 • Petitioners' [Friends] Opening Brief
 - 27 • Brief of Amicus Farm Interest Organizations, accompanying their motion for amicus
 - 28 • Respondent Pierce County's Statement in Lieu of Prehearing Brief
 - 29 • Intervenor City of Sumner's Response Brief
 - 30 • Intervenor Orton's Response Brief
 - 31 • Intervenor Forterra's Response Brief
 - 32 • Petitioners' [Friends] Reply Brief

30 ⁸ The Board had before it

- 31 • Petitioners' [Sanders] Opening Brief
- 32 • Respondent Pierce County's Statement in Lieu of Prehearing Brief
- Intervenors Bethel School District and Puyallup School District [Districts] Response Brief
- Petitioners' [Sanders] Reply Brief

1 The hearing provided the Board an opportunity to ask questions to clarify important
2 facts in the case and obtain a better understanding of the legal arguments of the parties.

3 4 **II. JURISDICTION AND STANDARD OF REVIEW**

5 **A. Board Jurisdiction**

6 The Board finds the Petitions for Review were timely filed, pursuant to RCW
7 36.70A.290(2). The Board finds the Petitioners have standing to appear before the
8 Board, pursuant to RCW 36.70A.280(2). The Board finds it has jurisdiction over the
9 subject matter of the petitions pursuant to RCW 36.70A.280(1).
10

11 **B. Presumption of Validity, Burden of Proof, and Standard of Review**

12 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,
13 and amendments to them, are presumed valid upon adoption.⁹ This presumption
14 creates a high threshold for challengers as the burden is on the petitioners to
15 demonstrate that any action taken by the County is not in compliance with the GMA.¹⁰
16

17
18 The Board is charged with adjudicating GMA compliance and, when necessary,
19 invalidating noncompliant plans and development regulations.¹¹ The Growth
20 Management Board is tasked by the legislature with determining compliance with the
21 GMA. The Supreme Court explained in *Lewis County v. Western Washington Growth*
22 *Management Hearings Board*:¹²
23

24 The Board is empowered to determine whether [county] decisions comply
25 with GMA requirements, to remand noncompliant ordinances to [the
26

27
28 ⁹ RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and
29 applicable development regulations] comprehensive plans and development regulations, and
30 amendments thereto, adopted under this chapter are presumed valid upon adoption.

31 ¹⁰ RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity]
32 the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city
under this chapter is not in compliance with the requirements of this chapter.

¹¹ RCW 36.70A.280, RCW 36.70A.302.

¹² 157 Wn.2d 488 at 498, fn. 7, 139 P.3d 1096 (2006).

1 county], and even to invalidate part or all of a comprehensive plan or
2 development regulation until it is brought into compliance.

3 The scope of the Board's review is limited to determining whether the County has
4 achieved compliance with the GMA only with respect to those issues presented in a
5 timely petition for review.¹³ The GMA directs that the Board, after full consideration of
6 the petition, shall determine whether there is compliance with the requirements of the
7 GMA.¹⁴ In making its determination, the Board shall consider the criteria adopted by the
8 Department of Commerce under RCW 36.70A.190.¹⁵ The Board shall find compliance
9 unless it determines that the County's action is clearly erroneous in view of the entire
10 record before the Board and in light of the goals and requirements of the GMA.¹⁶ In
11 order to find the County's action clearly erroneous, the Board must be "left with the firm
12 and definite conviction that a mistake has been committed."¹⁷
13
14

15 In reviewing the planning decisions of cities and counties, the Board is instructed to
16 recognize "the broad range of discretion that may be exercised by counties and cities"
17 and to "grant deference to counties and cities in how they plan for growth."¹⁸ However,
18 the County's discretion is not boundless; its actions must be consistent with the goals
19

20 _____
21 ¹³ RCW 36.70A.290(1).

22 ¹⁴ RCW 36.70A.320(3).

23 ¹⁵ Procedural criteria adopted by Commerce pursuant to RCW 36.70A.190(4)(b) are found at WAC 365-
24 196. Commerce has also adopted minimum guidelines pursuant to RCW 36.70A.050 for the classification
25 of agriculture, forest, and mineral lands and critical areas; these rules are found at WAC 365-190.

26 ¹⁶ RCW 36.70A.320(3).

27 ¹⁷ *Lewis County v. WWGMHB ("Lewis County")*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006) (citing to
28 *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993));
29 See also, *Swinomish Tribe, et al v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007).

30 ¹⁸ RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may
31 be exercised by counties and cities consistent with the requirements of this chapter, the legislature
32 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.

1 and requirements of the GMA.¹⁹ As to the degree of deference to be granted under the
2 clearly erroneous standard, the Supreme Court has stated:

3 The amount [of deference] is neither unlimited nor does it approximate a
4 rubber stamp. It requires the Board to give the [jurisdiction's] actions a
5 “critical review” and is a “more intense standard of review” than the
6 arbitrary and capricious standard.²⁰

7 Thus, the burden is on Petitioners to overcome the presumption of validity and
8 demonstrate that the challenged action taken by the County is clearly erroneous in light
9 of the goals and requirements of the GMA.

11 **III. PRELIMINARY MATTERS and PREFATORY NOTES**

12 **A. Evidentiary Matters and Abandoned Issues**

13 Four of Pierce County’s Community Plans were provided by the County as core
14 documents:

- 15 • Alderton-McMillin Community Plan (2008)
- 16 • Graham Community Plan (2008)
- 17 • Frederickson Community Plan (2008)
- 18 • South Hill Community Plan (2008)

19 The Sanders Petitioners also provided the Parkland-Spanaway-Midlands Communities
20 Plan (2002) as Exhibit 13 to their prehearing brief.

21 Numerous documents from the record were distributed at the Hearing on the Merits as
22 illustrative materials. The Board in this Order makes use of a City of Sumner map
23 labeled ‘2011 Urban Growth Area Amendments (Orton Junction)’ showing sewer lines,
24 100-year flood zone, and Pierce County zoning for the UGA expansion area and its
25 environs. The Board labels this map ‘Hearing on the Merits Exhibit 1’ (HOM Ex. 1).
26
27
28

29
30 _____
31 ¹⁹ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by
32 the goals and requirements of the GMA). See also, *Swinomish Indian Tribal Community, et al. v Western
Washington Growth Management Hearings Board*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007).

²⁰ *Swinomish*, at 435, fn.8.

1 The Board takes official notice of VISION 2040,²¹ Pierce County Ordinance No. 2011-
2 34s,²² and Pierce County Ordinance No. 2012-11.²³ Disputes about other evidentiary
3 matters are resolved in footnotes to the discussion which follows.
4

5
6 Abandoned issues are indicated by strike-through in the legal issues set forth in
7 footnotes at the head of each section. Pursuant to WAC 242-03-590(1), failure to brief
8 an issue constitutes abandonment of that issue.
9

10 **B. Prefatory Note on Pierce County Community Plans**

11 RCW 36.70A.080(2) allows inclusion of subarea plans in a comprehensive plan:

12 (2) A comprehensive plan may include, where appropriate, subarea
13 plans, each of which is consistent with the comprehensive plan.

14 Pierce County's Comprehensive Plan incorporates community plans developed by a
15 citizen process in various community planning areas.²⁴ For rural planning areas in
16 particular, Pierce County's community plans articulate the "local vision of rural
17 character" called for in RCW 36.70A.011 and RCW 36.70A.070(5)(a).²⁵ In *North Clover*
18 *Creek v. Pierce County*, the Board noted the role of Pierce County's adopted community
19 plans in defining rural character based on local circumstances:
20

21 The GMA acknowledges the importance of local circumstances, and thus,
22 allowing each rural community to develop its unique vision of rural
23 lifestyle, as Pierce County does through its community plans, is an
24
25

26
27 ²¹ Sanders Ex. 6.

28 ²² Sanders Ex. 18.

29 ²³ This Ordinance, adopted March 13, 2012 and extending the effective date of the challenged provisions
of Ordinance 2011-60s2, was provided to the Board at the Hearing on the Merits and labeled HOM Ex. 2.

30 ²⁴ Pierce County Code Chapter 19A.110 Community Plans Element. See generally, *Halmo, et al v Pierce*
County, CPSPGMHB Case No. 07-3-0004c, Final Decision and Order (Sept. 28, 2007), at 6-19.

31 ²⁵ See, *North Clover Creek et al v Pierce County*, CPSPGMHB Case No. 10-3-0003c, Final Decision and
32 Order (Aug 2, 2010), at 26: "Pierce County, through its community plans, has developed and adopted
'local visions of rural character'."

1 appropriate way to implement the requirement for a rural element in the
2 County Comprehensive Plan.²⁶

3 While community plans are developed in a citizen process steered by a Community
4 Planning Board, the County Council is not bound by the community recommendation
5 and may make amendments before adopting the plan.²⁷ Subsequent amendments in
6 the County's annual docketing cycle are referred to the community's Land Use Advisory
7 Commission (LUAC) which takes testimony and makes a recommendation to the
8 Planning Commission. The County Planning and Land Services (PALS) staff prepares
9 a written report. The Planning Commission holds a hearing and makes a
10 recommendation to the County Council's Community Development Committee before
11 the matter is heard and voted on by the full County Council. In short, local community
12 input and review is sought and considered, but there are multiple opportunities for other
13 input and amendments up to enactment by the County Council.
14
15

16 **C. Prefatory Note on VISION 2040**

17 RCW 36.70A.210(7) requires the Puget Sound metropolitan counties to adopt multi-
18 county planning policies (MPPs).²⁸ The statute sets a population threshold that requires
19 Pierce County to participate in the adoption of MPPs. The four-county Puget Sound
20 Regional Council (PSRC) is the multi-county planning agency of which Pierce County is
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26 ²⁶ *North Clover Creek, at 55.*

27 ²⁷ *Halmo, at 13:* "Under the GMA, while citizen input is encouraged, elected city and county council members are ultimately responsible for local planning." Petitioners complained that the Pierce County Council proposed and adopted changes to the recommended plan forwarded by the Community Planning Board. Except where statutory requirements were violated, the Board found the County acted within its discretion.

28 ²⁸ RCW 36.70A.210(7) provides: "Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the processes established under this section or other processes agreed to among the counties and cities within the affected counties throughout the multicounty region."

1 a member.²⁹ In 2008 PSRC adopted VISION 2040, updating the MPPs. The Board
2 takes official notice of VISION 2040 pursuant to WAC 242-03-630.³⁰

3
4 PSRC's multi-county planning process is the means by which local elected officials in
5 the four-county metropolitan region articulate the "regional differences" which the GMA
6 seeks to recognize.³¹ VISION 2040 reflects the unique demographics, shared
7 geography, interlinked transportation, and economic dynamism of the central Puget
8 Sound region.

9
10 Multi-county planning policies are a part of the GMA consistency framework for the
11 metropolitan counties. Local comprehensive plans and amendments must comply with
12 the goals and requirements of the GMA.³² GMA Goal 11, in RCW 36.70A.020(11),
13 provides that counties and cities are to "ensure coordination between communities and
14 jurisdictions to reconcile conflicts." To help implement this goal, RCW 36.70A.100
15 provides that "[t]he comprehensive plan of each county or city that is adopted pursuant
16 to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive
17 plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the
18 county or city has, in part, common borders or related regional issues." Coordination
19 and consistency among the metropolitan counties sharing common borders and related
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25 ²⁹ The Puget Sound Regional Council is the Metropolitan Planning Authority under federal law that
26 determines and coordinates the distribution of federal transportation funding. Designated a Regional
27 Transportation Planning Organization pursuant to Chapter 47.80 RCW, the PSRC is tasked with
28 "improved integration between transportation and comprehensive planning among public institutions,
29 particularly in the state's largest metropolitan areas." RCW 47.80.011.

30 VISION 2040, Sanders Ex.6. Sanders submitted the entire text of VISION 2040, together with PSRC
31 Issue Papers on Rural Areas, Information on the Cost of Sprawl, and Vision 2040 Environmental Impact
32 Statement as Ex. Nos. 6, 7, 8, and 9 to their prehearing brief. The Districts moved to strike these exhibits
as not part of the record, pointing out that even if Vision 2040 is entitled to official notice, the EIS and
Issue Papers are not official documents adopted by a government body. Districts Brief, fn. 17. The Board
takes official notice of VISION 2040, Sanders Ex. 6, and **strikes** Sanders Ex. Nos. 7, 8, and 9.

³¹ See, e.g., RCW 36.70A.011, RCW 36.70A.050(3), RCW 36.70A.190(4)(b).

³² RCW 36.70A.130(1)(d).

1 regional issues is provided in the GMA through the provision for multi-county planning
2 policies.

3
4 Multicounty planning policies, like countywide planning policies, provide a “framework
5 [that] shall ensure that city and county comprehensive plans are consistent as required
6 in RCW 36.70A.100.”³³ The Commerce guidelines at WAC 365-196-305 state that
7 MPPs “establish a common region-wide framework that ensures consistency among
8 county and city comprehensive plans adopted pursuant to RCW 36.70A.070 and
9 county-wide planning policies adopted pursuant to RCW 36.70A.210.” The Central
10 Board in one of its earliest cases wrote:³⁴

11
12 The City is reminded of the requirement that its comprehensive plan be
13 consistent with those of cities and counties which share common borders
14 or related regional issues (RCW 36.70A.100), with the [King County
15 Countywide Planning Policies] KCCPPs (RCW 36.70A.210(1)), and the
16 multicounty planning policies (RCW 36.70A.210(7)).

17 Our Supreme Court has definitively ruled that the “framework to ensure consistency”
18 which is provided by CPPs is binding on local jurisdictions. In *King County v. Central*
19 *Puget Sound GMHB*,³⁵ the Court addressed the question “whether the directive
20 provisions of CPPs must be binding in order to fulfill their purpose under the GMA.” The
21 Court reasoned:

- 22
- 23 • The GMA requires county and city comprehensive plans to be consistent
24 with each other in order to ensure harmonious land use planning. RCW
25 36.70A.100.
 - 26 • RCW 36.70A.210(1) provides that "a 'county-wide planning policy [CPP]'
27 is a written policy statement or statements used solely for establishing a
28 county-wide framework from which county and city comprehensive plans
29 are developed and adopted pursuant to this chapter. This framework

30 ³³ RCW 36.70A.210(1).

31 ³⁴ *West Seattle Defense Fund, v. City of Seattle* CPSGMHB Case No. 94-3-0016, Final Decision and
Order (April 4, 1995), at 55.

32 ³⁵ *King County v Central Puget Sound Bd.*, 138 Wn.2d 161, 175-176.

1 shall ensure that city and county comprehensive plans are consistent as
2 required in RCW 36.70A.100." (Emphasis added.)

- 3 • Local governments are required to adopt regionally developed CPPs,
4 from which local comprehensive plans, and then development
5 regulations, are enacted. The CPPs are thus the major tool provided in
6 the GMA to ensure that the comprehensive plans of each city within a
7 county agree with each other.

8 The Court concluded:

9 If the CPPs served merely as a nonbinding guide, municipalities would be
10 at liberty to reject CPP provisions and the CPPs could not ensure
11 consistency between local comprehensive plans. The Board was
12 therefore correct to conclude that CPPs are binding on the County.

13 The Board reads the Court's reasoning to be equally applicable to Multi-County
14 Planning Policies. If the MPPs served merely as a nonbinding guide, counties would be
15 at liberty to reject even directive provisions of the MPPs and the "framework to ensure
16 consistency" would be ineffective.

17 The Pierce County Staff Report for the Orton Junction amendments explains Pierce
18 County's process to incorporate VISION 2040 into the CPPs and local comprehensive
19 plans.³⁶

20 VISION 2040 and associated multi-county planning policies articulate the
21 vision in which Puget Sound jurisdictions will accommodate future
22 population and employment growth in harmony with the natural and built
23 environment. Through their next GMA compliance update, Pierce County
24 jurisdictions will be required to amend their respective comprehensive
25 plans consistent with VISION 2040. The Puget Sound Regional Council
26 (PSRC) will conduct a certification review to ensure consistency between
27 the local comprehensive plans and the regional document.³⁷ If a
28

29 ³⁶ PSRC explains: Alignment with VISION 2040. The Regional Council is expecting that local
30 comprehensive plans address the MPPs as amendments take place, and that comprehensive plans fully
31 address VISION 2040 by the GMA update in 2014. Amendments and updates prior to 2014 need to be
32 consistent with VISION 2040 and the MPPs. CP #26-62, FEIS at 5-6 and attached Comment Letter 8.

³⁷ See, RCW 47.80.023(4).

1 comprehensive plan is not certified, the local jurisdiction may not be
2 eligible for transportation funding administered by the PSRC.³⁸

3 Three months before enacting the comprehensive plan amendments challenged here,
4 the Pierce County Council approved amendments to the Pierce County CPPs to
5 achieve consistency with VISION 2040.³⁹ The CPP amendments were approved on
6 July 19, 2011, by Ordinance No. 2011-34s, but are not officially adopted until ratified by
7 the required percentage of Pierce County cities.
8

9 IV. AMENDMENTS U-3a, U-3b AND C-5 - ORTON JUNCTION

10 A. The Challenged Action – Background and Context

11 Ordinance 2011-60s2 amended Pierce County's comprehensive plan to eliminate 182
12 acres of rural farm and agricultural resource lands at a freeway intersection south of the
13 City of Sumner and to allow expansion of the UGA for a 300,000 square foot shopping
14 center, residential development, and regional YMCA. The three amendments
15 challenged by the Friends of Pierce County are Amendment U-3a – City of Sumner
16 CUGA/USA expansion, Orton Junction;⁴⁰ Amendment U-3b – City of Sumner –
17 CUGA/USA reduction, East Hill;⁴¹ and Amendment C-5 – Provide for Community Center
18 Designation – Alderton-McMillin Community Plan.⁴²
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24 ³⁸ CP #35-2, Staff Report, June 22, 2011, at 101.

25 ³⁹ Ordinance 2011-34s, Sanders Ex. 18. The Districts moved to strike this exhibit because the revised
26 CPPs are not effective until ratified. Districts Brief, fn. 17. Pursuant to WAC 242-03-630(4) the Board
27 **takes official notice** of Ordinance 2011-34s: An Ordinance of the Pierce County Council Acknowledging
28 its Approval of a Proposed Amendment to the Pierce County Countywide Planning Policies for
29 Consistency with VISION 2040 [etc.], adopted July 19, 2011. The Board accepts Ordinance 2011-34s for
30 the proposition the County Council approved VISION 2040 before it enacted Ordinance 2011-60s2.
31 Ordinance 2011-34s forwards the County-approved CPP amendments to the cities for ratification. The
32 Board in this order **does not rely** on the specific CPP amendments attached to Ordinance 2011-34s
because they have not been ratified.

⁴⁰ Ex. B to Ordinance 2011-60s2 p. 26.

⁴¹ Ex. B to Ordinance 2011-60s2 p. 27.

⁴² Ex. J to Ordinance 2011-60s2 p. 4-6.

1 The Geographic Setting

2 Orton Junction is in the Alderton-McMillin Plan Area. The Alderton-McMillin subarea
3 lies within the Puyallup River Valley south of the City of Sumner in central Pierce
4 County. The area straddles the Puyallup River and is about 30 miles northwest of
5 Mount Rainier. The valley is broad and flat, crisply defined by steep slopes rising to
6 plateaus on the east and west. The valley floor faces development constraints due to
7 flooding, high water tables, and volcanic hazards.⁴³
8

9
10 The Alderton-McMillin Community Plan, adopted in 2007, seeks to maintain the valley's
11 agriculture.⁴⁴ The valley floor is made up of rich alluvial soils deposited by the river over
12 time. In the late-1800's, hops farming was prevalent. In the early 1900's bulbs, flowers,
13 dairy, berry, vegetables and fruit orchards became more common. Although the
14 agricultural products have changed over time, the area remains an important source of
15 agricultural production for Pierce County. There are approximately 4,700 acres of
16 farmland, 42% of the land area, in the Community Plan area.⁴⁵ The 3,460 acres
17 designated ARL (31% of land area) represent some of the largest intact agricultural
18 lands in Pierce County.⁴⁶
19

20
21 Orton Junction, subject of this present challenge, lies in the fertile valley floor and
22 consists of parcels totaling 182 acres. The area has been historically farmed, most
23
24

25 ⁴³ Alderton-McMillin Community Plan (AMCP), at 15:

26 The policies of the Land Use element strive to maintain the Alderton-McMillin valley with a rural
27 agricultural character over the next 20 years. It is the goal on the community plan to preserve not
28 only the rich agricultural soils of the valley farmland but to ensure economically viable farms. This
29 would be accomplished through a variety of programs including a Transfer of Development Rights
30 program for lands with existing farms or prime agricultural lands. Urban level residential,
employment, and commercial growth are expected to occur in the surrounding urban areas and
be directed away from the Alderton-McMillin community.

31 ⁴⁴ AMCP, Introduction, at 1.

32 ⁴⁵ *Id.* See *T.S. Holdings v Pierce County*, CPSGMHB Case No. 08-3-0001, Final Decision and Order
(Sept 2, 2008).

⁴⁶ *Id.* at 17.

1 recently producing daffodil and tulip bulbs.⁴⁷ It is separated from the City of Sumner to
2 the north by State Highway 410, except at the intersection with 166th Avenue, where the
3 UGA was extended south of the intersection in 2003 and two car dealerships and a
4 large supermarket were developed in 2008. Slightly west of Orton Junction is Orting
5 Highway (State Route 162) which provides a second freeway intersection. To the south
6 lies the Puyallup River floodway and additional agricultural lands.⁴⁸
7

8 The City of Sumner, whose logo is a daffodil on a farm field of daffodils, is a city of
9 9,000, with a historic town center, recently enhanced by a Sounder train depot. Sumner
10 has recently achieved designation for the northern third of the city as a manufacturing
11 industrial center under PSRC criteria. Sumner has planned since 1983 to expand south
12 across the freeway (State Route 410) to Orton Junction.⁴⁹
13

14
15 In 2004, when the County altered its criteria and process for designating agricultural
16 resource lands of long term commercial significance (ARLs), 8 parcels in the Orton
17 Junction area totaling 125 acres were designated as ARL, including property owned by
18 Orton Farms.⁵⁰ This designation was retained when the County adopted the Alderton-
19 McMillin Community Plan in 2007. Other Orton Junction properties totaling 56 acres
20 were designated Rural Farm (RF). "Rural Farm" is a rural comprehensive plan
21 designation with the objective of "[p]rotect[ing] agricultural activities on lands that do not
22 qualify as designated Agricultural Resource Lands of long-term commercial
23 significance."⁵¹ The U.S. Department of Agriculture National Resource Conservation
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29 ⁴⁷ PCC #128, Pierce County Public GIS 2009 aerial photograph with UGA expansion in red.

30 ⁴⁸ *Id*, see also aerial photographs in PC #67.

31 ⁴⁹ Orton Response, at 22.

32 ⁵⁰ See *Orton Farms, et al. v Pierce County*, CPSGMHB Consolidated Case No. 04-3-0007c, Final Decision and Order, (Aug. 2, 2004).

⁵¹ Pierce County Comprehensive Plan PCC 19A.40.070 RUR Objective 7 p. 19A.40-11.

1 Service classifies all 182 acres in the Orton Junction UGA expansion area as prime
2 farmland.⁵²

3
4 *The County Action and the Parties*

5 Amendments U-3a and C-5 de-designated 125 acres of ARL land at Orton Junction and
6 designated 21.18 acres of the former ARL land as Moderate Density Single Family
7 (MSF) and 104.21 acres as Community Center (CC). Amendment U-3a also de-
8 designated 56.41 acres of RF and designated 36.32 acres of RF as MSF and 20.09
9 acres as CC. The Moderate Density Single Family comprehensive plan designation
10 provides for moderate to low density single-family and two-family dwellings within the
11 urban growth area.⁵³ Community Centers are “designed to meet shopping, service, and
12 multi-family housing needs of the surrounding community.”⁵⁴ Amendment U-3a adds all
13 182 acres to the UGA. Companion Amendment U-3b reduces the UGA in the East Hill
14 area by 284 acres.
15
16

17 Friends of Pierce County⁵⁵ challenge Pierce County’s decision to de-designate the
18 Orton Farms ARL lands and to expand the UGA at this location. *Amici* Farm Interest
19 Organizations⁵⁶ join in opposing conversion of prime farm land to another freeway-
20 intersection shopping plaza and housing development. The City of Sumner, together
21 with Orton Junction, LLC and Investco Financial Corporation, the present owners of a
22 large portion of the property, proposed these amendments and defend them in these
23
24

25
26 ⁵² PCC #128, USDA Natural Resources Conservation Service: *Soil Map – Pierce County Area,*
27 *Washington (UGA Expansion West of 166th Av E)* p. 1 of 3, p. 3 of 3 (10/17/2011); *Soil Map – Pierce*
28 *County Area, Washington (U-3a Ag De-designation East of 166th Ave E)* p. 1 of 3, p. 3 of 3 (10/17/2011);
and *Prime and other Important Farmlands, Pierce County Area* p. 1 of 2 (09/22/2009).

29 ⁵³ PCC 19A.30.055 LU-MSF Objective 11.5 p. 19A.30-19.

30 ⁵⁴ PCC 19A.30.020 C p. 19A.30-12.

31 ⁵⁵ Co-petitioners are Tahoma Audubon Society, American Farmland Trust, PCC Farmland Trust, and
Futurewise.

32 ⁵⁶ *Amici* are Washington Sustainable Food and Farming Network, Cascade Harvest Coalition, Organically
Grown Company, Tilth Producers, Terra Organics, Tahoma Farms, Let Us Farm, Washington State
Farmers Market Association, and Charlie’s Produce.

1 proceedings. Forterra NW (formerly Cascade Conservancy) has intervened on behalf
2 of the County.

3
4 Prior Board Decisions

5 Three prior cases decided by the Board provide context for the Board's consideration of
6 the agricultural protection elements of this appeal, specific to the Alderton-McMillin
7 Community Plan area. In *Orton Farms, et al. v. Pierce County* ("Orton Farms"),⁵⁷ the
8 Board concluded the County's ARL designation criteria did not comply with the statutory
9 criteria for determining the long-term commercial significance of the land.⁵⁸ In response
10 to the *Orton Farms* decision, the County revised its criteria for designating ARLs to
11 specifically include factors addressing proximity to population areas and the possibility
12 of more intensive use, as well as soil composition, growing capacity, and productivity.
13 In *Bonney Lake, et al. v. Pierce County* ("Bonney Lake"),⁵⁹ the Board concluded the
14 County's revised ARL designation criteria and ARL designations complied with the
15 agricultural land requirements and goals of the Act.⁶⁰

16
17
18 In *T.S. Holdings, et al. v. Pierce County* ("T.S. Holdings")⁶¹, the Board considered the
19 County's determination not to de-designate ARL land held by one of the original *Orton*
20 *Farms* petitioners and found the County correctly applied its de-designation process and
21 criteria. *Orton Farms*, *Bonney Lake* and *T.S. Holdings* lay out the criteria for ARL
22 designation and de-designation in Pierce County and, in particular, in the Alderton-
23 McMillin Community Plan area.
24
25

26
27 ⁵⁷ CPSGMHB Consolidated Case No. 04-3-0007c, Final Decision and Order, (Aug. 2, 2004)

28 ⁵⁸ *Orton Farms*, FDO, at 20-34.

29 ⁵⁹ CPSGMHB Consolidated Case No. 05-3-0016c, Order Finding Compliance [CPSGMHB Consolidated
30 Case No. 04-3-0007c – *Orton Farms*] and Final Decision and Order [CPSGMHB Consolidated Case No.
31 05-3-0016c], (Aug. 5, 2005), upheld as to predominant parcel size, *Futurewise v CPSGMHB*, 141
32 Wn.App. 202, 169 P.3d 499 (2007).

⁶⁰ *Bonney Lake*, OFC/FDO, at 20-21.

⁶¹ CPSGMHB Case No. 08-3-0001, Final Decision and Order (Sept 2. 2008) (upheld, Pierce County
Superior Court No. 08-2-13056-3 (Aug 28, 2009).

1 The unique element in the present case is that the County, City, Orton, and Forterra
2 NW, a non-profit conservation society,⁶² have agreed to Seven Principles which
3 condition the Orton Junction Amendments. These are commitments requiring the City
4 to agree to seek no further expansion into ARL lands and the property owner to fund
5 acquisition of development rights on 500 acres of agricultural land and provide other
6 unspecified support to local agriculture, along with other public benefits. The
7 Respondents assert the Seven Principles provide more certainty of long term protection
8 for local agriculture than strict application of the ARL designation criteria.
9

10
11 The Board addresses the Friends' Legal Issues in the order presented – first the
12 challenge to de-designation of agricultural lands, then expansion of the UGA, and finally
13 the presence of environmentally sensitive lands.
14

15 **B. De-designation of Prime Agricultural Land - Friends' Legal Issue A**

16 Friends' Legal Issue A contends Amendment U-3a and C-5 violate GMA requirements
17 to designate and protect agricultural resource lands by de-designating 125 acres of
18 prime agricultural lands at Orton Junction and adopting urban designations and policies
19 for the whole 182 acre site.⁶³
20
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22
23 ⁶² VISION 2040, at 56, takes note of Forterra's "Cascade Agenda": "A private initiative spearheaded by
24 community leaders and regional stakeholders, the Cascade Agenda includes long-term strategies to
25 conserve 1.3 million acres of working farms, forests, and natural areas. At the same time, the Cascade
26 Agenda seeks to create vibrant cities to attract the growth coming to our region over the next 100 years."
27 ⁶³ **Friends (A)** [with strike-out of abandoned issues] By de-designating over 125 acres of agricultural
28 lands of long-term commercial significance, by failing to preserve and protect approximately 182 acres of
29 "prime agricultural lands," and by adopting urban comprehensive plan designations and policies for these
30 lands, did amendments U-3a, C-5, and related amendments violate RCWs 36.70A.020(1, 2, 8, and 11),
31 36.70A.040, 36.70A.050, ~~36.70A.060~~, 36.70A.070, 36.70A.100, 36.70A.130, 36.70A.170, ~~36.70A.177~~,
32 36.70A.210, ~~36.70A.215~~, or ~~36.70A.310~~; the Multicounty Planning Policies [including the Resource Lands
Goal and policies MPP-DP-29, MPP-DP-31, and ~~MPP-DP-32~~]; the Countywide Planning Policies for
Pierce County, Washington [including the Countywide Planning Policy on Agricultural Lands subpolicies
2, 6, 10, and 11 and the Countywide Planning Policy on Economic Development and Employment
subpolicy 4]; the Pierce County Comprehensive Plan [including Pierce County Code (PCC) ~~19A.10.010~~,
~~PCC 19A.20.030~~, ~~PCC 19A.20.080~~, ~~PCC 19A.30.010~~, ~~PCC 19A.30.070~~, ~~PCC 19A.40.030~~, ~~PCC~~

1 Applicable Law

2
3 RCW 36.70A.040, which identifies the jurisdictions that are required to plan under the
4 GMA, also iterates their duties, including the duty to “designate . . . agricultural lands”
5 and “adopt regulations conserving these designated agricultural lands.”⁶⁴
6

7 RCW 36.70A.170 provides in relevant part:

- 8 (1) . . . [E]ach county . . . shall designate where appropriate: (a)
9 Agricultural lands that are not already characterized by urban growth
10 and that have long term commercial significance for the commercial
11 production of food or other agricultural products. . .
12 (2) In making the designations required by this section, counties and
13 cities shall consider the guidelines established pursuant to RCW
14 36.70A.050.

15 RCW 36.70A.030 defines “agricultural land” and “long-term commercial significance.”

- 16 (2) “Agricultural land” means land primarily devoted to the commercial
17 production of horticultural, viticultural, floricultural, dairy, apiary,
18 vegetable, or animal products or of berries, grain, hay, straw, turf,
19 seed, Christmas trees not subject to the excise tax imposed by RCW
20 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock,
21 and that has long-term commercial significance for agricultural
22 production. . .
23 (10) “Long-term commercial significance” includes the growing capacity,
24 productivity, and soil composition of the land for long-term commercial
25 production, in consideration with the land’s proximity to population
26 areas, and the possibility of more intense use of the land.

26 RCW 36.70A.050 instructs the Department of Commerce to adopt guidelines to guide
27 the classification of agricultural lands:
28
29

30
31 19A.40.070, and PCC 19A.80.050]; the Alderton-McMillin Community Plan [including Objective 7 A and
32 Principle 1 under this objective]; or WAC 365-190-050? [*Amici* address Goal 8]
⁶⁴ RCW 36.70A.040(2)(b)

1 (3) The guidelines under subsection (1) of this section shall be minimum
2 guidelines that apply to all jurisdictions, but also shall allow for
3 regional differences that exist in Washington State. The intent of
4 these guidelines is to assist counties and cities in designating the
5 classification of agricultural lands . . . under RCW 36.70A.170.

6 The relevant minimum guidelines for the designation of agricultural lands, developed by
7 Commerce pursuant to RCW 36.70A.050, are found at WAC 365-190-050, which
8 provides, in relevant part:

9 (3) Lands should be considered for designation as agricultural resource
10 lands based on three factors:

11 (a) The land is not already characterized by urban growth...

12 (b) The land is used or capable of being used for agricultural
13 production...

14 (i) Lands that are currently used for agricultural production or lands
15 that are capable of such use must be evaluated for designation.

16 The intent of a landowner to use land for agriculture or to cease
17 such use is not the controlling factor....

18 (ii) In determining whether lands are used or capable of being used
19 for agricultural production, counties and cities shall use the land-
20 capability classification system of the United States Department of
21 Agriculture Natural Resources Conservation Service as defined in
22 relevant Field Office Technical Guides. These eight classes are
23 incorporated by the United States Department of Agriculture into
24 map units described in published soils surveys, and are based on
25 the growing capacity, productivity and soil composition of the land.

26 (c) The land has long-term commercial significance for agriculture.
27 In determining this factor, counties and cities should consider the
28 following nonexclusive criteria, as applicable:

29 (i) The classification of prime and unique farmland soils as mapped
30 by the NRCS;

31 (ii) The availability of public facilities, including roads used in
32 transporting agricultural products;

(iii) Tax status, including whether lands are enrolled under the
current use tax assessment ... and whether there is the ability to
purchase or transfer land development rights;

(iv) The availability of public services;

(v) Relationship or proximity to urban growth areas;

(vi) Predominant parcel size;

- (vii) Land use settlement patterns and their compatibility with agricultural practices;
- (viii) Intensity of nearby land uses;
- (ix) History of land development permits issued nearby;
- (x) Land values under alternative uses; and
- (xi) Proximity to markets...

(5) When applying the criteria in subsection (3)(c) of this section [long-term commercial significance], the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain and support agricultural businesses, such as processors, farm supplier, and equipment maintenance and repair facilities.

The goals of the GMA, which are to guide the development of comprehensive plans and development regulations, are found at RCW 36.70A.020. GMA Goal (8) provides:

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

Pierce County's Process and Criteria for Designating and Removing ARL Designations

The County's Comprehensive Plan Land Use Objectives deal with the processes and criteria for *designating and removing* ARLs designations – LU-Ag Objectives 16 and 18 – codified as PCC 19A.30.070.B and D.

PCC 19A.30.070.B (LU-Ag Objective 16) Designate Agricultural Resource Lands (ARL) based on the Growth Management Act definition and the Minimum Guidelines of WAC 365-190-050.

1. Agricultural Resource Lands are lands meeting the definition in RCW 36.70A.030(2): "... land primarily devoted to the commercial production of horticulture, viticulture, floriculture, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries or livestock, and that has long-term commercial significance for agricultural production."

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2. The focus for preservation of agricultural lands must be on lands not already characterized by urban growth, characterized by more intensive rural development, designated Reserve-5 for future urban growth of a city or town or dedicated to Forest Lands.

a. Only rural lands shall be considered for agricultural resource lands designation.

b. Properties already characterized by urban growth, characterized by more intensive rural development, designated Reserve-5 for future urban growth of a city or town, shall be excluded and are defined as follows

- 1) Lands designated Rural Activity Center, Rural Neighborhood Center;
- 2) Lands rezoned to Rural Activity Center, Rural Neighborhood Center, Limited Area of More Intensive Rural Development (LAMIRD), or Reserve-5 in the adoption of a community plan or an associated Comprehensive Plan Amendment
- 3) Lands that are part of a preliminary plat approved prior to February 1, 2005, or a final plat recorded prior to February 1, 2005, including any associated open space or other non-buildable tracts identified on the face of the plat; and
- 4) Lands with mobile home parks.

c. Designated Forest Lands shall be excluded.

3. Designation of Agricultural lands of “long-term commercial significance” requires consideration of growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land’s proximity to population areas and the possibility of more intensive uses of the land (RCW 36.70A.030(10)). WAC 365-190-050 prescribes the minimum guidelines for identifying agricultural lands of long-term commercial significance and said minimum guidelines shall be considered in designating land as Agricultural Resource Land, including the following:

a. Soils. The key criterion for defining agricultural resource lands is the presence of the County’s most productive agricultural soil types and their associated production yield: soils identified as “Prime Farmland” in the NRCS [National Resource Conservation Service] Field Office Technical Guide for Pierce County, Section 2., distributed February 24, 2003, which have a grass/legume production yield of 3.5 tons per acre or greater, as

1 identified by the U.S. Department of Agriculture, Natural Resource
2 Conservation Service soil classification system.

3 1) Minimum parcel size. The threshold size used as a basis for the
4 designation of agricultural resource lands is 5 acres or larger in size
5 because soils data is most reliable at this size. Options for including
6 parcels below the 5-acre threshold are provided in community planning
7 processes. [See Objective 17] or the Comprehensive Plan Amendment
8 process.

9 2) Portion affected. The identified soils types and yield must be found
10 on 50 percent or more of the parcel area, PROVIDED that for properties
11 abutting the Carbon, Puyallup, or White Rivers, the threshold shall be
12 25 percent or more of the parcel area. The designation would affect the
13 whole parcel, not just the portion containing the soils types and yield.
14 Options for including parcels not meeting this criteria are provided in
15 community planning processes. [See Objective 17] or the
16 Comprehensive Plan Amendment process.

17
18 b. Intensity of Nearby Uses. To address the intensity of nearby uses,
19 parcels that are adjacent to lots of record of one acre or less on more than
20 50 percent of the perimeter of the parcel shall not be designated agricultural
21 resource lands.

22
23 c. Pressure to Urbanize. Community planning and joint planning efforts
24 may be used to define and establish an appropriate buffer of Reserve-5
25 around the urban growth area of a city or a town. In determining whether a
26 Reserve-5 buffer should be established, the following criteria shall be
27 considered:

28 1) Proximity to Urban Growth Area. A buffer of a reasonable width of
29 Reserve-5 designation adjacent to the city/town urban growth boundary,
30 following property lines, may be proposed in a community plan or joint
31 planning agreement. Such a proposal must be accompanied by findings
32 that support the designation and width of the buffer consistent with the
[GMA, CPPs and Comprehensive Plan]. Once established, the buffer
shall not be expanded except through the Compliance review required by
RCW 36.70A.130. Designation shall be accompanied by implementing
regulations which address setbacks and other zoning techniques used to
protect adjacent agricultural activities.

2) Economic Viability and Environmental Impacts of Farming. In the
community plan/joint planning evaluation of a potential buffer of Reserve-
5 adjacent to a city or town pursuant to 1) above, economic viability and
environmental impacts of farming may be considered as additional

1 factors for inclusion of specific parcels in the Reserve-5 buffer. However,
2 economic viability or environmental impacts of farming shall not be the
3 only determining factors for re-designation.

4 3) Other Criteria. In establishing a Reserve-5 buffer, and
5 notwithstanding any other provisions of PCC 19A.30.070(B), a
6 community planning board or parties to a joint planning effort shall
7 consider all of the criteria prescribed in WAC 365-190-050 and shall
8 document such consideration in its recommendations to the County
9 Council.

10 d. Landowner Intent. While landowner intent cannot be used as a
11 rationale for de-designation, it can be used as a criterion for inclusion when
12 reflected by the tax status of the land (inclusion in the County's Current Use
13 Assessment program as agriculture).

14 In Objective 16, the County incorporates: the required definitions from the GMA [RCW
15 36.70A.030(2) and (10)]; a commitment to designate ARLs [RCW 36.70A.170], which
16 was accomplished in 2004; Commerce's minimum guidelines that must be considered
17 in designating agricultural resource lands [RCW 36.70A.050 and WAC 365-190-050];
18 and the components for designation as set forth in *Lewis County*. Additionally, the
19 County has *refined* and *defined* soils' factors to consider in the designation process
20 such as productivity yields, parcel size, and portion of parcel affected. Intensity of
21 nearby uses is defined in terms of lot sizes on the perimeter of potential parcels.
22 Pressure to urbanize is identified in terms of proximity to UGAs (requiring a Reserve-5
23 buffer) and the economic viability and environmental impacts of farming. Landowner
24 intent is also recognized as a factor.

25 Objective 18 – PCC 19A.30.070.D - explains how ARL designations may be removed.

26
27 **PCC 19A.30.070.D (LU-Ag Objective 18)** Provide the criteria and process for
28 removing properties from the ARL designation.

- 29
30 1. Removal of properties from the agricultural resource lands designation
31 must be evaluated against the same criteria as designation (see
32 19A.30.070.B, above).

- 1 2. Removal of properties from agricultural resource lands designation shall
2 be limited to the following processes:
3 a. The approval of a Map Amendment to correct technical errors
4 under the timelines and procedures established for regular
5 Comprehensive Plan Amendments.
6 b. The adoption of a community plan that includes re-designation of
7 parcels consistent with 19A.30.070.C.
8 c. The approval of a Map Amendment to establish a Reserve-5 buffer
9 for a city or town, following a recommendation of an approved joint
10 planning agreement consistent with the provisions of 19A.30.070.C.1
11 and 3.
12 d. De-designation of agricultural resource lands for the purpose of
13 expanding a Reserve-5 buffer for a city or town created pursuant to
14 19A.30.070 C shall only be considered during the Compliance review
15 required by RCW 36.70A.130.
16 e. De-designation of agricultural resource lands for the purposes of
17 expanding the Urban Growth Area, provided that such de-designation is
18 allowed for and consistent with the applicable community plan.
19
20 3. Agricultural resource lands cannot be amended directly into the Urban
21 Growth Area unless permitted by the applicable community plan.
22

23 This Objective notes that for the County to remove ARL designations, the evaluation
24 must employ the same *criteria* as was used for designation – *i.e.* Objective 16. The
25 applicable community plan here is the Alderton-McMillin Community Plan.
26

27 The Alderton-McMillin Community Plan Land Use Element Objective 7A, Principle 1
28 provides:
29

30 An urban growth area expansion for an adjacent city may be considered
31 through an annual Comprehensive Plan amendment process only if the
32 request meets the following criteria:

5. If proposed, de-designation of ARL properties must be
accompanied by a commensurate designation of ARL lands from
other rural designations, provided that the new ARL lands meet the
criteria of PCC 19A.30.070B, and further provided that the new
ARL lands are placed in a conservation easement that limits
further future expansion of the urban growth area. The City must
demonstrate that the requirements for de-designation in the

1 Comprehensive Plan and the Growth Management Act have been
2 met. Parcels involved in the ARL de-designation described herein
3 would not be subject to the provisions of the Transfer and
4 Purchase of Development Rights program. If there are not
5 adequate rural lands to convert to ARL, the County may consider
6 additional conservation easements on ARL properties within the
7 Community Plan area.

7 Positions of the Parties

8 The Friends contend that application of the ARL designation criteria to the Orton
9 Junction parcels compels the conclusion that these parcels must retain designation as
10 agricultural resource lands of long term commercial significance. The original
11 designation was appropriate, they urge, and de-designation violates the mandate to
12 conserve these lands for farming. *Amici* Farm Interest Organizations contend that de-
13 designation to allow a shopping mall further weakens and fragments a farming
14 community struggling to maintain the land base needed for production of healthy local
15 foods.
16

17
18 The County provides no brief or argument.⁶⁵ As to ARL de-designation, Orton provides
19 the argument for the Respondents, asserting it is within the County's discretion to re-
20 weigh the factors that supported ARL designation for the property in 2003. The County
21 appropriately reached a different decision, Orton reasons, in light of the economic
22 opportunity provided by the proposed development and the conservation proposal in the
23 Seven Principles agreement.⁶⁶ Forterra argues Orton Junction is doomed to subdivide
24 into 10-acre estate lots under ARL designation. Forterra urges that the windfall from
25 shopping mall and residential development of Orton Junction will be used to buy long-
26 term conservation easements at a ratio of 4:1 and to provide other public benefits.
27
28

29
30 ⁶⁵ The Board looks to the County Staff Reports – CP #35-2 and #26-57 – and to the Findings of Fact – Ex.
31 N to Ordinance 2011-60s2 – to resolve questions about the County's action unexplained by intervenors.

32 ⁶⁶ As discussed further below, Orton does not assert tax revenue or other economic advantage is a
permissible de-designation criterion. The focus is appropriately on the development rights purchases and
other elements of the Seven Principles.

1 Board Discussion and Analysis: Part I – ARL De-designation Process

2
3 The State Supreme Court has formulated a three-part definition for agricultural lands of
4 long-term commercial significance:

5 In sum, based on the plain language of the GMA and its interpretation in
6 *Benaroya I*, we hold that agricultural land is land:

- 7 (a) not already characterized by urban growth
8 (b) that is primarily devoted to the commercial production of
9 agricultural products enumerated in RCW 36.70A.030(2), including land in
10 areas used or capable of being used for production based on land
11 characteristics, *and*
12 (c) that has long-term commercial significance for agricultural
13 production, as indicated by soil, growing capacity, productivity, and
14 whether it is near population areas or vulnerable to more intense uses.⁶⁷

15 Pierce County’s ARL designation criteria in PCC 19A.30.070 B contains parallel
16 requirements:

17 LU-Ag Objective 16.B.2 - The focus for preservation of agricultural lands
18 must be on **lands not already characterized by urban growth**,
19 characterized by more intensive rural development, designated Reserve-
20 5 for future urban growth of a city or town, or dedicated to forest lands.

21 LU-Ag Objective 16.B.1 – “Agricultural Resource Lands are lands meeting
22 the definition of RCW 36.70A.030(2): ...” and **primarily devoted to the
23 commercial production of** horticultural, viticultural, floricultural, dairy,
24 [and other **agricultural products**]”

25 LU-Ag Objective 16.B.3 – WAC 365-190-050 prescribes the minimum
26 guidelines for identifying agricultural lands of **long-term commercial
27 significance** and said minimum guidelines shall be considered in
28 designating land as Agricultural Resource Land.

29 The GMA uses the same substantive criteria for designation as for de-designation of
30 agricultural resource lands.⁶⁸ Pierce County’s Comprehensive Plan policies require the

31 _____
32 ⁶⁷ *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 488, 502, 139
P.3d 1096, 1103 (2006).

1 same analysis.⁶⁹ Thus, in review of a proposed ARL *de-designation*, the same three
2 substantive criteria are applied to evaluate the proposal.

3
4 However, the de-designation process is different from the designation process.⁷⁰ Under
5 the Pierce County plan, direct de-designation and inclusion of ARL lands into the UGA
6 must be authorized by the applicable community plan. Under the Commerce
7 regulations, the County must demonstrate that the Comprehensive Plan and GMA
8 criteria have been met using the designation amendment *process* prescribed in the
9 minimum guidelines.

11 **1) Alderton-McMillin Community Plan**

12 A threshold consideration is Pierce County's de-designation policy that provides, at
13 PCC 19A.30.070.D.3:

14
15 Agricultural resource lands cannot be amended directly into the Urban
16 Growth Area unless permitted by the applicable community plan.

17 The applicable plan is the Alderton-McMillin Community Plan. The Alderton-McMillin
18 Community Plan provides, when a UGA expansion is proposed involving de-designation
19 of ARL lands, it must be accompanied by "a commensurate designation of ARL lands
20 from other rural designations that limits future expansion of the urban growth area."⁷¹

23
24 ⁶⁸ *City of Arlington v. Central Puget Sound Growth Management Hearings Bd.*, 164 Wn.2d 768, 780 – 81,
193 P.3d 1077, 1083 – 84 (2008).

25 ⁶⁹ PCC 19A.30.070 D.1, LU-Ag Objective 18.1.

26 ⁷⁰ WAC 365-190-040(10).

27 ⁷¹ AMCP Land Use Element Objective 7A, Principle 1: An urban growth area expansion for an adjacent
28 city may be considered through an annual Comprehensive Plan amendment process only if the request
29 meets the following criteria:

30 5. If proposed, de-designation of ARL properties must be accompanied by a commensurate
31 designation of ARL lands from other rural designations, provided that the new ARL lands meet the
32 criteria of PCC 19A.30.070B, and further provided that the new ARL lands are placed in a
conservation easement that limits further future expansion of the urban growth area. The City must
demonstrate that the requirements for de-designation in the Comprehensive Plan and the Growth
Management Act have been met. Parcels involved in the ARL de-designation described herein would
not be subject to the provisions of the Transfer and Purchase of Development Rights program. If

1 However, “[i]f there are not adequate rural lands to convert to ARL, the County may
2 consider additional conservation easements on ARL properties within the Community
3 Plan area.”
4

5 While the Orton Junction amendments were pending, the County engaged Forterra to
6 negotiate an agreement that would meet the Alderton-McMillin requirements and
7 provide additional support for agriculture in the valley. The resulting Seven Principles
8 Agreement,⁷² incorporated in Ordinance 2011-60s2, leverages the high value of the
9 freeway frontage at Orton Junction. Orton agrees to buy permanent conservation
10 easements on four times the agricultural acreage being removed from the ARL. The
11 City of Sumner will pledge never again to seek to extend its UGA into designated
12 resource lands. The parties agree to convene local farmers to identify and implement
13 ways to support agriculture, perhaps through allowing a location for a farmers market or
14 community farm or some other assistance. The owners commit to spend between \$1
15 and \$1.3 million to buy conservation easements, in addition to the Transfer of
16 Development Rights TDRs required for the project.
17
18

19 The Seven Principles and Amendment U-3a require Orton to complete and record
20 conservation easements on a minimum of 125 acres of ARL lands within the Alderton-
21 McMillin Community Plan area prior to implementation of the plan amendment. The
22 remaining 375 acres must be secured before application for development permits. The
23 Friends contend the proposed acquisition of conservation easements is not consistent
24 with the AMCP requirement for commensurate lands for two reasons.⁷³ First, buying
25 easements on ARL lands does not compensate for the permanent loss of 125 acres of
26 ARL at Orton Junction. There is still a net loss of an irreplaceable resource. Second,
27
28

29 there are not adequate rural lands to convert to ARL, the County may consider additional
30 conservation easements on ARL properties within the Community Plan area.

31 ⁷² Ex. O to Ordinance 2011-60s2.

32 ⁷³ Friends Prehearing Brief at 22.

1 the proposed candidate sites identified in the Second Supplemental Staff Report⁷⁴ or,
2 alternatively, in the Seven Principles Agreement,⁷⁵ are not adjacent to UGA boundaries
3 in the AMCP and thus do not limit further future urban expansion.⁷⁶
4

5 The Seven Principles agreement indicates intent “to obtain conservation easements of
6 property as close as possible to the Orton Junction Project to impose a permanent
7 barrier to any further expansion of the City of Sumner UGA boundary onto resource
8 lands.” However, the Seven Principles do not require commitment to “green wall”
9 conservation easements prior to implementation of the de-designation, as the Friends
10 contend the AMCP requires.
11

12 The Board finds the Friends’ construction of the AMCP provision is overly strained. The
13 Board reads the de-designation provision as allowing two compensatory alternatives.
14 Rural lands may be designated ARL provided they meet ARL designation criteria and
15 provided these new ARL lands are “placed in a conservation easement that limits the
16 future expansion of the UGA.” Alternatively, additional conservation easements may be
17 acquired on existing ARL lands in the AMCP area. This second compensatory
18 alternative makes no reference to the curtailment of UGA expansion. Under the Seven
19 Principles Agreement, it seems likely most of the 500 protected acres of farm land will
20 be existing ARL, but not necessarily located so as to limit future UGA expansion.⁷⁷
21
22

23
24 _____
25 ⁷⁴ CP #35-2, Staff Report, at 2-3 and map Attachment A.

26 ⁷⁵ Ex. O to Ordinance 2011-60s2, Seven Principles Agreement at 3.

27 ⁷⁶ The County Staff Report identifies 179 contiguous ARL acres in the AMCP some distance from Orton
28 Junction that are proposed for application of conservation easements and concludes that the proposal
29 satisfies the “commensurate ARL acres” requirements. The Seven Principles Agreement presents a
30 different listing totaling 136 acres of which at least 36 (mapped in the staff report) are far from any UGA.

31 ⁷⁷ Board member Paolella would interpret the conservation easement provision of the Alderton-McMillin
32 Community Plan (AMCP) as establishing a policy objective to limit further UGA expansion regardless of
whether the conservation easement was placed on other rural lands or on ARL lands. See AMCP Land
Use Element Objective 7A, Principle 1(5). By its very nature, a conservation easement limits future urban
growth. Pierce County’s Findings for Amendment U-3a also refer to the intended use of conservation
easements on existing ARL lands to “prevent future expansion of the City of Sumner’s UGA boundary”
and to “begin a ‘green wall’ of permanent conservation easement protection immediately adjacent to the

1 The County's Amendment U-3a findings state:⁷⁸

- 2 • Conservation easements shall be completed and recorded with the Pierce
- 3 County Auditor on a minimum of 125 acres of Agricultural Resource
- 4 Lands within the Alderton-McMillin Community Plan area prior to plan
- 5 amendment implementation;
- 6 • The proposal is consistent with general policies for agricultural
- 7 preservation in ... the Alderton-McMillin Community Plan ... through the
- 8 application of the proposed conservation easements.

9 The Board concludes the conservation easements promised by the Seven Principles
10 Agreement satisfy the AMCP threshold requirement for compensatory easements. The
11 AMCP policy also requires that the requirements for de-designation in the
12 Comprehensive Plan and the Growth Management Act have been met. We turn to that
13 analysis in a moment.

15 **2) Minimum Guidelines De-Designation Process**

16 The Minimum Guidelines adopted by Commerce pursuant to RCW 36.70A.050 provide
17 specific rules for amending natural resource designations. WAC 365-190-040(10)(b)
18 sets forth the process for reviewing natural resource designations:

- 19 • First, a parcel-by-parcel approach is prohibited.
- 20 • Second, designation amendments should be based on changed circumstances,
- 21 an error in designation, new information, or a change in population growth rates.
- 22
- 23

24 Pursuant to RCW 36.70A.050(3), the WAC 365-190 guidelines promulgated by the
25 Department of Commerce "shall be minimum guidelines that apply to all jurisdictions" to
26 assist local jurisdictions in classifying agricultural, forest and mineral lands, as well as
27 critical areas. The courts have now clarified that these guidelines must be followed.⁷⁹

28
29
30 UGA boundary." So conservation easements on ARL properties within the Community Plan area should
31 limit further future UGA expansion.

⁷⁸ Ex. N to Ordinance 2011-60s2 at 7.

⁷⁹ See concurring opinion of Board member Margaret Pageler.

1 The Court of Appeals in *Manke Lumber Company v. Diehl*⁸⁰ (“*Manke Lumber*”) refers to
2 the minimum guidelines as mandatory: “the minimum guidelines **require** counties to
3 map natural resource land...” citing WAC 365-190-040(2)(b)(vii).⁸¹ “The GMA sets forth
4 objectives and minimum guidelines that local governments **must follow** when
5 classifying land.”⁸² In *Lewis County v. Hearings Board*,⁸³ the Supreme Court approved
6 the *Manke Lumber* approach of reliance on WAC minimum guidelines. The Board
7 therefore reviews Pierce County’s action in light of the minimum guidelines.⁸⁴
8

9
10 First, a parcel-by-parcel approach is prohibited. WAC 365-190-040(10)(b) states:

11 In classifying and designating natural resource lands, counties **must**
12 approach the effort as a county-wide or regional process. Counties and
13 cities should not review natural resource lands designations solely on a
14 parcel-by-parcel process.

15 As the Western Board explained in *CCNRC v. Clark County*,⁸⁵ if agricultural lands are
16 de-designated on a parcel-by-parcel basis, inevitably the agricultural production base
17 decreases to a point that elements of the support industry cannot survive economically.
18 Then the production side of the industry is unable to obtain services, leading to more
19 de-designation and ultimate disappearance of agriculture in the area. The GMA
20 emphasis is broader than conservation of individual parcels of agricultural land on a
21 site-specific basis. Rather, in order to preserve or foster the agricultural economy, as
22

23
24 ⁸⁰ *Manke Lumber Co. v Diehl*, 91 Wn. App 793 (1998).

25 ⁸¹ *Id.* at 807 (emphasis added).

26 ⁸² *Id.* at 840 (emphasis added).

27 ⁸³ *Lewis County v Hearings Board*, 157 Wn.2d 488, at 501 (2006); see also *Futurewise v CPSGMHB*, 141
28 Wn.App. 202 at 211 (2007): “Our Supreme Court has held that a county may designate a minimum parcel
29 size for certain land type designations so long as the limitation is consistent with GMA and with CTED
30 principles...”; *Clark County v WWGMHB*, 161 Wn.App. 204, 232, 254 P.3d 862 (2011) rev’ granted 172
31 Wn.2d 1006, 259 P.3d 1108 (Sep. 6, 2011): “... the regulation actually *requires* counties to consider the
32 10 factors.”

⁸⁴ See also, Henry W. McGee, Jr. and Brock W. Howell, 31 Seattle Univ. L. R. 549 (2008), *Washington’s
Way II: The Burden of Enforcing Growth Management in the Crucible of the Courts and Hearings Boards*,
at 566-572.

⁸⁵ *CCNRC v Clark County*, WWGMHB Case No. 09-2-0002, Final Decision and Order (Aug. 10, 2009), at
21.

1 mandated by RCW 36.70A.020(8), .060, .120, and WAC 365-190-050(5), a county-wide
2 or agricultural-area process is required.

3
4 Here the County's Findings recognize the significant provision for TDRs and
5 conservation easements provided by the Seven Principles Agreement to permanently
6 protect valuable agricultural lands in the Alderton-McMillin area.⁸⁶ The record is clear
7 that these provisions meet the AMCP requirements.
8

9 The County also finds that implementation of the Seven Principles "will identify and
10 develop vital agricultural industry program support and infrastructure, consistent with the
11 policies and objectives identified in the County's Agriculture Strategic Plan." However,
12 the only commitment in the Seven Principles Agreement is "to convene a stakeholder
13 process to identify agriculture industry programs or infrastructure to incorporate into the
14 Orton Junction Project to provide additional support for the local agricultural industry."⁸⁷
15 While this is commendable, the area-wide assessment of de-designation impacts is to
16 precede designation amendments, not follow them, according to the process required in
17 WAC 365-190-040(10)(b).⁸⁸
18
19

20 Second, the WAC designation amendment process stipulates that de-designation
21 should be based on an error, change in circumstances, new information, or a change in
22 population growth rates. This rule recognizes the certainty that is required for long-term
23 resource conservation. As the *Clark County* court said:⁸⁹
24

25 The County designated these parcels as ALLTCS [ARL] in its 2004
26 comprehensive plan that it intended to follow for 20 years. Absent a

27
28 ⁸⁶ Ex. N. to Ordinance 2011-60s2 at 6-7

29 ⁸⁷ Ex. O to Ordinance 2011-60s2, at 8

30 ⁸⁸ See also WAC 365-196-480 Natural resource lands: (2)(e) The review of existing designations should
31 be done on an area-wide basis and in most cases, be limited to the question of consistency with the
32 comprehensive plan, rather than revisiting the entire prior designation and regulation process. However,
to the extent that new information is available or errors have been discovered, the review process should
take this information into account.

⁸⁹ 161 Wn.App. 204, at 234.

1 showing that this designation was both erroneous in 2004 and improperly
2 confirmed by the Board, or that a substantial change in the land occurred
3 since the ALLTCS designation, the prior designation should remain.
4 Without such deference to the original designation, there is no land use
5 plan, merely a series of quixotic regulations.

6 The Board does not find in the Staff Report or in the County's Findings any information
7 referencing the WAC designation amendment process. The Board must therefore
8 **remand** Amendment U-3a to the County to conduct the appropriate process or indicate
9 how its process met the WAC 365-190-040(10) standards.

10 The Board proceeds to review the other elements of the ARL de-designation in light of
11 the court's admonition in *Suquamish Tribe* to resolve every issue presented.⁹⁰

12
13
14 *Board Discussion and Analysis: Part II – Applying the Agricultural Lands Criteria*

15 The Board reviews each of the ARL designation criteria in the Pierce County Plan,
16 together with the WAC factors, based on the record presented.⁹¹

17
18 **(1) Not already characterized by urban growth.**

19 Describing Orton Junction in the DEIS, the City says:⁹²

20 A review of aerial photos and Pierce County Assessor's data indicates the
21 area includes approximately 12 single-family residences and that
22 commercial activity is limited to agriculture related activity.

23 For the eight parcels that make up the 125 ARL-designated acres at Orton Junction, the
24 Friends submit Pierce County Assessor's records and a 2009 aerial photograph to
25

26
27
28 ⁹⁰ *Suquamish Tribe v Kitsap County*, 156 Wn.App. 743, 775-779, 235 P.3d 812 (2010), applying RCW
29 34.05.570(3)(f).

30 ⁹¹ See McGee & Howell, 31 Seattle Univ. L. R. at 568: The boards and courts, not to mention local
31 governments, have found parsing the agricultural land requirements difficult. The test for designating
32 agricultural land is long and has multiple factors. Uncertainty leers at every bend; the meaning and weight
of every factor in the analysis is vague.

⁹² CP #26-60, at 3.10-8.

1 demonstrate the ARL parcels together have only three single family homes, a handful of
2 out buildings, and horticultural buildings on one parcel.⁹³

3
4 East of the ARL parcels and the UGA expansion area, the zoning is ARL, Rural Farm
5 (RF) and R-10.⁹⁴ The City of Sumner's city limits east of Orton Junction are on the far
6 side of the freeway and consist of a block of steep hillside that provides protected
7 watershed for Elhi Springs. To the west (154th Street) is ARL, RF and, at the
8 intersection of SR 410 and SR 162, a small cluster of homes zoned R-10. Sumner city
9 limits are to the west beyond SR 162. South of Orton Junction is the Puyallup River
10 floodplain and more ARL, RF and R-10 zoning. Only by focusing exclusively on the 40-
11 acres at the northeast portion that were designated UGA in 2003 and developed with
12 commercial uses in 2008 can Orton Junction's ARL lands be "characterized by urban
13 growth."
14

15
16 The GMA defines "characterized by urban growth" as referring to "land having urban
17 growth on it or land located in relationship to an area with urban growth on it as to be
18 appropriate for urban growth."⁹⁵ Orton argues the urban development at the freeway
19 intersection shows the area is already experiencing urban growth.⁹⁶
20

21 However, Pierce County's ARL designation criteria specifically define lands which are
22 excluded from ARL designation. "Properties already characterized by urban growth ...
23 shall be excluded and are defined as follows:" listing lands designated Rural Activity
24 Center, LAMIRD, Reserve-5, pre-2005 approved plats, and mobile home parks.⁹⁷ None
25 of these apply to Orton Junction.
26

27
28
29 ⁹³ Friends Prehearing Brief at 9, citing documents in PCC #126A.

30 ⁹⁴ See HOM Ex. 1 for land use designations at Orton Junction and vicinity.

31 ⁹⁵ RCW 36.70A.030(19).

32 ⁹⁶ Orton Response, at 5-6, citing *City of Arlington v. CPSGMHB.*, 164 Wn.2d at 784, 791 – 81, 193 P.3d 1077 (2008)

⁹⁷ PCC 19A.30.070.B.2, LU-Ag Objective 16.2.

1 The Board finds the ARL properties here (a) are adjacent to the UGA and to urban
2 development on the northeast, but (b) have no urban growth on them, and (c) are not
3 characterized by urban growth as defined in Pierce County's ARL designation criteria.
4

5
6 **(2) Devoted to agricultural use**

7 The Supreme Court defined the "devoted to" requirement in *City of Redmond*:

8 We hold land is 'devoted to' agricultural use under RCW 36.70A.030 if it
9 is in an area where the land is actually used or capable of being used for
10 agricultural production.⁹⁸

11 The parties do not dispute that the ARL properties are actually used or capable of being
12 used for agricultural production. Orton acknowledges it recently applied for current use
13 tax status in order to lower the property tax for the farmer who leases the land.⁹⁹

14 Sumner's application for the amendment stated: "Lands within the expansion area have
15 been used for agricultural purposes in the past, most recently for the farming of daffodils
16 and tulips."¹⁰⁰ The Friends point out the U.S. Department of Agriculture National
17 Resource Conservation Service classifies the full 182 acres in the UGA expansion as
18 prime farmland, a national classification that identifies the best farmland in the nation.¹⁰¹
19

20
21 The Board finds the Orton Junction ARL land is devoted to agricultural use, as it is
22 actually used or capable of being used for agricultural production.
23
24

25
26 ⁹⁸ *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.*, 136 Wn.2d 38, 53, 959
P.2d 1091, 1097 (1998).

27 ⁹⁹ Orton Response, at 25.

28 ¹⁰⁰ CP #26-1, 2011 Comprehensive Plan Amendments City of Sumner Application, at 17.

29 ¹⁰¹ Friends Prehearing Brief, at 8, citing PCC #128, USDA Natural Resources Conservation Service, *Soil*
30 *Map – Pierce County Area, Washington (UGA Expansion West of 166th Av E)* p. 1 of 3, p. 3 of 3
31 (10/17/2011); *Soil Map – Pierce County Area, Washington (U-3a Ag De-designation East of 166th Ave E)*
32 p. 1 of 3, p. 3 of 3 (10/17/2011); *Prime and other Important Farmlands, Pierce County Area, Washington*
p. 1 of 2 (09/22/2009). Friends point to more information on the soils in the UGA expansion area in PCC
#126, 2011 U-3a City of Sumner De-Designation and UGA Expansion Request Compliance with Criteria
for Agricultural Lands of Long-Term Commercial Significance p. 1.

1 **(3) Long-term commercial significance**

2 “Long term commercial significance” is defined in RCW 36.70A.030(10):

3 “Long-term commercial significance” includes the growing capacity,
4 productivity, and soil composition of the land for long-term commercial
5 production, in consideration with the land’s proximity to population areas,
6 and the possibility of more intense use of the land.

7 In the Supreme Court’s *Lewis County* formulation, “long-term commercial significance
8 for agricultural production, [is] indicated by soil, growing capacity, productivity, and
9 whether it is near population areas or vulnerable to more intense uses.”¹⁰²

10
11 Pierce County’s criteria require consideration of the minimum guidelines of WAC 365-
12 190-050 to determine long-term commercial significance. The County also provides
13 specific measures for several of the WAC factors. The Board looks first at the criterion
14 of soil productivity as defined by Pierce County and the minimum guidelines, then at the
15 various factors indicating vulnerability to more intense uses.
16

17 **(3.i) Soil**

18 WAC 365-190-050(3)(b)(ii) provides as a minimum guideline that counties “shall use”
19 the soil surveys published by the USDA Natural Resources Conservation Service in
20 Field Office Technical Guides. This land-capability classification system is “based on
21 the growing capacity, productivity and soil composition of the land.”
22

23
24 Pierce County LU-Ag Objective 16.B provides:

- 25 a. **Soils.** The key criterion for defining agricultural resource lands is the
26 presence of the County’s most productive agricultural soil types and
27 their associated production yield: soils identified as “Prime Farmland”
28 in the NRCS [National Resource Conservation Service] Field Office
29 Technical Guide for Pierce County, Section 2., distributed February
30 24, 2003, which have a grass/legume production yield of 3.5 tons per
31

32

¹⁰² *Lewis County*, 157 Wn.2d at 502.

1 acre or greater, as identified by the U.S. Department of Agriculture,
2 Natural Resource Conservation Service soil classification system.

3 1) **Minimum parcel size.** The threshold size used as a basis for
4 the designation of agricultural resource lands is 5 acres or larger in
5 size because soils data is most reliable at this size....

6 2) **Portion affected.** The identified soils types and yield must be
7 found on 50 percent or more of the parcel area....

8 The Friends assert the whole Orton Junction UGA expansion area is classified by the
9 USDA Natural Resource Conservation Council as prime farmland.¹⁰³ Citing to
10 information in Sumner's DEIS, they point out that well over 50% of the soils are
11 Puyallup fine sandy loam and Sultan silt loam, classified as prime farmland.¹⁰⁴ Briscot
12 loam, making up 39% of the soil, is "[p]rime farmland if drained and either protected
13 from flooding or not frequently flooded during the growing season."¹⁰⁵

14
15
16 Orton responds that the soils are prime when drained, reducing the land's
17 productivity.¹⁰⁶ Apparently an agricultural drainage system was installed many years
18 ago, but the drainage was disrupted by freeway construction in the 1970s and has not
19 been restored or fully maintained.¹⁰⁷

20
21 The Board notes the County Staff rejected the "prime when drained" analysis, stating
22 the County could not introduce a new classification into its system without formal
23 amendment of its ARL criteria.¹⁰⁸ As to the condition of the drainage system, the Board
24 ruled in its *T.S. Holdings* decision that failure to maintain or improve an agricultural
25

26
27 ¹⁰³Citing PCC #126, 7 CFR § 657.5(a) for an explanation of prime farmland and United States
28 Department of Agriculture, Field Office Technical Guide Section 2 - Natural Resources Information 1.
29 Soils for an explanation of the Land Capability Classification system.

30 ¹⁰⁴ CP #26-60, DEIS at 3.9-37.

31 ¹⁰⁵ PCC #128, USDA Natural Resources Conservation Service, Prime and other Important Farmlands,
32 Pierce County Area p. 1 of 2 (09/22/2009).

¹⁰⁶ Orton Response, at 16-17.

¹⁰⁷ Id at 17, and information provided orally by Orton's counsel at the Hearing on the Merits.

¹⁰⁸ CP 35-2, Staff Report, at 106.

1 drainage system, like failure to repair or replace a fence, or even the decision not to
2 plow or plant is not a condition related to growing capacity.¹⁰⁹

3
4 The County's Findings in support of U-3a state "these parcels contain soils that meet
5 the soils criteria for ARL designation. . . ." The Board concludes the soils criteria of the
6 Pierce County Plan and the minimum guidelines support continued ARL designation for
7 these properties.

8
9 (3ii) The availability of public facilities, including roads used in transporting
10 agricultural products and (3iv) the availability of public services

11 Orton Junction is well situated along roads that give ready access for transporting the
12 current crop – fresh-cut daffodils and tulips or harvested bulbs – to metropolitan
13 markets.¹¹⁰

14
15 The dispute of the parties here centers on whether water and sewer services are
16 available to support ARL de-designation and the more intensive UGA uses. The
17 Friends argue (1) urban-level infrastructure is not present in Orton Junction, (2)
18 providing sewer lines is contrary to the County's policy on volcanic hazards, and (3) the
19 water provider – Sumner – has not demonstrated capacity to serve the additional
20 uses.¹¹¹ Orton responds that "availability" to support ARL de-designation doesn't
21 require fully built-out infrastructure but "the infrastructure and ability to extend further
22 coupled with the capacity to serve are adequate to justify the proposal."¹¹²

23
24
25
26 ¹⁰⁹ *T.S. Holdings, LLC v. Pierce County*, CPSGMHB Case No. 08-3-0001, Final Decision and Order
27 (Sept. 2, 2008), at 37: "Here, the Record indicates the property has been: abandoned as a dairy, water
28 rights have been sold, the land has not been farmed, but for some hay production, the property is in need
29 of maintenance, particularly its drainage system, and the present landowner wants the land to be de-
30 designated. Each of these actions is a reflection of individual choices – landowner intent."

31 ¹¹⁰ See "Proximity to Markets," below.

32 ¹¹¹ Friends Prehearing Brief at 13-14.

¹¹² Orton Response at 21, citing *ICAN v Jefferson County*, WWGMHB 07-2-0012c, Compliance Order
(Aug. 12, 2009) at 6; *KCRP v Kitsap County*, CPSGMHB 06-3-0005, Order Finding Compliance (Nov. 5,
2007).

1 As to sewer service availability, the Board finds there are sewer mains near the
2 northeast and south west boundaries of the Orton Junction expansion area. The City
3 has demonstrated treatment capacity and provided competent plans for pump station,
4 force main and conveyance improvements to serve high-intensity development.¹¹³ The
5 Friends' objection concerning volcanic hazards is a serious matter and is dealt with
6 subsequently in this order.¹¹⁴
7
8

9 Water service is already provided to Orton Junction by the City of Sumner. Upgrading
10 the distribution infrastructure to serve intensive development presents no unique
11 challenges. However, Sumner's immediate water supply deficiencies, discussed
12 subsequently in this order, raise significant questions as to the availability of water
13 service for Orton Junction.¹¹⁵
14
15

16 The Board finds (a) roads are available to take agricultural products to market, (b) there
17 are sewer and water lines in or near the proposed UGA expansion area, and (c) there is
18 an apparent deficiency of water supply needed to serve more intensive development.
19

20 **(3iii) Tax status and TDR eligibility**

21 Pierce County's ARL designation policies state: "While landowner intent cannot be used
22 as a rationale for de-designation, it can be used as a criterion for inclusion when
23 reflected by the tax status of the land (inclusion in the County's Current Use
24 Assessment program as agriculture)."¹¹⁶ Enrollment in the current use tax program
25 generally requires a multi-year commitment to farming.
26
27

28 ¹¹³ CP #26-60, DEIS at 3.19-8.

29 ¹¹⁴ PCC 19A.60.080D.2 provides: Direct sewer lines, utilities, and public facilities away from volcanic
hazard areas, wherever feasible.

30 ¹¹⁵ The County's Findings state: "Urban water and sewer service is located south of SR 410 and adjacent
31 to the parcels, with capacity to serve the development." The capacity to provide water service is not
documented in the record provided to the Board, as set forth below in response to Friends' Legal Issue B.

32 ¹¹⁶ PCC 19A.30.070.B.3.d, LU-Ag Objective 16.3.d.

1 The Friends provide Pierce County Assessor-Treasurer documents showing 79% of the
2 Orton Junction ARL farm land is in the current use taxation program.¹¹⁷ The Friends
3 also point out the agricultural properties, both the ARL and Rural Farm lands, are
4 eligible to participate in Pierce County's TDR programs.¹¹⁸
5
6

7 Orton explains from 2005 to 2010 only 23 acres of ARL land at Orton Junction were
8 enrolled in the Current Use Farm and Agriculture tax assessment program. In 2010,
9 Orton enrolled an additional 76 acres to bring its property tax payments down below its
10 agricultural lease income.¹¹⁹
11

12 The Board finds the tax status of the ARL lands, together with TDR eligibility, weighs in
13 favor of designation.
14

15 **(3v) Relationship or proximity to urban growth areas**

16 The Friends contend only one parcel of the Orton Junction ARL land abuts the UGA.¹²⁰
17 Orton counters that the area is immediately adjacent to the incorporated city limits and
18 the UGA, immediately adjacent to two freeway interchanges, and has been part of the
19 City of Sumner's expansion plans for 25 years: "The location makes this area ideal for
20 UGA expansion and inappropriate for agricultural operations."¹²¹
21
22

23 The County's Findings in support of Amendment U-3a state:¹²²

- 24 • These parcels are located immediately adjacent to existing urban
25 development located south of SR 410, including recent development of
26

27
28 ¹¹⁷ Friends Prehearing Brief at 14.

¹¹⁸ PCC 18G.10.020A.1.

¹¹⁹ Orton Response at 25.

¹²⁰ Friends Prehearing Brief at 10: ARL Parcel 0520301006 abuts part of commercial/UGA parcel
0520301037. From the Board's review it appears three of the ARL parcels touch or abut the UGA. See,
HOM Ex. 1.

¹²¹ Orton Response, at 22.

¹²² Ex. N to Ordinance 2011-60s2 at 7.

1 two auto dealerships and a grocery store. They are located adjacent to
2 two SR 410 freeway interchanges that are characterized by urban growth.

3 The Board notes Pierce County's Comprehensive Plan provisions address proximity to
4 the UGA and "pressures to urbanize" with specific provisions to establish a Reserve-5
5 buffer area in order to protect agricultural operations from the adverse effects of high
6 intensity development.¹²³ Before being de-designated by Amendment U-3a, the Orton
7 Junction ARL lands were separated from the City of Sumner by State Highway 410,
8 except at the northeast corner of the area, where a 2003 UGA expansion allowed the
9 recent development of urban commercial uses. However, no Reserve-5 buffer has
10 been proposed or provided for the Orton Junction ARL lands.
11

12
13 The Board is not persuaded that the post-2003 incursion of commercial development
14 into the northeast corner of the area supports de-designation of an additional 125 acres
15 of ARL land. While we can't turn back that clock, the GMA is built on the premise that
16 past planning missteps shouldn't preclude wise planning for the future, and wise
17 planning under the GMA starts with designating and protecting natural resource
18 lands.¹²⁴ If mere adjacency to a UGA triggers de-designation and urbanization, the
19 Central Puget Sound area will soon be paved over. The Pierce County Plan at
20 minimum requires a Reserve 5 buffer.
21

22
23 The Board finds the Orton Junction ARL lands are located in proximity to the UGA on
24 the northeast.
25

26 **(3vi) Predominant parcel size**
27
28
29
30

31 _____
32 ¹²³ PCC 19A.30.070.B.3.c, LU-Ag Objective 16.3.c.

¹²⁴ RCW 36.70A.040(3)(b), RCW 36.70A.170.

1 The Friends identify the 8 parcels designated as ARL. The largest of these parcels is
2 55.42 acres, the next 20.69 acres, and the smallest are 10 acres, 8.8 acres, 7.8 acres,
3 and 6.9 acres.¹²⁵
4

5 Orton asks the Board to consider the whole Orton Junction UGA expansion area. Orton
6 points out that the majority of parcels in the whole area are less than one acre in size.¹²⁶
7 Similarly, the County's Findings state: "A majority of the parcels within the proposed
8 UGA expansion area are less than one acre in size."¹²⁷ Orton argues the
9 "predominance of small lots" reflects a land use pattern that impairs the long term
10 commercial significance of the properties for agriculture.
11

12 The Board reads the minimum guidelines as criteria for designation or de-designation of
13 ARL lands. Thus the "predominant parcel size" factor must reference the agricultural
14 lots, not the general vicinity. The number or size of parcels in the surrounding area that
15 are not subject to designation/de-designation is irrelevant. Pierce County's policies are
16 explicit: "The threshold size used as a basis for the designation of ARL is 5 acres or
17 larger in size."¹²⁸ Sumner's EIS acknowledges: "Those ARL parcels proposed for
18 inclusion within the UGA expansion (and therefore proposed for de-designation) meet
19 the 5-acre threshold size identified in this criterion."¹²⁹
20
21

22
23 The Board finds large parcels predominate in the ARL lots, with 5 of the 8 parcels being
24 10 acres or larger and all exceeding the Pierce County threshold size of 5 acres.
25
26
27

28
29 _____
30 ¹²⁵ Friends Prehearing Brief at 15, PCC #126.

31 ¹²⁶ Orton Response at 25, citing PCC #25, Application at 15 and CP #26-60, DEIS at 3.9-40.

32 ¹²⁷ Ex. N to Ordinance 2011-60s2 at 7.

¹²⁸ PCC 10A.30.070 B.3.a.1, LU-Ag Objective 16.3.a.1; upheld, *Futurewise v CPSGMHB*, 141 Wn.App.
202, 169 P.3d 499 (2007).

¹²⁹ CP #26-62, FEIS at 3.9-47.

1 **(3vii) Land use settlement patterns and compatibility with agricultural**
2 **practices**

3 Until the UGA incursion in 2003, the ARL lands at Orton Junction were shielded from
4 incompatible land uses by the raised freeway on the north and west and the Puyallup
5 River, parkland and agricultural uses on the south. A row of smaller lots with single
6 family homes stretches along 75th and Riverside Road to the south and up both sides of
7 166th Avenue in the eastern portion of the area. There is also a cluster of homes west
8 of 154th Street along 75th and the Orting Highway.
9

10
11 No evidence has been presented suggesting these settlements are incompatible with
12 agriculture.¹³⁰ The Friends provide data indicating most of the homes were built
13 decades ago, and thus the residents have long coexisted with the farm community.
14

15 Orton points to the settlement pattern created by the new commercial uses at the 166th
16 Avenue freeway intersection.¹³¹ Orton argues agricultural uses are inconsistent with
17 urban development and with pressures for commercial uses at the freeway. No
18 evidence was provided of actual incompatibility between farm operations on the ARL
19 lands and either the car dealerships or the mega-grocery store.
20

21 The Board finds the factor of compatibility of land use settlement patterns with
22 agricultural practices does not provide clear guidance for either designation or de-
23 designation.
24

25 **(3viii) Intensity of nearby land uses**
26
27
28
29
30

31 ¹³⁰ The Friends identify some of these residential lots as owned by local farmers. Friends Prehearing Brief
at 16, fn. 103.

32 ¹³¹ Orton Response, at 23-24.

1 Pierce County's Comprehensive Plan policies address this criterion with a numerical
2 formula:¹³²

3 To address the intensity of nearby uses, parcels that are adjacent to lots
4 of record of one acre or less on more than 50% of the perimeter of the
5 parcel shall not be designated agricultural resource lands.

6 The Friends calculate the perimeter of the three ARL parcels that abut lots one acre or
7 smaller and find none of the ARL parcels meets the 50% adjacency threshold for de-
8 designation.¹³³ Orton has no response to the Friends' calculations.
9

10 The Board concludes the intensity of nearby uses does not support ARL de-designation.
11

12 **(3ix) History of land development permits issued nearby**

13 The Friends tabulate all of the building permits for the rural and ARL lands within and
14 near Orton Junction. The Friends summarize:¹³⁴
15

16 Outside of the preexisting UGA which has new commercial development,
17 the permits have been for single-family residences, mobile homes,
18 accessory structures, and agricultural buildings. Of the residences, which
19 are single-family homes and mobile homes including farm dwellings, only
20 one home was built in the 1990s and one built in the 2000s. More
21 residences, nine, were constructed in the 1920s, more than any other
22 decade.

23 Orton's response points to the commercial development in the UGA incursion at the
24 166th Avenue freeway intersection:¹³⁵

25 There has been rapid development of commercial uses since 2008,
26 including two new car dealerships and a large (93,000 square foot) retail
27 supermarket. These join a gas station and food mart. Additionally, in

28 ¹³² PCC 19A.30.070 B.3.b, LU-Ag Objective 16.3.b.

29 ¹³³ Friends Prehearing Brief at 21: Four percent of the perimeter of parcel 0520301049 abuts lots one
30 acre or smaller, 49 percent of the perimeter of parcel 0520304001 abuts parcels one acre or smaller, and
31 24 percent of the perimeter of parcel 0520305002 abuts parcels one acre or smaller.

32 ¹³⁴ Friends Prehearing Brief at 17, citing PCC #126, Pierce County Assessor-Treasurer ePIP, *Building
Characteristics* reports.

¹³⁵ Orton Response at 23, citing PCC #25, Application at 15, CP 26-60, DEIS at 3.9-40 and CP #26-60 at
3.9-41.

1 2010, Sumner redeveloped 166th Avenue East north of Orton Junction to
2 a 5-lane configuration in anticipation of future urbanization.

3 Orton argues this recent pattern of land development “logically extends to the rest of the
4 Orton Junction south to Riverside Road.”¹³⁶ Orton contends intense urbanization is the
5 main development trend in the immediate vicinity of Orton Junction.
6

7 The Board finds the argument of pressure to urbanize is belied by the continued
8 agricultural activities and lack of building permit applications on the ARL and rural lands
9 at the Junction. Where land has been designated urban at the 166th Avenue freeway
10 intersection, commercial development is to be expected. However, the history of land
11 development permits in the proposed UGA expansion area and its rural vicinity does not
12 support de-designation of ARL lands.
13

14
15 The Board finds (1) urban development has occurred recently on the lands in the
16 Sumner UGA but (2) there have been few, if any, development permits issued in the
17 ARL and surrounding rural lands in the last decade.
18

19 **(3xi) Proximity to markets**

20 The Friends assert the Orton Junction ARL properties are close to markets and have
21 good road access to buyers and central Puget Sound cities.¹³⁷ The Friends identify
22 food and meat processing operations, farmers markets for direct sales, and farm
23 product distributors in the area. These businesses provide markets for local farms. The
24 value of this area and its proximity to markets for fresh produce and flowers in the
25 metropolitan area is underscored by the *Amici* Farm Interest Organizations, which
26
27
28

29
30 ¹³⁶ Id. at 24.

31 ¹³⁷ Friends Prehearing Brief at 18, citing PCC #126, Puget Sound Fresh, *Puget Sound Area Farmers*
32 *Markets Pierce County*; Pierce Conservation District Mobile Meat Processing Unit webpage; U.S. Census
Bureau, *2009 County Business Patterns Pierce County Washington*; PCC #140, Testimony of Amy
Moreno-Sills (Oct. 3, 2011).

1 represent not only farmers but some of the region's primary distributors of local farm
2 products. Orton does not respond to this argument.

3
4 The Board concludes the proximity to markets favors ARL designation at Orton
5 Junction.

6
7 **(3x) Land values under alternative uses**

8 The Friends acknowledge land developed for urban uses will have higher market
9 values, but they argue the presence of critical areas, lack of public facilities and
10 services, and County policy against sewer extension in a lahar zone preclude urban
11 development at Orton Junction and so values should be kept low.¹³⁸ However,
12 Sumner's EIS points out that it is to be "expected that land values under urban land use
13 designations with freeway visibility would likely be higher than under rural
14 designations."¹³⁹

15
16
17 It appears to the Board that the land values under alternative uses in this case must be
18 measured by the worth assigned to the project by Orton, the City of Sumner, Forterra,
19 and ultimately, Pierce County. The parties to the Seven Principles Agreement propose
20 to leverage the value of the eight designated ARL parcels at Orton Junction to buy down
21 development rights on other ARL or rural lands in a 4 to 1 ratio at an estimated cost of
22 \$1,000,000 – \$1,300,000. Additionally, they will subsidize affordable housing, will
23 acquire TDRs, will employ Forterra as a continuing sustainability consultant, and will
24 pay for unspecified services for farmers in the Alderton-McMillin community. Clearly the
25 parties place a high dollar value on the land under alternative uses.

26
27
28 The Board finds that land value under alternative uses is the one ARL designation factor
29 that fully supports de-designation of the agricultural properties at Orton Junction. It

30
31 _____
32 ¹³⁸ Friends Prehearing Brief, at 17.

¹³⁹ CP #26-62, FEIS at 3.9-50.

1 appears to the Board that the County Council gave this factor significant weight in its
2 decision to adopt Amendment U-3a.

3
4 Summary on Application of Designation/De-designation Factors

5 Applying the required analysis to the County's de-designation of the Orton Junction ARL
6 lands, the Board finds the Friends have met their burden of proving the property
7 continues to meet the Pierce County ARL designation criteria and satisfies the majority
8 of the WAC factors. The County Staff Report correctly concluded:¹⁴⁰

9
10 The ARL designation was not made in error and the property continues to
11 meet the adopted ARL designation criteria. The adopted policy states that
12 the de-designation shall be based on the same criteria as was applied
13 through the original Agricultural Resource Lands designation process.

14 The County Council's Findings, however, conclude the lands lack long-term commercial
15 significance:¹⁴¹

- 16 • There are approximately 125 acres of ARL land within the area proposed
17 for the UGA expansion. While these ARL parcels contain soils that meet
18 the soils criteria for ARL designation under GMA and the Comprehensive
19 Plan, the parcels *do not meet the GMA requirements for long term*
20 *commercial significance*. These parcels are located immediately adjacent
21 to existing urban development located south of SR 410, including recent
22 development of two auto dealerships and a grocery store. They are
23 located adjacent to two SR 410 freeway interchanges that are
24 characterized by urban growth. Urban water and sewer service is located
25 south of SR 410 and adjacent to the parcels, with capacity to serve the
26 development. A majority of the parcels within the proposed UGA
27 expansion area are less than one acre in size.

28 The County rests its conclusion of no long-term commercial significance on three
29 findings: proximity to urban growth, availability of urban water and sewer service, and
30 predominant parcel size. The Board's analysis above concludes the County's finding on

31 ¹⁴⁰ CP #35-2, Staff Report at 107. Staff stated the County could use alternative criteria but the County
32 would need to adopt such criteria through a comprehensive plan amendment process applicable to all
ALR designations.

¹⁴¹ Ex. N to Ordinance 2011-60s2 at 7.

1 adjacency to urban development is supported in the record, but the County neglects to
2 point out the ARL parcels are surrounded on three sides by ARL, RF and R-10 lands.
3 The finding on water service capacity is not supported by facts in the record. The
4 finding on predominant parcel size does not measure the relevant parcels.
5

6 In sum, the Board finds application of the Pierce County criteria, including incorporation
7 of the minimum guidelines, strongly supports a conclusion that these lands have long-
8 term commercial significance as agricultural resource lands. Two of the WAC factors
9 weigh in favor of de-designation: adjacency to the UGA and land value under alternative
10 uses.¹⁴²
11

12
13 In *Lewis County*, the Court stated:¹⁴³

14 The GMA does not dictate how much weight to assign each factor in
15 determining long term commercial significance. While a jurisdiction may
16 weigh the various WAC factors differently, they may not ... “[go] beyond
17 the considerations permitted by WAC 365-190-050 and RCW
18 36.70A.030.”

19 Here it appears evident the County has gone *beyond the WAC factors* to base its de-
20 designation approval largely on the Seven Principles Agreement, a proposed
21 compensatory scheme to be funded from redevelopment of the property. It remains for
22 the Board to review the Seven Principles Agreement to determine whether the County
23 was within its discretion under the GMA in relying on the alternative provisions of the
24 Seven Principles to justify de-designating the Orton Junction ARL lands in the face of
25 the designation criteria of the Pierce County Comprehensive Plan and the majority of
26 the minimum guideline factors.
27

28
29
30 ¹⁴² McGee and Howell, 1 Seattle Univ. L. R. 594, at 572: Thus, not only must local governments consider
31 each factor in the CTED guidelines; the local governments must also give at least some weight to each
32 other factors.

¹⁴³ *Lewis County*, 157 Wn.2d at 503-504.

1 The Board must also consider the result required from the designation/de-designation
2 analysis. WAC 365-190-050(5) states the process of determining long-term commercial
3 significance “should result in designating an *amount of agricultural resource lands*
4 *sufficient to maintain and enhance the economic viability of the agricultural industry,*”
5 including the retention of agricultural processors, farm suppliers, equipment repair
6 facilities and other support services.¹⁴⁴ The Board looks to the County’s record, to the
7 Alderton-McMillin Community Plan, to Forterra’s brief and the Seven Principles, and to
8 the brief of *Amici* on this question.
9

10
11 Finally, the Board considers the “framework to ensure consistency” provided by the
12 MPPs and CPPs.

13
14 *Board Discussion and Analysis: Part III – Reviewing the County Action and*
15 *Outcome*

16 **1) The Seven Principles Agreement**

17 Given the heightened value of the Orton Junction lands if developed for shopping,
18 housing and the regional YMCA, the County requested Forterra to negotiate an
19 agreement with Sumner and Orton, attempting to leverage compensatory protections for
20 agriculture. The resulting Seven Principles Agreement proposes to allow the Orton
21 Junction development but draw the urban line at its southern boundary with long-term
22 finality.
23

24
25 Forterra’s thesis is that ARL zoning alone does not guarantee continued farming; rather,
26 market pressures inevitably lead to large-lot subdivisions and a sprawl of 10-acre “rural
27 estates.”¹⁴⁵ Forterra contends the only way to ensure agriculture survives economically
28

29
30 ¹⁴⁴ WAC 365-190-050((5)).

31 ¹⁴⁵ The Board notes the AMCP Land Use policies address this scenario with a cluster alternative that
32 would result, on 125 acres of ARL land, in 24 one-acre home sites and 100 acres of dedicated farm land.
AMCP, at 21,23-24,30 Objective 4.1.

1 in an urbanizing region is through purchase of development rights or conservation
2 easements. The Seven Principles Agreement uses the higher value of the Orton
3 Junction land as a shopping center to buy up to \$1.3 million in agricultural land
4 development rights. The first 125 acres of ARL conservation easements will be
5 acquired prior to the effective date of the new zoning. A remaining 375 acres will be
6 acquired prior to approval of any development permit, for a 4:1 ratio of permanent
7 protection over de-designated acreage.
8

9
10 Forterra champions a plan for a “green wall” of protected agricultural lands around the
11 Sumner UGA. As noted in the County findings, there are publicly-owned lands south of
12 Orton Junction that form part of this “green wall.” At the Hearing on the Merits, the
13 Board was shown maps of possible “green wall” properties where conservation
14 easements on ARL lands might be acquired. However, neither the Staff Report nor
15 Seven Principles Agreement provides or requires that protected lands ring the UGA. If
16 mere UGA adjacency justifies de-designation of ARL lands, as Orton’s arguments imply,
17 continued loss of fertile farmland is inevitable.
18

19
20 The Board finds the “green wall” concept is commendable, but without more certainty in
21 the Agreement, the record does not support a conclusion that further UGA expansion
22 will be prevented. The lack of such certainty fails to consider the needs of the
23 agricultural community; it falls short of “maintaining and enhancing” the industry as
24 required by RCW 36.70A.020(8). This expansion of the UGA followed by its
25 urbanization will lead to the identical argument being made to justify further expansion
26 as the land abutting the expanded Orton Junction – east, west, and south – will then be
27 adjacent to urban growth. A solid “green wall” would prevent that expansion (assuming
28 compatibility of farm operations can be ensured), but the wall which the record presents
29 is far from solid.
30
31
32

1 The Seven Principles pledge to acquire TDRs to enable development of 654 dwelling
2 units in the new UGA.¹⁴⁶ Orton points out this will develop an immediate market for
3 TDRs in Pierce County where take-up of the program has so far been meager.¹⁴⁷
4

5 The Seven Principles also agree to a process to identify other agricultural program
6 support to be incorporated into the project, pledging “to convene a stakeholder process
7 to identify agriculture industry programs or infrastructure to incorporate into the Orton
8 Junction Project to provide additional support for the local agricultural industry.”¹⁴⁸ As
9 the Board previously noted, strategies to support local agriculture should be identified
10 *before* enacting a designation amendment, per WAC 365-190-040(10), not relegated to
11 an indeterminate subsequent process.¹⁴⁹
12

13
14 The County’s Findings for Amendment U-3a rely on the 4:1 conservation easements,
15 the “green wall” concept, the TDRs to be purchased, and the industry-support proposal:

- 16 • The Puyallup River and significant public ownerships immediately south
17 of the proposed UGA expansion provide a permanent and logical
18 boundary between agricultural uses farther south and the proposed urban
19 uses within the UGA expansion area.
- 20 • With implementation of the 7 Principles described in Exhibit O, the Orton
21 Junction UGA amendment provides significantly greater conservation
22 easements and TDRs than are required by Objective 7A of the Alderton
23 McMillin Community Plan. Through the implementation of these 7
24 Principles, the *County can prevent sprawl* and prevent further expansion
25 of the City of Sumner’s UGA boundary onto resource lands; will provide 4
26 acres of permanent conservation easement protection on agricultural
27 resource lands for every one acre of ARL lands contained within the
28 Orton Junction UGA amendment and will identify and develop vital local
29 agricultural industry program support and infrastructure, consistent with

30 ¹⁴⁶ Ex. O to Ordinance 2011-60s2, at 5.

31 ¹⁴⁷ Orton Brief, at 1.

32 ¹⁴⁸ Ex. O to Ordinance 2011-60s2, at 8.

¹⁴⁹ The record before the Board is devoid of any work plan, proposed time line, identification of local partners, commitment of funds or lands, or other details to give substance to the promise of “additional support.”

1 the policies and objective identified in the County's Agriculture Strategic
2 Plan;

- 3 • The amount of conservation easement protection identified in Exhibit O
4 exceeds the conservation easement protection than that [sic] required by
5 the Alderton McMillin Community Plan and adopted Pierce County policy,
6 resulting in conservation of over 500 acres. Conservation easements
7 acquired pursuant to Exhibit O will *begin a "green wall"* of permanent
8 conservation easement protection immediately adjacent to the UGA
9 boundary and permanently protect other valuable agricultural lands
10 nearby. The Conservation Easements required for approval of this
11 amendment are specific to this amendment proposal and are not intended
12 to establish new county policy;
- 13 • The number of TDRs required in Exhibit O, which required TDRs for both
14 the rural lands and the ARL lands within the UGA amendment, exceeds
15 the number of TDRs required by the Alderton McMillin Community Plan.

16 Clearly the County's de-designation action is based largely on the Seven Principles,
17 going well beyond consideration of the WAC factors and its own comprehensive plan
18 de-designation analysis. Forterra's concept of a 4:1 ratio of permanent protection over
19 de-designated acreage coupled with a "green wall" of protected agricultural lands
20 around the Sumner UGA appears to the Board to be a promising approach to potentially
21 further the GMA's fundamental policies to discourage urban sprawl and to protect
22 resource lands. However, the challenge is to evaluate this concept under the GMA
23 standards for de-designation and within the regional framework to assess whether the
24 long-term *economic viability* of the agricultural industry is maintained and enhanced.

25 **2) Maintaining Agricultural Industry**

26 The Commerce minimum guidelines, after listing the ARL designation factors, conclude
27 with the expected outcome: designation of sufficient lands to enhance the economic
28 vitality of agriculture as an industry. WAC 365-190-050(5) provides:

29 When applying the criteria in subsection (3)(c) of this section [long-term
30 commercial significance], the process should result in designating an
31 *amount of agricultural resource lands sufficient to maintain and enhance*
32 *the economic viability of the agricultural industry* in the county over the
long term; and to retain and support agricultural businesses, such as

1 processors, farm supplier, and equipment maintenance and repair
2 facilities.

3 *Amici* Farm Interest Organizations bring a whole-industry viewpoint to the case before
4 us.¹⁵⁰ *Amici*, together with Petitioners American Farmland Trust and PCC Farmland
5 Trust, include farmers, food distributors, wholesalers and farmers' market organizers,
6 and farm and local-food advocacy organizations.¹⁵¹ They assert the County's action
7 was taken without due consideration for the economic viability of the agricultural
8 industry in Pierce County and the Alderton-McMillin community in violation of GMA
9 Planning Goal 8.¹⁵² *Amici* document the active agriculture industry in Pierce County
10 characterized by an "influx of small, intensive direct market operations that are quite
11 profitable."¹⁵³ They argue the ARL de-designation impedes expansion of Pierce
12 County's burgeoning small-scale agriculture which relies on quality soils and proximity
13 to markets.
14

15
16 *Amici* acknowledge zoning controls are not a *sufficient* guarantee that land will remain
17 available for farming, but land use designations and the political will to enforce them are
18 certainly a *necessary* condition for the industry's stability. *Amici* point out it is the
19 "flexibility of zoning laws" that inflates land values and destabilizes the farm industry.¹⁵⁴
20 *Amici* argue the Orton Junction de-designation of ARL and RF lands not only paves
21 over 182 acres of prime farm lands but sends a signal to other farmers that zoning will
22
23

24
25
26 _____
27 ¹⁵⁰ Orton moves to strike the portions of *Amici* brief arguing non-compliance with GMA environmental
28 protection requirements. The Board finds some of the arguments of *Amici* go beyond the issues raised by
29 Petitioners. The Board **strikes** Section E of the *Amici* brief.

30 ¹⁵¹ Motion for Amicus Standing (March 22, 2012).

31 ¹⁵² RCW 36.70A.020(8): Natural resource industries: Maintain and enhance natural resource-based
32 industries, including productive ... agricultural ... industries. Encourage the conservation of ... productive
agricultural lands, and discourage incompatible uses.

¹⁵³ *Amici* Brief at 12, citing American Farmland Trust, *The Suitability, Viability, Needs, and Economic
Future of Pierce County Agriculture*, Phase I Report, at 8.

¹⁵⁴ *Amici* Brief at 14, citing American Farmland Trust, at 10.

1 not long protect them from urbanization, particularly if mere urban adjacency becomes
2 the overriding factor in the de-designation analysis.

3
4 *Amici* also protest the fragmentation of agricultural lands by Amendment U-3a. Citing
5 the Pierce County Agriculture Strategic Plan,¹⁵⁵ *Amici* argue contiguous farmland areas
6 broken up by the encroachment of incompatible development cannot operate
7 effectively.¹⁵⁶ They point out there are now ARL lands across the street from the Orton
8 Junction UGA - to the west on 154th, to the east on 166th, and south of 75th and
9 Riverside Road. The ARL parcels directly east and west of the Orton Junction UGA will
10 now be isolated. Like the farmers to the south, they will be faced with high-intensity
11 adjacent development, their farm vehicles sharing the roads with folks thronging to
12 events at the YMCA or sales at the mall, and their normal farm operations necessarily
13 curtailed by the incompatibility of high-density residential and commercial uses. *Amici*
14 ask: How long can it be before the criteria for de-designation are applied to these
15 fragmented lands? Even if these lands are protected by conservation easements, will
16 farming be viable?
17
18

19 The Board underscored the need for a whole-industry perspective in *T.S. Holdings*.¹⁵⁷
20

21 Population growth increases the pressure to convert agricultural lands to
22 other uses, thereby undermining the land base that supplies our source of
23 food. The GMA creates a framework for addressing these pressures,
24 especially the fragmentation and conversion of the agricultural land base
25 and maintenance of the agricultural industry. In one of its earliest GMA
26 decisions, our Supreme Court held:

27 The GMA sought to control and regulate growth, and specifically
28 emphasized the protection of natural resource lands, including

29 ¹⁵⁵ CP #28-21 Pierce County Agriculture Strategic Plan Appendices: Task 5: Policies and Regulations
30 Impacting Competitiveness (January 2006).

31 ¹⁵⁶ *Amici* Brief at 7.

32 ¹⁵⁷ CPSGMHB Case No. 08-3-0001, Final Decision and Order (Sept 2, 2008), at 12, citing *Conserving
Pierce County Farmlands – Development Rights Purchasing Program - Report and Analysis for Growth
Management/Agricultural Land Conservation*, Cascade Land Conservancy, December 2006, at 12.

1 agricultural land. The legislature hoped to preserve agricultural
2 land near our urban centers so that freshly grown food would be
3 readily available to urban residents and the next generation could
4 see food production and be disabused of the notion that food
grows on supermarket shelves.¹⁵⁸

5 Accommodating growth while conserving agricultural lands is a difficult
6 challenge for Washington's local governments, yet the GMA demands it.

7
8 The Alderton-McMillin Community Plan confronts the challenge with a number of
9 strategies:¹⁵⁹

10 The Alderton-McMillin Community Plan strives to preserve farmland,
11 improve the financial viability of farmers, and maintain the rural character
12 of the community into the future. In order to achieve these goals, some
13 innovative land-use planning strategies are introduced. Funding for
14 farmland preservation and programs to provide agricultural viability is a
15 very limited resource and time is of the essence. Land prices have risen
16 dramatically pricing new farmers out of the market and allowing retiring
17 farmers to sell their property for large residential lots at top dollar. The
18 community plan recognizes the importance of Purchase of Development
19 Rights (PDR) program but acknowledges that only a few purchases could
20 be made with the potential funding sources. Transferring development
rights is another tool to preserve farmland. The community plan
proposed to transfer development rights of farms in the valley to targeted
areas beyond the community plan boundaries.

21 The community plan strives to allow more options for farmers to market
22 products locally by allowing certain retail use on the farm site and
23 developing and promoting agricultural tourism. Opportunities are
24 provided to sell produce, nursery items, plants, eggs, wine, arts and
25 crafts, dairy products, and limited accessory retail directly from the farm.
26 This allows the market to come directly to the farm which increases profits
and reduces the costs to the farmer.

27
28 The Seven Principles Agreement is in accord with the Community Plan in (a) leveraging
29 funds for purchase of conservation easements or transfer of development rights in order

30
31 ¹⁵⁸ *Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 58; 959 P.2d
1091 (1998).

32 ¹⁵⁹ AMCP at 21.

1 to buy down ARL land values, and (b) proposing a farmers' market or as-yet-
2 unidentified assistance in support of local agriculture. However, in basing its de-
3 designation of the Orton Junction ARL properties largely on the Seven Principles, the
4 County did not address the resulting fragmentation of ARL lands or the question of
5 sufficiency of remaining farm lands for long-term industry viability.
6

7 WAC 365.190.050(5) states the designation analysis "should result in designation of an
8 amount of agricultural resource lands *sufficient to maintain and enhance the economic*
9 *viability* of the agricultural industry in the county over the long term." There must be a
10 sufficient base of land and production to support all of the agriculturally based
11 businesses that are part of the industry, including processors, suppliers, shippers, cold
12 storage plants, equipment repairers, and so on. In combination, the lands, producers
13 and support businesses constitute the agricultural economy.
14

15
16 *Lewis County* advises that a jurisdiction may consider factors in addition to the WAC
17 factors so long as it does not "go beyond" the considerations of WAC 365-190-050 and
18 RCW 36.70A.030.¹⁶⁰ Here Pierce County bases its de-designation action on a plan that
19 goes beyond the WAC de-designation factors, yet the County's Findings address
20 neither the process required by WAC 365-190-040(10)(b) nor the results required by
21 WAC 365-190.050(5). The Board concludes Petitioners have carried their burden of
22 showing the potential for further incursions on the viability of the agricultural industry,
23 through isolation of ARL lands adjacent to the Orton Junction UGA and the continued
24 conversion of prime agricultural land close to metropolitan markets.
25
26

27 **3) MPPs and CPPs – "Framework to Ensure Consistency"**

28 The Friends point out that RCW 36.70A.100 requires coordination and consistency
29 among comprehensive plans of counties or cities having "common borders or related
30

31
32 ¹⁶⁰ *Lewis County*, 157-Wn.2d at 504-505.

1 regional issues.” Countywide planning policies (CPPs), and by extension, multicounty
2 planning policies (MPPs), are the GMA mechanisms to ensure that consistency.¹⁶¹
3 RCW 36.70A.210(1), (7). Conservation of agricultural land is a regional issue,
4 particularly in light of the integrated metropolitan market for food and other agricultural
5 products.¹⁶²
6

7 Friends note the Resource Lands Goal of the VISION 2040 MPPs provides that “[t]he
8 region will conserve its natural resource land *permanently* by designating, maintaining,
9 and enhancing farm, forest, and mineral lands.”¹⁶³ This goal is implemented in part by
10 MPP-DP-31 which provides in full:
11

12 MPP-DP-31: Support the sustainability of designated resource lands.
13 *Do not convert these lands to other uses.*¹⁶⁴

14 The Friends contend the County’s action will pave over the Orton Junction lands
15 resulting in permanent loss of prime agricultural soils in direct contravention of the
16 VISION 2040 goal and policy. Countywide Planning Policies are also violated, the
17 Friends contend, citing the following:¹⁶⁵
18

19 CPP Agricultural Lands subpolicy 2:

20 The purposes of agricultural preservation are: ... ensuring that agricultural
21 lands are treated sensitively to their location and the presence of urban
22 growth pressures; ... preserving the local economic base; ... maintaining
23 specialty crops; ... [and] maintaining regional, state and national
24 agricultural reserves.

25 CPP Agricultural Lands subpolicy 6:

26 The County, and each municipality in the County, shall extend the
27 agricultural policies to locations within and/or adjacent to agricultural
28 preservation areas in order to: ... protect such areas from encroachment
29 by incompatible uses; and ... protect smaller-sized agricultural parcels

30 ¹⁶¹ RCW 36.70A.210(1), (7).

31 ¹⁶² Friends Prehearing Brief, at 25-27.

32 ¹⁶³ Sanders Ex. 6, VISION 2040 at 27.

¹⁶⁴ Sanders Ex. 6, VISION 2040 at 56.

¹⁶⁵ CPP at 14-17, Friends Prehearing Brief Tab CPP.

1 which are not individually viable for agricultural production but, which
2 taken cumulatively with other smaller sized parcels in the area, have long
3 term significance for agricultural production.

4 CPP Agricultural Lands subpolicy 10:

5 The County, and each municipality in the County, shall ensure that prime
6 agricultural lands presently in the unincorporated County or within a
7 municipality are preserved and protected by the enactment of appropriate
8 land use controls; or by including the land in the urban growth area
9 boundary of a municipality only if the municipality has delineated
standards and criteria relating to preserving the agricultural lands.

10 CPP Agricultural Lands subpolicy 11:

11 The County, and each municipality in the County, shall coordinate
12 agricultural land preservation policies with other Countywide Planning
13 Policies through: correlating agricultural land preservation policies with
urban growth area policies ...

14 The Friends argue these Pierce County policies require conservation of prime
15 farmlands, including both designated ARL lands and the smaller parcels designated
16 Rural Farm. Cities are to coordinate with the County in preserving farmland through
17 their UGA policies and are not to bring agricultural land into the UGA unless the city has
18 adopted “standards and criteria” to preserve the agricultural lands. Friends point out
19 Amendment U-3a spells the irreversible loss of 125.39 acres of ARL lands and 56.41
20 acres of Rural Farm to be replaced by 57.5 acres of Moderate Density Single Family
21 and 124.3 acres of Community Center.
22
23

24 Orton counters that construing these policies as the Friends request would preclude de-
25 designation of any agricultural land, which is not consistent with GMA and County
26 provisions allowing de-designation in appropriate circumstance.¹⁶⁶ A single MPP, Orton
27 suggests, does not constitute an absolute prohibition. Orton argues that the cited MPP
28 and CPPs “are generalized guidance regarding conservation of agricultural lands once
29
30

31 _____
32 ¹⁶⁶ Orton Response, at 32.

1 designated,” not an enforceable mandate. Orton urges the Board to look to the pro-
2 agriculture provisions of the Seven Principles which are consistent with the overall
3 purpose and intent of VISION 2040.
4

5 The Board views VISION 2040 as articulating the “regional differences” that
6 characterize growth planning for the four-county Puget Sound region. Pierce County’s
7 Countywide Planning Policies as adopted by the County and its cities are an expression
8 of “local circumstances” in the County. On agricultural lands, the CPPs state the policy
9 section was added by Interlocal Agreement based on “their unique importance in Pierce
10 County and their relationship to urban growth area boundaries and policies.”¹⁶⁷ MPPs
11 and CPPs cannot be ignored, particularly when their provisions are directive.
12

13
14 The Board agrees with Orton that neither MPP-DP-31 nor the cited CPPs can be read
15 as an absolute prohibition of de-designation of ARL lands, in view of the designation
16 amendment provisions in the Commerce minimum guidelines, County Policies, and
17 case law. However, when weighing the ARL designation factors, the MPPs require a
18 Central Puget Sound county – and the CPPs require Pierce County – to put a heavy
19 thumb on the balance scale in favor of continued designation for prime farmland.
20

21 The Board concludes the cited MPP and CPP provisions, while not creating an
22 independent basis for a finding of non-compliance for Amendment U-3a, confirm the
23 Board’s “firm and definite conviction that a mistake has been made.”
24

25
26 In sum, the County has based its de-designation of Orton Junction ARL lands largely on
27 the Seven Principles Agreement. In particular, the County relies on the “green wall”
28 concept and conservation easements to permanently limit further sprawl. The Board
29 finds the “green wall’ is still a concept, not supported by facts in the record. The County
30

31
32 _____
¹⁶⁷ CPP, at 14, Friends Prehearing Brief, Tab CPP.

1 also relies on an unspecified industry support program. Again, there are no facts in the
2 record responsive to *Amici's* facts and arguments concerning industry fragmentation
3 and loss of critical mass. The County has left "identify[ing] and develop[ing] vital local
4 agriculture industry program and infrastructure" to some undefined future.
5

6 The Board notes VISION 2040 MPP-DP-48 promotes innovative techniques, including
7 TDRs and other conservation incentives to "focus growth within the urban growth area .
8 . . . to *lessen pressure to convert* rural and resource areas to more intense urban-type
9 development, while *protecting the future economic viability* of . . . resource-based uses."
10 The TDRs and conservation easements in the Seven Principles Agreement do not focus
11 growth within an existing UGA. However, with demonstrable "green wall" provisions the
12 Seven Principles could "lessen pressure to convert" and halt the domino effect of UGA
13 adjacencies. And with a specific and enforceable industry-support commitment, the
14 Seven Principles could help "protect the future economic viability" of agricultural uses.
15
16

17 Conclusion – Legal Issue A

18 The Board finds the County's de-designation of the Orton Junction ARL lands is **clearly**
19 **erroneous**. Farm lands with prime soil are an irreplaceable resource. The lands at
20 issue meet all the criteria for designation in the County's Plan [PCC 19A.30.070] and
21 satisfy the majority of the minimum guidelines factors [WAC 365-190-050(3)]. If market
22 values for land or freeway locations are determinative, the State will continue to lose an
23 irreplaceable resource that the GMA requires us to conserve. Viewing the whole record
24 before the Board, in consideration of the Commerce guidelines and of the goals and
25 requirements of the GMA, the Board concludes a mistake has been made.¹⁶⁸
26
27
28
29

30 ¹⁶⁸ There is no basis at this time for a determination of invalidity. The Board takes **official notice** of Pierce
31 County Ordinance 2012-11, adopted March 13, 2012, deferring the effective date of Plan Amendments U-
32 3, M-3, C-2, C-3 and C-5 until August 15, 2012 and deferring consideration of implementing regulations
for these amendments in view of the challenge pending before the Board. HOM Ex. 2

1 The Board finds and concludes the County's adoption of Amendments U-3a and C-5 to
2 Ordinance 2011-60s2 failed to comply with RCW 36.70A.170 and with the provisions of
3 PCC 19A.30.070. The County's action was not guided by WAC 365-190-040 and -050
4 or by RCW 36.70A.020(8) and was not consistent with the Countywide Planning
5 Policies and Multi-County Planning Policies cited above. The Board **remands**
6 Ordinance 2011-60s2 Amendments U-3a and C-5 to Pierce County to take action to
7 comply with the GMA as set forth in this order.
8

9 **C. Extension of UGA – Friends' Legal Issue B**

10 Friends' Legal Issue B contends Amendments U-3a and C-5 violate RCW 36.70A.110,
11 .115, and related provisions by expanding the UGA beyond the land needed for Pierce
12 County's urban population and employment growth in violation of RCW 36.70A.110 and
13 the County's Comprehensive Plan.¹⁶⁹ Petitioners contend:
14

- 15 • the GMA and Pierce County Comprehensive Plan criteria for UGA expansion
- 16 have not been met for either residential or commercial expansion,
- 17 • the availability of adequate urban services has not been documented,
- 18 • priority alternatives were not considered,
- 19
- 20
- 21

22 ¹⁶⁹ **Friends (B)** [with strikeout of abandoned issues] By adding approximately 182 acres to the urban
23 growth area (UGA) when the Pierce County Buildable Lands Report documents that adequate
24 residential and commercial land is available in the Sumner and Pierce County urban growth areas and
25 the area included in the expansion does not meet the requirements and priorities for being included in an
26 urban growth area, did amendments U-3, C-5, and related amendments violate RCWs ~~36.70A.020(1, 2,~~
27 ~~3, and 12), 36.70A.040, 36.70A.070, 36.70A.100, 36.70A.110, 36.70A.115, 36.70A.130, 36.70A.210,~~
28 ~~36.70A.215, or 36.70A.340; the Multicounty Planning Policies [including the "The Urban Growth Area,"~~
29 ~~the Urban Lands Goals, and policies MPP-DP-29 and MPP-DP-4]; the Countywide Planning Policies for~~
30 ~~Pierce County, Washington [including the Countywide Planning Policy on Urban Growth Areas~~
31 ~~subpolicies 1.6, 2, and 7 and the Countywide Planning Policy on Amendments and Transition subpolicy~~
32 ~~2]; the Pierce County Comprehensive Plan [including PCC 19A.10.010, PCC 19A.20.030, PCC~~
~~19A.20.080, PCC 19A.20.100, PCC 19A.30.010, PCC 19A.30.020, PCC 19A.30.055, PCC 19A.30.100,~~
~~PCC 19A.30.140, PCC 19A.30.170, PCC 19A.60.080, and PCC 19A.80.050]; the Alderton-McMillin~~
~~Community Plan [including Objective 7A and Principle 1 under this objective]; or Pierce County~~
~~development regulations including PCC 19C.10.055? See Ord. No. 2011-60s2 Sections 1, 3, 11, 16, and~~
~~17.~~

- Sumner’s use of the companion amendment U-3b is unavailing, and
- the action violates the Multi-county Planning Policies of VISION 2040.

The City of Sumner provides the response in support of the County.

Applicable Law

RCW 36.70A.110(2) provides, in relevant part:

Based upon the growth management population projection made for the county by the office of financial management [OFM], the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county and city for the succeeding twenty-year period As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.... An urban growth area determination may include a reasonable land market supply factor....

RCW 36.70A.115 provides in pertinent part as follows (emphasis added):

Counties and cities . . . shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide **sufficient capacity of land suitable for development** within their jurisdictions to accommodate their **allocated housing and employment growth**, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management.

Pierce County’s Comprehensive Plan provisions for urban growth areas are in Chapter 19A.30 PCC.¹⁷⁰ PCC 19A.30.010 H.1 provides:

1. Expansion of the Comprehensive Urban Growth Area (CUGA) and satellite urban growth areas shall be approved by the County Council ... only if the following criteria are met:

¹⁷⁰ Friends Prehearing Brief Tab PCC.

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- a. Residential land capacity within all urban growth areas is evaluated and the need for additional residential land capacity within all or any specific urban growth area is clearly demonstrated and the observed development densities are consistent with the density assumptions as documented in the most recent published Buildable Lands Report as required by RCW 36.70A.215.... and/or
- b. The supply of land needed for additional commercial/industrial uses outside urban growth areas is clearly demonstrated; and
- c. Documentation that adequate public facilities and services can be provided within the 20-year planning horizon is provided.
- d. Proposed UGA expansion areas shall be required to comply with the requirements of Pierce County's TDR/PDR Program.
- e. Proposed UGA expansion areas should be approved only if the proposing jurisdiction provides an analysis of: (1) the underdeveloped lands, consistent with the Pierce County Buildable Lands program methodology, within its municipal boundaries and affiliated UGAs, and evidence of implementation strategies in place or being pursued to densify the underdeveloped lands; ...
- f. Future UGA expansion areas should be approved only if it is demonstrated that the area has the capability and capacity to provide urban level services to the area while maintaining a healthy natural ecosystem.
- g. Future UGA expansion areas should avoid the inclusion of designated agricultural lands and critical areas, unless (a) otherwise permitted by the applicable community plan, or (2) the development rights are removed.

PCC 19A.30.010.B.1.b provides, in connection with the five-year updates to the Buildable Lands Report:

For review of proposed new urban growth areas or expansion of existing urban growth areas, more timely information on population and development trends, such as census reports and updated projection

1 from[OFM], and regulatory changes may augment the most recent
2 Buildable Lands Report.

3 PCC 19A.30.010.B.2 sets a land market supply factor (“land safety factor”) of 25
4 percent, to be calculated on a county-wide basis, not individual growth areas. PCC
5 19A.30.10.B.3 requires use of consistent methodologies to determine the capacity of
6 urban growth areas.
7

8 PCC 19A.30.010.H.2 requires:
9

10 The following priorities for expanding the 20-year CUGA boundary or
11 satellite city or town UGA boundary shall be considered during the Plan
12 amendment process:

- 13 e. Lands with high concentrations of critical areas or designated as
14 agricultural and forest lands of long-term commercial significance
15 should be given the lowest priority for inclusion into the UGA, and
16 should be included in the UGA only when a compensatory program,
17 such as a transfer of development rights program or other program, is
18 in place. A determination that land has long-term commercial
19 significance [as natural resource land] shall be made only following an
20 analysis of the land.

21 1) UGA Capacity – PCC 19A.30.010 H.1. a and b

22 Positions of the Parties

23 The Friends’ argument addresses the UGA capacity for residential and commercial
24 use.¹⁷¹ The Friends cite PCC 19A.30.010 H.1 which allows UGA expansions “only if”
25 the need for residential and commercial land is “clearly demonstrated....” Looking to
26 the 2007 Pierce County Buildable Lands Report (BLR),¹⁷² the Friends point out the
27 capacity of Pierce County UGAs vastly exceeds what is necessary to accommodate the
28
29

30
31 ¹⁷¹ Friends Prehearing Brief at 29-30.

32 ¹⁷² CP #28-21, *Pierce County Buildable Lands Report: A Monitoring and Evaluation Analysis of Urban Growth and Development Capacity for Pierce County and its Cities and Towns* p. 336 (Sept. 1, 2007).

1 2022 projected population and employment growth.¹⁷³ Looking at Sumner specifically,
2 the Friends state the City currently has five times the land needed to meet its
3 employment projections.¹⁷⁴ The City’s projection is that it needs capacity for 2,415
4 additional employees by 2022 and it has a capacity for 12,217.¹⁷⁵ The City also has the
5 capacity for 723 more housing units than needed to meet its residential projections,
6 according to Petitioners.
7

8 The City in response points to the updated land capacity analysis prepared by the
9 City,¹⁷⁶ the market study supporting the need for additional retail services in the area,¹⁷⁷
10 and the companion amendment – Amendment U-3b – downsizing the UGA northeast of
11 the City by almost 100 acres.
12

13 The Friends in reply assert the City’s updated land capacity analysis is inconsistent with
14 the Pierce County Buildable Lands program methodology, violating PCC 19A.30.010
15 H.1.a.¹⁷⁸ Even with this flawed methodology, the Petitioners contend, the UGA
16 expansion still is oversized to meet 2022 projected growth by 41 housing units and
17 1,833 jobs.¹⁷⁹
18

19
20 Board Discussion and Analysis
21

22
23 ¹⁷³CP #28-21. The *2007 Buildable Lands Report* (p. 336) found the housing capacity of the Pierce County
24 urban growth areas exceeds the number of houses needed to accommodate the County’s 2022 projected
25 urban population growth by approximately 64 percent. The *2007 Buildable Lands Report* (PALS letter to
26 Buildable Lands Stakeholders, Dec. 12, 2007) found that the land available for employment uses exceeds
27 projected demand by 54 percent.

28 ¹⁷⁴CP #28-21, Pierce County, *Errata Sheet For 2007 Pierce County Buildable Lands Report* p. 14 (Dec.
29 12, 2007).

30 ¹⁷⁵Sumner’s employment capacity is largely based on designation of a manufacturing/industrial center
31 (MIC) across the northern third of the city.

32 ¹⁷⁶CP #26-62, FEIS, App. A. “City of Sumner Land Capacity Analysis for the 2010 Comprehensive Plan
Amendments.”

¹⁷⁷CP #26-62, FEIS App. H. Orton Junction Market Study, Long Bay Enterprises (October 2010)

¹⁷⁸Friends Reply, at 30, citing Staff Report, CP # 35-2, (June 22, 2011), at 97, and methodological
differences in Sumner’s Land Capacity Analysis pp. A-9 to A-11.

¹⁷⁹Friends Reply, at 30-31.

1 The State Supreme Court in its 2008 *Thurston County* decision held:¹⁸⁰

2 [A]lthough the GMA does not explicitly limit the size of a UGA, to give
3 meaning to the market supply factor provision and in light of the GMA
4 goal of reducing sprawl, we hold a county's UGA designation cannot
5 exceed the amount of land necessary to accommodate the urban growth
6 projected by OFM [the Washington State Office of Financial
Management], plus a reasonable land market supply factor.

7 The UGA sizing standard requires the County to designate no more than the amount of
8 land necessary to accommodate the 20-year urban growth projection, plus a reasonable
9 land market supply factor. Once a petitioner challenges a county's UGA designation,
10 the county may "show its work" to explain the difference between supply and demand
11 and compute the appropriate amount of UGA acreage.¹⁸¹ Consistent with the OFM 20-
12 year population forecast, the "projected urban growth" must include residential uses
13 together with a broad range of non-residential needs and uses (e.g., commercial,
14 industrial, service, and retail).

15
16
17 Pierce County's criterion for UGA expansion has two prongs. Part (a) of PCC
18 19.30.010.H.I addresses residential expansion and requires satisfaction of Buildable
19 Lands provisions.¹⁸² Part (b) of PCC 19.30.010.H.I addresses expansion for
20 commercial development. In each case, the need for additional urban land must be
21 "clearly demonstrated."
22

23
24 Because Sumner requests UGA expansion for both residential and commercial
25 purposes, both prongs of the policy must be met. To support the first prong, Sumner
26 recalculated its residential land capacity based on updated information, as allowed in
27 PCC 19A.30.010.B.1.b. The Staff Report acknowledged the differences in methodology
28

29
30 ¹⁸⁰ *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 351 –
52, 190 P.3d 38, 48 – 49 (2008).

31 ¹⁸¹ *Id.* 164 Wn. 2d at 353.

32 ¹⁸² The Supplemental Staff Report concluded Sumner's achieved densities and employment satisfied the
Buildable Lands requirements. CP #26-57, at 15.

1 and assumptions,¹⁸³ but concluded: “Criteria 1 (Residential land capacity) is a mute [sic]
2 point because the proposal results in a net reduction in housing capacity.”¹⁸⁴

3
4 Amendment U-3b removes the East Hill area from the UGA. This is a 284-acre hillside
5 which will be down-zoned from Moderate Density Residential to R10.¹⁸⁵ Amendment U-
6 3a adds 182 acres to the UGA at Orton Junction, including residential capacity for about
7 650 units. The result is a net reduction in UGA acreage and residential capacity, but
8 still within Sumner’s population allocation.
9

10 The County Council Findings concerning residential capacity state:¹⁸⁶

- 11 • Together with UGA Amendment U-3b, this proposal will result in a net
12 reduction of the Sumner USA [Urban Service Area] and the CUGA
13 [Comprehensive Urban Growth Area]. The amount of residential land
14 capacity in the CUGA and the Sumner USA does not increase with this
15 proposal;
- 16 • The City of Sumner has completed a revised land capacity analysis,
17 based on the information since adoption of the 2007 Buildable Lands
18 Report. The City’s revised land capacity analysis methodology is
19 supported by Pierce County Comprehensive Plan policies that allow for
20 the submission of supplemental information by local jurisdiction in
21 justification of UGA expansion (PCC 19A.30.010). The City’s land
22 capacity analysis demonstrates that the City’s proposal (U-3a and U-3b)
would result in a decrease in the residential capacity by 520 people and
113 housing units....

23 The Board does not find the Friends’ objections concerning residential capacity
24 persuasive. The County’s conclusions on residential capacity are consistent with its
25 policies and supported by facts in the record.
26
27
28
29

30 ¹⁸³ CP #35-2, Staff Report at 97.

31 ¹⁸⁴ CP #35-2, Staff Report at 105.

¹⁸⁵ Amendment U-3b is discussed further below.

32 ¹⁸⁶ Exhibit N to Ordinance No. 2011-60s2 at 6.

1 The second prong of the UGA expansion criteria requires: “(b) the supply of land
2 needed for additional commercial/industrial uses outside urban growth areas is clearly
3 demonstrated.”
4

5 The calculation of commercial capacity differs from residential. The residential criterion
6 provides consideration of “the need for additional residential land capacity *within all or*
7 *any specific urban growth area.*” For commercial/industrial expansion, however, the
8 proposal must clearly demonstrate that land is needed “outside urban growth areas;”
9 thus analysis cannot be limited to a specific UGA but is evaluated on a countywide
10 basis.¹⁸⁷ County policies restrict the UGA to be sized up to 25 percent more than the
11 area needed based on the 20-year employment targets, reflective of the
12 Comprehensive Urban Growth Area.¹⁸⁸ The County acknowledges: “Collectively, the
13 areas within all the Pierce County cities and towns and unincorporated urban areas of
14 the County have *more than double* the land capacity needed to accommodate the
15 adopted countywide employment target.”¹⁸⁹
16
17

18 On its face, Amendment U-3a is inconsistent with County policy because it exacerbates
19 the existing countywide oversupply of commercial/industrial lands to meet the County’s
20 adopted employment targets, as the Staff Report acknowledges.¹⁹⁰
21

22
23 Sumner submitted a market study by Long Bay Enterprises in support of the need for
24 development of regional retail services.¹⁹¹ The study identified a market potential for up
25 to 2.3 million square feet of retail to serve the East Pierce Sub-area of the County. The
26 Board notes this study indicates advantages the Orton Junction location may offer, but it
27

28
29 _____
30 ¹⁸⁷ The Staff Report indicates this is the approach taken in the County’s 2002 and 2007 Buildable Lands
31 Reports. CP #26-57, at 9.

32 ¹⁸⁸ PCC 19A.30.010.B.2.

¹⁸⁹ CP #35-2 Staff Report, at 97 (emphasis added).

¹⁹⁰ CP #35-2, Staff Report at 104: The approval of this proposal would increase this oversupply.

¹⁹¹ CP #26-62, FEIS, App. H. Orton Junction Market Study, Long Bay Enterprises (Oct. 2010)

1 does not demonstrate that there is an additional supply of land needed for
2 commercial/industrial employment outside the current urban growth areas.¹⁹² The Long
3 Bay report identifies market opportunities, but that is not the assessment required for
4 land capacity analysis under the GMA.

5
6 In addition to commissioning the market analysis, Sumner developed its own land
7 capacity analysis updating the County's CUGA employment allocations. Sumner
8 identified four sites in other parts of the County where projected growth was not likely to
9 occur by 2022, the 2007 Buildable Lands target date. Based on direct inquiries and
10 other updated data from Cascadia, Tacoma Sportsmen's Club, Paul Bunyan
11 Sportsmen's Club, and Marymount School, the City calculates the 2007 BLR
12 employment capacity overstates the County's employment capacity by at least 7,000
13 jobs.¹⁹³

14
15
16 The County Staff points out the County Plan already adds a market factor of 25%,
17 precisely to recognize that not all redevelopment potential in the UGA will be achieved
18 by the target date of the plan. The Staff states revisions to the land capacity analysis
19 for employment must be made on a whole-county basis during the next scheduled BLR
20 update.¹⁹⁴ This is in accord with WAC 365-196-310(i) which provides:

21
22 ... frequent, piecemeal expansion of the urban growth area should be
23 avoided. Site-specific proposals to expand the urban growth area should
24 be deferred until the next comprehensive review of the urban growth
25 area.

26 The County Council Findings state the increase in Sumner's employment capacity "is
27 offset by over-stated employment capacity elsewhere in the CUGA".¹⁹⁵ However, by
28 definition a county's employment capacity is overstated through adoption of a market
29

30 ¹⁹² See, CP #35-2 Staff Report, at 105.

31 ¹⁹³ CP #26-43, Sumner letter to Planning Commission, at 4, and Attachment A.

32 ¹⁹⁴ CP # 26-57, Supp. Staff Report, at 7-9.

¹⁹⁵ Ex. N to Ordinance 2011-60s2, at 6.

1 factor. In Pierce County's case, it is overstated by up to 25%, a market factor that
2 applies on a county-wide basis. If the County is simply saying the allocated capacity will
3 not be used, are they not in effect increasing their market factor beyond 25%? Does the
4 County interpret its plan policies to allow any city on an ad hoc basis to cherry-pick a
5 property anywhere in the County, assume that property's projected 20-year employment
6 potential is lower, and then use the number to justify preferred UGA expansion?
7

8 RCW 36.70A.115 requires counties and cities to "provide sufficient capacity . . . to
9 accommodate their allocated housing and employment growth." *Thurston County* says
10 the land supply for urban growth cannot exceed the demand arising from OFM
11 projections. In Pierce County there is already a well-documented county-wide
12 "oversupply" of employment capacity. So the supply already exceeds the demand,
13 even beyond the 25% market factor.
14

15
16 County action further increasing the capacity (land supply) in one city on an ad hoc
17 basis without a corresponding action decreasing capacity (land supply) somewhere else
18 has the net effect of increasing the county-wide supply of employment capacity when
19 there has been no increase in demand – OFM allocation. Thus, the County's action is
20 not "based upon" the OFM 20-year urban growth projection.¹⁹⁶ By passing Ordinance
21 2011-60s2, Pierce County's UGA designation exceeds the amount of land necessary to
22 accommodate the urban growth projected by OFM (plus a reasonable land market
23 supply factor), contrary to RCW 36.70A.110, RCW 36.70A.115, and the rule from the
24 *Thurston County* case.
25
26

27 The County Council Findings concerning employment capacity state:¹⁹⁷
28
29
30

31 _____
32 ¹⁹⁶ RCW 36.70A.110(2) requires the size of an UGA to be "based upon" an OFM growth projection.

¹⁹⁷ Exhibit N to Ordinance No. 2011-60s2 at 6.

- 1 • ... The increase in employment capacity in this proposal is offset by over-
2 stated employment capacity elsewhere in the CUGA and the proposal
3 remains *employment capacity neutral*;

4 The Board finds no evidence in the record of action taken by the County to offset the
5 Sumner increase in employment capacity with a CUGA decrease elsewhere. Thus, the
6 County's Finding that "the proposal remains employment capacity neutral" is not
7 supported by the record.
8

9 The County Council Findings also suggest that Sumner's market study provides a basis
10 for increasing the employment allocation to Sumner:¹⁹⁸

- 11 • The Long Bay Enterprises Market study demonstrates an *underserved demand*
12 for additional retail and commercial services in East Pierce County and,
13 correspondingly, a *lack of capacity* for that type of employment within the UGA.
14

15 But this finding makes an unsupported leap from "underserved demand for additional
16 retail" to "lack of capacity for that type of employment within the UGA." The analysis in
17 the two Long Bay market studies¹⁹⁹ submitted by Sumner is vigorously challenged by
18 County staff who insist the GMA imperative to use urban lands more efficiently and
19 avoid conversion of rural and agricultural lands requires the County to look more closely
20 at options for redevelopment of urban lands in Sumner or elsewhere before approving a
21 City request for UGA expansion. The County's UGA expansion criterion PCC
22 19A.30.010.H.1.b specifies: "The supply of land needed for additional
23 commercial/industrial uses *outside urban growth areas* is clearly demonstrated."
24 However, the Friends did not challenge the market studies in their prehearing brief, and
25 the Board will not opine on the issue.²⁰⁰
26
27

28
29
30 ¹⁹⁸ Exhibit N to Ordinance No. 2011-60s2 at 6.

31 ¹⁹⁹ A second study, June 8, 2011, is an attachment to CP #26-43.

32 ²⁰⁰ The Board notes Bonney Lake filed a petition for review challenging the County's adoption of the Orton
Junction amendments. The Bonney Lake PFR included legal issues about unfair economic competition
and violation of GMA and CPP economic development requirements. Bonney Lake subsequently settled

1 The Board finds the County's expansion of the UGA for commercial purposes is not
2 consistent with PCC 19A.30.010.H.1.b.
3

4 Conclusion
5

6 The Board concludes the County's adoption of Amendment U-3a and U-3b satisfied the
7 provisions of PCC 19A.30.010.H.1.a and complied with RCW 36.70A.110(2) and RCW
8 36.70A.115 with respect to accommodating *residential* growth.
9

10 The Board finds and concludes the County's action in expanding the UGA to
11 accommodate *commercial/employment* growth was not consistent with the provisions of
12 PCC 19A.30.010.H.1.b with respect to commercial capacity and exceeded the land
13 needed to accommodate allocated employment growth in violation of RCW
14 36.70A.110(2) and RCW 36.70A.115 as applied by the *Thurston County Court*.
15 Therefore the County's adoption of Amendments U-3a was clearly erroneous in view of
16 the entire record before the Board and in light of the goals and requirements of the
17 GMA.
18

19
20 2) Provision of Adequate Urban Services – PCC 19A.30.010.H.1.c

21 Comprehensive Plan Requirement

22 PCC 19A.30.010.H.1 allows UGA expansions "only if the following criteria are met:"

23 c. Documentation that adequate public facilities and services can be provided
24 within the 20-year planning horizon is provided.

25 f. Future UGA expansion areas should be approved only if it is demonstrated that
26 the area has the capability and capacity to provide urban level services to the
27 area while maintaining a healthy natural ecosystem.
28

29 Positions of the Parties
30

31
32 its dispute with the County and the petition was withdrawn. Order of Dismissal (March 23, 2012). Those
issues are no longer before the Board.

1 The Friends contend the County has not documented that adequate public services can
2 be provided to the UGA expansion area within the 20-year planning horizon.²⁰¹ They
3 point in particular to the County's Water System Analysis which identified a water supply
4 deficiency and lack of water rights to meet the increased demand to serve the more
5 intensive uses.²⁰²

6
7 The City in response points to its EIS review of water, sewer and stormwater
8 systems.²⁰³ The City states it has adequately planned for construction of planned
9 improvements to increase capacity of the wastewater treatment plant, application of LID
10 requirements to reduce stormwater system impacts, and the extension of water and
11 sewer distribution infrastructure.²⁰⁴ To ensure water system capacity, the City proposes
12 source improvements, construction of a new well, and application for additional water
13 rights. The City contends: "While distribution infrastructure would need to be expanded
14 and system improvements would need to occur to serve the growing population, the
15 City's existing capacity, plans for expansion and infrastructure improvements are
16 adequate for demonstrating that the City can provide service within the 20 year planning
17 horizon."²⁰⁵

18 19 20 21 Board Discussion and Analysis

22 Pierce County's Comprehensive Plan allows it to consider UGA expansions "only if" it
23 has been provided with "documentation" that adequate public services can be provided.
24 Further, it must be "demonstrated" that the area has the "capacity to provide urban level
25 services."
26

27
28 ²⁰¹ Friends Prehearing Brief, at 30, Friends Reply at 11-12.

29 ²⁰² CP #26-25, 2011 Amendments to the Pierce County Comprehensive Plan Urban Growth Area (UGA)
30 Amendments – Water System Analysis p. 2. The UGA reduction, U-3b, is in a different water service
31 area (WSA), so it does "not offset the expansion proposed in Amendment U-3a within the Sumner WSA."
32 *Id.*

²⁰³ CP #26-60, DEIS at 3.18, 3.19.

²⁰⁴ City Response, at 19.

²⁰⁵ City Response, at 19, citing CP #26-60, DEIS, 3.18-9.

1 Sumner's Orton Junction EIS, prepared in 2010, shows that the City's "current water
2 source will be insufficient to meet peak daily demand conditions by the end of 2012."²⁰⁶
3 The Final EIS indicates, based on current supply information, there will be a 20% supply
4 deficiency for peak demand by 2030.²⁰⁷ The DEIS states: "The City is currently working
5 on expansions to existing sources, development of new interties with adjacent
6 providers, and acquisition of additional water rights." Proposals include improvements to
7 spring sources and construction of a new well.²⁰⁸ Combined, these measures would
8 amply resolve the supply deficit.
9
10

11 Pierce County Staff analyzed the Sumner amendment in 2011, reviewing the City's
12 state-approved Water Supply Plan and communicating with the Department of Health.
13 They reported no documentation of applications for procurement of additional water
14 sources.²⁰⁹ Staff reported:
15

16 The current Comprehensive Water System Plan (WSP) was approved by
17 [Washington State Department of Health] DOH on 07/30/2010 with an
18 expiration date of 07/30/2016. This WSP indicates that the existing City
19 water sources may be insufficient to meet the projected maximum-day
20 demand by the year 2012 if the City does not pursue modifications to
21 water rights and/or sources to increase the instantaneous capacity of the
22 water system (ES-2). The WSP also describes improvements the City is
23 pursuing to increase instantaneous flow capacity including interties with
24 the City of Pacific and Mountain View-Edgewood in 2010 and a new well
25 in 2011. Department of Health (DOH) approved the City of Sumner water
26 system for an "unspecified" designation, which means there is adequate
27 capacity for future growth through the six year planning period [2016].
28 However, to date DOH has not seen any submittals for interties or well
29 construction to document the procurement [of] additional water source.
30 However, based upon the current status it is unclear how water will be
31 provided to the proposed expansion area or whether there is [sic]
32

²⁰⁶ CP #26-60, DEIS at 3.18-7.

²⁰⁷ CP #26-62, FEIS at 3.18.

²⁰⁸ CP #26-60, DEIS at 3.18-7.

²⁰⁹ CP #26-25, 2011 Amendments to the Pierce County Comprehensive Plan Urban Growth Area (UGA) Amendments – Water System Analysis p. 2.

1 sufficient water rights to meet the increase in water demand based on a
2 change in zoning that would allow more intensive uses.²¹⁰

3 The Board reads the Comprehensive Plan provisions of PCC 19A.30.010.H.1.c and f as
4 requiring documentation of capacity to provide services to a proposed UGA expansion.

5 Given that the peak demand deficit is projected as early as 2012, and Sumner had
6 proposed interties in 2010 and a new well in 2011, the Board would anticipate some
7 portion of the source expansion would have been documented prior to the County's
8 approval of the amendment.²¹¹

9
10
11 The County's Findings for Amendment U-3a state:

12 The City has demonstrated that it has adequate capacity to provide urban
13 services to the proposed UGA expansion area consistent with the provisions
14 of PCC 19A.30.010(c).

15 With regard to capacity to supply water, the Board has not found evidence in the record
16 to support the County's finding. At best, "it is unclear" how water will be provided or
17 whether there are sufficient water rights to meet the increased water demand from the
18 higher-intensity development. This does not meet the Comprehensive Plan requirement
19 for documentation of service capacity.

20
21 The City argues Petitioners cannot meet their burden of demonstrating non-compliance
22 simply by alleging that "it is unclear."²¹² Here, however, the Friends (and the City's EIS)
23 have provided information of an imminent water capacity shortfall in meeting peak
24 demand. The Comprehensive Plan requires documentation of adequate capacity, and
25 the City's possible solutions were not persuasive to the County staff that analyzed the
26
27

28 ²¹⁰ CP #26-25, 2011 Amendments to the Pierce County Comprehensive Plan Urban Growth Area (UGA)
29 Amendments – Water System Analysis p. 2.

30 ²¹¹ For example, the record might document which springs or wells are being improved, on what
31 schedule, and how much additional yield is projected; what is the projected location, schedule, and yield
32 of the proposed new well; when are water rights limitations likely to be reached and what is the proposed
source and amount of additional water rights sought to be acquired.

²¹² City Response, at 19.

1 City's Water System Plan.²¹³ Under its Comprehensive Plan criteria, the County must
2 have documentation of service capacity before it can approve a UGA expansion. Given
3 the high stakes and long time periods required to secure new water sources or water
4 rights, the Board finds the City's response falls short of the required "documentation."
5

6 Conclusion

7 Petitioners have met their burden of demonstrating Amendment U-3a does not satisfy
8 the criterion of PCC 19A.30.010.H.1.c.
9

10 3) Lowest Priority For UGA Expansion - PCC 19A.30.010.H.2.e

11 Comprehensive Plan Requirement

12 PCC 19A.30.010.H.2 requires:

13
14 The following priorities for expanding the 20-year CUGA boundary or satellite
15 city or town UGA boundary shall be considered during the Plan amendment
16 process:

17 e. Lands with high concentrations of critical areas or designated as
18 agricultural and forest lands of long-term commercial significance should be
19 given the lowest priority for inclusion into the UGA, and should be included in
20 the UGA only when a compensatory program, such as a transfer of
21 development rights program or other program, is in place. A determination
22 that land has long-term commercial significance [as natural resource land]
shall be made only following an analysis of the land.

23 Positions of the Parties

24 The Friends point out the Orton Junction area is entirely critical areas and 125 acres are
25 designated Agricultural Resource Lands of long term commercial significance. They
26 assert the land has the lowest priority for UGA expansion, and other expansions should
27 have been considered if the County determines another shopping center is necessary.
28

29
30
31 ²¹³ See McGee and Howell, *Washington's Way II: The Burden of Enforcing Growth Management in the*
32 *Crucible of the Court and Hearings Boards*, 33 Seattle U. L. Rev. 549, 555-556 (2008) comparing the
burden of persuasion, which is always on the petitioner, and the burden of production, which "must shift at
some point such that the respondent must refute the evidence proffered by the petitioner."

1 The City's responsive brief did not address this issue, but at the Hearing on the Merits,
2 the City pointed out this section of the Plan does not use mandatory language. The
3 policy identifies priorities which "shall be *considered*," and states ARL lands or lands
4 with high concentrations of critical areas "*should*" be given low priority and "*should* be
5 included" in the UGA only when TDRs or some other compensatory program is in place.
6
7

8 Board Discussion and Analysis

9 The Board determined in Legal Issue A above that the Agricultural Resource Lands
10 comprising 125 of the 182 acres of the UGA expansion area continue to meet Pierce
11 County's criteria for ARL designation. The Board notes WAC 365-196-310(4)(c)(v)
12 specifies:
13

14 Urban growth areas should not be expanded into designated agricultural,
15 forest or resource lands *unless no other option is available*. Prior to
16 expansion of the urban growth area, counties and cities must first review
17 the natural resource lands designation and conclude the lands no longer
18 meet the designation criteria for resource lands of long term commercial
significance.

19 The County and Forterra have demonstrated that a compensatory program is in place,
20 as allowed by PCC 19A.30.010 H.2, and the Board has concluded the program is at
21 least as protective as TDRs.
22

23 In Legal Issue D, below, the Board determines Orton Junction does not have high
24 concentrations of wetlands, frequently flooded areas, or habitat, but the whole UGA
25 expansion area is designated as critical aquifer recharge area, a volcanic hazard area,
26 and a potential liquefaction area. The risks to water quality, property and life safety in
27 these zones indicate that Orton Junction should be the lowest priority for more intensive
28 development.
29
30
31
32

1 The Board reads the priority language of the County policy as mandatory, requiring that
2 certain priorities “shall be considered” in the plan amendment process. It appears to the
3 Board that the supplemental market study submitted by Sumner looked at other
4 commercial sites in the UGA.²¹⁴ However, in considering possible UGA expansion, it did
5 not look for alternative UGA expansion that might not involve critical areas or de-
6 designation of agricultural lands. The County has not made a determination that no
7 other option is available.²¹⁵
8

9
10 Conclusion

11 The provisions of PCC 19A.30.010 H.2.e give further support to the Friends’ contention
12 that Amendment U-3a does not comply with the Pierce County Policies regarding UGA
13 expansions.
14

15 4) Companion Amendment – PCC 19C.10.055.F.2

16 Development Regulation

17 PCC 19C.10.055.F provides the requirements for applications for Urban Growth Area
18 amendments:
19

20 If the most recent Buildable Lands Report indicates that no additional residential
land capacity is needed, one of the following shall be required:

- 21 1. Supplemental information updating population and development trends or
22 documentation of regulatory changes implemented since the completion of
23 the most recent Buildable Lands Report that justifies the need within the
Countywide context to expand the Urban Growth Area; or
- 24 2. A companion application for reducing the Urban Growth Area in another
25 location to ensure that the amount of residential land capacity is not
26 increased. The properties proposed for removal from the Urban Growth Area
27 must be contiguous with the Urban Growth boundary and be rural in
28 character with existing rural densities.

29
30 ²¹⁴CP # 26-43, City of Sumner letter to Planning Commission, June 15, 2011, Att. B, Orton Junction
31 Market Study Supplemental Report, Long Bay Enterprises (June 2011).

32 ²¹⁵ See CP #26-57, Staff report at 13-14; CP #35-2 at 102, 115 – “lack of demonstrated need for
additional commercial lands.”

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- 3. Documentation that the proposed UGA application does not increase the residential or commercial/industrial capacity.

1 Positions of the Parties

2 The Friends assert Amendment U-3b, reducing the UGA in the East Hill Area, cannot be
3 used to off-set the U-3a expansion for Orton Junction.²¹⁶ They argue the County only
4 allows the companion amendment procedure to reclassify residential lands, not to justify
5 commercial expansion. The City does not respond to this argument, but points to the U-
6 3b reclassification to demonstrate that its paired actions reduce the total acreage in the
7 UGA.
8

9
10 Board Discussion and Analysis

11 The County's provisions for UGA applications require one of the following:

- 12 a. supplemental population and employment information;
- 13 b. a companion application reducing the UGA;
- 14 c. demonstration that the UGA application does not increase capacity for
15 residential or commercial/industrial capacity.

16 Here Sumner provides both updated population/employment data and a companion
17 application reducing the UGA in the East Hill area.
18

19 The East Hill area is adjacent to Sumner on the hillside east of the City. The area
20 contains 247 parcels on 284 acres previously designated Moderate Density Single
21 Family, now amended to Rural 10.²¹⁷ The area is already developed in small lots; only 4
22 parcels exceed 5 acres, of which one is a mobile home park, and none exceeds 10
23 acres.²¹⁸ Not surprisingly, Sumner finds, and the County agrees, it is not feasible or
24 efficient to provide urban levels of service to these hillside dwellings.²¹⁹
25
26

27
28 ²¹⁶ Friends Prehearing Brief at 31.

29 ²¹⁷ County Findings, Ex. N. to Ordinance No. 2011-60s2, p. 8.

30 ²¹⁸ CP #35-2, Staff Report, June 22, 2011, at 114. See CP #26-60, DEIS at 3.9-31 through 3.9-32, East
31 Hill average lot size 1.14 acres and density of 0.88 du/acre.

32 ²¹⁹ The Board is troubled by the UGA reduction decision. Rezoning these small lots to R10 and denying
them urban services long term in favor of a freeway intersection shopping mall in a lahar and liquefaction
zone appears cynical at best. As the PSRC comment letter in the EIS states: "This area [East Hill]
appears to be much more urban in nature than the area consisting of designated agricultural land

1
2 The Board finds the East Hill reduction “ensures the residential land capacity is not
3 increased,” as the companion application provision requires. East Hill contains 284
4 acres compared to Orton Junction’s 182 acres. The Friends have provided no data
5 demonstrating the Community Center and Moderate Density Residential designations at
6 Orton Junction would allow more housing than the prior Moderate Density designation
7 of East Hill. Sumner projects a net reduction of 113 units or 550 population but insists it
8 can still accommodate the 2022 population target.²²⁰ Residential capacity is not
9 increased by these paired amendments. The Friends have not carried their burden of
10 showing non-compliance with PCC 19C.10.055.F.
11
12

13 Conclusion

14 The Friends have not carried their burden of showing non-compliance with PCC
15 19C.10.055.F.
16

17 5) Multi-County Planning Policies – Urban Lands

18 VISION 2040 Policy

19 Vision 2040 is the updated Multi-County Planning Policy for the Central Puget Sound
20 Region, authorized by RCW 36.70A.210(7). As indicated in the Prefatory Note, Pierce
21 County has endorsed VISION 2040 in Ordinance 2011-34s, which acknowledges the
22 County’s obligation to plan consistently with the MPPs.
23
24

25 VISION 2040 provides, with respect to Urban Growth Areas:²²¹

26 **The Urban Growth Area.** Counties must work with their cities to
27 designate an urban growth area as the primary location for growth and
28

29 proposed for expansion in the UGA modification alternative.” [FEIS at 5-7, Comment Letter 8] However,
30 the only U-3b challenge raised by these Petitioners is whether U-3b offsets U-3a under County Code
31 provisions. Pursuant to RCW 36.70A.290(1), the Board does not address issues not presented in the
32 petition for review.

²²⁰ City Response, at 17.

²²¹ Sander Ex. 6, *VISION 2040 Part III: Multicounty Planning Policies* at 46- 47.

1 future development. All four counties in the region designated such an
2 urban growth area in the mid-1990s. Subsequently, only relatively minor
3 adjustments to the urban growth area have been made. The Regional
4 Growth Strategy was developed with the assumption that, with good
5 planning and efficient land use, existing urban growth area designations
6 can accommodate the population and employment growth expected by
7 2040. Any adjustments to the urban growth area in the coming decades
8 should continue to be minor. *When adjustments to the urban growth area
are considered, they should avoid encroaching on important habitat and
natural resource areas.*

9 **Urban Lands Goals and Policies**

10 **Goal:** The region will promote the efficient use of land, *prevent*
11 *urbanization of rural and resource lands*, and provide for efficient delivery
12 of services within the designated urban growth area.

13 **MPP-DP-4:** *Accommodate the region's growth first and foremost in the*
14 *urban growth area.* Ensure that development in rural areas is consistent
15 with the regional vision.

16 Pierce County CPP Urban Growth Areas Policy 2.4.1 requires:²²²

17 Municipal urban growth area boundaries shall be determined ... with
18 consideration for the following additional factors ... the VISION 2020
19 document, including Multi-county Planning Policies.

20 Positions of the Parties

21 The Friends contend the County's action is inconsistent with MPP-DP-4. They assert
22 VISION 2040 is based on the premise that projected growth will be accommodated
23 within the existing UGA boundaries, any adjustments will be minor, and should "avoid
24 encroaching on important habitat and natural resource areas."²²³

25
26
27 The City responds that the 182 expansion is "minor," as there is a net 100-acre
28 decrease of UGA acreage.²²⁴ The City also disputes the Friends' assertion that the
29

30
31 ²²² Countywide Planning Policies for Pierce County (2009), p. 57.

32 ²²³ Friends Prehearing Brief, at 31-32.

²²⁴ City Response, at 21-22.

1 project encroaches on important habitat, citing the EIS determination that habitat value
2 on the agricultural parcels is “somewhat limited.”²²⁵ As to natural resource lands, the
3 City asserts there is no “encroachment” because the area satisfies the criteria for de-
4 designation of resource lands. Finally, the City argues the Multi-county Planning
5 Policies are “generalized guidance” and are “not strict prohibitions of any urban growth
6 expansion.”
7

8 9 Board Discussion and Analysis

10 There are two prongs to the VISION 2040 consistency argument. First, as previously
11 discussed, the conversion of designated agricultural lands to urban uses, and, second,
12 the expansion of the urban growth area. VISION 2040 MPP-DP-4 states imperatively:
13 “Accommodate the region’s growth first and foremost in the urban growth area.”
14

15 The Pierce County Staff Report concluded:²²⁶

16 The proposal is consistent with the general agricultural preservation
17 policies [of VISION 2040] due to application of conservation easements.
18 The proposal is not consistent with VISION 2040 policies MPP-DP-31 and
19 MPP-DP-16 because of the direct language that discourages the
20 conversion of designated agricultural resource lands and rural lands to
21 commercial uses.

22 The Staff cites policies MPP-DP-31: “Support the sustainability of designated resource
23 lands. Do not convert these lands to other uses,” and MPP-DP-16: “Direct commercial,
24 retail and community services that serve rural residents into neighboring cities and
25 existing activity centers to prevent the conversion of rural lands into commercial uses.”

26 The Board notes even the VISION 2040 policy on TDRs and conservation incentives
27 requires these techniques to be used to spur growth within urban areas rather than
28 converting resource areas to urban development. MPP-DP-48 states: “Use these
29

30
31 _____
32 ²²⁵ CP #26-62, FEIS, at 3.5-3.

²²⁶ CP # 35-2, Staff Report, at 102.

1 techniques to focus growth *within* the urban growth area (especially cities) to lessen
2 pressures to convert rural and resource areas to more intense urban-type
3 development.”

4
5 The Board notes the VISION 2040 provisions are imperative:

- 6 • Accommodate growth first and foremost in the UGA.
- 7 • Do not convert resource lands to other uses.
- 8 • Direct commercial uses into existing cities to prevent conversion of rural lands
9 into commercial uses.

10
11
12 The Supplemental Staff Report cites an October 5, 2011 DEIS comment letter from
13 PSRC staff emphasizing the intent of VISION 2040 to direct growth within the existing
14 cities with only modest expansion of the UGA. PSRC staff stated:²²⁷

15 The revised MPPs stress the efficient use of land by maximizing the
16 development potential of existing urban areas. The protection and
17 preservation of rural and resource lands and protection and enhancement
18 of the natural environment are also stressed....

19 VISION 2040 recognizes that jurisdictions will need to ‘bend the trend’ to
20 align with the Regional Growth Strategy. This means focusing on
21 accommodating population and employment growth in existing cities and
22 through the development and support of centers, more compact urban
23 communities, and through redevelopment and infill.

24 The County Council’s Findings state:²²⁸

- 25 • The proposal is consistent with general policies for agricultural preservation
26 in the Comprehensive Plan, the Alderton-McMillin Community Plan, Vision
27 2040, and the Countywide Planning Policies through application of the
28 proposed conservation easements;
- 29 • Expansion of the City of Sumner’s urban growth area is consistent with the
30 GMA, Countywide Planning Policies, the Comprehensive Plan and the
31 Alderton-McMillin Community Plan.

32 ²²⁷ CP #26-57, Supp. Staff Report, at 11.

²²⁸ Exhibit N to Ordinance No. 2011-60s-2 at 6.

1 So the County finds consistency with VISION 2040 agricultural preservation policies
2 based on conservation easements but does not assert that the UGA expansion is
3 consistent with VISION 2040.
4

5 The Board finds the County Staff analysis persuasive. Expanding the UGA onto
6 agricultural resource lands to build a freeway-intersection shopping mall is not an
7 efficient use of land in VISION 2040 terms. While the proposed Orton Junction
8 development has high goals for sustainability as a compact, connected community, it
9 inevitably competes with the infill and redevelopment VISION 2040 intends to
10 accommodate in existing cities.
11

12 Conclusion

13
14 The Board concludes the inconsistency between the County's action in adopting
15 Amendment U-3a and C-5 and the UGA-containment imperatives of the VISION 2040
16 Multicounty Planning Policies provides further support to the Board's remand of these
17 amendments to the County.
18

19 Conclusion for Legal Issue B

20 The Friends have not carried their burden of demonstrating non-compliance with PCC
21 19A.30.010.H.1.a and PCC 19C.10.055.F.2. The challenge to Amendments U-3a and
22 U-3b based on UGA expansion for residential capacity is **dismissed**.
23

24 The Board finds and concludes the County's adoption of Amendments U-3a and C-5
25 was not consistent with the provisions of PCC 19A.30.010.H.1.b with respect to
26 commercial capacity and exceeded the land needed to accommodate allocated
27 employment growth contrary to RCW 36.70A.110(2) and RCW 36.70A.115. Additionally
28 the action was inconsistent with PCC 19A.30, 010.H.1.c, PCC 19A.30.010.H.2.e and
29 MPP-DP-4. The Board concludes the County's expansion of the UGA to provide
30 commercial/employment capacity is **clearly erroneous**, in view of the whole record
31
32

1 before the Board and in light of the goals and requirements of the GMA. The Board
2 **remands** Ordinance 2011-60s2 Amendments U-3a and C-5 to Pierce County to take
3 action to comply with the GMA as set forth in this order.
4

5 **D. UGA Extension in Floodplain – Friends’ Legal Issue C**

6 Friends’ Legal Issue C contends Amendment U-3a violates RCW 36.70A.110(8)(a) by
7 extending the UGA into the 100-year floodplain of the Puyallup River.²²⁹
8

9 Applicable Law

10 RCW 36.70A.110(8)(a) provides:

11 [With certain exceptions,] the expansion of an urban growth area is
12 prohibited into the one hundred year floodplain of any river or river segment
13 that: (i) is located west of the crest of the Cascade Mountains, and (ii) has a
14 mean annual flow of one thousand or more cubic feet per second as
15 determined by the department of ecology.

16 “One hundred year floodplain” is defined as the same as “special flood hazard area” as
17 set forth in WAC 173-158-040.²³⁰ The WAC provision states the 100-year base flood is
18 the area designated on the most recent FEMA maps for the National Flood Insurance
19 Program.
20

21 Pierce County Comprehensive Plan Land Use LU-UGA Objective 6 sets forth “criteria
22 and priorities for expansion of urban growth areas.” Subsection (i) mandates:

23 Prohibit the expansion of the UGA into the one hundred year floodplain of
24 any river or river segment per RCW.²³¹
25

26 Positions of the Parties

27

28 ²²⁹ **Friends (C)** By adding land in the one hundred year floodplain of the Puyallup River within a river
29 segment that is located west of the crest of the Cascade mountains and has a mean annual flow of one
30 thousand or more cubic feet per second as determined by the Washington State Department of Ecology
31 to the urban growth area, did the Orton Junction amendments violate RCWs 36.70A.070, 36.70A.110, or
32 36.70A.130, or the Pierce County Comprehensive Plan including PCC 19A.30.010?

²³⁰ RCW 36.70A.110(8)(c).

²³¹ PCC 19A.30.010.H.1.i.

1 The Friends assert part of the Orton Junction UGA expansion is within the 100-year
2 floodplain of the Puyallup River. Friends point to Pierce County maps of Regulated
3 Flood Hazard Areas that include areas just north of Riverside Road within the new UGA
4 boundary.²³²

5
6 The City of Sumner responds that the County's Regulated Flood Hazard Areas extend
7 300 feet beyond the 100-year floodplain as mapped in FEMA's Flood Insurance Rate
8 Map.²³³ Sumner asserts the 100-year floodplain itself does not extend north of
9 Riverside Road. Sumner points to the mapping included in its EIS,²³⁴ the 100-year
10 Floodplain Map as adopted by the County,²³⁵ and FEMA's more recent flood modeling
11 and Flood Insurance Rate Map, dated April 4, 2011.²³⁶ These maps support the
12 County's conclusion that the 100-year floodplain of the Puyallup River lies south of
13 Riverside Road, according to Sumner.
14

15 16 Board Discussion

17 The Board finds the City's evidence persuasive. While Pierce County Flood Hazard
18 Area regulations may place limits on development within 300 feet of the floodplain, the
19 prohibition of UGA expansion applies to the 100-year floodplain itself. The County's
20 Regulated Flood Hazard Areas extend beyond the "special flood hazard area" defined in
21 WAC 173-158-040 as the 100-year base flood line where UGA expansion is prohibited.
22

23
24 The Friends' zeal in opposing floodplain development is commendable: continued
25 paving over of flood-prone lands increases flood risks for our neighbors, as the recent
26 GMA restrictions recognize. In the present case, however, the FEMA maps indicate the
27 new UGA boundary does not extend into the 100-year floodplain.
28

29
30 ²³² Friends PHB at 32-33, citing PCC #126 and PC #135; Friends Reply at 32.

²³³ City Response at 23, citing PCC 18E.70.020.E.

²³⁴ Sumner Ex. M, CP #26-62, Figure 3.32; see also HOM Ex. 1.

²³⁵ Sumner Ex. N, based on FEMA Flood Insurance Rate Map, August 19, 1987.

²³⁶ Sumner Ex. O.

1 Conclusion

2
3 The Board finds and concludes Amendment U-3a does not violate RCW 36.70A.110(8)
4 or PCC 19A.30.010.H.1.i. Friends' Legal Issue C is **dismissed**.

5
6 **E. UGA Extension in Critical Areas – Friends' Legal Issue D**

7 Friends' Legal Issue D²³⁷ asserts the Orton Junction expansion and Community Center
8 designation is inconsistent with Pierce County Comprehensive Plan provisions and
9 Countywide Planning Policies (CPPs) that discourage UGA expansion on
10 environmentally sensitive lands.

11
12 Applicable Law

13 Legal Issue D is based on the GMA requirements for consistency, coupled with
14 provisions of the County Comprehensive Plan and CPPs alleged to be violated. RCW
15 36.70A.070 (preamble) and RCW 36.70A.130 require the comprehensive plan and
16 amendments to be internally consistent. RCW 36.70A.100 and RCW 36.70A.215(1)
17 require the plan and amendments to be consistent with CPPs.

18
19
20 CPP Urban Growth Areas Policy 2 provides:²³⁸

21 The following specific factors shall dictate the size and boundaries of
22 urban growth areas.

23
24
25
26 ²³⁷ **Friends (D)** [with strikeout of abandoned elements]: By including an open space corridor and other
27 critical areas within the urban growth area, did amendments U-3a and C-5 violate RCWs 36.70A.020(2,
28 9, and 10), ~~36.70A.040, 36.70A.060,~~ 36.70A.070, 36.70A.100, 36.70A.130, ~~36.70A.160, 36.70A.170,~~
29 ~~36.70A.240,~~ or 36.70A.215; the Countywide Planning Policies for Pierce County, Washington [including
30 Economic Development and Employment subpolicy 4, ~~Natural Resources, Open Space and Protection~~
31 ~~of Environmentally Sensitive Lands~~ subpolicy 6, or Urban Growth Areas subpolicy 2]; the Pierce County
32 Comprehensive Plan [including PCC 19A.30.010, ~~PCC 19A.30.170, PCC 19A.60.070,~~ or PCC
33 19A.60.080]; or the Alderton-McMillin Community Plan [including Principle 3]? See Ordinance No. 2011-
34 60s2 Sections 1, 3, 11, and 17.

²³⁸ CPP at 55-57.

1 The sub-policies that follow require consideration of environmentally-sensitive lands in
2 determining appropriate size of UGAs, UGA location, and municipal UGA boundaries.

3 CPP UGA Policy 2.1.1: sizing of UGA must “*take into account* ... land with
4 natural constraints, such as critical areas (environmentally-sensitive land) ...
5 greenbelts and open space....”

6 CPP UGA Policy 2.2.1: “Any of the following *shall be considered* in
7 determining location of urban growth area boundaries: ... (d) location of
8 designated ... critical areas....”

9 CPP UGA Policy 2.4: boundaries of municipal UGAs “shall be determined ...
10 *with consideration for* the following additional factors: ... (2) the carrying
11 capacity of the land *considering* ... environmentally sensitive lands....”

12 CPP Economic Development and Employment Policy 4²³⁹ requires the County and its
13 cities to take steps to ensure that economic growth remains within the capacities of the
14 state’s natural resources, including

15 4.3. Limiting incompatible development activities in or adjacent to designated
16 natural resource lands and critical areas and/or by requiring adequate buffers
17 between economic development activities and designated natural resource
18 lands and critical areas

19 Pierce County Comprehensive Plan Policy 19A.30.010.H.2.e states that lands with “high
20 concentrations of critical areas” should be given the “lowest priority for inclusion into the
21 UGA.” Comprehensive Plan Policy 19A.30.010.H.6.1.g provides:

22 Future UGA expansion areas should avoid the inclusion of designated
23 agricultural lands and critical areas, unless (a) otherwise permitted by the
24 applicable community plan, or (b) the development rights are removed.

25 Comprehensive Plan Policy 19A.60.080.D addresses geologic hazard areas, providing,
26 in part:

27 Establish land use practices in geologically hazardous areas so that
28 development does not cause or exacerbate natural processes which
29 endanger the lives, property, and resources of the citizens of Pierce
30 County.

31 _____
32 ²³⁹ CPP at 20.

- 1 1. Discourage high intensity land use activities in volcanic hazard areas.
2 a. Establish lower densities and low-intensity land uses in volcanic
3 hazard areas which discourage conversion of land to urban uses.
4 b. Direct sewer lines, utilities, and public facilities away from volcanic
5 hazard areas, wherever feasible.

6 The Alderton-McMillin Community Plan, Land Use Element Principle 3 provides:²⁴⁰

7 Development proposals which have significant adverse impacts to critical
8 areas or resource lands that cannot be mitigated to less than significant
9 levels should be denied.

10 The Board is also required to consider the procedural guidelines developed by
11 Commerce. WAC 365-196-485(4) provides:

12 When considering expanding the urban growth area, counties and cities
13 should avoid including lands that contain large amounts of mapped critical
14 areas.... If critical areas are included in urban growth areas, they still
15 must be designated and protected.

16 Positions of the Parties

17 The Friends contend the UGA expansion area contains all five categories of critical
18 areas requiring designation and regulatory protection under the GMA:²⁴¹ wetlands,
19 critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently
20 flooded areas, and geologically hazardous areas. The area is also a mapped Open
21 Space Corridor. The Friends argue the applicable planning policies preclude UGA
22 expansion in areas with such high concentration of environmentally sensitive lands.
23

24
25 Sumner provides the facts and arguments on behalf of the County. Sumner asserts the
26 wetlands, flood-prone areas and critical habitats are minimal. As to critical aquifer
27 recharge areas and geologic hazards, Sumner responds that the whole city is in these
28 zones and that existing regulations and emergency preparedness are an adequate
29 response.
30

31 ²⁴⁰ AMCP at 27.

32 ²⁴¹ RCW 36.70A.030(5).

1 The Board notes Ordinance 2011-60s2 contains no County Council findings on critical
2 areas but merely acknowledges the City of Sumner's EIS.²⁴² Forterra and Orton do not
3 address these issues.
4

5
6 Board Discussion and Analysis

7 The Friends do not challenge the County's designation of critical areas in Orton
8 Junction. Rather, they assert the Orton Junction UGA expansion violates County
9 comprehensive plan and CPP policies that prohibit UGA expansion in areas with high
10 concentrations of environmentally sensitive lands.
11

12 The County's Comprehensive Plan policies governing UGA expansion provide that
13 lands with "high concentrations of critical areas" should be given "the lowest priority for
14 inclusion into the UGA."²⁴³ Future UGA expansion "should avoid the inclusion of ...
15 critical areas unless (a) otherwise permitted by the applicable community plan..."²⁴⁴ The
16 Alderton-McMillin Community Plan calls for denial only if significant adverse impacts
17 cannot be mitigated.²⁴⁵
18

19
20 The Countywide Planning Policies²⁴⁶ state UGA expansion decisions must "*take into*
21 *account*" land with natural constraints (environmentally-sensitive land), and location of
22 critical areas "*shall be considered*" in determining UGA boundaries. "The carrying
23 capacity of the land *considering* ... environmentally sensitive lands..." is another
24 required *consideration*. Incompatible economic development adjacent to critical areas
25 should be limited or adequate buffers required.
26
27

28
29
30 ²⁴² The Staff Report contains a single short paragraph at 109.

31 ²⁴³ PCC 19A.30.010.H.2.e.

32 ²⁴⁴ PCC 19A.30.010.H.6.1.g.

²⁴⁵ Alderton-McMillin Community Plan, Land Use Element Principle 3.

²⁴⁶ CPP 55-57, 20.

1 The Board reads these policies as generally requiring consideration of environmentally
2 sensitive lands but not directly prohibiting UGA expansion into critical areas. Words like
3 “lowest priority,” “avoid the inclusion,” “take into account,” do not amount to a flat denial.
4 Only the Alderton-McMillin Plan calls for denial of proposals with significant unmitigable
5 impacts to critical areas, saying such proposals “should be denied.”²⁴⁷
6

7 The Board finds scant evidence the County considered the critical areas question. The
8 Council Findings contain no comment on critical areas, other than acknowledgement of
9 Sumner’s EIS. The Staff Report identifies 1.85 acres of wetlands, 18.64 acres of wildlife
10 habitat area, 1.52 acres of floodplain, and 195 acres (the whole Junction) of volcanic
11 hazard areas. The Report states: “It is assumed the city’s regulations would mitigate
12 any potential impacts to these critical areas.”²⁴⁸ Assuming incorporation of the Sumner
13 EIS into the County’s record constitutes the necessary environmental consideration, the
14 Board reviews the record to determine whether a high concentration of critical areas or
15 significant unmitigable impacts to critical areas warrants a finding of inconsistency and
16 non-compliance.
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30 _____
31 ²⁴⁷ AMCP Land Use Element Principle 3: Development proposals which have significant adverse impacts
32 to critical areas or resource lands that cannot be mitigated to less than significant levels should be
denied.

²⁴⁸ CP #35-2 Staff Report, June 22, 2011, at 109.

1 A) Open Space Corridors

2 The Friends state: “The entire UGA is an Open Space Corridor,” citing to Pierce
3 County’s Open Space Corridors map.²⁴⁹ This is the sum total of Petitioners’ facts and
4 argument.²⁵⁰ The City responds that Pierce County’s definition and treatment of open
5 space is intended to guide open space preservation efforts but is not a prohibition of
6 development.²⁵¹

7
8
9 The identification of open space corridors is required In RCW 36.70A.160, which
10 begins:

11 Each county and city that is required or chooses to prepare a
12 comprehensive land use plan under RCW 36.70A.040 shall identify open
13 space corridors within and between urban growth areas. They shall
14 include lands useful for recreation, wildlife habitat, trails, and connection
15 of critical areas as defined in RCW 36.70A.030.

16 The Friends list this statute in their issue statement but provide no related reference,
17 argument or authorities in their brief. The Board has held an issue is abandoned when,
18 other than repeating a statute in the statement of a Legal Issue, petitioners have made
19 no argument tied to the statutory provisions.²⁵² WAC 242-03-590(1) provides in part
20 “Failure to brief an issue shall constitute abandonment of the unbrieffed issue.” An issue
21 is briefed when legal argument is provided. It is not enough to simply cite the statutory
22 provision in the statement of the legal issue. The Board determines the issue of violation
23 of RCW 36.70A.160 or the County’s open space corridor provisions is **abandoned**.²⁵³

24
25
26
27 ²⁴⁹ Friends Prehearing Brief at 34, referencing PCC #126, Pierce County Open Space Corridors.

28 ²⁵⁰ In other sections of their opening and reply brief, the Friends suggest, without authority, that “open
space corridors” are a type of critical area.

29 ²⁵¹ City Response, at 27, citing PCC 19A.030.170.

30 ²⁵² *North Clover Creek II v. Pierce County*, CPSGMHB Case No. 10-3-0015, Final Decision and Order
(May 18, 2011) at 11; *TS Holdings v. Pierce County*, CPSGMHB Case No. 08-3-0001, Final Decision and
31 Order (Sep. 2, 2008) at 7.

32 ²⁵³ The Board has held RCW 36.70A.160 requires jurisdictions to identify open space corridors but does
not require that the areas be regulated or protected. *Suquamish II v. Kitsap County*, CPSGMHB Case No.

1 B) Wetlands, Frequently Flooded Areas, Fish and Wildlife Habitat Conservation
2 Areas.
3

4 As evidence of wetlands, the Friends rely on tax parcel information indicating “potential”
5 or “possible” wetlands on seven parcels in the UGA expansion area.²⁵⁴ The City
6 responds that the EIS for Orton Junction identified only one stream and a few small
7 wetlands in the area.²⁵⁵
8

9 The Board compares Sumner’s EIS Figure 3.4.2 Streams and Wetlands, showing no
10 streams or wetlands in the UGA expansion area, with the EIS text which states:
11 “Several small wetlands are mapped in the south portion of the area and one stream
12 (Salmon Creek).”²⁵⁶ The Board finds Orton Junction probably contains some
13 wetlands,²⁵⁷ but notwithstanding Orton’s complaints about poor drainage, the area does
14 not have significant wetlands.
15

16
17 Flood-prone lands are identified by the Friends from the County’s Regulated Flood
18 Hazard Areas map which shows a flood-regulated area just north of Riverside Road and
19 two small isolated areas in the north central portion of the UGA expansion area.²⁵⁸
20 Sumner’s EIS text and mapping focus on the 100-year floodplain and show no
21 frequently flooded areas in the Orton Junction area.²⁵⁹ As with wetlands, the Board does
22 not find the expansion area contains significant flood-prone lands.
23

24
25 07-3-0019c, Final Decision and Order (Aug. 15, 2007), at 61; *LMI/Chevron v. City of Woodway*,
26 CPSGMHB Case No. 98-3-0012, Final Decision and Order (Jan. 8, 1999), at 54.

27 ²⁵⁴ Friends’ Prehearing Brief at 11, citing *Property Information for Tax Parcels* 0520292003, 0520292046,
28 0520301006, 0520302010, 0520304001, 0520304701, and 0520305002. See PCC #126B, Parcel Maps
29 1, 2, 3, 4, 5, 6, and 7 for the location of these parcels. Parcel 0520301049 is shown on Parcel Maps 3 and
30 7.

31 ²⁵⁵ City Response, at 24, citing CP #26-60, DEIS at 3.5-3.

32 ²⁵⁶ CP #26-60, DEIS 3.5-3.

²⁵⁷ CP #35-2 at 109. Staff Report identifies 1.85 acres of wetlands.

²⁵⁸ PCC #126, Pierce County Public GIS Regulated Flood Hazard Area; see CP#35-2 at 109. Staff Report
identifies 1.52 acres of “floodplain”.

²⁵⁹ CP #26-60, DEIS Fig. 3.3-2 and 3.3-1.

1 To show fish and wildlife habitat conservation areas, Petitioners point to a Sumner EIS
2 map indicating the presence of waterfowl concentrations along the northwest boundary
3 of the expansion area.²⁶⁰ The Board notes the EIS text states Salmon Creek is a Type 3
4 (fish bearing) stream in the Orton Junction area, is mapped as coho salmon habitat by
5 WDFW, and is “the least altered creek in the current plan area”.²⁶¹ While RCW
6 36.70A.172(1) requires jurisdictions to give special consideration to anadromous
7 fisheries, the Friends make no mention of this salmon stream. Neither the Friends nor
8 Sumner provide information demonstrating extensive critical habitat in the UGA
9 expansion area.
10
11

12 The Board finds Orton Junction contains relatively small pockets of wetlands, frequently
13 flooded areas, and fish and wildlife habitat conservation areas. The Friends provide no
14 evidence that the County’s existing critical areas regulations are inadequate to mitigate
15 impacts to these areas.²⁶² The Board concludes the Friends have not demonstrated the
16 presence of wetlands, frequently flooded areas, or habitat areas preclude UGA
17 expansion in this location, although there is no indication of special consideration given
18 to the protection and conservation of anadromous fisheries.
19
20

21 C) Critical Aquifer Recharge Areas

22 The Friends point to the County’s Aquifer Recharge Area Map, where all of the Orton
23 Junction area is shown to be within the wellhead protection area defined by ten-year
24
25
26

27 ²⁶⁰ CP #26-60 DEIS Fig. 3.5-1 Priority Habitat and Species; see CP#35-2 at 109. Staff Report identifies
28 18.64 acres of wildlife habitat.

29 ²⁶¹ CP #26-60, DEIS at 3.5-1 and 3.4-2.

30 ²⁶² The Seven Principles Agreement proposes additional eco-friendly construction and design. Ordinance
31 Ex. O, Principles E and F and Attachment B. There is no indication the proposed standards address
32 advanced water management techniques that might enhance mitigation of development impacts to
wetlands, flooded areas, and habitat; however, the Friends have not demonstrated the existing
regulations are inadequate.

1 time of travel.²⁶³ Sumner's EIS identifies two wells – Elhi Springs and South Well –
2 whose ten-year travel zones extend over virtually all the UGA expansion area.²⁶⁴ The
3 South Well is used for Sumner's domestic water supply.²⁶⁵ Sumner's EIS describes
4 impacts to the South Well and Elhi Springs wellhead protection areas:²⁶⁶

5 An increase in impervious surface area would occur, potentially resulting
6 in an increase in pollution loading of vehicle-related pollutants and peak
7 stormwater runoff, as well as decreased filtration to groundwater.
8 However, there would also be a potential reduction in agricultural
9 pollutant loading.

10 The City argues the County's wellhead protection regulations allow development while
11 ensuring protection of the resource.²⁶⁷

12
13 It is uncontested that virtually the whole of the UGA expansion area is a critical aquifer
14 recharge area. Much of Orton Junction is within the 10-year travel time of Sumner's
15 South Well, which provides domestic water supply. While it seems apparent that a land
16 use change from agriculture to high-intensity commercial/residential in the South Well
17 wellhead protection area would have significant impacts, both in terms of infiltration
18 rates and pollution risks, the Friends have provided no information demonstrating such
19 impacts cannot be effectively mitigated through the applicable regulations.²⁶⁸ Sumner's
20 EIS indicates recent updates to the City's stormwater regulations, Shoreline Master
21 Program, and a Groundwater and Stream Low Flow Monitoring Plan. Additionally,
22 Sumner's Aquifer Recharge Area regulations, SMC 16.48, would regulate land use and
23
24

25
26 ²⁶³ PCC #126, Pierce County Aquifer Recharge Area.

27 ²⁶⁴ CP #26-60, DEIS Fig. 3.4-1.

28 ²⁶⁵ CP #26-60, DEIS at 3.4-3.

29 ²⁶⁶ CP #26-60, DEIS at 3.4-7.

30 ²⁶⁷ City Response, at 26, citing PCC 18E.050, which limits certain land uses, prohibits injection wells,
31 limits impervious surface coverage, controls the volume of water infiltration, restricts underground storage
32 tanks, and requires hydrogeological assessments prior to developments highly susceptible to
contaminating the aquifer.

²⁶⁸ While Sumner's argument in this case relies on the efficacy of County regulations, the Sumner EIS
relies on the City's regulatory scheme. Regardless, the burden is on the Petitioners to demonstrate some
unmitigated risk to the critical areas.

1 development in the Orton Junction area if annexed by the City. The Board concludes
2 the Friends have not demonstrated the presence of the South Well or Elhi Springs
3 CARAs preclude UGA expansion in Orton Junction.
4

5 D) Geologically Hazardous Areas – Seismic and Volcanic Hazards

6 The GMA defines “geologically hazardous areas” as areas “that because of their
7 susceptibility to erosion, sliding, earthquake, or other geological events, are not suited
8 to the siting of commercial, residential, or industrial development consistent with public
9 health and safety.”²⁶⁹ The GMA requires that critical areas be designated and that
10 regulations to protect their “functions and values” be enacted applying best available
11 science. However, there is no GMA directive that prohibits development because of
12 geological risks. While hazard areas are defined as areas that are *not suited to*
13 *development* consistent with public health and safety, the GMA definition by itself does
14 not impose an independent duty upon the County to protect life and property by
15 prohibiting development.²⁷⁰
16
17

18 The County Comprehensive Plan land use policies for geologic hazard areas provide in
19 part:²⁷¹
20

- 21 1. Discourage high-intensity land use activities in volcanic hazard areas. (a)
22 Establish lower densities and low-intensity land uses in volcanic hazard
23 areas which *discourage the conversion of land to urban uses*.
- 24 2. Direct sewer lines, utilities, and public facilities away from volcanic hazard
25 areas, wherever feasible.
- 26 3. Require stringent design standards for sewer lines and utilities within
27 seismic hazard areas.

28
29
30 ²⁶⁹ RCW 36.70A.030(9).

31 ²⁷⁰ *Tahoma Audubon Society, et al v. Pierce County*, CPSGMHB Case No. 05-3-0004c, Final Decision
and Order (July 12, 2005), at 25; *Hanson v King County*, CPSGMHB Case No. 98-3-0015c, Final
Decision and Order (Dec. 16, 1998), at 7-8: Definitions, by themselves, do not create GMA duties.

32 ²⁷¹ PCC 19A.60.080.D.

1 WAC 365-190-120 provides the minimum guidelines for designation of geologically-
2 hazardous areas. These are lands subject to geological events such that “[t]hey pose a
3 threat to the health and safety of citizens when incompatible commercial, residential, or
4 industrial development is sited in areas of significant hazard.” The guideline provides:
5 “Some geological hazards can be reduced or mitigated by engineering, design, or
6 modified construction or mining practices so that risks to public safety and health are
7 minimized. *When technology cannot reduce risks to acceptable levels, building in*
8 *geologically hazardous areas must be avoided.*”
9

10
11 WAC 365-190-120(7) requires designation of seismic hazard areas: “Seismic hazard
12 areas must include areas subject to a severe risk of damage as a result of ... soil
13 liquefaction.” The Friends point to County and City maps indicating the entire UGA
14 expansion area is at high risk for dynamic settlement and liquefaction in the event of an
15 earthquake.²⁷²
16

17
18 Sumner acknowledges the liquefaction zone but argues it extends throughout the valley
19 and is adequately addressed by seismic construction standards in the County’s
20 development regulations.²⁷³
21

22 The Board finds the seismic risks in the UGA expansion area are well documented and
23 uncontested. The Orton Junction EIS documents seismic activity in the recent past. The
24 EIS states the alluvial sediments in the Sumner Valley make the area “particularly
25 susceptible to liquefaction,” which “occurs when saturated soils are subject to strong
26 ground motion, and lose cohesion and bearing strength.”²⁷⁴ “Sandblows” from
27
28

29
30 _____
31 ²⁷² PCC #126, Pierce County Potential Liquefaction and/or Dynamic Settlement Hazard Area; CP #26-60,
32 Fig. 3.1-2 Seismic Hazard Area.

²⁷³ City Response, at 26, citing PCC 18E.90.030 and .040.

²⁷⁴ CP #26-60, at 3.1-2.

1 liquefaction in the Puyallup area in the 1949 earthquake are cited as evidence of past
2 liquefaction.

3
4 With regard to seismic hazard areas, the Board has held GMA requirements are
5 satisfied when known faults and other hazards are mapped using best available
6 science.²⁷⁵ The engineering technology to reduce seismic risks to acceptable levels is
7 found in the International Building Code, which Sumner has adopted.²⁷⁶ As noted by the
8 Board in addressing citizen opposition to siting a wastewater treatment plant near a
9 newly-identified seismic fault:

10
11 [A jurisdiction's] duty and obligation to protect the public from potential
12 injury or damage that may occur if development is permitted in
13 geologically hazardous areas is not rooted in the challenged GMA critical
14 area provisions. Rather, providing for the life safety of occupants and the
15 control of damage to structures and buildings is within the province of
building codes - Chapter 19.27 RCW.²⁷⁷

16 The Board concludes the Friends have not met their burden of demonstrating the
17 liquefaction risks in the Orton Junction preclude expansion of the UGA, so long as any
18 development complies with the building codes applicable to liquefaction areas.

19
20 WAC 365-190-120(8)(a) requires designation of volcanic hazard areas, defined as
21 "areas subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris
22 flows, lahar flows, mudflows or related flooding resulting from volcanic activity." The
23 Friends provide maps of the volcanic hazard area that includes the whole of Orton
24

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30 ²⁷⁵ *Seattle Audubon, et al v City of Seattle*, CPSGMHB Case No. 06-3-0024, Order Finding Compliance
(May 29, 2007), at 4.

31 ²⁷⁶ CP #26-60, at 3.1-6 to 3.1-7.

32 ²⁷⁷ *Sno-King Environmental Alliance, et al, v Snohomish County*, CPSGMHB Case No. 06-3-0005, Final
Decision and Order (July 24, 2006) at 15-16.

1 Junction. ²⁷⁸ Sumner acknowledges the lahar inundation zone and states it includes the
2 whole of the City. The City asserts:

3 The county and jurisdictions have developed evacuation plans,
4 automated alarm systems and planned evacuation routes and responses
5 associated with this volcanic hazard. However, the development
6 regulations do not prohibit development within volcanic hazard areas....
7 The lahar regulations should not be used to limit UGA expansion.²⁷⁹

8 The Board finds the volcanic risks in the UGA expansion area are well documented and
9 uncontested. The area is a Class II lahar risk zone, that is, there is a high probability of
10 debris inundation in an event with a recurrence interval at the low end of the 100-year to
11 500-year range.²⁸⁰ The debris travel time from the monitors on Mount Rainier that
12 trigger alarms down to Orton Junction is just over an hour, putting the UGA boundary
13 within lahar time travel zone C on the Pierce County Volcanic Hazard Areas Map.²⁸¹

14 The EIS states:

15 The key to reducing loss of life will be accurate monitoring of mountain
16 activity, prediction of events, and emergency notice. With less than 2
17 hours for detection, notice, and evacuation, emergency management
18 systems must be operational and highly effective. Any development in the
19 volcanic hazard area would have an increased risk of damage from
20 mudflows.

21 In *Tahoma Audubon Society, et al v. Pierce County*,²⁸² the Board thoroughly reviewed
22 Pierce County's Volcanic Hazard Area regulations in a case challenging development of
23

24 _____
25 ²⁷⁸PCC #126, Figure 3 Hazard zones for lahars, lava flows, and pyroclastic flows from Mount Rainier
26 (Hoblitt and others, 1998; US Geological Survey Open-File Report 98-428); PCC #126, Pierce County
27 Volcanic Hazards & Volcanic Time of Travel.

28 ²⁷⁹ City Response, at 25, citing PCC 18E.60 – the County restrictions that apply to development within the
29 Case II Lahar Travel Time zone where the mudflow could reach the area within 1-1.5 hours. The
30 development regulations prohibit hazardous substances and hazardous land uses. "Special occupancy"
31 (e.g. schools and daycare centers) and "covered assembly" (e.g. convention centers, churches, theaters)
32 are allowed provided the occupancy load does not exceed 1,000 persons and evacuation plans are in
place. Other land uses are allowed without limitation.

²⁸⁰ CP #26-60, at 3.1-5.

²⁸¹ See Sumner Municipal Code 16.54.060.

²⁸² CP#SGMHB Case No. 05-3-0004c, Final Decision and Order (July 12, 2005), at 12-31.

1 a resort in the Nisqually Valley. The Board found there is no international or national
2 engineering standard to mitigate the lahar risks posed in the valleys surrounding Mount
3 Rainier. There are few active volcanoes in the country, of which Mount Rainier poses
4 the most severe debris flow risks. It is not possible to “harden” development, because
5 nothing man-made can withstand inundations of the depth, viscosity, and rate of flow
6 likely from a Mount Rainier event. The County has adopted some restrictions on
7 development, including occupancy limits, based on estimates of evacuation times.²⁸³
8 The feasibility of rapid evacuation was identified as an engineering and life-safety
9 question rather than an issue of volcanology.²⁸⁴
10

11
12 Thus in determining what land use regulations are required, once a lahar hazard is
13 acknowledged, the Board in *Tahoma Audubon* agreed with Pierce County that land use
14 policy and responsibility with respect to Mount Rainier Case II lahars – “low probability,
15 high consequence” events – is within the discretion of the elected officials: they bear the
16 burden of weighing risks to lives and property within their jurisdiction.²⁸⁵
17

18 The Orton Junction EIS relies on warning and evacuation as the “technology” that might
19 “reduce risks to acceptable levels.” Pierce County has developed an early warning
20 system, and Sumner participates in the County disaster management program.
21 Nevertheless, the Friends argued strenuously at the Hearing on the Merits that the risks
22 are not manageable. Further, as the Friends point out, the East Hill area is neither a
23 liquefaction nor lahar zone and could readily absorb the population proposed for Orton
24 Junction.
25
26
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29 ²⁸³ The County’s emergency management director and USGS Mount Rainier volcanologists testified in
30 favor of a 100-person limit in lahar time travel zone A. The County adopted a 400-person limit. *Id* at 23-
31 25.

31 ²⁸⁴ *Id.* at 28.

32 ²⁸⁵ *Id.* at 25: “The Board finds no direct requirement in the GMA that would allow it to substitute its
judgment for that of the Pierce County elected officials.”

1 The City's answer is that all of Sumner is in the lahar zone. The Board fails to see how
2 that addresses the question of whether an additional 182 acres of the inundation risk
3 zone – Class II lahar time travel zone C - should be converted from agriculture to high-
4 intensity development. The Board has found no analysis of evacuation feasibility.²⁸⁶
5 However, it defies credulity to suppose a major suburban shopping complex, 650
6 homes, and a regional YMCA could be notified, evacuated, and reach higher ground in
7 an hour.²⁸⁷ That said, it is not the Board's prerogative to substitute its judgment for that
8 of the County officials.
9

10 Sumner's EIS addresses the liquefaction and lahar risks by referencing Sumner
11 comprehensive plan policies that call for the City to
12

- 13 • *Take measures to reduce risk* and hazard from volcanic mudflows off Mount
14 Rainier
- 15 • *Take measures to reduce risk* of hazard from earthquakes and related effects
16

17 The EIS indicates the City has adopted the International Building Code to reduce
18 earthquake hazards, participates in the Pierce County Emergency Management System
19 to reduce risks from earthquakes, volcanic eruptions or mudflows, and has adopted
20 critical areas regulations governing development in seismic and volcanic hazard
21 areas.²⁸⁸
22

23 The Board notes in the case of flood risks, the Legislature has defined the 100-year
24 floodplain as mapped by FEMA as setting the bounds for more intensive development.
25 No such bounds have been legislated into the GMA for other geological hazards. The
26 Board concludes the Friends have not met their burden of demonstrating Amendments
27
28

29
30 ²⁸⁶ CP # 35-2 at 109. The Staff Report notes that the City of Sumner's use and occupancy regulations for
31 the zone are even less restrictive than the County's, allowing 5,000-person occupancy.

²⁸⁷ While some lahars are preceded by volcanic rumblings, others occur without warning.

²⁸⁸ CP #26-60, at 3.1-6 to 3.1-7.
32

1 U-3a and C-5 violate GMA or Pierce County plan provisions concerning UGA expansion
2 in critical areas.

3
4 Conclusion

5 The Board finds and concludes the Friends have not carried their burden of
6 demonstrating Amendments U-3a and C-5 violate the cited plan provisions concerning
7 extending the UGA to lands with designated critical areas. Friends Legal Issue D is
8 **dismissed.**
9

10
11 **V. AMENDMENTS M-3, C-2 AND C-3**
12 **SANDERS' ISSUES**

13 **A. The Challenged Actions**

14 In adopting Ordinance 2011-60s2, Pierce County made several amendments at the
15 request of school districts. Amendment M-3²⁸⁹ is a map amendment re-designating 117
16 acres in the Graham Community Plan area from Rural Farm (RF) to Rural Residential
17 10 (R10) at the request of Bethel School District and Rainier View Church in order to
18 provide a multi-school campus site for Bethel. Amendment C-2²⁹⁰ amends sign design
19 standards in the South Hill Community Plan to allow electronic billboards, a change
20 requested by Puyallup School District. Amendment C-3²⁹¹ amends sign design
21 standards in the Frederickson Community Plan with similar but not identical electronic
22 billboard provisions, a change requested by Bethel School District.
23
24

25 The Sanders Petitioners are a group of citizens long active in Pierce County's
26 community planning process. The Sanders Petitioners challenge Pierce County's
27

28
29 ²⁸⁹ Ex. B to Ordinance 2011-60s2, p.6, Amendment M-3 Bethel School District and Rainier View Christian
30 Church, RF to R10, Graham Area.

31 ²⁹⁰ Ex. D to Ordinance 2011-60s2, p.5, Amendment C-3 Frederickson Community Plan Community
32 Character and Design Element – Sign Design standards 19.2.5 and 19.2.10.

²⁹¹ Ex. G to Ordinance 2011-60s2, p.3-4, Amendment C-2 South Hill Community Plan Community
Character and Design Element, Sign Design Standards 27.2.3, 27.2.5, and 27.2.11.

1 Amendments M-3, C-2 and C-3. Bethel and Puyallup School districts have intervened in
2 support of the County, Bethel with respect to Amendments M-3 and C-3, Puyallup for
3 Amendment C-2. The School Districts filed a joint brief. Pierce County filed a statement
4 indicating it would not provide briefing and argument in support of the challenged
5 amendments but would rely on the briefs and arguments of intervenors. Accordingly, the
6 Board looks to the County Staff Report and the Findings of Fact in Ordinance 2011-
7 60s2 to resolve questions about the County's action.
8

9
10 **B. Applicable Law**

11 The GMA requires consistency among the elements of a comprehensive plan, including
12 sub-area plans. A framework for consistency is provided by countywide planning
13 policies, and in the Central Puget Sound region, multi-county planning policies. A
14 comprehensive plan amendment must meet these consistency requirements.²⁹²

- 15 • RCW 36.70A.070 (preamble) provides: The plan shall be an internally consistent
16 document and all elements shall be consistent with the future land use map.
- 17 • RCW 36.70A.080(2) provides: A comprehensive plan may include, where
18 appropriate, subarea plans, each of which is consistent with the comprehensive
19 plan.
- 20 • RCW 36.70A.130 (1)(d) provides: Any amendment of or revision to a
21 comprehensive land use plan shall conform to this chapter. Any amendment of or
22 revision to development regulations shall be consistent with and implement the
23 comprehensive plan.
24
25

26
27 ²⁹² The Board addresses all Sanders' legal issues in light of the GMA consistency provisions identified in
28 Legal Issue 3. The Board notes the consistency statutes, except for RCW 36.70A.100, are not referenced
29 in Sanders Legal Issues 1 and 2 but only in Legal Issue 3. RCW 36.70A.290(1) requires a petition that
30 "includes a detailed statement of issues for resolution presented by the board." WAC 242-03-210 requires
31 a "detailed statement of the issues presented for resolution by the board that specifies the provision(s) of
32 the act or other statute allegedly being violated and, if applicable, the provision(s) of the document that is
being appealed." Neither the GMA nor the Board's Rules of Procedure requires that each issue statement
must stand alone or must repeat each of the statutory provisions relied on.

- 1 • RCW 36.70A.210 contains the statutory provisions governing countywide
2 planning policies. RCW 36.70A.210(1) provides in part: [A] “countywide planning
3 policy” is a written policy statement or statements used solely for establishing a
4 countywide framework from which county and city comprehensive plans are
5 developed and adopted pursuant to this chapter. This framework shall ensure
6 that city and county comprehensive plans are consistent as required in RCW
7 36.70A.100.
- 8 • RCW 36.70A.100 provides: The comprehensive plan of each county or city that
9 is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and
10 consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040
11 of other counties or cities with which the county or city has, in part, common
12 borders or related regional issues.
- 13 • RCW 36.70A.210(7) provides for multicounty planning policies: Multicounty
14 planning policies shall be adopted by two or more counties, each with a
15 population of four hundred fifty thousand or more, with contiguous urban areas
16 and may be adopted by other counties, according to the processes established
17 under this section or other processes agreed to among the counties and cities
18 within the affected counties throughout the multicounty region.

19 The Sanders Petitioners also allege violations of RCW 36.70A.070(5) which describes
20 the mandatory Rural Element of a county’s comprehensive plan. Relevant provisions of
21 the statute are set forth in the discussion below.

22 The Sanders Petitioners allege non-compliance with two of the GMA Planning Goals:

- 23 • RCW 36.70A.020(2) Reduce sprawl. Reduce the inappropriate conversion of
24 undeveloped land into sprawling, low-density development.
- 25 • RCW 36.70A.020(10) Environment. Protect the environment and enhance
26 the state’s high quality of life, including air and water quality, and the
27 availability of water.

1
2 **C. Amendment M-3 – Re-Designation for Multi-School Complex**

3 Amendment M-3 was initiated by Bethel School District to land-bank 117.9 acres in the
4 Graham Area for a future high-school/middle-school campus.²⁹³ An elementary school
5 is already located across the street. At Bethel’s request, the County re-designated the
6 Crate Farm property from Rural Farm (RF) to Rural Residential 10 (R-10), a designation
7 which allows a high school as a conditional use. The Sanders Petitioners raise multiple
8 objections.²⁹⁴

- 9
- 10 • De-designation of RF lands was inconsistent with the Graham Plan
 - 11 requirements;
 - 12 • Assignment of R-10 rather than Rural Sensitive Resource (RSR) designation was
 - 13 non-compliant with the Graham Plan;
 - 14
 - 15

16
17 ²⁹³ Rainier View Church located on a corner of the property at issue joined Bethel in the re-designation
request but is not otherwise involved in these proceedings.

18 ²⁹⁴ **Sanders 1.** Is Pierce County’s adoption of Map Amendment M-3 not in compliance with RCW
19 36.70A.100, RCW 36.70A.070 (5) & RCW 36.70A.020 (2), and with specified provisions of the Multi-
20 County Planning Policies, Countywide Planning Policies, Pierce County Comprehensive Plan, Graham
Community Plan, Frederickson Community Plan, and Parkland-Spanaway Community Plan, because:

21 (a) it is inconsistent with preserving rural lands, in protecting the rural character, in assuring visual
compatibility with surrounding rural areas, and in preventing sprawl?

22 (b) it ignored the State’s GMA and County’s obligations to protect farming and agricultural lands?

23 (c) the County failed to establish a process for designation and redesignation of Rural Farm
lands (as exists for Agricultural Resource Lands) prior to passage to the Ordinance?

24 (d) the County misrepresented the land as not currently being used for agricultural and farming
purposes?

25 (e) it ignored its obligations to be an active participant in the siting of educational facilities which,
as population magnets, would likely increase urban sprawl?

26 (f) the County failed to analyze the impact of locating school facilities in rural as opposed to
27 urban areas?

28 **Sanders 2.** Is Pierce County’s adoption of Map Amendment M-3 not in compliance with RCW
29 36.70A.070 (5), RCW 36.70A.070 (10) & RCW 37.70A.100, and with specified provisions of the Multi-
County Planning Policies, Countywide Planning Policies, Pierce County Comprehensive Plan, and
Graham Community Plan, because:

30 (a) it is inconsistent with the protection of wetlands, open spaces, ground waters, critical areas,
and other sensitive resource lands?

31 (b) it failed to consider and to properly map the land parcels for the applicability of Rural Sensitive
32 Resource (RSR) standards in accordance with its land use hierarchy?

- Siting a multi-school campus in the rural area violates GMA requirements for protection of rural character and is inconsistent with Multi-county Planning Policies, Countywide Planning Policies, and adopted community plans; and
- Environmental conditions on the property demand RSR designation.

The Board's analysis begins with the County map amendment and the applicable designation criteria and process. Then the Board addresses the siting of schools in the rural area. Finally the question of environmental constraints and RSR designation is addressed.

Rural Farm Designation/Re-designation

The Rural Farm designation is established in Pierce County to provide an additional measure of protection for farm lands and operations located in rural areas and thus not qualifying as Agricultural Resource Lands. As described in the Graham Plan:

The Rural Farm (RF) designation includes properties that are five acres or more in size, which are currently being used for or have historically been used for farming activities or have been previously zoned agricultural and that are not currently designated as Agricultural Resource Land (ARL). This new RF designation is intended to recognize properties that provide agriculture within the community but may or may not meet the soils criteria for designation as ARL.... A variety of agricultural related uses are allowed within the RF designation as well as the protections and incentives afforded to ARL.²⁹⁵

The Graham Plan goal was to provide the same level of protection to Rural Farm lands as to Agricultural Resource Lands.²⁹⁶ However, unlike the ARL designation criteria, where landowner intent is not a deciding factor, the Rural Farm designation requires either Current Use Taxation enrollment or property owner request.

²⁹⁵ Sanders Ex. 12, Graham Community Plan at 49.

²⁹⁶ Sanders Ex. 12, Graham Community Plan at 55-56, 72.

1 PCC 19A.40.070 A provides

2 Establish the Rural Farm designation based on current or historic agricultural
3 use including the following factors:

- 4 1. The property shall be a minimum of one acre in size.
- 5 2. The property is located outside a Rural Center, Reserve 5, Agricultural
6 Resource Land, Designated Forest Land, or Mineral Resource Overlay.
- 7 3. The property meets one of the following conditions:
 - 8 a. The property is currently enrolled in the Current Use Assessment
9 Program for Productive Farm and Agriculture; or
 - 10 b. The property owner requests designation as Rural Farm through a
11 Comprehensive Plan amendment process.

12 The Sanders Petitioners contend re-designation of RF parcels required a more
13 detailed, appropriate procedure. They point out PCC 19A.40.070 B states the
14 purpose of the RF designation:

15 Increase the agricultural base within the County by recognizing agricultural
16 properties that may or may not contain prime soils supporting Agricultural
17 Resources Lands designation but are or have been used for agricultural
18 activities.²⁹⁷

19 While prime soils are not a deciding criteria for RF lands, Petitioners point out the
20 property here meets the soils productivity standard for ARL designation.²⁹⁸

21 The Graham Community Plan, Objective 4.1.4 states:

22 *Establish a process for designation and redesignation of Rural Farm.*

23 Petitioners argue the County has failed to establish the required de-designation
24 procedures and consequently has failed to properly analyze and protect this valuable
25 land.²⁹⁹

27 _____
28 ²⁹⁷ Bethel at the Hearing on the Merits made much of the fact some allowed uses in the RF designation
29 have heavy footprints and may involve as much impervious surface as a school campus. But the Board
30 notes RF protects properties “used for agricultural activities” [PCC 19A.40.070 B] which includes
31 greenhouses, food processing and refrigeration facilities, and the like. See Graham Community Plan at
32 49: “A variety of agricultural related uses are allowed in the RF designation.”

²⁹⁸ Sanders Brief at 19, citing Ex. A, PCC #120, Draft Farm Management Plan for Bethel School District
Crate Property, and Ex. 23, PCC #125, Attachment 23, p. 2.

1 The Board reads PCC 19A.40.070 E as providing the County's process for designating
2 and redesignating RF lands:

3
4 Use community planning and comprehensive plan amendment processes
5 to implement or revise the Rural Farm designation as follows:

- 6 1. Rural Separator, Rural Sensitive Resource, Rural 10 or Rural 20
7 designations may be redesignated to Rural Farm pursuant to the
8 criteria outlined in 19A.40.070 A. above.
- 9 2. Rural Farm designations may be redesignated to an adjacent rural
10 residential (Rural Separator, Rural Sensitive Resource, Rural 10 or
11 Rural 20) designation provided that the property directly abuts one of
12 these designations and the property is converted to that designation
13 (i.e., a Rural Farm designated property abuts a R 10 property and
14 would be changed from Rural Farm to R 10).

15 The Board finds the County here "use[d] community planning and comprehensive plan
16 amendment processes" to revise the RF designation on the subject parcels. The
17 amendment proposal was submitted to the Graham Land Use Advisory Commission
18 (LUAC), forwarded to the Planning Commission, analyzed in a written Staff Report,
19 discussed at the Council's Planning and Development Committee, and adopted as part
20 of the County's annual package of amendments. Petitioners have not identified any
21 flaws in this process. Rather, they argue the County should have enacted a stricter
22 review process similar to that for the de-designation of ARL lands.
23

24 The Board recognizes the disappointment of citizens who have relied on a county or city
25 promise to "establish a process" or engage in some future planning exercise. However,
26 unless the adopted plan provides a fixed date or mandate for that promise, the Board
27 seldom finds a violation. In the *Andrew Cainion* case,³⁰⁰ a Bainbridge Island property
28
29

30
31 ²⁹⁹ Sanders Brief at 18-19.

32 ³⁰⁰ *Andrew Cainion v City of Bainbridge Island*, CPSGMHB Case No. 10-3-0013, Order on Motion to Dismiss (Jan. 7, 2011).

1 owner appealed denial of his application for a comprehensive plan amendment to
2 upzone his property. Cainion relied on a comprehensive plan provision which
3 established a Special Planning Areas process to designate certain Neighborhood
4 Service Centers for more intensive development. The process was not completed due
5 to staff and finance limitations. The Board found the comprehensive plan provisions “as
6 merely stating a desired objective and not creating an obligation to complete the work
7 by a time certain.” The comprehensive plan “did not establish a duty upon which
8 Cainion’s alleged GMA violations could be founded.”³⁰¹
9

10 Similarly in this case, the Graham Plan may have intended a more focused de-
11 designation analysis and process for RF lands, but there is no mandatory obligation that
12 provides a basis for the Board to look beyond the plain language of PCC 19A.40.070 E:
13 “Use community planning and comprehensive plan amendment processes to implement
14 or revise the Rural Farm designation....”
15
16

17 The Sanders Petitioners also rely on a hierarchical land use listing presented by County
18 planners to the Graham Community Planning Board in September 2006.³⁰² The
19 hierarchy places RF as the most protective zone, followed by RSR and then R 10.
20 Petitioners contend this designation hierarchy required the County to evaluate the
21 property under RSR criteria if RF de-designation was proposed. However, the parties
22 have presented no evidence that the hierarchical land use scheme has been adopted
23 as a comprehensive plan or community plan provision. Staff working documents and
24 representations to community groups do not constitute enforceable adoptions or
25 amendments of plans and regulations.³⁰³
26
27

28 _____
29 ³⁰¹ Id. at 3.

30 ³⁰² Sanders Ex. 23, PCC #125 and Ex. 24, PCC #120.

31 ³⁰³ See, e.g., *City of Lake Stevens v City of Snohomish*, CPSGMHB Case No. 09-3-0028, Order on
32 Motions (July 6, 2009); *Harless v. Kitsap County*, CPSGMHB 02-3-0018c, Order on Motions (Jan. 23,
2003): Instructions to planning staff are not GMA enactments subject to Board review, even when
adopted by Council resolution.

1 The Board notes the County's Rural Farm provisions state explicitly:
2

3 Rural Farm designations may be redesignated to an adjacent rural residential
4 (Rural Separator, Rural Sensitive Resource, Rural 10 or Rural 20) designation
5 provided that the property directly abuts one of these designations and the
6 property is converted to that designation (i.e., a Rural Farm designated property
7 abuts a R 10 property and would be changed from Rural Farm to R 10).³⁰⁴

8 The Board finds the parcels at issue are currently bounded primarily by lands zoned R
9 10.³⁰⁵ The County's Findings for Amendment M-3 state:³⁰⁶

- 10 • Rural Farm designations may be redesignated to an adjacent rural residential
11 (Rural Separator, Rural Sensitive Resource, Rural 10 or Rural 20) designation,
12 provided that the property directly abuts one of these designations and the
13 property is converted to that designation (19A.40.070 E.2., Ord. 2006-52s); and
- 14 • The Rural 10 designation which currently surrounds the majority of the site is
15 appropriate for the site.

16 The Board finds and concludes Petitioners have failed to carry their burden in
17 demonstrating the County's redesignation of the M-3 parcels from RF to R 10 was
18 inconsistent with the County Comprehensive Plan or Graham Community Plan
19 provisions.
20

21 Schools in the Rural Area

22 The Sanders Petitioners contend that the County's re-designation of rural land to site a
23 multi-school campus in the rural area violates GMA provisions to protect rural character
24 and is conducive to suburban sprawl. Arguing that locating a major school complex in a
25 rural area is inconsistent with GMA goals and adopted plans, the Petitioners point to
26 explicit Multi-County Planning Policies, Countywide Planning Policies, Pierce County
27 Comprehensive Plan Policies, and provisions of the Community Plans for three
28
29

30 ³⁰⁴ PCC 19A.40.070 E.2.

31 ³⁰⁵ Only Lot 0418172010 is identified as adjacent to RSR zoning on the south and east. The criterion for
RSR zoning on this lot is not satisfied, as set forth in discussion which follows.

32 ³⁰⁶ Exhibit N to Ordinance 2011-60s2, page 4.

1 communities served by the Bethel School District - Graham, Frederickson, and
2 Parkland-Spanaway-Midland.

3
4 Petitioners assert Bethel does not need to build a multi-school campus to serve the
5 existing rural population; rather, Bethel proposes to land-bank the property to
6 accommodate “a high rate of continued growth.” But high growth rates *in the rural area*
7 are contrary to RCW 36.70A.070(5) and to other core GMA principles.
8

9 Bethel in response states that the majority of students the district serves are from the
10 rural area. It envisions a multi-school complex that would include community and
11 recreational facilities, creating a community center which is lacking for families in
12 Graham’s rural area.
13

14 Petitioners counter with their analysis of Bethel’s enrollment growth projections,
15 concluding: “The vast overwhelming majority of the [new home] parcels and the
16 anticipated new population are located in the County’s UGA, not in the County’s rural
17 areas.”³⁰⁷
18

19
20 GMA Provisions. The Board’s consideration begins with the Legislature’s statement of
21 intent that counties “develop a local vision of rural character.”³⁰⁸ The GMA mandates
22 that each County’s comprehensive plan contain a “rural element” including “measures
23 governing rural development” that “protect the rural character of the area, as
24 established by the county.”³⁰⁹ The Board has previously commended Pierce County’s
25 “local vision of rural character.” In the first *North Clover Creek* case, the Board said:
26
27

28
29 ³⁰⁷ Petitioners provide data indicating major residential development through pre-GMA vested
30 subdivisions in the rural area has been curtailed under the Graham Community Plan. Sanders Reply, at
31 10, fn. 5. See PCC #69, at 2, citing New Home Trends Current and Future Development Inventory 2009,
submitted to the County by Bethel with its Amendment M-3 application.

32 ³⁰⁸ RCW 36.70A.011.

³⁰⁹ RCW 36.70A.070(5)(c).

1 The Board notes with approval that Pierce County, in adopting the
2 Graham Plan, has defined rural character for the Graham area. The GMA
3 acknowledges the importance of local circumstances, and thus allowing
4 each rural community to develop its unique vision of rural lifestyle, as
5 Pierce County does through its community plans, is an appropriate way to
6 implement the requirement for a rural element in the County
7 Comprehensive Plan.³¹⁰

8 The GMA in RCW 36.70A.030(15) defines “rural character” as “patterns of land use and
9 development established by a county in the rural element of its comprehensive plan: (a)
10 In which open space, the natural landscape, and vegetation predominate over the built
11 environment; ... (c) That provide visual landscapes that are traditionally found in the
12 rural areas and communities; ... (e) that reduce the inappropriate conversion of
13 undeveloped land into sprawling, low-density development; (f) that generally do not
14 require the extension of urban governmental services; and (g) that are consistent with
15 the protection of natural surface water flows and groundwater and surface water
16 recharge and discharge areas.” RCW 36.70A.030(16) defines “rural development” as
17 “consistent with the preservation of rural character.”
18

19 These definitions inform the mandatory measures required in the Rural Element of the
20 County Comprehensive Plan under RCW 36.70A.070(5)(c):

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

- 24 (i) Containing and otherwise controlling rural development;
- 25 (ii) Assuring visual compatibility of rural development with the surrounding area;
- 26 (iii) Reducing the inappropriate conversion of undeveloped land into sprawling,
27 low-density development in the rural area;
- 28 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water
29 and groundwater resources; and
- 30 (v) Protecting against conflicts with the use of agricultural, forest and mineral
31 resource lands designated under RCW 36.70A.170.

32 ³¹⁰ *North Clover Creek, et al. v Pierce County*, CPSGMHB Case No. 10-3-0003c, Final Decision and
Order (Aug. 2, 2010), at 55.

1 Bethel correctly points out schools are not deemed “urban services” under the GMA.³¹¹
2 Schools are included in the definition of “public facilities” in RCW 36.70A.030(12) and
3 education is included in the definition of “public services” in RCW 36.70A.030(13). But
4 neither the “rural services” nor the “urban services” definition mentions schools.³¹² RCW
5 36.70A.030(18) defines “rural governmental services” as “those public services and
6 public facilities historically and *typically delivered at an intensity* usually found in rural
7 areas.” This contrasts with “urban governmental services,” defined in RCW
8 36.70A.030(17) as services “*delivered at an intensity* usually found in urban areas.” The
9 Board has stated: “These GMA definitions recognize that the scale and intensity of
10 services in rural lands should be less than those in urban areas.”³¹³
11
12

13
14 The Sanders Petitioners focus on the intensity of Bethel’s intended use. Petitioners
15 contend converting over 100 acres of active farm land to a multi-school complex is
16 clearly erroneous because undeveloped land is converted for an urban-intensity facility
17 that will draw students from the urban area rather than serving the rural population.³¹⁴
18 Thus they assert the M-3 amendment promotes public services at an urban level which
19 are not needed in the rural area.
20

21
22 Prior Board Decisions. In *Vashon-Maury, et al. v. King County*,³¹⁵ the Board reviewed a
23 challenge alleging King County’s policy concerning rural schools allowed urban growth
24 in the rural area. The policy provided:
25

26 Churches and high schools in the rural area are encouraged to locate in rural
27 cities or unincorporated rural towns. In reviewing proposals for siting churches
28

29 ³¹¹ Districts Response at 12.

30 ³¹² RCW 36.70A.030(17) and (18).

31 ³¹³ *Karpinski, et al. v. Clark County*, WWGMHB Case No. 07-2-0027, Final Decision and Order (May 14,
2008), at 41.

32 ³¹⁴ The Board notes Bethel does not contradict the assertion that the new campus is intended to serve
urban students. Sanders Reply, at 6.

1 and schools outside cities and Rural Towns, King County should assure that any
2 approved project will not stimulate local demand for urban-level services and that
3 any sewer service permitted is designed only to serve the approved project.

4 The Board upheld King County, stating:

5 The Board concludes that, by their nature, some schools may be in the rural area
6 in order to serve the school children who live there. Schools can be compatible
7 with rural character, depending largely on how they are designed and configured
8 on the site. It is the county's duty and prerogative to adopt and enforce such
9 policies and regulations as are necessary to keep K-12 schools in the rural area
from being incompatible with the character of the rural land use pattern.

10 In the Western Board's 2003 Clark County case – *Karpinski, et al. v. Clark County*³¹⁶ -
11 the question was whether presence of a school was a factor supporting de-designation
12 of agricultural resource lands. Stating that the scale and intensity of a school
13 determined whether it was a rural or urban service, the Board concluded the mere
14 “presence of schools, needed by residents of all areas alike,” should not be “considered
15 urban growth that is incompatible with resource lands.”
16

17
18 In both the *Hensley VI*³¹⁷ and *CTED*³¹⁸ cases, petitioners first challenged Snohomish
19 County plan provisions which allowed exceptions to UGA sizing and boundary changes
20 in order to include a school property immediately *adjacent* to the UGA. The Board
21 upheld the County's policy allowing UGA expansions to include adjacent schools. A
22 second challenge in *Hensley VI* concerned re-designation of rural land from R-10 to R-5
23 to allow a middle school *outside* the UGA. Here the Board looked to the County Plan
24

25
26 ³¹⁵ CPSGMHB Case No. 95-3-0008, Final Decision and Order (Oct. 23, 1995) at 71-72,

27 ³¹⁶ WWGMHB Case No. 07-2-0027, Final Decision and Order (May 14, 2008), at 40-42. The Board said:

28 “While schools are defined as a public facility, they are not listed as either a rural or an urban service.
29 That is because school districts make schools available to students who live on urban, rural, and resource
lands. ...The availability of schools is not a factor in determining whether agricultural land should be de-
designated.”

30 ³¹⁷ *Hensley, et al, v. Snohomish County*, CPSGMHB Case No. 03-3-0009c, Final Decision and Order
(Sept. 22, 2003), at 11-19.

31 ³¹⁸ *CTED, et. al v. Snohomish County*, CPSGMHB Case No. 03-3-0017, Final Decision and Order (March
32 8, 2004), at 22-29. The Board upheld the County, but the Board's reasoning was subsequently reversed
by the Superior Court and the parties stipulated to a dismissal. Order of Dismissal (Nov. 29, 2004)

1 Policy providing: “The County shall ... discourage the location of middle and high
2 schools outside the UGAs.” The Board found large schools were prohibited in five of the
3 County’s rural zones. The Board said:

4 The County has an obligation to work with school districts in the siting of
5 schools; it also has an obligation to facilitate the siting of schools within urban
6 areas while discouraging them outside of UGAs – which the County has
7 done. The Board concludes that the FLUM and zoning designations the
8 County has in place does [sic] facilitate the location of schools within the
9 UGA and appropriately discourage middle and high schools outside the
10 UGA. The County need not prohibit schools throughout the rural area. The
11 County already discourages schools in the rural area by limiting the number
12 of zoning districts that permit schools. Furthermore, the conditional use
13 process provides a mechanism to ensure that any proposed school on the
14 site is designed and configured to be compatible with the rural character or
15 the rural area.³¹⁹

16 The *Hensley VI* Board held Snohomish County’s re-designation to accommodate the
17 proposed middle school was consistent with its adopted policies. The Pierce County
18 policies applicable to approval of Amendment M-3, as discussed below, require a
19 different outcome.

20 MPPs, CPPs, Comprehensive Plan, Community Plans.

21 Petitioners first point to Multi-County Planning Policies discouraging the siting of major
22 new schools in rural areas and requiring the County to review school location plans. As
23 set forth in the prefatory note above, the four-county Puget Sound Regional Council
24 (PSRC) is the multi-county agency authorized to adopt multi-county planning policies.
25 The MPPs are part of the GMA “framework to ensure consistency” across the
26 metropolitan region.³²⁰ The MPPs allow coordination and consistency among the
27 metropolitan counties sharing common borders and related regional issues as required
28
29
30

31 ³¹⁹ *Hensley*, at 22.

32 ³²⁰ RCW 36.70A.210(1) and (7); WAC 365-196-305.

1 by RCW 36.70A.100. In order to ensure consistency, the directive policies of the MPPs
2 must have a binding effect.³²¹

3
4 In 2008 PSRC adopted VISION 2040, updating the Multi-County Planning Policies.³²²
5 VISION 2040 addresses the siting, size and scale of schools in the rural area from the
6 perspectives of the cost of infrastructure and of the magnet effect on new residential
7 development.³²³ The text comments: “Over the past several decades, it has been the
8 practice of many school districts in suburbanizing areas across the United States to site
9 new schools on large undeveloped acreages that are neither easy to walk to nor
10 accessible by transit.” This results in expensive bus transportation programs, much
11 individual driving to and from the school, and demand for infrastructure investments.³²⁴
12 In addition to GMA planning principles, the Board notes that other state laws such as
13 the subdivision statutes require local jurisdictions to make findings that appropriate
14 provisions have been made for including sidewalks and other planning features that
15 assure safe walking conditions for students walking to school.³²⁵

16
17
18 The siting of new schools in rural areas also increases development pressure in the
19 vicinity of the new school. As the regional agency responsible for allocation of federal
20 and other transportation funds, PSRC has a direct interest in prioritizing transportation
21 infrastructure development across the region. Major school campuses create unique
22
23
24

25
26 ³²¹ Compare, *King County v Central Puget Sound Bd.*, 138 Wn.2d 161, 175-176: In order to provide a
27 “framework to ensure consistency” of adopted plans *within* a county, “directive policies” of the CPPs “must
28 have a binding effect.”

29 ³²² Sanders Ex. 6, VISION 2040.

30 ³²³ VISION 2040, at 89-96. VISION 2040 also draws the connection between the built environment and
31 health, especially design for safe walking and biking. VISION 2040, at 58-59.

32 ³²⁴ Petitioners point out that development of the disputed site will result in 10 Bethel schools, including
three high schools, being located along a 4-mile stretch of 224th Street, requiring busing of students from
the District’s urban service areas. While 224th Street is classified as a major arterial, it is primarily a two-
lane road with soft shoulders and no sidewalks.

³²⁵ See e.g. RCW 58.17.110(2).

1 demands on transportation infrastructure, stretching regional resources. Vision 2040
2 addresses this issue.

3
4 VISION 2040 adopts policies for siting schools and other community facilities in “a
5 manner that supports key growth management principles.”³²⁶

- 6 • MPP-PS-5: Encourage the design of public facilities and utilities in rural areas to
7 be at a size and scale appropriate to rural locations, so as not to increase
8 development pressure.
- 9 • MPP-PS-22: Site schools, institutions and other community facilities that primarily
10 serve urban populations within the urban growth area in locations where they will
11 promote the local desired growth plans.
- 12 • MPP-PS-22: Locate schools, institutions, and other community facilities serving
13 rural residents in neighboring cities and towns and design these facilities in
14 keeping with the size and scale of the local community.
- 15 • Facilities Siting and Design: PS-Action-6. Counties and cities will collaborate with
16 special service districts to review district location and design criteria for new
17 schools, libraries, and other such public facilities – to ensure that growth
18 management goals and the regional vision are addressed.

17 The MPPs include directive elements: site schools for urban kids in the UGA; locate
18 schools for rural kids in cities and towns; and counties will collaborate with school
19 districts to review location for new schools to meet GMA goals and the regional vision.
20

21 Pierce County’s 2009 Countywide Planning Policy on Education – even before the
22 incorporation of VISION 2040 - recognizes the importance of county participation with
23 school districts to ensure “school siting location decisions” are coordinated “with other
24 necessary public facilities and services and with established and planned growth
25 patterns.”³²⁷

26
27 CPP Education Policy 5. The County, and each municipality in the County, *shall*
28 *determine specific siting requirements* for all public and private educational
29 facilities and shall meet specific educational facility needs by:
30

31 ³²⁶ VISION 2040 at 94.

32 ³²⁷ CPP, at 22, Education Policy 3 and 3.3; see Sanders Brief at 12-13.

1 5.1. *Locating schools consistently with the local comprehensive plan*, including
2 the capital facilities element;

3 5.2. *Deciding all facility locations*, types and sizes with consideration for the
4 provision of other necessary public facilities and services and the compatibility
5 and effect of the provision of such facilities on land use and development
6 patterns.³²⁸

7 Yet the County's Staff Report and Ordinance Findings for Amendment M-3 provide no
8 information as to the County's consideration of either the VISION 2040 rural school
9 siting policies or the applicable Countywide Planning Policies. Nor are we provided any
10 information about the County's efforts to assist Bethel in locating schools consistent with
11 GMA principles and planned growth patterns. The Ordinance Findings do not even
12 acknowledge that school siting is involved.³²⁹ The Staff Report defers analysis until a
13 development application is filed:
14

15 The proposal may result in a need for increased public facilities. If public
16 school facilities are developed they will likely increase demand on roads,
17 water supply and other public facilities. A detailed assessment for
18 accommodation of those needs would occur concurrent with review of a
19 proposed development.

20 The School District has stated it is their intent to utilize a portion of the
21 site for a future educational complex. This should be limited to serving the
22 rural population, not require the extension of urban services, and should
23 be found to be in keeping with the functional and visual character of the
24 area, and standards of the Graham Community Plan and development
25 regulations in place at the time of application.³³⁰

26 Turning to the Pierce County Comprehensive Plan, the Sanders Petitioners note the
27 Comprehensive Plan goal to "reduce the inappropriate conversion of undeveloped land
28 into sprawling, low-density development." They argue Amendment M-3 is inappropriate
29

30
31 ³²⁸ Id. at 23.

32 ³²⁹ Exhibit N to Ordinance 2011-60s2 at 4 only references zoning criteria.

³³⁰ CP #35-2, Staff Report, at 36, 37.

1 because it converts undeveloped farm land to serve a school that will draw students
2 from beyond the immediate rural area.³³¹

3
4 The Board notes Bethel School District serves the Parkland-Spanaway-Midland
5 Communities, the Frederickson Community, and the Graham Community. Community
6 plans from each of the three areas, adopted as part of Pierce County's Comprehensive
7 Plan, call for school siting decisions to be coordinated by Pierce County consistent with
8 land use plans. Parkland-Spanaway-Midland and Frederickson, as their plans indicate,
9 are predominately urban areas.³³²

10
11 The Parkland-Spanaway-Midland Communities Plan calls for Pierce County to
12 coordinate land use planning and school district capital facilities planning.³³³ The Plan
13 provides: "New schools should be sited *in the UGA* near the student population that
14 would be served by the proposed school facility."³³⁴

15
16
17 The Frederickson Community accommodates an Employment Center which
18 encompasses 35% of the land area.³³⁵ But there is also a fast-growing residential
19 population and, as yet, no local high school.³³⁶ The Board notes the M-3 site is well
20 over a mile from the Frederickson UGA boundary. Frederickson's Plan complains, "Due
21 to the high rate of growth in the Frederickson area, residents have experienced
22 deficiencies in public services....Ensuring that adequate schools ... are present *in the*
23 *community* is a major goal of this plan."³³⁷ The plan urges "provision of urban level
24 services and facilities *within Frederickson*" and "continued investment into needed
25

26
27 ³³¹ Sanders Brief at 13.

28 ³³² Sanders Ex. 13, Parkland-Spanaway-Midland Communities Plan, at 13; Sanders Ex. 14, Frederickson
Community Plan, at 2, 20.

29 ³³³ Sanders, Ex. 13, Parkland-Spanaway-Midland Communities Plan, at 194.

30 ³³⁴ Sanders, Ex. 13, at 180 (emphasis added).

31 ³³⁵ The Frederickson Community Plan indicated 2,574 acres of vacant land out of a community total of
8000 acres. Sanders Ex. 14, Frederickson Community Plan, at 18-19, 26-27.

32 ³³⁶ Sanders Reply at 4.

³³⁷ Frederickson Community Plan at 108-109, emphasis added.

1 urban facilities and services *within Frederickson*.³³⁸ Frederickson’s plan recognizes the
2 County’s role and asks the “County and the district to develop strategies that address
3 student capacity deficiencies.”
4

5 The Graham Community is largely rural, and the Graham Community Plan describes
6 steps to be taken to protect rural character and enhance the rural lifestyle. While
7 acknowledging that vested subdivisions would result in some continued
8 suburbanization,³³⁹ the Graham Plan seeks to locate civic uses primarily in commercial
9 areas and rural activity centers (LAMIRDS), and ensure they are at a scale compatible
10 with adjacent uses and rural character. Land Use Element, Objective 10, Principle 4
11 states: “Provide for educational facilities in close proximity to residential areas at a scale
12 that is appropriate for the surrounding area...”³⁴⁰
13
14

15 Reviewing the adopted school siting provisions at each level from VISION 2040 down to
16 the community plans, the Board finds Pierce County has assumed a responsibility for
17 ensuring school facility locations are consistent with the County’s growth plans. The
18 Multi-county Planning Policies, the 2009 Countywide Planning Policies, and the
19 Parkland-Spanaway-Midland and Frederickson Community Plans, require the County to
20 engage with school districts in planning for school locations; it is not enough to say the
21 County will impose conditions on a school district’s subsequent permit application.
22
23

24 The Board notes the CPPs are directive: the County *shall determine siting requirements*
25 *for schools, locating schools* consistently with the local comprehensive plan and
26 *deciding all facility locations*, types and sizes.³⁴¹
27
28
29

30 ³³⁸ Id. at 30, Objective 3, emphasis added.

31 ³³⁹ Sanders Ex. 12. Graham Community Plan, at 24-25.

32 ³⁴⁰ Id. at 67.

³⁴¹ CPP at 23, Friends Prehearing Brief, Tab CPP.

1 The Sanders Petitioners allege the County failed to critically review Bethel's application
2 for a map amendment to accommodate a multi-school campus in the rural area in light
3 of UGA boundaries, the County's land use policies, and other comprehensive plan
4 criteria. The District has not pointed the Board to any evidence that the County assisted
5 in the school location exercise. Materials in the record demonstrate the District focused
6 its search for sites on RF-designated lands, reasoning that rural dairy farming has
7 disappeared from rural Pierce County in the last fifteen years, leaving many farms
8 vacant.³⁴² Another District site inventory was limited to sites which would not require a
9 comprehensive plan amendment as is required for the subject property.³⁴³ There is no
10 evidence in the record that the County has worked with the District to identify and, if
11 necessary, rezone land parcels in or adjacent to the UGA in order to place a school
12 campus near the urban population.³⁴⁴
13
14

15 Petitioners assert the County has not acted in compliance with its policies. Because the
16 County has not independently briefed the matter and the intervening Districts failed to
17 address this question, the Board has no basis for refuting Petitioners' assertions.
18 Petitioners have met their burden of proof, and the Board is left with a firm and definite
19 conviction that a mistake has been made.
20

21
22 Critical Areas Protection

23 The Sanders Petitioners contend Amendment M-3 does not comply with GMA
24 requirements for environmental protection because the County failed to consider and
25
26
27

28 ³⁴² Sanders Ex. 25, PCC #120, Bethel School District 2010 Graham Community Plan Comprehensive
29 Rural Farm "RF" Inventory and Talking Points.

30 ³⁴³ CP #12-1, Attachment VIII, A Feasible Land Inventory Analysis, Dec. 2010, Sitts & Hill Engineers, Inc.

31 ³⁴⁴ Sanders Reply, at 7, fn. 4. At the Hearing on the Merits, Mr. Halmo proffered documents showing the
32 School District's acquisition of property in the Frederickson industrial zone. Ms. Urback objected and
offered documentation that the purchases were for a school bus base, not for a school site. The Board
denied admission of both petitioner and intervenor documents as not relevant.

1 properly map the land parcels for the applicability of Rural Sensitive Resource (RSR)
2 designation.

3
4 The GMA contains explicit provisions linking rural character to protection of
5 environmental functions of the landscape. RCW 36.70A.030(15) defines “rural
6 character,” in part, as “the patterns of land use and development established by a
7 county in the rural element of its comprehensive plan ... (g) that are consistent with the
8 protection of natural surface water flows and groundwater and surface water recharge
9 and discharge areas.” RCW 36.70A.070(5)(c)(iv) requires the rural element of a county
10 plan to include measures governing rural development “[p]rotecting critical areas, as
11 provided in RCW 36.70A.060, and surface water and groundwater resources.”
12

13
14 The Graham Community Plan established the RSR designation “to protect surface
15 waters, aquifers, and fish and wildlife habitat from degradation by more intensive rural
16 residential development and some types of civic uses that may also be permitted in
17 other rural classification.”³⁴⁵ The RSR designation permits “uses that do not involve
18 significant buildings or impervious surfaces.”³⁴⁶ Low-impact development techniques are
19 required. Development of educational facilities in the RSR zone requires a conditional
20 use permit.
21

22
23 Sanders Petitioners point out the area east and south of land parcel 0418172010
24 contains the headwaters of Muck Creek. Muck Creek is a principal tributary of the
25 Nisqually River and a protected salmon stream. The County identifies the upper
26 reaches of Muck Creek with an Open Space Corridor designation. The Open Space
27

28 ³⁴⁵ Sanders Ex. 12, Graham Community Plan, at 49. See generally, *Halmo et al, supra*, at 16-19,
29 documenting work by petitioners and colleagues to protect the Nisqually River Watershed Area, Muck
30 Creek Basin and other sensitive water bodies. The Graham Community Planning Board devised the RSR
31 designation to reduce development pressure in environmentally constrained areas. However, the County
32 Council within its discretion chose to make amendments, such that RSR is only slightly more protective
than the base R-10.

³⁴⁶ Sanders Ex 12, Graham Community Plan, Objective 8 and 13, pp 62-64, 67, 70-71.

1 designation extends about 4 acres onto the south-east corner of Lot 0418172010. While
2 a pre-GMA subdivision has been developed on adjacent properties to the east, the
3 County's open space designation still protects anything within a 500 foot buffer of the
4 corridor.

5
6 Petitioners document additional significant environmental constraints on the M-3
7 property. The Graham Groundwater Study indicates a shallow water table, with ground
8 water at less than 10 feet below the surface in much of the area during winter
9 months.³⁴⁷ The cattle water well on Lot 0418172010 shows groundwater to be at 8 feet
10 below the surface.³⁴⁸

11
12 The County's wetlands map shows an array of wetlands on the property.³⁴⁹ The Staff
13 Report states: "Pierce County wetland mapping sources indicate that about one-third of
14 the 39-acre parcel on the southwest portion of the proposal site (parcel no.
15 0418172009) and ten percent of the parcel on the southeast portion of the proposal site
16 (parcel no. 0418172010) are wetlands."³⁵⁰

17
18 The Board notes Bethel's consultant eliminated from consideration a number of possible
19 school sites due to high water tables, wetlands, critical aquifer recharge areas, and
20 possible habitat impacts – the same environmental constraints identified on the M-3
21 property.³⁵¹ The Board also acknowledges evidence submitted by Sanders Petitioners
22 to show the District drained wetlands on the property.³⁵² However, the Board must
23 review the County's re-designation of the property on the basis of the applicable criteria
24 in the Plan.
25
26
27

28 ³⁴⁷ Sanders Ex. 22, PCC #69 and Ex. F, Graham Groundwater Study, April 2007.

29 ³⁴⁸ Sanders Ex. 21, PCC #8.

30 ³⁴⁹ See Sanders Ex. D, PCC #120, Critical areas information for tax parcels 0418172009 and
0418172010.

31 ³⁵⁰ Sanders Ex. G, PCC #59, Staff Report, at 38.

32 ³⁵¹ CP #12-1, Attachment VIII.

³⁵² Sanders Ex. A, PCC #120, Wetlands Violation File.

1 The Land Use Element of the Graham Community Plan addresses the location of the
2 Rural Sensitive Resource designation relative to open space corridors.
3

4 Objective 8. Principle 1. Apply a Rural Sensitive Resource (RSR) designation to
5 open space corridors within rural residential designations to reduce impacts
6 associated with development.

7 Standard 8.1.1 Establish a RSR zone on rural residential properties located
8 within the open space corridor that contain at least 50% of designated open
9 space corridor area.

10 8.1.1.1 At a minimum, the RSR zone should extend 500 feet in all
11 directions from any wetland, stream, or surface water utilized for open space
12 corridor designation.

13 8.1.1.2 Delineate the RSR zone using parcel boundaries.

14 The County Staff Report acknowledges that the open space corridor for Muck Creek
15 extends into the southeast parcel, Lot 0418172010.³⁵³ The lot is a 40-acre parcel and
16 the four acres in the open space corridor represent approximately ten percent of the
17 parcel, not the 50% required by Standard 8.1.1. The staff concludes RSR designation
18 should not be applied.

19 Petitioners argue the 500-foot buffer must be drawn around the mapped open space
20 corridor, and with this buffer, the 50% lot coverage needed for RSR designation is
21 reached. The Board disagrees. Standard 8.1.1 looks to the parcel involved to determine
22 whether it contains a mapped open space corridor. Only if this mapping covers at least
23 50% of the parcel is the RSR designation applied. This is the threshold requirement to
24 establish RSR zoning. The next step, in Standard 8.1.1.1, is then to draw the RSR zone
25 to extend a minimum of 500 feet from the wetland, stream or surface water that
26 provided the basis for the RSR designation. The Board finds Lot 0418172010,
27 containing only 10% mapped open space corridor, does not meet the criteria for RSR
28 designation.
29
30

31 _____
32 ³⁵³ Sanders Ex. G, PCC #59, Staff Report at 38-39.

1 Bethel points out construction of a high school in the R-10 zone requires a Conditional
2 Use Permit.³⁵⁴ Conditional uses require a “special degree of control to assure
3 compatibility with the Comprehensive Plan, adjacent uses, and the character of the
4 vicinity.”³⁵⁵ Conditional use review includes analysis under SEPA which will address
5 wetlands, salmon stream headwaters, groundwater, and the other environmental
6 constraints which will limit development on the property. As the Board stated in *Hensley*
7 *VI*, “the conditional use permit process provides a mechanism to ensure that any
8 proposed school on the site is designed and configured to be compatible with the rural
9 character or the rural area.”³⁵⁶ Given the strong critical areas protections in the
10 Comprehensive Plan and the Graham Community Plan, and the environmental
11 expertise Pierce County staff will bring to the analysis, the Board would expect robust
12 review and conditioning of any school-complex application for the site, in the event the
13 location is approved after the consideration required by the plan policies discussed
14 previously.
15
16
17

18 The Board finds and concludes the Petitioners have not carried their burden in
19 demonstrating the County violated the GMA or its own policies in failing to apply an
20 RSR designation to the M-3 properties.
21

22
23 *Conclusion – Amendment M-3*

24 The Board finds and concludes the County’s adoption of Amendment M-3 to Ordinance
25 2011-60s2 did not violate the County’s comprehensive plan provisions concerning Rural
26 Farm or Rural Sensitive Resource designations. Those portions of Sanders Legal
27 Issues 1 and 2 are **dismissed**.
28

29
30 _____
31 ³⁵⁴ Districts Response, at 18, Ex. 16 - PCC 18A.24.020 and PCC 18A.33.220D, and Ex. 17 – PCC
32 18A.75.030.

³⁵⁵ PCC 18A.75.030A.

³⁵⁶ *Hensley VI*, at 21.

1 The Board finds Amendment M-3 provides a rural location for a multi-school campus to
2 serve urban students in violation of directive policies of VISION 2040, Pierce County
3 CPPs, and the Parkland-Spanaway-Midlands and Frederickson Community Plans which
4 require the County to ensure school locations are consistent with GMA plans. The
5 Board concludes the County's action is **clearly erroneous** in view of the entire record
6 before the Board and in light of the goals and requirements of the GMA.³⁵⁷ Amendment
7 M-3 is **remanded** to the County for action consistent with this order.³⁵⁸
8
9

10 **D. Amendments C-2 and C-3 - Electronic Message Signs**

11 The Challenged Action

12 Amendment C-2 Puyallup School District³⁵⁹ amends the Community Character and
13 Design Element of the South Hill Community Plan policies. The Sign Design Standards
14 are amended by adding:
15

16 27.2.11 Allow on-site electronic message signs with static text that changes no
17 more frequently than once every 30 seconds for public safety, public parks and
18 recreation services, education facilities and religious assembly uses.

19 The prohibition on flashing or rotating signs (Standard 27.2.3) and the prohibition on
20 pole signs (Standard 27.2.5) are each amended by adding an exception for electronic
21 message signs.³⁶⁰
22
23
24
25

26 ³⁵⁷ The Board's decision addresses only the action of the County in adopting Amendment M-3 without first
27 acting in accordance with its policies. The Board recognizes Bethel School District has distinct authority in
28 operating and managing public education, including property acquisition, pursuant to statutes that are not
29 within the Board's jurisdiction.

30 ³⁵⁸ There is no basis for a determination of invalidity. Bethel has made clear it is land-banking the property
31 for long-term growth and does not have immediate development plans. See, Districts Response, at
32 3. Thus the County will have ample time to engage in the analysis required by the MPPs, CPPs and
Community Plans before a permit application is filed.

³⁵⁹ Exhibit G to Ordinance No. 2011-60s2, p. 3.

³⁶⁰ Petitioners read the amendment to Standard 27.2.3 to allow electronic message signs to be flashing or
rotating.

1 Amendment C-3 Bethel School District³⁶¹ amends the Community Character and
2 Design Element of the Frederickson Community Plan. Sign Design Standards are
3 amended by adding:

4 19.2.10 Allow on-site electronic message signs with static text that changes no
5 more frequently than once every 30 seconds for public safety, public parks and
6 recreation services, education facilities and religious assembly uses.

7 Standard 19.2.5 "Limit the use of pole signs" is amended by adding: "Free standing pole
8 signs should be allowed for electronic message signs for public agencies and civic
9 uses."
10

11 Amendment C-2 was introduced by Puyallup School District to allow "electronic
12 readerboard" signs in the South Hill Community for public schools.³⁶² The South Hill
13 Land Use Advisory Commission (LUAC) voted to recommend denial of the amendment.
14 The Planning Commission disagreed, forwarding the amendment to the County Council
15 which modified the proposed language, changing "electronic readerboards" to
16 "electronic messaging signs," adding other allowed civic and religious users, and
17 allowing these displays on pole signs, which are otherwise prohibited.
18
19

20 Amendment C-3 was introduced at the request of the Bethel School District to allow
21 electronic messaging signs for a variety of civic and religious users in the Frederickson
22 community. The Frederickson LUAC modified the proposal to exclude civic uses and to
23 permit pole signs. The Planning Commission accepted the LUAC changes and
24 forwarded the amendment to the County Council. The Council modified the C-3
25 language to add more civic users. Testimony for and against C-2 and C-3 was
26 presented at each step of the process.
27
28
29
30

31 ³⁶¹ Exhibit D to Ordinance No 2011-60s2, p. 5.

32 ³⁶² The process for Amendment C-2 and C-3 is summarized from the Districts' Response, at 19-20.

1 Pierce County's Findings of Fact in support of these amendments state.³⁶³

- 2 • It will provide an effective asset for communicating upcoming school and
3 community events, public health and safety alerts, and other appropriate
4 information.

5 The Findings call for County staff to conduct an analysis of electronic message sign
6 standards in surrounding jurisdictions and prepare a report and recommendations to the
7 County Council.

- 8 • It is appropriate that community plans have the ability to place limits on signs to
9 address the unique character of the community, therefore the Department of
10 Planning and Land Services is requested to conduct an analysis of the various
11 electronic message sign standards in surrounding jurisdictions, solicit input from
12 the Land Use Advisory Commissions and provide a report to the Community
13 Development Committee with options and a recommendation for addressing
14 design standards for electronic message signs throughout the County.

15 The Sanders Petitioners challenge the two amendments as inconsistent with the
16 Comprehensive Plan and inconsistent with the respective community plans.³⁶⁴

17 Positions of the Parties
18
19
20
21

22 ³⁶³ Exhibit N to Ordinance No. 2011-60s2, p. 9.

23 ³⁶⁴ **Sanders 3.** Does Pierce County's adoption of Amendments C-2 (Puyallup School District electronic
24 message signs South Hill Plan) and C-3 (Bethel School District electronic message signs Frederickson
25 Plan) fail to comply with RCW 37.70A.070 (preamble), RCW 36.70A.080, RCW 36.70A.130(1)(d), & RCW
26 36.70A.210, with specified provisions of the County's Comprehensive Plan, and with the County's
27 subarea Community Plans' Community Character and Design Standards on signage (as further defined
28 and elaborated in the County's Development Regulations Title 18B [Signs]) because:

29 (a) the Amendments approved signage which is not consistent with and/or
30 compatible with the County's Comprehensive Plan and its community plan policies?

31 (b) the Amendments fail to consider local circumstances, the impacts upon the intrinsic visual
32 characteristics of the urban landscape and residential areas, and the importance of visual aesthetics to
the urban communities which call for the reduction of visual signage clutter?

(c) the County failed to analyze the impact of the extension of electronic message
signage and instead called for a formal study to be conducted on the usage of such signage 'after the
fact'?

1 Petitioners first argue Amendments C-2 and C-3 violate Pierce County Comprehensive
2 Plan policies which require sub-area plans to be consistent with the County's
3 Comprehensive Plan.³⁶⁵ Since the other community plans uniformly prohibit electronic
4 signs, Petitioners assert the amendments create an inconsistency.³⁶⁶
5

6 Turning to the South Hill Community Plan, Petitioners point out the community took
7 "extraordinary action to address in its formal planning process the continued visual
8 blight" of signage, including the "glut of pole signs."³⁶⁷ The South Hill community sign
9 design policies intend to "reduce the visual clutter of signs," "minimize the negative
10 aesthetic impact" of signage, and "ensure that signage complements, rather than
11 dominates or intrudes upon, the character and visual amenity" of the area.³⁶⁸
12

13
14 In the Frederickson Community Plan, Petitioners also point to policy language calling for
15 "sign controls that minimize the number and size of signs" to "promote the gradual
16 reduction in the number of signs through the adoption of an amortization period for
17 nonconforming signs."³⁶⁹
18

19 Petitioners assert there is no record of local circumstances in either South Hill or
20 Frederickson supporting the need for increased messaging. Further, the amendments
21 are so badly drafted that a proliferation of flashing, rotating, animated, garish and
22 distracting signage from an array of agencies and users is possible.
23

24 The Districts respond that the requests for electronic message capability arose from
25 teachers, parents and school personnel wanting an additional source of school
26
27

28
29
30 ³⁶⁵ Sanders Brief, at 29, citing PCC 19A.10.030A, 19A.20.080B, and 19A.110.040.

³⁶⁶ Sanders Brief, at 29 (noting the single Browns Point/Dash Point exception).

³⁶⁷ Sanders' Brief, at 30, citing South Hill Community Plan, Ex. 15, pp 47-80, esp 66-70.

³⁶⁸ Sanders Brief at 31, Ex. 15, South Hill Community Plan, at 51, 66-68.

³⁶⁹ Sanders Brief at 32-33, Ex. 14, Frederickson Community Plan at 44, 54-56.

1 information, particularly in emergency situations.³⁷⁰ Manual readerboards are
2 cumbersome, costly to keep current, and impossible to update quickly enough to
3 provide parents real-time information about an emergency such as a snow day or lock-
4 down.³⁷¹ The Districts note the amendments were also supported by Graham Fire and
5 Rescue, citing the need to “broadcast public safety messages immediately.”³⁷²
6

7 As to the South Hill and Frederickson Community Plans, the Districts assert the
8 community interest in better school and public safety communication supported
9 Amendments C-2 and C-3. The Districts point out that both these communities are
10 urban and each already has one or more public school electronic message signs.³⁷³
11 Finally, the Districts assure us their electronic billboards will be tasteful, not garish or
12 over-illuminated, and unlikely to generate complaints or traffic accidents.³⁷⁴
13
14

15 Board Discussion

16 At the outset, the Board agrees with the Districts that the GMA contains no provisions
17 addressing signage. Indeed, while the GMA calls for rural character to be defined and
18 the visual quality of rural areas to be protected, there are no comparable GMA
19 provisions for urban areas. Thus urban sign regulation is within the discretion of local
20 elected officials.
21

22 A prior amendment sponsored by Bethel to allow electronic message signs for schools
23 in the Graham area was challenged by Halmo and others in *North Clover Creek I v*
24 *Pierce County*.³⁷⁵ The Board found provision for such signage was inconsistent with
25
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27
28 ³⁷⁰ Districts Response at 21-26, Ex. 21, 23, 28, letters from parents.

29 ³⁷¹ Districts Response at 24, testimony of Ken Blair, former School Board member.

30 ³⁷² Districts Response at 24, 26.

31 ³⁷³ Districts Response at 31, 33.

32 ³⁷⁴ Districts Response at 31, 33, citing lack of complaints about various existing signs and citing an analysis commissioned by Puyallup School District on illumination levels of electronic message boards: Ex. 22, CP #6-4, “Brightness Impacts Analysis,” Daktronics.

³⁷⁵ CPSGMHB Case No. 10-3-0003c, Final Decision and Order (Aug. 2, 2010).

1 many of the rural character goals and policies of the Graham Community Plan. The
2 Board also found there was no support in the record for a need to allow such signage
3 for uses other than public schools and public safety agencies.
4

5 In the *North Clover Creek* case,³⁷⁶ the Board found Pierce County's amendment to the
6 Graham Community Plan sign design standards violated the Rural Element
7 requirements of RCW 36.70A.070(5). The Board's reasoning was straightforward. The
8 GMA rural provisions emphasize visual landscapes and assuring visual compatibility of
9 development with surrounding rural areas. The GMA calls for plans that reflect local
10 circumstances and provide a local vision of rural character. The Graham Community
11 Plan articulated the visual landscapes, scenic roads, Mt. Rainier vistas, and starry
12 nights that are central to its vision of rural character. The Plan explicitly identified the
13 creeping visual pollution of unregulated signage in adjacent areas as a threat to its rural
14 character. The Graham Community Plan chose signage control as one of seven key
15 goals to protect its community character. In this context, the Board found the County's
16 open-ended amendment allowing electronic billboards for a range of users in the
17 Graham area was non-compliant – failing to protect rural character as defined in the
18 adopted community plan.
19
20

21
22 In contrast, the Frederickson and South Hill communities are both urban. Frederickson
23 contains a major manufacturing/industrial center. South Hill is highly developed with
24 shopping malls and commercial strip development, especially along Meridian (State
25 Highway 161). While each of the community plans contains sign design standards and
26 language urging reduction of visual clutter of signage, such plan provisions may be
27 amended by the elected officials unless to do so would thwart goals of the plan or
28 violate the GMA.
29
30

31 _____
32 ³⁷⁶ Id. at 48-58.

1 The Board notes there is no GMA protection for “urban character.” None of the GMA
2 planning goals, definitions, or mandatory comprehensive plan elements addresses
3 signage. From a GMA perspective, urban sign design policy and regulation is fully within
4 the discretion of local elected officials. Further, as the Staff Report notes, neither the
5 Pierce County Comprehensive Plan nor the Countywide Planning Policies prohibit
6 electronic message signs; thus there is no conflict or inconsistency. The Board
7 concludes the Sanders Petitioners have not carried their burden of proof on this issue.
8

9
10 Conclusion – Amendments C-2 and C-3

11 The Board finds and concludes the Sanders Petitioners have failed to carry their burden
12 of demonstrating Amendments C-2 and C-3 violate provisions of the GMA or conflict
13 with the County Comprehensive Plan. Sanders’ Legal Issue 3 is dismissed.
14

15 **VI. ORDER**

16 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
17 parties, the GMA, prior Board orders and case law, having considered the arguments of
18 the parties and having deliberated on the matter, the Board ORDERS:
19

- 20 1) Pierce County’s adoption of Amendment U-3a and C-5 to Ordinance 2011-
21 60s2 was **clearly erroneous** and **does not comply** with the goals and
22 requirements of the GMA, as follows:
23
24 a) In de-designating Agricultural Resource Lands and designating them for
25 urban development, the County **failed to comply** with RCW 36.70A.170 and
26 with the provisions of PCC 19A.30.070, WAC 365-190-040 and -050; was not
27 guided by RCW 36.70A.020(8); and was not consistent with cited Countywide
28 Planning Policies and Multi-County Planning Policies.
29
30 b) In expanding the UGA, the County **failed to comply** with the provisions of
31 PCC 19A.30.010.H.1.b and related provisions with respect to commercial
32 capacity. The County exceeded the land needed to accommodate allocated

1 employment growth in violation of RCW 36.70A.110(2) and RCW 36.70A.115
2 as applied by the *Thurston County Court*.

3 c) The Board **remands** Amendment U-3a and C-5 to Pierce County to take
4 legislative action to comply with the GMA as set forth in this order.

5 2) Petitioners Friends of Pierce County, et al. have failed to carry their burden of
6 proof in demonstrating that Pierce County's adoption of Amendments U-3a
7 and C-5 to Ordinance 2011-60s2 violated RCW 36.70A.110(8) by allowing
8 UGA expansion in a floodplain or violated provisions of the GMA, Countywide
9 Planning Policies, Pierce County Comprehensive Plan, or Alderton-McMillin
10 Community Plan by including an open space corridor and critical areas within
11 the UGA. The Friends' Legal Issues C and D are **dismissed**.

12 3) Petitioners Friends of Pierce County, et al. have failed to carry their burden of
13 demonstrating Amendment U-3b violated any provision of the GMA or Pierce
14 County Comprehensive Plan. Legal issues concerning Amendment U-3b are
15 **dismissed**.

16 4) Pierce County's adoption of Amendment M-3 to Ordinance 2011-60s2 was
17 **clearly erroneous** and **does not comply** with the requirements of RCW
18 36.70A.100, the Countywide Planning Policies, and the Multi-county Planning
19 Policies as set forth in this Order. The Board **remands** Amendment M-3 of
20 Ordinance 2011-60s2 to the County to take action to comply with the GMA as
21 set forth in this Order.

22 5) Petitioners Marilyn Sanders, et al have failed to carry their burden of proof in
23 demonstrating that Pierce County's adoption of Amendments C-2 and C-3 to
24 Ordinance 2011-60s2 were inconsistent with Pierce County's Comprehensive
25 Plan or the South Hill or Frederickson Community Plans. Petitioners' Legal
26 Issue 3 is **dismissed**.

27 6) The Board declines to enter a determination of invalidity with respect to
28 Ordinance 2011-60s2 Amendments U-3a, C-5 or M-3.
29
30
31
32

1 7) The Board sets the following schedule for the County's compliance:³⁷⁷

2

3

Item	Date Due
Compliance Due	December 10, 2012
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	December 20, 2012
Objections to a Finding of Compliance	January 3, 2013
Response to Objections	January 10, 2013
Compliance Hearing – Location to be determined	January 24, 2013 10:00 a.m.

4

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10 Dated this 9th day of July, 2012.

11

12

13 _____
Margaret Pageler, Board Member
(concurring separately below)

14

15

16 _____
William Roehl, Board Member

17

18

19 _____
Raymond Paolella, Board Member

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21

22

23 **Note: This is a final decision and order of the Growth Management Hearings**
24 **Board issued pursuant to RCW 36.70A.300.**³⁷⁸

25 _____

26 ³⁷⁷ Pursuant to WAC 242-03-910, the County may file a motion requesting an expedited compliance
27 hearing if it has taken action to comply with all or part of the Board's order prior to expiration of the time
28 set for compliance.

29 ³⁷⁸ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on
30 all parties within ten days of mailing of the final order. WAC 242-3-830(1), -840.

31 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty
32 days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.

It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

1
2 **Concurring Opinion of Board Member Margaret Pageler**
3

4 I concur in all respects with the decision in this matter. I write separately to clarify the
5 Board's reliance on the guidelines adopted by the Department of Commerce (formerly
6 CTED) under RCW 36.70A.050 (designation of natural resource lands and critical
7 areas), and under RCW 36.70A.190(4)(b) (procedural guidelines).
8

9 Cities and counties are required to consider the "minimum guidelines" for natural
10 resource lands and critical areas designations and BAS – RCW 36.70A.170(2). The
11 Board, in making its decisions, is required to consider the procedural guidelines – RCW
12 36.70A.320(3).
13

14 The Central Board's past decisions have varied in applying the Commerce guidelines.
15 Compare *DOE/CTED v. City of Kent*, CPSGMHB Case No. 05-3-0034, Final Decision
16 and Order (Apr. 19, 2006), at 10-11, 26 (wetlands guidelines are mandatory), with *Orton*
17 *Farms, et al. v. Pierce County*, CPSGMHB Case No. 04-3-0007c, Final Decision and
18 Order (Aug. 2, 2004) at 26 (agricultural lands designation guidelines are advisory and
19 not mandatory).
20

21
22 As we point out in the present order, recent court decisions require more disciplined
23 application of the Commerce guidelines, calling into question the "advisory only"
24 language in some of the Central Board's prior orders. In deciding future Central Puget
25 Sound cases, the Board expects to be guided by the Commerce guidelines.
26
27
28

29
30 _____
Margaret Pageler, Board Member
31
32