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

CITY of SHORELINE, TOWN of WOODWAY, and SAVE RICHMOND BEACH, et al., Petitioners, v. SNOHOMISH COUNTY, Respondent, and BSRE POINT WELLS, LLC, Intervenor, and THE TULALIP TRIBES, Amicus Curiae.	**Coordinated Case Nos.** **09-3-0013c and 10-3-0011c** **(*Shoreline III and Shoreline IV)*** **CORRECTED FINAL DECISION AND ORDER*** **This Corrected FDO makes the clerical corrections indicated in footnote 30 of the Order on Motions for Reconsideration issued by this Board on May 16, 2011.*

I. SYNOPSIS

The City of Shoreline, Town of Woodway, and Save Richmond Beach, a neighborhood organization, challenged Snohomish County's amendments of its comprehensive plan and development regulations that provide for the redevelopment of Point Wells, an unincorporated urban area.

Comprehensive Plan amendment Ordinance Nos. 09-038 and 09-051designated Point Wells an Urban Center. The Board concluded the action was clearly erroneous in three respects: the designation was inconsistent with the County's Urban Center comprehensive

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corrected FINAL decision
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plan provisions; because the action thwarted GMA compliance by the City of Shoreline, the action lacked consistency with the comprehensive plans of adjacent jurisdictions; and the action was not guided by several GMA Goals.

Development regulation amendments, Ordinance Nos. 09-079 and 09-080, adopted Urban Center provisions specific to Point Wells. The Board dismissed Petitioners' GMA allegations based on abandonment or citation to inapplicable statutory provisions. The Petitioners carried their burden of showing the ordinances were not guided by certain GMA Goals, but because the goal violations were not tied to specific statutory requirements, the Board did not reach a finding of non-compliance.

The City of Shoreline also raised SEPA challenges. The Board remanded the County's FSEIS for Ordinance Nos. 09-038 and 09-051 for analysis of reasonable alternatives. As to the DNS for Ordinance Nos. 09-079 and 09-080, the Board ruled that because the DNS is predicated on an inadequate FSEIS, the DNS is also inadequate. The Board further found certain new information and changes to the proposal required addenda to the DNS.

The Board entered a determination of invalidity for Ordinance Nos. 09-038 and 09-051, and remanded all four Ordinances to the County, setting a one-year compliance schedule based on the unusual complexity of the matter.

II. PROCEDURAL BACKGROUND

Point Wells is an unincorporated urban area in Snohomish County which for many decades has served as an oil depot and tank farm. Point Wells is situated adjacent to the City of Shoreline and the Town of Woodway. On August 12, 2009, Snohomish County adopted Ordinance Nos. 09-038[1] and 09-051[2] amending its comprehensive plan policies and land

[1] Amended Ordinance No. 09-038. Relating to the Growth Management Act, adopting future land use map amendments to the Snohomish County Growth Management Act Comprehensive Plan (GMACP) and zoning map amendments to implement changes to the Future Land Use Map for the Southwest Urban Growth Area (SW 41- Paramount of Washington, LLC)

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use map to allow the redesignation of Point Wells from Urban Industrial to Urban Center.[3] Environmental review for the ordinances conducted pursuant to the State Environmental Policy Act (SEPA) consisted of a Draft Supplemental Environmental Impact Statement (DSEIS) issued in February 2009 and Final Supplemental Environmental Impact Statement (FSEIS) issued June 2009.

The City of Shoreline, Town of Woodway, and resident organizations and individuals from the Richmond Beach neighborhood[4] (referred to as Save Richmond Beach) filed petitions for review challenging the Urban Center designation for Point Wells and the adequacy of the SEPA review. The three petitions were consolidated as GMHB Case No. 09-3-0013c *Shoreline III.*[5] Settlement extensions were granted while the parties discussed possible development regulations to implement the Urban Center designation.

On May 12, 2010, the County adopted Ordinance Nos. 09-079[6] and 09-080[7] amending its development regulations for Urban Centers to accommodate the Point Wells designation. Environmental review for these ordinances was based on a Declaration of Non-significance (DNS). Shoreline, Woodway, and Save Richmond Beach again filed petitions for review, which were consolidated as GMHB Case No. 10-3-0011c *Shoreline IV.*

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[2] Amended Ordinance No. 09-051. Relating to the Growth Management Act (GMA), adopting amendments to the Land Use (LU) chapter of the Snohomish County Growth Management Act Comprehensive Plan (GMACP) – General Policy Plan (GPP) for Urban Centers

[3] Snohomish County Comprehensive Plan, Appendix E-Glossary/Definitions: "Urban Center: An area with a mix of high-density residential, office and retail uses with public and community facilities and pedestrian connections located along an existing or planned high capacity transit route."

[4] The Richmond Beach neighborhood is within the City of Shoreline.

[5] Order of Consolidation, August 5, 2010.

[6] Amended Ordinance No. 09-079. Relating to Urban Center design standards, establishing a new zone for Urban Centers, establishing bulk regulations for Urban Centers; amending bulk regulations for the Neighborhood Business Zone; amending and repealing definitions to Subtitle 30.9 SCC; amending sections of and adding sections to Title 30 SCC

[7] Amended Ordinance No. 09-080. Relating to the Growth Management Act, adopting zoning map amendments to implement a new zoning classification for the Urban Center comprehensive plan designation.

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The Board coordinated these two cases for briefing and hearing.[8] The Prehearing Order set forth a combined set of legal issues for the coordinated cases.[9] BSRE Point Wells LLC (BSRE), the Point Wells property owner, intervened.[10] The Tulalip Tribes subsequently filed a brief *amicus curiae*.[11]

Dispositive motions and motions to supplement the record were timely filed.[12] The Board's Order on Dispositive Motions dismissed Legal Issue No. 7 – notice and public participation - and ruled that Save Richmond Beach lacked standing to allege SEPA violations.[13] Other dispositive motions were denied.

The Hearing on the Merits was convened March 2, 2011, in the Snohomish County Administrative Building in Everett. Margaret Pageler served as the presiding officer, with Board members David O. Earling and William Roehl as panel members and Board staff attorney Julie Taylor also attending.

Petitioner City of Shoreline appeared by its attorney Ian Sievers. Petitioner Town of Woodway appeared by its attorney Wayne D. Tanaka. Petitioners Save Richmond Beach were represented by their attorney Zachary R. Hiatt. Respondent Snohomish County was represented by County Deputy Prosecuting Attorneys John R. Moffat and Martin D. Rollins. Intervenor BSRE appeared by its attorney Gary D. Huff. Court reporting services were provided by Katie Eskew of Byers and Anderson. A number of observers attended the hearing.

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[8] August 23, 2010, Order Coordinating Cases
[9] December 15, 2010 Prehearing Order
[10] August 23, 2010 Order on Intervention. BSRE's predecessor in interest was Paramount of Washington, LLC, and the SEPA documents and other records sometimes refer to Paramount. Other filings refer to BSRE as Blue Square. The Board uses "BSRE" to indicate the property-owning entity.
[11] February 16, 2011 Order Granting Amicus
[12] The Board issued orders in response to these motions on January 14, 2011 (Supplemental Evidence) and January 18, 2011 (Dispositive Motions).
[13] Petitioner Richmond Beach Preservation Association and 23 named individuals voluntarily withdrew from the *Shoreline III* case, leaving Save Richmond Beach as the petitioner in that case. Order on Dispositive Motions, at 2.

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As instructed in the pre-hearing order, the parties coordinated their briefing and arguments. The hearing provided the Board an opportunity to ask questions clarifying important facts in the case and providing better understanding of the legal arguments of the parties.

III. JURISDICTION AND STANDARD OF REVIEW

Board Jurisdiction

The Board finds that the Petitions for Review were timely filed, pursuant to RCW 36.70A.290(2). The Board finds that Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2).[14] The Board finds that it has jurisdiction over the subject matter of the petitions pursuant to RCW 36.70A.280(1).

Standard of Review

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

The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.[17] The scope of the Board's review is limited to determining whether Snohomish County has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.[18] The Board shall, after full consideration of the petition, find compliance unless it determines that the County's action is clearly erroneous in view of the entire record before the Board and in light

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[14] In its Order on Dispositive Motions, the Board ruled the City of Shoreline satisfied the requirements for SEPA standing, but Petitioner Save Richmond Beach did not have SEPA standing and its SEPA challenge was dismissed. Order on Dispositive Motions, at 12.

[15] RCW 36.70A.320(1) provides: Comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

[16] RCW 36.70A.320(2) provides: 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.

[17] RCW 36.70A.280, RCW 36.70A.302

[18] RCW 36.70A.290(1)

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of the goals and requirements of the GMA.[19] In order to find the Snohomish County action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been committed."[20]

In addition, when reviewing Snohomish County's planning decisions, the Board is instructed to recognize "the broad range of discretion that may be exercised by counties and cities" and to "grant deference to counties and cities in how they plan for growth." [21] However, the County's actions are not boundless; their actions must be consistent with the goals and requirements of the GMA.[22]

This case also includes allegations that the County violated the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, as to both the adequacy of the EIS[23] and issuance of a DNS without certain supplementing addenda.[24] When the adequacy of substantive environmental analysis is challenged, the Board must determine if Snohomish County's analysis was clearly erroneous, with the adequacy of the EIS reviewed *de novo* and tested under the 'rule of reason'. The rule of reason requires a reasonably thorough discussion of the significant aspects of the probable

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[19] RCW 36.70A.320(3).

[20] *City of Arlington v. CPSGMHB,* 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing to *Dept. of Ecology v. PUD District No. 1 of Jefferson County,* 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe, et al v. WWGMHB,* 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB,* 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).

[21] RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

[22] *King County v. CPSGMHB,* 142 Wn.2d 543, 561, 14 P.2d 133 (2000)(Local discretion is bounded by the goals and requirements of the GMA). See also, *Swinomish,* 161 Wn.2d at 423-24. In *Swinomish,* as to the degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and capricious standard. *Id.* at 435, Fn.8.

[23] Ordinance Nos. 09-038 and 09-051 (*Shoreline III).*

[24] Ordinance Nos. 09-079 and 09-080 (*Shoreline IV*).

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environmental consequences of the agency's decision.[25] The Board does not rule on the wisdom of the proposal but rather on "whether the FEIS gave [the decision makers] sufficient information to make a reasoned decision."[26] As for the DNS, the Board similarly applies the "clearly erroneous" standard of review.[27] In addition, in any action involving an attack on the adequacy of an environmental document the decision of the governmental agency shall be accorded substantial weight.[28]

IV. PRELIMINARY MATTERS, ABANDONED ISSUES AND ORDER OF DISCUSSION

Restated and Coordinated Legal Issues

Prior to the prehearing conference the Presiding Officer distributed a matrix of the legal issues presented in the six petitions for review (PFRs) and asked the petitioners to simplify and organize the issues. The petitioners subsequently provided a set of Restated and Coordinated Legal Issues, incorporating and referencing all the issues in the PFRs. The Presiding Officer modified the restated issues slightly to best reflect the original PFRs. Thus the Board's Prehearing Order sets forth ten issues which reflect both a consolidation and modification of the issues presented by the petitioners in the six petitions for review. The restated issues are attached as Exhibit A to this Order and are the issues addressed in these coordinated cases.

Abandoned Issues

Petitioners in their opening briefs and at hearing expressly abandoned the following issues:

- Legal Issue 2, except for a reference to RCW 36.70A.070(6)(b),[29]
- Legal Issue 4.c, and

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[25] *Klickitat County Citizens v. Klickitat County,* 122 Wn.2d 619, 634 (1993).
[26] *Citizens' Alliance v. City of Auburn*, 126 Wn. 2d 356, 362, 894 P.2d 1300 (1995).
[27] DNS/MDNS is reviewed under clearly erroneous standard: *Murden Cove v. Pierce County,* 41 Wn.App. 515, 523 (1985); *Norway Hill v. King County,* 87 Wn.2d 267, 275 (1976); *Anderson v. Pierce County,* 86 Wn.App. 290 (1997).
[28] RCW 43.21C.090.
[29] Shoreline and Save Richmond Beach Consolidated Prehearing Brief – Shoreline III, p. 2 fn. 1.

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- Legal Issue 9.[30]

The County and BSRE contend that other claims have been abandoned. The Board addresses these assertions of abandonment within the context of the discussion and analysis that follows.

Order of Discussion

Recognizing that the legal issues present significant overlaps, and that the *Shoreline III* and *Shoreline IV* petitions challenge different ordinances, the Board discusses the issues in the order presented in the Restated and Coordinated Legal Issues. In doing so, the Board is cognizant that it is empowered to decide only issues "presented to the board in the statement of issues, as modified by any prehearing order."[31] However, the Board is not required to decide each issue in isolation from the whole of the PFR. Nor does the Board read individual provisions of the statute as stand-alone propositions, unrelated to one another.[32]

V. THE CHALLENGED ACTIONS and STATEMENT OF FACTS[33]

Point Wells is a 61-acre site located on Puget Sound in unincorporated Snohomish County immediately north of the King/Snohomish County boundary. The site is bordered by two-third mile of Puget Sound shoreline on the south and west. The upland side is bordered by a steep bluff up to 220' high. The Town of Woodway in Snohomish County, with 1200 residents, is located at the top of the bluff.[34] The City of Shoreline, with 53,000 residents, is across the King County boundary to the south. The only present or anticipated vehicle

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[30] Consolidated Prehearing Brief – Shoreline IV, at 18.
[31] RCW 36.70A.290(1).
[32] For example, Petitioners' Legal Issue 6 based on GMA planning goals – RCW 36.70A.020 – is reviewed in the context of legal issues alleging non-compliance with specific GMA requirements.
[33] See generally, Petitioners' Consolidated Statement of Facts – Shoreline III (Jan. 27, 2010); Petitioners' Consolidated Statement of Facts – Shoreline IV (Feb. 2, 2011); Intervenor's Restatement of Facts (Feb. 11, 2011).
[34] At the top of the bluff are an additional 37 acres of unincorporated Snohomish County adjacent to Woodway. This area is not part of the Urban Center redesignation and is not of concern in the present dispute.

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access to Point Wells is Richmond Beach Drive - a neighborhood road in Shoreline. A railroad line bisects the site running north and south.

Point Wells has been the site of petroleum-based industrial use for 100 years. An oil refinery, tank farm, and asphalt plant have left a legacy of heavy contamination.[35] Natural streams have been buried or diverted, marshes drained or filled, and the land paved over.

For the past decade, Snohomish County, the adjacent jurisdictions and successive owners of the property have discussed potential remediation and change of use for Point Wells. By virtue of its single ownership, waterfront location, and 180-degree views over the Sound to Whidbey Island and the Olympic Mountains, the site presents a unique opportunity for creation of a mixed-use residential/commercial community. BSRE presents an attractive proposal modeled on successful development in Vancouver BC. BSRE envisions lively and dense urban development incorporating innovative sustainability measures for reduced energy use, walkability, stream daylighting, shoreline restoration, water reuse and recycling, and the like.[36]

However, redeveloping this contaminated site as a mixed-use urban community presents major challenges directly related to GMA planning requirements. As an unincorporated area, Point Wells is within Snohomish County's planning authority. The site is a potential annexation area for two municipalities – Woodway and Shoreline – each of which has a different vision than Snohomish County. In the past decade, the matter has been brought to the GMHB three times, with one appeal reaching the State Supreme Court.[37]

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[35] Remediation is expected to cost $20 to $30 million.
[36] Index # 317 "Plan Vision" PowerPoint. While an effective sales tool, the PowerPoint is not a GMA plan.
[37] *L. Michael Investments v. Town of Woodway*, CPSGMHB Case No. 98-3-0012, Final Decision and Order (Jan. 8, 1999), at 9; *City of Shoreline v. Snohomish County (Shoreline I)*, CPSGMHB Case No. 00-3-0010, Order on Motions (Sep. 5, 2000); *City of Shoreline v. Town of Woodway (Shoreline II)*, CPSGMHB Case No. 01-3-0013, Final Decision and Order (Nov. 28, 2001), Supreme Court decision in *Chevron USA Inc. v. CPSGMHB,* 156 Wn. 2d 131 (2005).

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Prior to the action challenged here, Snohomish County's comprehensive plan designated the property Urban Industrial.[38] In 2005 the County amended its comprehensive plan by adopting policy LU 5.B.12:

> Within the Southwest UGA, parcels designated Urban Industrial [Point Wells] shall be considered for future redesignation from Urban Industrial to Mixed Use/Urban Center designation upon receipt of necessary studies addressing all permitting considerations such as site development, environmental impacts and issues.

Woodway and Shoreline also have comprehensive plan provisions expressing their preferences for Point Wells redevelopment. Woodway includes Point Wells as a Municipal Urban Growth Area (MUGA), and its comprehensive plan includes a vision statement and land use alternatives for the area. [39] Shoreline refers to Point Wells as a Future Service and Annexation Area, and has adopted a subarea plan.[40] Both municipalities support mixed-use redevelopment, but not at Urban Center intensities.

A major obstacle is limited access. Point Wells lacks highway access. Due to the steep bluffs upland, the only way to access the property by land is through the City of Shoreline from the south via Richmond Beach Drive, a two-lane street that dead-ends at Point Wells. The nearest major highway is State Route 99, approximately 2.5 miles east, via Richmond Beach Drive and N. 185th Street in Shoreline. The DSEIS discloses the limitations of the street capacity of Richmond Beach Drive[41] and of the further roads and intersections that form the links to the highway.[42] The DSEIS points out the bluff to the east and northeast

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[38] Snohomish County's Growth Management Act Comprehensive Plan/General Policy Plan (GMACP/GPP) is referred to herein as the County's comprehensive plan.

[39] Shoreline III, Index #320.Town of Woodway Comprehensive Plan 2004 Update (revised Nov. 17, 2008) at 5-6 (Vision) and Appendix pp. 59-62.

[40] Shoreline III, Index #319.City of Shoreline Comprehensive Plan 2005, Subarea Plan 2-Point Wells, at 259-267.

[41] Richmond Beach Drive is a narrow right-of-way between residential development on the east and railroad grade on the west.

[42] Shoreline III, Index #104. DSEIS, at 3.11-1. Shoreline's 2009 traffic study showed LOS of F at three Richmond Beach intersections resulting from Urban Center development at Point Wells, even with the mitigations suggested in the study. Index #180, Table, p. 12.

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limits the potential for additional access roads.[43]

Point Wells also lacks transit service.[44] Express transit service, whether offered by King County Metro or Community Transit, is 2.5 miles away, on State Route 99, and Sound Transit's proposed light rail line is beyond – on Interstate 5.[45] While the rail line through Point Wells provides commuter service between Seattle and Everett, Sound Transit, which operates commuter rail, has no present plan to provide a Point Wells station.[46] Even if the King County Metro bus line which now terminates half a mile from Point Wells were extended to Point Wells in the future to serve the anticipated population,[47] this would not be express or high-capacity service.

The County ordinances challenged here amend County comprehensive plan policies and land use map to allow the designation of Point Wells as an Urban Center - Ordinance Nos. 09-038 and 09-051 – and amend County development regulations for Urban Centers to accommodate the Point Wells designation - Ordinance Nos. 09-079 and 09-080.

VI. LEGAL ISSUES AND ANALYSIS

LEGAL ISSUE 1

The Prehearing Order states Legal Issue 1 as follows:

> 1. [**SHORELINE III and IV]** Did Snohomish County Ordinances 09-038, 09-051, 09-079, and 09-080 (collectively, the "Ordinances") fail to comply with RCW 36.70A.070, because they are internally inconsistent with Snohomish County GMACP/GPP, Goal

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[43] Shoreline III, Index #104, at 3.11-1.

[44] Shoreline III, Index #104, at 3.11-13 to 3.11-16

[45] BSRE states that Community Transit's Bus Rapid Transit to Everett along Aurora and Sound Transit's light rail to Seattle along I-5 are projected to be constructed and operating before the first Point Wells residential units come on line. However, these connections are 2 ½ to 3 miles from Point Wells. Intervenor's Restatement of Facts, at 7-8.

[46] The FSEIS notes: "2025 transportation analysis reflected in the SEIS [ ] determined that assumption of a high capacity rail station is **not** reasonable regardless of proposed zoning that would be expected to provide adequate density to support transit service." Shoreline III, Index #169, p. 3.14-5.

[47] King County Metro does not ordinarily serve beyond King County boundaries. BSRE states that it is negotiating with King County Metro to extend service 0.5 miles into Point Wells, where BSRE proposes to provide a transit center. Intervenor's Restatement of Facts, at 7. Metro's present routes provide all-day half-hour service to Northgate and peak hour runs to downtown Seattle.

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> LU 2, Policy LU 3.A.2, Policy LU 3.A.3, Glossary Appendix E, LU Policy 3.B.1 – 2, and provisions in the GMACP/GPP that establish access to high capacity transit as a criterion for designation as an Urban Center? If so, are the Ordinances invalid?

This issue was raised by all three petitioners and goes to the heart of their challenge to both the County's comprehensive plan and development regulations amendments.

Applicable Law

The preamble to RCW 36.70A.070 provides:

> The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

Discussion and Analysis

At the outset, the Board notes RCW 36.70A.070 requires internal consistency in an adopted *comprehensive plan,* including its mandatory elements. This section of the GMA does not reference development regulations. The Board has previously ruled amendments to development regulations are not properly the subject of a challenge based on RCW 36.70A.070.[48] Consistency of development regulations with comprehensive plans is mandated in other GMA provisions. In *Aagaard III v. City of Bothell*, the Board stated:

> …Petitioners here have cited to the wrong section of the GMA in stating their consistency issue. Consistency between a plan and development regulations is required by RCW 36A.70.130(1) and .040, not by .070, which pertains to internal consistency within a plan.[49]

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[48] *Children's Alliance I v City of Bellevue,* CPSGMHB Case No. 95-3-0001, Order on Dispositive Motions (May 17, 1995), at 6; *Hensley IV v Snohomish County*, CPSGMHB Case No. 01-3-0004c, Final Decision and Order (Aug. 15, 2001), at 20 (a challenge as to whether a jurisdiction has adopted regulations that implement its plan or whether the jurisdiction's planning activities are in conformity with its plan is appropriately brought by challenging compliance with RCW 36.70A.040(3) or .120, not through a challenge to the consistency provisions of RCW 36.70A.070(preamble)).

[49] CPSGMHB Case No. 08-3-0002, Final Decision and Order (Oct. 24, 2008), at 24.

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Accordingly, the portions of Legal Issue 1 challenging the *Shoreline IV* ordinances based on RCW 36.70A.070 are **dismissed**.

- LU 3.A.3 – Urban Centers Locational Criteria

Section LU 3.A of the County Comprehensive Plan sets forth the County's adopted characteristics and criteria for Urban Centers.[50] The locational criteria are provided in LU 3.A.3:

> Urban centers shall be located adjacent to a freeway/highway and a principal arterial road, and within one-fourth mile walking distance from a transit center, park-and-ride lot, or be located on a regional high capacity transit route.

The Petitioners assert that designating Point Wells as an Urban Center is inconsistent with the LU 3.A.3 locational criteria, which they read as requiring **both** highway adjacency **and** transit access, provided by a transit center, park-and-ride, or regional high capacity transit route. To support their construction of LU 3.A.3, Petitioners cite other comprehensive plan provisions, including the incorporation of PSRC Vision 2040 principles in Objective LU 3.A and the policy requirement for transit access in LU 3.A.2. Petitioners further argue the characteristics of the County's other designated Urban Centers and the practical realities of Urban Center location support their construction of LU 3.A.3.[51]

The County contends the Urban Center locational criteria are met by location "on a regional high capacity transit route," regardless of present or planned transit access at that location. The County asserts that the words "be located" provide the parallelism in LU 3.A.3: an Urban Center should **either** "be located" on a freeway/highway with transit access provided by a transit center or park-and-ride within walking distance "**or** be located" on a regional high capacity transit route.

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[50] County Comprehensive Plan, at LU-16-17, emphasis supplied.
[51] Consolidated Prehearing Brief of Petitioners City of Shoreline and Save Richmond Beach – Shoreline III (Jan. 27, 2011), at 4-11.

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> Urban centers shall **be located** adjacent to a freeway/highway and a principal arterial road, and within one-fourth mile walking distance from a transit center, park-and-ride lot, **or be located** on a regional high capacity transit route.

The County contends Point Wells can be designated an Urban Center by virtue of the Sound Transit commuter rail line that runs through the property regardless of whether a rail station is provided: Point Wells is "on a regional high capacity transit route."[52]

Petitioners urge that LU 3.A.3 must be read to provide two locational criteria: highway adjacency and transit access. They contend the parallelism in the policy is indicated by the "and" which links (a) highway adjacency and (b) various options for transit access.

> Urban Centers shall be located adjacent to a freeway/highway and a principal arterial road **and** within one-fourth mile walking distance from a transit center, park-and-ride lot, or be located on a regional high capacity transit route.

The Board finds the language of LU 3.A.3 is not self-explanatory. Neither reading of the provision is grammatically clear, as even the County acknowledges.[53] Are the criteria disjunctive – located on a highway *or* on a transit route – as the County contends? Or are the criteria conjunctive – located on a highway *and* with transit access, as Petitioners argue?

The County contends that its reading of LU 3.A.3 is supported by the evolution of the wording of LU 3.A.3 and asserts that the Board should defer to the County's construction of its own comprehensive plan policies. While the Board concludes the County's interpretation of LU Policy 3.A.3 is rather strained, deference to its interpretation is appropriate.[54]

- The County's Other Urban Centers

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[52] Snohomish County Response Brief – Shoreline III (Feb. 11, 2011) at 5-10.
[53] John Moffat at HOM.
[54] *King County v CPSGMHB,* 91 Wn. App. 1, 12 (1998).

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Petitioners point out that Point Wells is the County's only Urban Center without either transit access or the existing road infrastructure to support high-capacity vehicle access.[55] The Petitioners contend Snohomish County's other Urban Center designations support the argument that the LU 3.A.3 locational criteria require freeway/highway adjacency as well as transit services.[56] Indeed, each of the other five designated Urban Centers is identified and named by highway intersection.[57] Thus, each of the County's Urban Centers – except Point Wells - is located "adjacent to a freeway/highway and a principal arterial road."[58] The Point Wells Urban Center, by contrast, is at the dead-end of a narrow road through a residential neighborhood. While the Board acknowledges the discrepancy between Urban Centers located on arterials providing high vehicle trip capacity and Point Wells, with its one neighborhood access road,[59] the Board does not find this comparison determinative in light of the required deference to the County's interpretation of LU 3.A.3.

Nevertheless, having accepted that interpretation, in order to determine consistency the Board must read the Goals, Objectives and Policies of the County's Comprehensive Plan addressing Urban Centers as a whole.[60]

- <u>Access to Roads and Transit</u>

The Board notes, first, Policies LU 3.A.2 and LU 3.A.3 clearly envision that urban centers will have ready access to transportation.

Policy LU 3.A.2

> Urban Centers shall be compact (generally not more than 1.5 square miles), pedestrian oriented areas within designated Urban Growth Areas with *good access to higher frequency transit and urban services*. … These locations are

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[55] Consolidated Prehearing Brief – Shoreline III, at 7.
[56] Woodway Prehearing Brief at 2; Consolidated Prehearing Brief – Shoreline III, at 6-8
[57] I-5 and 128th St. SE; I-5 and 164th St. SW; State Route 527 and 196th St. SE; State Route 99 and 152nd St. SW' I-5 and 44th Ave. W. Shoreline III, Index #246, at 8-9.
[58] LU 3.A.3
[59] Average daily vehicle counts range from 30,000 to 218,000 at the other five Urban Centers, compared to 790 on Richmond Beach Drive. Consolidated Prehearing Brief – Shoreline III, at 8.
[60] *West Seattle Defense Fund v. City of Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (Apr. 4, 1995), at 27: " . . . consistency . . . can also mean that policies of a comprehensive plan, for instance, must work together in a coordinated fashion to achieve a common goal."

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> intended to develop and redevelop with a mix of residential, commercial, office and public uses at higher densities, *oriented to transit* and designed for public circulation. Urban Centers should also include urban services and reflect high quality urban design. Urban Centers shall emphasize the public realm (open spaces, parks and plazas) and create a sense of place (identity). Urban Centers will develop/redevelop over time and may develop in phases.

Policy LU 3.A.3:

> Urban centers shall be located adjacent to a freeway/highway and a principal arterial road, and within one-fourth mile walking distance from a transit center, park-and-ride lot, or be located on a regional high capacity transit route.

The ready access policy would be achieved by the first part of LU 3.A.3 as interpreted by the County as urban centers would be located adjacent to a freeway/highway and a principal arterial and be located within 1/4 mile walking distance from a transit center or park-and-ride lot.

However, the County urges the Board to view the second clause of LU 3.A.3 - "located on a regional high-capacity transit route" - as a stand-alone urban-center criterion notwithstanding the lack of existing or planned access to that route. Such an interpretation ignores Policy LU 3.A.2's reference to “good access” and leads to an absurd result: an urban center with limited transportation access. Such a center would *not* be located on a freeway/highway and a principal arterial, it would *not* be within 1/4 mile walking distance of a transit center or park-and-ride lot and would *have no access* to higher frequency transit, *although it would be located* on a regional high-capacity transit route. Mere adjacency to an inaccessible transit corridor cannot satisfy the LU 3.A.2 Urban Center requirement for “good access to higher frequency transit.”

Woodway’s Prehearing Brief states the question succinctly:

> The Town acknowledges that, within certain limits, the County is free to create an Urban Center designation and define it in any way the County Council thinks best. However, having done so, the County is obligated to follow its own regulations and only designate property on the FLUM that actually meets the designation and criteria established in the text. Obviously, there is a certain

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> amount of discretion and judgment in this decision, but there are limits. This case presents a test of those limits.[61]

The Board looks to other County comprehensive plan language concerning Urban Centers. The Board finds three references that speak of Urban Centers as "on" or "along" a high capacity transit route or corridor, without specifying that the service must be provided and accessible.[62] However, the introductory text and other Urban Centers policies clearly support the Board's understanding that a transit requirement includes access and linkages. The subchapter begins:

> [Urban centers are areas where] significant population and employment growth can be located, a community-wide focal point can be provided, and the *increased use of transit*, bicycling and walking can be supported. These centers are intended to be compact and centralized living, working, shopping and/or activity areas *linked to each other by high capacity or local transit*. The concept of centers is pedestrian and *transit orientation* with a focus on circulation, scale and convenience with a mix of uses.[63]

Thus the policy text makes clear transit *usage* and *linkages* are essential characteristics of Urban Centers.

LU Policy 3.A.6 underscores the necessary provision of both transit and roads in planning for Urban Centers.

> LU Policy 3.A.6
> Desired growth within Urban Centers shall be accomplished through application of appropriate zoning classifications, *provision of necessary services* and public facilities, *including transit,* sewer, water, stormwater, *roads* and pedestrian improvements, parks, trails and open space and protection of critical areas. The county will identify and apply methods to facilitate development within designated

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[61] Woodway Prehearing Brief, at 2.
[62] LU 2.A.5 encourages location of high density residential development "within walking distance of transit access *or designated transit corridors*." Shoreline III, Index #246, p. 3.
Glossary Appendix E defines Urban Center: "An area … located along an existing or planned *high capacity transit route*." Index #246, p 11.
Urban Centers explanatory text states: "Urban Centers provide a mix of high-density … development … located *along a designated high capacity route*." LU – 14.
[63] LU-14 (emphasis added).

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> urban areas, including *supportive transit,* parks*, road* and non-motorized improvements. (Emphasis supplied)

In Policy LU 3.A.6, the County sets itself the task of identifying and applying methods to facilitate the necessary transit and road improvements to support development in Urban Centers, thus, again, recognizing that both highway and transit access are essential to the high-density mixed-use communities designated as Urban Centers.[64] Policy LU 3.A.6 links back to Policy 3.A.2 and its requirement that "Urban Centers shall be compact … pedestrian oriented areas … with *good access to higher frequency transit and urban services*."

In sum, the Board finds the County's Urban Center policies as a whole require ready access to both the road system and transit services. Mere location on an inaccessible transit route is not sufficient and not consistent with these policies.

- <u>Consistency with Vision 2040</u>

The Board's conclusion is further buttressed by the language of Comprehensive Plan Objective LU 3.A which establishes the intention that Urban Center planning must be consistent not only with the Comprehensive Plan policies, but also with Vision 2040. While the County argues the Petitioners raised no allegation of inconsistency with Vision 2040, the Board disagrees. Petitioners specifically alleged inconsistencies existed between provisions of Ordinance 09-038 and 09-051and the County's Comprehensive Plan provisions that establish access to high capacity transit as a criterion for Urban Center designation.

Consistency with Vision 2040 when planning for Urban Centers is explicitly incorporated into the County Comprehensive Plan by Objective LU 3.A.

> Objective LU 3.A:
> Plan for Urban Centers within unincorporated UGAs consistent with Vision 2040 and the CPPs.

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[64] As noted above, Point Wells currently lacks any transit services (much less, higher frequency transit) and lacks adequate highway access (and will require improvements to multiple road segments and intersections in Shoreline and Woodway). Petitioners have also challenged whether the County's adopted development regulations provide the necessary implementation.

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Puget Sound Regional Council (PSRC) is the multi-county agency responsible for coordinated land use and transportation planning for the four Central Puget Sound counties. PSRC's Vision 2040 regional plan[65] constitutes a "multicounty planning policy" for the four-county region pursuant to RCW 36.70A.210(7). Vision 2040 – and its predecessor Vision 2020 - identify a limited number of regional growth centers for special concentrations of population and/or employment as a way of focusing public infrastructure and transportation expenditures.

Vision 2040 emphasizes the development of "a highly efficient transit system linking major centers." The plan designates over two dozen regional growth centers. Three regional growth centers are in Snohomish County, two located along I-5 in Lynnwood and Everett, a third on I-405 at Bothell-Canyon Park. Under Vision 2040, the regional growth centers "focus growth within already urbanized areas" and "provide the backbone for the region's transportation network."[66]

Vision 2040 includes as one of its "overarching goals" a focus on urban growth in transit oriented communities.[67] More specifically, Vision 2040 includes the following language:

> Centers create environments of *improved accessibility* and mobility-*especially for* walking, biking, and *transit-and, as a result, play a key transportation role* as well. *Centers also provide the backbone for the region's transportation network. By developing a highly efficient transportation system linking major centers*, the region can take significant steps to reduce the rate of growth in vehicle miles traveled, while a cop accommodating a growing population and an increase in jobs.[68]

Petitioners argue persuasively that the Point Wells Urban Center doesn't meet Vision 2040 goals for urban center development. Point Wells has no present or planned transit access,

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[65] Shoreline III, Index #12, *Vision 2040.*
[66] Shoreline III, Index #12, at 45, 47.
[67] "Major regional investments for transportation and other infrastructure should be prioritized to these locations…. County-level and local funding are also appropriate to prioritize to regional growth centers." Shoreline III, Index #12, *Vision 2040*, at 48.
[68] Shoreline III, Index #12, Vision 2040, at 47 (emphasis supplied).

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and there is no transportation linkage – either by highway or transit or ferry – to the regional network.

The Board has had previous occasion to assess the relationship between Snohomish County's designated Urban Centers and the Urban Center designations in PSRC's Vision 2020. In the case of *Bothell et al Snohomish County*,[69] the City of Lynnwood asserted the County's expansion of a County-designated Urban Center in close proximity to Lynnwood's City Center, a PSRC-designated "regional growth center," was inconsistent with PSRC's Vision 2020. The Board found PSRC's "regional growth centers" are large, important, sub-regional hubs as contrasted with the County's "urban center" zones. As defined by PSRC: "The term 'regional growth center' is used to differentiate centers that are designated for regional purposes from those that have a more local focus." *Id*. The Board concluded the County's Urban Center designations, having "a more local focus," were not required to be identical to the PRSC "regional growth centers." Thus, as the Board held in the *Bothell* decision,[70] it is not inconsistent with the Vision 2040 policies for Snohomish County to designate as one of its "urban centers" an area of the unincorporated UGA that does not meet the criteria for a PSRC "regional growth center."

However, this case presents a different question: how should the County's Urban Center land use policies be construed in light of the County's stated objective of consistency with Vision 2040? The Board reasons that the PSRC goal of using development in "centers" to support a "highly efficient transit system linking major centers" is highly relevant to construction and application of the County's Urban Center policies. The Board takes official notice that regional transit services are governed by their own complex statutes and intergovernmental agreements. Establishing regional priorities for initial investment and long-term service is an intensive process. Thus Urban Centers consistent with Vision 2040 should be linked to accessible transit service on the regional network.

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[69] CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007) at 50-ff.
[70] CPSGMHB Case No. 07-2-0026c, Final Decision and Order (date), at 51-52.

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BSRE generally contends its project will, over time, meet the transit access criteria of LU 3.A.2 and LU 3.A.3. BSRE points out transit agencies will not plan to provide additional service until population growth is assured.[71] BSRE states it is negotiating with King County Metro to extend local bus service 0.5 miles into Point Wells, where BSRE proposes to provide a transit center. Metro's present routes provide all-day half-hour service to Northgate and peak hour runs to downtown Seattle.[72] BSRE also provides a letter from Sound Transit expressing "interest" in serving Point Wells if the developer funds construction of the commuter rail station.[73] However, it is undisputed as of today, there is no regional transit solution in the plans of any of the transit agencies to serve an additional population of 6000 at Point Wells.[74]

The Board does not find BSRE's assurances persuasive. The Board agrees with petitioners that a "highly efficient transportation system linking major centers" is not satisfied by providing van pools to a Metro park-and-ride two and a half miles away. Nor is "high capacity transit" satisfied by an urban center on a commuter rail line without a stop. There is nothing efficient or multi-modal about an urban center designation that could result in an additional 12,860 car trips per day through a two-lane neighborhood street, or that relies for high-capacity transit on an unusable commuter rail line and van pools. The Board concludes the County's construction of LU 3.A.3 is not consistent with LU Objective 3.A and Vision 2040.

In light of the foregoing facts and arguments, the Board is left with "a firm and definite conviction that a mistake has been committed" in the County's designation of Point Wells as

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[71] Intervenor's Restatement of Facts, at 6-7.
[72] Shoreline III, Index #104, 3.11-15, 16.
[73] Shoreline IV, Index #243. The Board notes that Sound Transit's letter explains some of the regional complexities involved in adding service in Snohomish County and the considerations of rail line availability and scheduling. Sound Transit's letter makes no commitment, regardless of developer financing.
[74] Ordinance No. 09-051 adds a definition for "Planned Transit Station" to the County comprehensive plan Glossary: "A transit station identified in a public transit agency long range or capital plan located along a high capacity route."

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an Urban Center. The designation is inconsistent with the County's comprehensive plan land use policies concerning Urban Centers and thus does not comply with RCW 36.70A.070 (preamble). The County's action is clearly erroneous in light of the entire record before the Board.

Conclusion

The Board is persuaded the County's adoption of Ordinance Nos. 09-038 and 09-051is **clearly erroneous** in that the designation of Point Wells as an Urban Center is internally inconsistent with the County's comprehensive plan provisions concerning Urban Centers. The County's action **does not comply** with RCW 36.70A.070 (preamble) which requires internal consistency. The Board remands the ordinances to the County to take legislative action to comply with the GMA as set forth in this order.

Petitioners' allegation that Ordinance Nos. 09-079 and 09-080 also violate RCW 36.70A.070 (preamble) is without merit and is **dismissed.**

LEGAL ISSUE 2

The Prehearing Order states Legal Issue 2 as follows:

> 2. **[SHORELINE III]** Did Snohomish County Ordinances 09-038 and 09-051 (collectively, the "Shoreline III Ordinances") fail to comply with RCW 36.70A.070 (preamble), (3), (6) and (8) as they apply to Point Wells, because they are not consistent with the GMACP elements related to capital facilities, transportation, parks/open space, and recreational facilities? If so, are the Ordinances invalid?

This issue was raised by Shoreline and Save Richmond Beach and partially abandoned. In their consolidated prehearing brief, Shoreline and Save Richmond Beach expressly abandoned the portions of this issue that alleged inconsistency with elements of the County's comprehensive plan.[75] This part of Legal Issue 2 is **dismissed**.

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[75] Consolidated Prehearing Brief – Shoreline III, at 2, fn. 2; Consolidated Reply Brief – Shoreline III, at 2. The Petitioners explained: "The abandonment of the City's PFR 3.5 and 3.7 and SRB PFR 13 and 15 occurred because the parties have no reason to directly challenge the mandatory elements of the County's

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One portion of Legal Issue 2 was included in the Petitioners' opening brief and not abandoned: consistency with the concurrency requirement in the mandatory transportation element - RCW 36.70A.070(6)(b).[76]

Applicable Law

RCW 36.70A.070(6) sets forth mandatory requirements for the transportation element of a jurisdiction's comprehensive plan. Subsection (6)(b) provides:

> After adoption of the comprehensive plan by jurisdictions required to plan… local jurisdictions must adopt and enforce ordinances that prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development ….

Discussion and Analysis

The Petitioners state:

> The GMA's concurrency requirement serves as a bar to development that would cause the level of service on transportation systems to fall below the locally adopted standards.

The Board notes that the DSEIS identifies a number of intersections in Shoreline, Woodway and Edmonds where Point Wells' Urban Center development, without mitigation, is projected to result in traffic levels beyond LOS limits adopted by the respective municipalities, including several intersections that reach an F/F standstill.[77] The DSEIS identifies a number of possible mitigations, including roadway improvements, turn lanes and signalization, primarily in Shoreline, but also in Woodway and Edmonds.[78]

Comprehensive Plan on capital facilities and transportation since the impacts are directed at *Shoreline's* capital facilities and transportation planning, hence the more direct focus on the goals."

[76] Consolidated Pre-hearing Brief – Shoreline III, at 10-11.

[77] Shoreline III, Index #104, DSEIS, at figure 3.11-7, p. 3.11-32 to -33.

[78] Shoreline III, Index #104, DSEIS, at 3.11-42 to -43.

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However, the Petitioners have provided no authority for the proposition that the GMA creates a requirement for a planning jurisdiction to guarantee concurrency for facilities of neighboring jurisdictions. RCW 36.70A.070(6)(a)(iii)(B) requires each planning jurisdiction to adopt "level of service standards for all *locally-owned* arterials and transit routes." RCW 36.70A.070(6)(b) by its terms directs a local jurisdiction, having adopted its comprehensive plan (containing the mandatory transportation element and adopted LOS standards), to then enact and enforce ordinances prohibiting development approval if the development causes the level of service on a *locally owned transportation facility* to decline below the LOS standards adopted in the transportation element of the comprehensive plan. The Board concludes that the mandatory concurrency provisions for "locally-owned" facilities apply to facilities owned by the planning jurisdiction, not those owned by its neighbors.

By contrast, RCW 36.70A.070(6)(a)(v) requires that the transportation element contain a sub-element which addresses intergovernmental coordination efforts, "including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions."[79] However, Petitioners did not raise the issue of compliance with this requirement and in fact, abandoned any challenge under RCW 36.70A.070(6)(a).

The Board finds and concludes that Petitioners have not carried their burden of demonstrating violation of RCW 36.70A.070(6)(b) or inconsistency of the *Shoreline III* ordinances with the mandatory GMA comprehensive plan transportation element.

Conclusion

Legal Issue 2 is **dismissed** in its entirety.

LEGAL ISSUE 3

The Prehearing Order sets forth Legal Issue 3 as follows:

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[79] See, *Kap II v. City of Redmond*, CPSGMHB Case No. 06-3-0026, Final Decision and Order (Apr. 5, 2007), at 4.

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> 3. **[SHORELINE IV]** Did Snohomish County Ordinances 09-079 and 09-080 (collectively, the "Shoreline IV Ordinances") violate RCW 36.70A.040(4) and RCW 36.70A.120 by adopting development regulations that were inconsistent with and failed to implement Snohomish County GMACP provisions in the "Centers" section of the LU Urban Center Chapter, LU Policy 3.A.3, FLUM Center Designation "Urban Center," and Glossary Appendix E, by designating Point Wells as an Urban Center zone where the location of Point Wells is not in proximity to existing or planned high capacity transit routes, transportation corridors, or public transportation stations?

This issue was raised by Shoreline and Save Richmond Beach.[80]

Applicable Law

RCW 36.70A.040 is entitled "Who must plan – Summary of requirements – Development regulations must implement comprehensive plans."

- Subsection (1) requires counties that meet certain criteria of population and growth rate to plan under GMA; Snohomish County plans under this GMA provision.
- Subsection (2) allows other counties to "opt in" to the GMA scheme.
- Subsection (3) requires counties originally required to plan under GMA (such as Snohomish County, to adopt comprehensive plans "and development regulations that are consistent with and implement the comprehensive plan…"
- Subsection (4) requires "opt-in" counties to adopt comprehensive plans and consistent development regulations.

RCW 36.70A.120 provides:

> Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan.

Discussion and Analysis

In referencing RCW 36.70A.040(4), the Petitioners cite to the wrong subsection of the GMA – a section applying to "opt-in" counties only. This provision does not create a duty for Snohomish County, which is not one of the "opt-in" counties.

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[80] As noted above, Petitioners' Legal Issue 1 also alleged the *Shoreline IV* ordinances were inconsistent with the comprehensive plan, but cited to RCW 36.70A.070, pertaining to comprehensive plans not development regulations.

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The Board by statute must limit its rulings to the issues presented in the prehearing order. RCW 36.70A.290(1) requires the petition for review to include "a detailed statement of issues presented for resolution by the board," and specifies: "The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order."[81] Thus the Board will not correct the Petitioners' citation. The Board finds that Petitioners have failed to meet their burden of demonstrating a violation of RCW 36.70A.040(4); this part of Legal Issue 3 must be **dismissed.**

The County contends that the Petitioners' consistency argument based on section RCW 36.70A.120 should be dismissed as abandoned, because their prehearing brief merely cites to .120 in the statement of Legal Issue 3 but contains no argument tied to section .120. The Board concurs.

WAC 242-02-570(1) provides in part "Failure … to brief an issue shall constitute abandonment of the unbriefed issue."[82] The Board has explained, "An issue is briefed when legal argument is provided."[83] It is not enough to simply cite the statutory provision in the statement of the Legal Issue.[84]

In the present case, while Petitioners' briefing includes some argument about development regulation consistency under Legal Issue 1, neither in that section nor under Legal Issue 3 is there any argument or authorities based on RCW 36.70A.120. Therefore the Board finds and concludes that Petitioners' consistency challenge based on RCW 36.70A.120 was **abandoned**.

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[81] See also WAC 242-02-210(2)(c) requiring a detailed statement of the issues being presented.
[82] See *City of Bremerton v. Kitsap County*, CPSGMHB Case No. 04-3-0009c, Final Decision and Order (Aug. 9, 2004), at 5; *TS Holdings v. Pierce County,* CPSGMHB Case No. 08-3-0001, Final Decision and Order (Sep. 2, 2008), at 6.
[83] *Tulalip Tribes of Washington v Snohomish County*, CPSGMHB Case No. 96-3-0029, Final Decision and Order (Jan. 8, 1997), at 7.
[84] *TS Holdings v. Pierce County,* CPSGMHB Case No. 08-3-0001, Final Decision and Order (Sep. 2, 2008), at 7 (dismissing challenges based on GMA provisions only cited by Petitioner in restating the Legal Issues in the case).

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Conclusion

Legal Issue 3 is **dismissed** in its entirety.

LEGAL ISSUE 4

The Prehearing Order sets forth Legal Issue 4 as follows:

> 4. Did the Ordinances fail to comply with RCW 36.70A.100 where:
> a. TOWN OF WOODWAY: Point Wells is located within the Town's MUGA. The Town's Comprehensive Plan shows the property with an Industrial designation. The Ordinances are not coordinated or consistent with the Town's existing Comprehensive Plan.
> b. CITY OF SHORELINE: The City of Shoreline Comprehensive Plan indicates a Mixed Use development with urban densities. However, the densities proposed in the challenged Ordinances far exceed the contemplation of the Shoreline Comprehensive Plan.
> c. KING COUNTY: The Point Wells designation is not consistent with the transportation element of King County's GMACP. (See King County GMACP, Technical Appendix C, Transportation.)
>
> If so, are the Ordinances invalid?

Inconsistency with King County's transportation plan was asserted by Save Richmond Beach, but this sub-issue was subsequently abandoned.[85] Woodway and Save Richmond Beach raise the issue of inconsistency with Woodway's plan, with Woodway arguing that inconsistency extends to the *Shoreline IV* ordinances. All three petitioners assert inconsistency with Shoreline's plan, with Woodway again arguing that inconsistency extends to the *Shoreline IV* ordinances.

Applicable Law

RCW 36.70A.100 provides:

> The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties and cities with which the county or city has, in part, common borders or related regional issues.

[85] See Snohomish County Response – Shoreline III, at 4.

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Discussion and Analysis

At the outset, the Board notes that RCW 36.70A.100 requires coordination and consistency of the *adopted comprehensive plans* of adjacent jurisdictions. This section does not reference development regulations. The Board has previously ruled that amendments to development regulations are not properly the subject of a Section .100 challenge.[86] Therefore Petitioners' challenge to the *Shoreline IV* ordinances based on RCW 36.70A.100 is **dismissed.**

The requirement of inter-jurisdictional coordination and consistency is a fundamental GMA objective. It is reflected in legislative findings stating "citizens, communities, local governments and the private sector [should] cooperate and coordinate" in land use planning.[87] GMA Planning Goal 11 calls for cities and counties to "ensure coordination between communities and jurisdictions to reconcile conflicts" in developing their plans.[88] GMA requirements for adoption of County-wide Planning Policies (CPPs) are designed to provide a framework for city-county coordination.[89] The mandate of "coordination and consistency" in RCW 36.70A.100 must be construed in this context.

- Woodway's Comprehensive Plan Policies for Point Wells

Point Wells is surrounded on three sides by the Town of Woodway and is within the town's designated Municipal Urban Growth Area (MUGA). The Town has planned for Point Wells for a number of years, beginning with a focused stakeholder and citizen process in 1999.[90]

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[86] *Bothell et al v Snohomish County*, CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007), at 27; *Kap II v. City of Redmond*, CPSGMHB Case No. 06-3-0026, Final Decision and Order (Apr. 5, 2007), at 11; *Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order (Mar. 1, 1993), at 8.

[87] RCW 36.70A.010 "It is in the public interest that … local governments cooperate and coordinate with one another in land use planning".

[88] RCW 36.70A.020(11).

[89] RCW 36.70A.210(1) (requiring CPPs to provide a "framework [to] ensure that city and county comprehensive plans are consistent").

[90] "In 2001 Woodway amended its comprehensive plan to include goals and policies concerning Point Wells, including identifying Point Wells as a PAA for the Town of Woodway and calling for negotiation of an interlocal agreement with Snohomish County concerning land use control and impact mitigation." *Chevron USA Inc v Hearings Board*, 123 Wn App. 161, 165, citing Woodway Land Use Policy 19.

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Currently, Woodway has adopted an industrial designation for Point Wells. Its land use policies call for low-density urban residential land use on the upper bluff and the continuation of the industrial designation on the waterfront area west and south of the rail line.[91] The Town's policies seek "a collaborative process to achieve a consensus among the governmental agencies" prior to any mixed-use development of Point Wells.[92]

However, the Vision Statement in Woodway's comprehensive plan clearly anticipates redevelopment for Point Wells. In Woodway's Vision Statement:

> Point Wells is redeveloped for a combination of desired mixed land uses on the waterfront, a restored shoreline ecology, substantial public access, and recreational opportunities … Beside being a unique resource for the community, Point Wells is a regional attraction and a model of sustainable, accessible and appropriate shoreline redevelopment and upland conservation and neighborhood development.[93]

The Woodway plan continues: "Point Wells can potentially accommodate a large population," and then raises observations and criteria related to annexation and impact on Town character and fiscal sustainability.[94] Woodway's comprehensive plan appendix includes a range of mixed-use scenarios for post-industrial development of Point Wells – from multi-family, to marina-centered commercial uses, to hotels, to single-family residential consistent with the low densities existing in the town – no more than four dwelling units per acre.[95]

Notwithstanding the support in Woodway's plan for mixed-use at Point Wells, Woodway here argues any of its alternative scenarios for Point Wells redevelopment is "starkly

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[91] Shoreline III, Index #320. Woodway Comprehensive Plan, (2004 Update, revised Nov. 17, 2008) LUP-20. The County's Urban Center designation does not include the upper bluff area.
[92] Woodway Prehearing Brief, at 5-6
[93] Shoreline III, Index #320. Woodway Comprehensive Plan, at 6.
[94] *Id.*
[95] For example, Woodway's Alternative F, for the waterfront area, envisions 270 multi-family units and a 100-room hotel, with commercial uses centered on a marina. Shoreline III, Index #320, at 62.

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different" from the scale and intensity of the County's Urban Center designation, which would allow 3,500 units housing more than 6000 residents.[96]

- Shoreline's Comprehensive Plan Policies for Point Wells.

The City of Shoreline, in King County, provides the only road accessing the Point Wells site. Shoreline therefore has a high level of interest in future development of Point Wells and has long included policies related to Point Wells redevelopment in its Comprehensive Plan.[97] In 1998 Shoreline adopted a comprehensive plan that designated Point Wells as a potential annexation area (PAA).[98]

Shoreline initiated a subarea planning process for Point Wells in April 2009. Shoreline invited participation from Snohomish County, Woodway, and BSRE's predecessor - Paramount. Shoreline circulated a draft Point Wells subarea plan envisioning less intense development than allowed by the County's proposed Urban Center designation.[99] Shoreline states the County declined to participate and thus failed to coordinate with Shoreline's subarea planning process.

One aspect of Shoreline's challenge may be summarily disposed of. Shoreline apparently argues the County's action is inconsistent with the City's subarea plan. Shoreline Subarea Plan Policy PW-12 states:

> The maximum daily traffic that the City should permit emanating from or entering into Point Wells may not exceed 8,250 vehicle trips per day, nor reduce the City's adopted level of service standards for the Corridor at the time of application for development permits at Point Wells.[100]

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[96] Woodway Prehearing Brief, at 5.
[97] For example, Shoreline Comprehensive Plan Policy T25 provides: "Work with Sound Transit to study the development of a low impact commuter rail stop in the Richmond Beach/Point Wells area." Shoreline III, Index #319, at 58.
[98] See, *Chevron USA Inc v Hearings Board*, 123 Wn App. 161, 164-165 (noting that under King County's countywide planning policies, PAAs "shall not overlap").
[99] Shoreline III, Index #155, at 5-6.
[100] Shoreline III, Index #319, Shoreline Comprehensive Plan, at 266.

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Shoreline points out that the County's Urban Center designation for Point Wells would generate 12,860 trips per day, based on the DSEIS.[101] This would result in failing levels of service at nine Shoreline intersections.[102] Despite this conflict with the City's policies, Shoreline says, the County refused to coordinate its planning process with Shoreline's subarea planning. In particular, Shoreline asserts the County acted unilaterally in adopting the Point Wells development regulations without first coordinating planning and ensuring funding for necessary capital improvements in adjacent jurisdictions.[103]

The Board finds the County Council began its consideration of comprehensive plan amendments for redesignation of Point Wells in June, 2006. [104] Shoreline began its subarea planning process in April 2009, providing the County a draft of its Subarea Plan and inviting County participation.[105] The County adopted the Point Wells Urban Center designation on August 12, 2009. Shoreline adopted its subarea plan for Point Wells on April 19, 2010 and the County adopted the Point Wells development regulations on May 12, 2010.[106] Thus to the extent Shoreline challenges the *Shoreline III* ordinances as inconsistent with its Subarea Plan, the Subarea Plan was not adopted until well after the County enacted its Urban Center designations for Point Wells. To the extent Shoreline challenges the Point Wells development regulations, such challenge is not within the scope of RCW 36.70A.100.

- <u>Coordination and Consistency - Woodway</u>

To review the challenge raised by Woodway, the Board looks first to the GMA provisions concerning consistency *within a county*. The framework for coordinated planning between a county and cities within that county is established by the county-wide planning policies required under RCW 36.70A.210, which provides:

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[101] Shoreline III, Index #104, at 3.11-26.
[102] Shoreline III, Index #169, FSEIS, at 3-37.
[103] Consolidated Reply Brief - Shoreline IV, at 6.
[104] Intervenor's Restatement of Facts, at 3.
[105] Shoreline III, Index #155, at 5-6.
[106] Petitioners' Consolidated Statement of Facts – Shoreline IV, at 6.

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> This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100.[107]

County-wide planning policies "shall at a minimum address … (f) policies for joint county and city planning within urban growth areas."[108] Thus a County's CPPs establish the scope and intent of interjurisdictional coordination and joint planning necessary to demonstrate compliance with RCW 36.70A.100. [109]

Consistent with RCW 36.70A.210, the Board has applied countywide planning policies to disputes within a county. In 2007 the Board decided reciprocal challenges by the cities of Seattle and Burien under RCW 36.70A.100.[110] Seattle and Burien had each designated the same area of unincorporated King County as a potential annexation area (PAA). King County intervened in both cases to argue that its Countywide Planning Policies provide a process for resolving contested PAAs.[111] The Board declined to find either city's action violative of the coordination required by RCW 36.70A.100. Rather, the Board deferred to King County's process, reasoning that deferral would foster the collaboration required by the GMA. The Board concluded:

> It is now up to Seattle and Burien, with assistance from the County, to assess their respective abilities to provide adequate governmental services and facilities to these unincorporated areas.[112]

Thus Countywide Planning Policies will be applied in resolving inter-jurisdictional disputes about comprehensive plan consistency *within a county.*

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[107] RCW 36.70A.210(1).
[108] RCW 36.70A.210(3)(f).
[109] *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn.2d 161, 175, 979 P.2d 374 (1999) ("The CPPs are thus the major tool provided in the GMA to ensure that the comprehensive plans of each city within a county agree with each other"); *Kitsap Citizens, et al v Kitsap County*, CPSGMHB Case No. 01-3-0019c, Final Decision and Order (May 29, 2001), at 24 ("CPPs are the primary benchmark for ensuring and determining consistency among comprehensive plans"); *City of Snoqualmie and City of Issaquah v King County*, CPSGMHB Case No. 92-3-0004c, Final Decision and Order (Mar. 1, 1993), at 8.
[110] *Seattle v Burien*, CPSGMHB Case No. 07-3-0005, Final Decision and Order (July 9, 2007); *Burien v. Seattle*, CPSGMHB Case No. 07-3-0013, Final Decision and Order (July 9, 2007).
[111] King County Comprehensive Plan Policy U-203 provides: "For contested areas, the county should attempt to help resolve the matter, or to enter into an interlocal agreement with each city for the purpose of bringing the question of annexation before voters." See, *Seattle v Burien,* at 13.
[112] *Seattle v Burien,* at 12; *Burien v Seattle*, at 11.

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As to Snohomish County, the Board has previously determined Snohomish County-wide Planning Policies (CPPs) require advisory consultation through an inter-agency committee – Snohomish County Tomorrow (SCT) – and provide for binding joint-planning by inter-local agreement. In *Bothell v Snohomish County*,[113] the cities of Mill Creek and Bothell protested the County's rezoning of lands within their respective MUGAs at higher densities than the plans of either city contemplated. The Board dismissed the charge of inter-jurisdictional inconsistency, saying:

> The GMA does not prescribe a particular process for the county/city collaboration and consistency that is promoted by the statute. County-wide planning policies provide only a framework for city/county planning consistency, unless the parties in a particular county agree to a more binding arrangement. RCW 36.70A.210(1). In Snohomish County, the county-wide planning policies establish Snohomish County Tomorrow as a merely advisory body (CPP JP-4) and apparently contemplate that any binding city-county joint planning be established by inter-local agreement. (CPP JP-1) None of the parties point to any inter-local agreement by which the County has agreed to give Bothell or Mill Creek a deciding voice as to zoning in their respective MUGAs.

Because there was no inter-local agreement under the CPPs, the Board concluded the County's upzoning in the Bothell and Mill Creek MUGAs did not violate RCW 36.70A.100.

In the present matter, Woodway does not allege inconsistency with CPPs or that a CPP has been violated. The County submitted its Point Wells proposal to SCT for consultation as required.[114] There is no inter-local agreement between Snohomish County and Woodway giving the Town a deciding voice as to redevelopment of Point Wells. The Board finds and concludes Woodway has not demonstrated the County's action violates the CPPs which constitute the framework for consistency between a county and its cities. Woodway's claims based on RCW 36.70A.100 are **dismissed**.

- <u>Coordination and Consistency – Shoreline</u>

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[113] CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007), at 29.
[114] Amended Ordinance 09-038, page 1.

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Shoreline is in King County and not subject to Snohomish County's CPPs. RCW 36.70A.100 requires Snohomish County's comprehensive plan "shall be coordinated with, and consistent with" the comprehensive plans of adjacent cities. Shoreline claims the County has refused to engage in the City's subarea planning process and thus has failed to *coordinate* its plans.

In determining whether plans of adjacent jurisdictions are *coordinated*, the Board may look to the record of inter-agency communication and consultation in adoption of the challenged plan provisions. In *SOS v City of Kent*,[115] the Board found the City had sought comment from adjoining jurisdictions on its urban separators policies and received specific comment from King County; no violation of RCW 36.70A.100 was shown. Likewise in *Kap II v City of Redmond*,[116] the record indicated the City of Redmond was working with King County transportation staff on a comprehensive corridor study and was involving the community beyond the city limits in its roadway extension planning process; the Board found the RCW 36.70A.100 requirement of coordination was satisfied.

In the present case, the record fully demonstrates that Snohomish County's process for re-designation of Point Wells provided opportunity for input from both Shoreline and Woodway. For example, the DSEIS contains an extensive section on compatibility of designating Point Wells an Urban Center with the comprehensive plans of Woodway and Shoreline.[117] Further, the County asserts it accepted a number of suggestions from the two municipalities and incorporated them into its ordinances.[118] Shoreline complains the County refused to participate in the City's sub-area planning process.[119] The Board does not find this objection persuasive in light of the substantial contact and communication between the jurisdictions concerning Point Wells, which the Board takes as sufficient evidence of *coordination*.

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[115] CPSGMHB Case No. 04-3-0019, Final Decision and Order (Dec. 16, 2004), at 9-11.
[116] CPSGMHB Case No. 06-3-0026, Final Decision and Order (Apr. 5, 2007), at 11-12.
[117] Shoreline III, Index #104, DSEIS, at 3.14-9 to 3.14-14.
[118] County Response Brief – Shoreline III, at 12, and ff. 51, 52.
[119] As previously noted, Shoreline's sub-area process began after BSRE submitted its proposed docket amendment to Snohomish County.

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The more cogent question is whether the County's action is *consistent* with the Shoreline comprehensive plan. The Board has defined consistency to mean "provisions are compatible with each other – they fit together properly. In other words, one provision may not thwart another."[120] Petitioners argue the sheer scale of development contemplated at Point Wells under the Urban Center redesignation is inconsistent with the comprehensive plans of both Shoreline and Woodway.[121]

The County points to the *Bothell* decision where the Board rejected the cities' argument that RCW 36.70A.100 consistency requires the County to adopt zoning regulations the same as or approved by an adjacent city. In *Bothell* the Board ruled "the cities do not have the authority to dictate specific development standards outside their borders. …"[122] The Board relied on the reasoning of *MT Development LLC, et al., v. City of Renton,*[123] where the Court of Appeals ruled that Renton had no authority to impose its comprehensive plan or zoning outside its city limits. The Board in *Bothell* concluded the GMA principle of inter-jurisdictional consistency does not give cities the authority to impose their urban density and design criteria beyond their boundaries.

The present matter is distinguishable, of course, because Woodway and Shoreline are not directly seeking to enforce their differing proposed land use designations for Point Wells. Rather, they are demanding consistency that acknowledges the limits of their capacity to plan for and absorb the impacts of adjacent densities in compliance with the GMA.

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[120] *Laurence Michael Invs., v Town of Woodway*, CPSGMHB Case No. 98-3-0012, Final Decision and Order (Jan. 8, 1999), at 23; *West Seattle Defense Fund v City of Seattle,* CPSGMHB Case No. 94-3-0016, Final Decision and Order (Apr. 4, 1995), at 27; cited with approval, *Chevron USA Inc v Hearings Board*, 123 Wn App. 161, 167.

[121] As ruled above, Woodway's "coordination" remedies are governed by Snohomish County County-wide Planning Policies. RCW 36.70A.210.

[122] *Bothell et al v Snohomish County*, CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007), at 28.

[123] *MT Development LLC, et al., v. City of Renton,* 140 Wn. App. 422, 165 P.3d 427 (2007).

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The Board concludes that the requirement for inter-jurisdictional coordination and consistency in RCW 36.70A.100 does not require Snohomish County to adopt land use designations or zoning regulations in the unincorporated UGA that are the same as or approved by an adjacent municipality. Inter-jurisdictional consistency does not give one municipality a veto over the plans of its neighbor.

However, in the unique circumstances of this case, the County's action does not comply with RCW 36.70A.100. Here, substantial evidence in the record demonstrates the Point Wells Urban Center redesignation makes Shoreline's plan non-compliant with the GMA, as Shoreline has no plans or funding for the necessary road projects to maintain the level of service standards which it has adopted pursuant to GMA mandates.[124] While the DSEIS identifies possible future road capacity mitigations, Shoreline's existing capital facilities and transportation plans are at present rendered inadequate. The only "mitigation" for this inconsistency in capital planning, as proposed in the FSEIS, is: "The affected jurisdictions could meet to determine transportation strategies."[125]

As the *Chevron* court noted, consistency as defined by the Board means "provisions are compatible with each other – they fit together properly. In other words, one provision may not thwart another."[126] Here, Shoreline's capital facilities planning and level of service standards are thwarted by the Point Wells Urban Center designation.[127] The lack of compatibility is clearly demonstrated in Shoreline's scramble to re-analyze the traffic and safety capacity of its impacted roadways and to estimate costs for necessary improvements.[128] Shoreline's analysis concludes four intersections reach LOS F and two reach LOS E by 2025 with build-out of Point Wells.[129] Shoreline estimates mitigation

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[124] RCW 36.70A.070(6)(iii)(B).
[125] Shoreline III, Index #169, FSEIS at 3-57.
[126] *Chevron USA Inc v Hearings Board*, 123 Wn App. 161, 167.
[127] Consolidated Prehearing Brief – Shoreline IV, at 17-18.
[128] Shoreline III, Index #180.
[129] Id.

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requirements will cost $33.4 million.[130] Shoreline's adopted capital facilities plans and funding are not compatible with Snohomish County land use policies that create these unplanned requirements.

The Board notes the Point Wells Urban Center development regulations require construction of an internal road network but do not contain requirements ensuring necessary improvements to external intersections and roads necessary to access the development, deferring these decisions to the permit process. The GMA requires capital facilities and transportation planning *at the same time* as land use designations. Where, as here, the capital planning of necessity involves adjacent jurisdictions, RCW 36.70A.100 mandates that the plans of those jurisdictions be consistent. As respects the City of Shoreline, in the absence of interlocal agreements or other secure commitments that can be incorporated in its planning documents, the Board is left with a **firm and definite conviction that a mistake has been made.**

Conclusion

The Board finds Woodway has not carried its burden of demonstrating a violation of RCW 36.70A.100, in that no violation of Snohomish County CPPs or breach of an inter-local agreement is in evidence. The Board finds and concludes Petitioners have **failed to carry their** burden in demonstrating the County's action violated RCW 36.70A.100 with respect to the Town of Woodway.

As to Shoreline, the Board finds the County's adoption of the challenged ordinances violates RCW 36.70A.100 by making Shoreline's Comprehensive Plan inconsistent with GMA requirements for capital facilities and transportation planning. The Board concludes the County's adoption of Ordinance Nos. 09-038 and 09-051 was **clearly erroneous** and **does not comply** with RCW 36.70A.100. The Board remands the ordinances to the County to take legislative action to comply with the GMA as set forth in this order.

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[130] Shoreline III, Index #218.

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LEGAL ISSUE 5

The Prehearing Order sets forth Legal Issue 5 as follows:

> 5. **[SHORELINE III]** Did the Shoreline III Ordinances fail to comply with RCW 36.70A.110(3) and (4) as they apply to Point Wells because they designate urban growth in an area not adequately served by public facilities and services, and did not acknowledge, given the realities of access and proximity, that Shoreline and/or Woodway are the units of local government most appropriate to provide urban services?

This legal issue is raised by Shoreline and Save Richmond Beach.

Applicable Law

RCW 36.70A.110(3) and (4) provide, in pertinent part:

> (3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas….
> (4) In general, cities are the units of government most appropriate to provide urban governmental services.

Discussion and Analysis

It is well settled that the phased location of urban growth in RCW 36.70A.110(3) is advisory, not mandatory, as indicated by the word "should" rather than "shall."[131] In *Spokane County v. City of Spokane,*[132] the Court of Appeals explained this statutory provision "*recommends* where urban growth should be located and who should provide governmental services to those areas."[133] The Board has indicated growth phasing is an option which is available to

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[131] *Citizens for Responsible Growth, et al v Snohomish County*, CPSGMHB Case No. 03-3-0013, Final Decision and Order (Dec. 8, 2003), at 11 ("RCW 36.70A.110(3) does not impose a mandatory requirement on planning jurisdictions; it provides that urban growth *should*, not *shall*, be located … ").
[132] 148 Wn. App. 120, 130, 197 P.3d 1228 (2009) (emphasis supplied)
[133] See also, *Wold v. City of Poulsbo*, CPSGMHB Case No. 10-3-0005c , Final Decision and Order (Aug. 9, 2010), at 60; *Citizens for Responsible Growth v. Snohomish County*, CPSGMHB Case No. 03-3-0013, Final Decision and Order (Dec. 3, 2003) at 11.

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address the need for infrastructure concurrency, but is not a mandate.[134] Thus urban growth may be located (a) where urban services are already available, (b) where there is already some urban development and necessary urban services will be provided by public or private sources, and (c) in the remaining portions of the urban growth areas.

Similarly, the language of RCW 36.70A.110(4) does not impose a mandate. It provides: "*In general*, cities are the units of government *most appropriate* to provide urban services." Petitioners have cited no authority for asserting the County is required to designate a city to provide urban services as a condition for a comprehensive plan amendment in the urban area.

The Board concludes the Petitioners have not carried their burden of proof in demonstrating a violation of RCW 36.70A.110(3) or (4).[135]

Conclusion

Legal Issue 5 is **dismissed.**

LEGAL ISSUE 6 – GMA Goals

The Prehearing Order sets forth Legal Issue 6 as follows:

> 6. Did the Ordinances fail to be guided by RCW 36.70A.010 and RCW 36.70A.020 (1) [compact urban development], (3) [transportation], (9) [parks], (11) [coordination with neighboring jurisdictions], and (12) [provision of capital facilities and services]? If so, are the ordinances invalid?

These issues are generally raised by all Petitioners in both their *Shoreline III* and *IV* PFRs, except that Woodway raises no challenge concerning Goal 9.

Applicable Law

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[134] *MBA/Camwest III v City of Sammamish,* CPSGMHB Case No. 05-3-0045, Final Decision and Order, (Feb. 21, 2006), at 15.

[135] The Board notes also that RCW 36.70A.110 addresses designation of urban growth areas. The present case involves a change of use in an existing urban area, not a UGA designation.

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- Legislative Findings

RCW 36.70A.010 articulates legislative findings that underpin the GMA and provides, in relevant part:

> The legislature finds that uncoordinated and unplanned growth … pose a threat to the environment, sustainable economic development, and the health, safety and high quality of life enjoyed by residents of this state. *It is in the public interest that* citizens, communities, *local governments*, and the private sector *cooperate and coordinate with one another in comprehensive land use planning*. (Emphasis supplied)

It is well-settled that statements of legislative intent, though codified in the statute, do not create enforceable mandates.[136] While legislative findings for the GMA do not provide a basis for a compliance challenge,[137] they may assist the Board in interpreting and applying the mandates of the statute.[138] Thus, the Board takes note of these legislative findings as it construes in particular Goal 11 and RCW 36.70A.100.

- GMA Planning Goals – RCW 36.70A.020.

RCW 36.70A.020 sets forth the GMA planning goals. Those cited by Petitioners are the following:

> (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
>
> (3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
>
> (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

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[136] See, *Judd v AT&T*, 152 Wn.2d 195, 203 (2004); *Aripa v DSHS*, 91 Wn2d 135, 139 (1978).

[137] *Petso II v City of Edmonds*, CPSGMHB Case No. 09-3-0005, Final Decision and Order (Aug 17, 2009) at 9; *Litowitz, et al, v City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order (Jul. 22, 1996), at 14; *Keesling v King County,* CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005), at 27.

[138] *North Clover Creek v. Pierce County*, CPSGMHB Case No. 10-3-0003c, Final Decision and Order (Aug. 2, 2010), at 8.

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

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

Discussion and Analysis

- Urban Growth and Public Facilities and Services – Goals 1 and 12

The GMA favors compact urban development, but establishes the principal that local government actions which increase urban growth must at the same time ensure the provision of urban services. Thus the first GMA planning goal is:

> Urban growth. Encourage development in urban areas *where adequate public facilities and services exist or can be provided in an efficient manner*.[139]

The definitions in RCW 36.70A.030 indicate the intended public facilities and services:

> (12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.
>
> (13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.
>
> (18) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewers systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

Planning for urban development – whether through UGA expansions or intensification on existing urban lands - requires a 20-year plan to provide adequate urban services.[140] Such

[139] RCW 36.70A.020(1) (emphasis added).

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services are not always provided by the county or city that adopts the plan. The Board has made clear that county plans for urban areas to be served by non-county providers, "should at least cite, reference or otherwise indicate where such locational and financing information may be found that supports the County's UGA designation and GMA duty to ensure that adequate public facilities will be available within the area during the twenty-year planning period."[141]

In *Suquamish II v Kitsap County*,[142] the Board found that Kitsap County's Capital Facilities Element (CFE) was deficient in planning services in the existing UGA, where the County had not yet planned sanitary sewer service for all of its pre-expansion UGA. On reconsideration, the Board entered a determination of invalidity, saying the County's action "cannot be sustained if there is no provision for public facilities and services being adequate and available to support the planned-for development." [143] In Kitsap County, sewer service to the unincorporated County UGA is provided, in some areas by cities, in other areas by sewer districts, and in some areas by a County utility. On remand, the County negotiated with cities and sewer districts to develop and adopt the necessary service plans to support the County's action, and the Board found the plan compliant.[144]

The same principles apply to actions that increase development intensity in an urban area. In *Bothell v. Snohomish County*,[145] the Board invalidated County action redesignating urban

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[140] *Suquamish Tribe, et al v Kitsap County*, CPSGMHB Case No. 07-3-0019c, Final Decision and Order (Aug. 15, 2007), at 20-26; *Fallgatter v City of Sultan*, CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006), at 16; *Hensley v City of Woodinville*, CPSGMHB Case No. 96-3-0031, Final Decision and Order (Feb. 25, 1997), at 9.
[141] *Bremerton et al v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Finding of Noncompliance and Determination of Invalidity (Sep. 8, 1997), at 41.
[142] *Suquamish Tribe, et al v Kitsap County (Suquamish II)*, CPSGMHB Case No. 07-3-0019c, Final Decision and Order (Aug. 15, 2007), at 26 ("The CFE must take into account through its inventory and plan, the urban services needed throughout the UGA, not just on its developing fringe, over the 20-year planning period.") Rev'd on other grounds – *Suquamish Tribe, et al v CPSGMHB*, 156 Wn.App. 743 (2010).
[143] *Suquamish II*, Order on Motion for Reconsideration (Sep. 13, 2007) at 4.
[144] *Suquamish II*, Order Finding Compliance (June 5, 2008).
[145] *Bothell, et al v Snohomish County,* CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007).

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land at higher densities, where adequate public road infrastructure was not available and had not been programmed to serve the site. The Board said:

> The heart of the GMA is the requirement for coordinated and comprehensive planning. Infrastructure must match and support urbanization. The costs of supplying urban services are to be taken into account *at the time* the urban growth boundary is extended or capacity is increased.[146]

The GMA Guidelines explain:

> The obligation to provide urban areas with adequate public facilities is not limited to new urban areas. Counties and cities must include in their capital facilities element a plan to provide adequate public facilities to all urban areas, including those existing areas that are developed, but do not currently have a full range of urban governmental services or services necessary to support urban densities.[147]

In the case before the Board, adequate urban services for Point Wells are not currently available and not clearly planned. The DSEIS for the Point Wells Urban Center identifies serious deficiencies in road and intersection capacity on the one small road that accesses Point Wells, a road within the jurisdiction of the City of Shoreline and for which Shoreline has not programmed the necessary improvements.[148] No transit service is presently provided or planned by transit agencies.[149] The water and sewer districts now serving the industrial uses on the property have not adopted plans for the infrastructure necessary to support a residential population of perhaps over 6000.[150] Police, fire, emergency, trash collection and other service vehicles all face the limitations of the single access road to the site. To support an Urban Center designation at Point Wells, Snohomish County needs to secure commitments from the agencies responsible for the necessary infrastructure and

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[146] *Bothell* at 21.
[147] WAC 365-196-320(1)(e).
[148] See Shoreline III, Index #104, DSEIS Section 3.11 Transportation.
[149] Shoreline III, Index #104, DSEIS, at 3.11-13 to 3.11-16.
[150] Shoreline III, Index #104, DSEIS Sec. 3.12 Public Services, at 3.12-7 to 3.12-9 (water), 3.12-9 to 3.12-11 (sewer). The Board notes BSRE proposes to implement advanced on-site water recycling and efficiency measures that could significantly reduce demands on regional water supply and sewer capacity.

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services; where applicable, service provision and facilities should be incorporated in the long-range plans of the responsible agencies.[151]

Goal 1 encourages urban growth "where adequate facilities exist or can be efficiently provided." Goal 12 aims at ensuring necessary facilities and services are available when new development is ready for occupancy. BSRE projects construction on the first phase residential development at Point Wells may begin in 2016, with build-out through 2029.[152] The Board notes that this is within the GMA's 20-year horizon for coordinated land use and infrastructure planning.

The development regulations enacted by the County for the Point Wells Urban Center do not adopt a sufficient plan for infrastructure and services. Rather, the regulations establish a *process* for developing urban services commitments concurrently with approving project permit applications. Spokane County tested the same 'wait and see' approach to infrastructure mitigation in *Fenske v. Spokane County*,[153] arguing that "traffic impacts will be subsequently reviewed and mitigated during the site-specific land use approval process and will be required to meet traffic concurrency at that later point in time." The Board found:

> By its very nature, capital facilities planning must be done at the PLAN approval stage as opposed to the PROJECT approval stage in order to effectively provide for the necessary lead time and identification of probable funding sources, and also to inform decision makers and the public as they consider the public infrastructure impacts of proposed comprehensive plan amendments.[154]

BSRE asserts that its promises to fund the building of a commuter rail station, a transit center, and an on-site police and fire station – promises contained in its promotional PowerPoint and referenced in correspondence in the record – stand in for the governmental commitment required by the GMA.[155] BSRE and the County assert the facilities and services

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[151] *Suquamish II v Kitsap County*, CPSGMHB Case No. 07-3-0019c, Final Decision and Order (Aug 15, 2007) at 20-26.
[152] Intervenor's Response – Shoreline III, at 22-23.
[153] EWGMHB Case No. 10-1-0010, Final Decision and Order (Sep. 3, 2010), at 7-8.
[154] *Fenske*, at 8 (emphasis in original).
[155] See, e.g., Intervenor's Restatement of Facts, at 6-7, 10, and Shoreline III, Index # 317 "Plan Vision"

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will be available when development is available for occupancy, as set forth in Goal 12. The Board is not persuaded. The Board agrees the compact urban development proposed for Point Wells would be very much in keeping with Goal 1 if urban services could be provided efficiently.[156] But on a record that proposes van pools to a Metro park-and-ride in lieu of high-capacity transit service, Goal 1 is not satisfied. While the Board assumes good faith on the part of the County (and Intervenor), good faith is not a substitute for identifying and providing for needed infrastructure and public services. "Trust us" is not a GMA plan.

The Board finds and concludes that the County's actions were **not guided by Goals 1 and 12.**

- Transportation – Goal 3

Goal 3 reads:

> Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

The Board notes that the language of the transportation goal informs the requirements for internal consistency discussed in Legal Issue 1, as well as the requirement for regional coordination addressed in Legal Issue 4.

In analyzing Legal Issue 1, the Board noted Point Wells' designation as an Urban Center fails to provide "good access to higher frequency transit and urban services" as contemplated in LU 3.A.2. In the *Bothell* case, the Board concluded that urban density not supported by adequate roads or transit thwarted Goal 3:

> GMA Planning Goal 3 calls for "efficient multimodal transportation systems" that are "coordinated with county and city comprehensive plans." By enacting the McNaughton rezones, Snohomish County thwarts this goal because the County comprehensive plan allows more development density than the roads can handle

[156] GMA Goal 1 encourages urban growth "where adequate public facilities and services exist or can be provided in an efficient manner." RCW 36.70A.020(1).

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> or than the TIP is scheduled to provide. Transportation systems are not coordinated with the comprehensive plan.[157]

Point Wells' isolated location makes it a poor candidate for "efficient multi-modal transportation systems." Petitioners' numeric calculations demonstrate the absurdity of relying on van pools, even as an interim solution.[158] Bus transit, ferry or water taxi service, or even commuter rail may eventually be possible but are not requirements in the County plan or regulations. Rather, as in *Bothell*, "the County comprehensive plan allows more development density than the roads can handle or than the TIP is scheduled to provide."[159]

In response, BRSE contends the *Shoreline IV* regulations demonstrate the County was clearly guided by a multimodal transportation goal.[160] Although the County Urban Center policies only require location "on" a regional high capacity transit route, the newly-enacted code provisions require ½ mile walking distance to an existing or planned high-capacity transit station or vanpooling as an [interim][161] option. SCC 30.34A.085 provides:

> **SCC 30.34A.085 Access to Public Transportation**
> Business or residential buildings within an urban center either:
> (1) Shall be constructed within one-half mile of existing or planned stops or stations for high capacity transit routes such as light rail or commuter lines or regional express bus routes or transit corridors that contain multiple bus routes:
> (2) Shall provide for new stops or stations for such high capacity transit routes or transit corridors within one-half mile of any business or residence and coordinate with transit providers to assure use of the new stops or stations; or
> (3) Shall provide a mechanism such as van pools or other similar means of transporting people on a regular schedule in high occupancy vehicles to operational stops or stations for high occupancy transit.

Thus multimodal transportation is not merely encouraged but required, according to BSRE.

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[157] *Bothell, et al v Snohomish County,* CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007), at 22.
[158] Consolidated Prehearing Brief – Shoreline IV, at 7.
[159] *Bothell,* at 22.
[160] Intervenor's Response – Shoreline IV, at 9-10.
[161] In the Board's Order on Dispositive Motions, the Board acknowledged BSRE's assertion that van pools are only intended as an interim measure until transit service is established. Order, at 21-22. However, SCC 30.34A.085 as worded makes van pools an *alternative* to transit service, not merely a temporary measure.

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The Board is not persuaded. Goal 3 calls for "efficient multi-modal transportation." There is little *efficient* or *multi-modal* in the County's proposal to run up to 12,000 new trips a day through a neighborhood two-lane street or to serve the development with an inaccessible commuter rail line and van pools to distant park-and-rides.

Goal 3 calls for systems "based on regional priorities." Considerable evidence in the record here demonstrates that Urban Center development at Point Wells was not based on regional priorities for roads or transit. No facts in the record suggest improved highway access to Point Wells is a regional priority. Neither Community Transit nor King County Metro includes Point Wells in its bus service plans. Sound Transit dropped a potential Point Wells station from its 2025 Plan for commuter rail.[162]

Finally, Goal 3 calls for systems "coordinated with … city comprehensive plans." The record here demonstrates transportation needs for Point Wells are not coordinated with road improvement plans and financing in the impacted municipalities of Shoreline, Woodway, and Edmonds. Indeed, Shoreline argues persuasively that the County's designation of Point Wells as an Urban Center will make it impossible for Shoreline to comply with the GMA transportation and infrastructure requirements. Shoreline's recently-adopted Subarea Plan for Point Wells opposes any development of Point Wells that results in more than 8,250 vehicle trips per day,[163] while the SEIS projects Point Wells build-out could generate 12,860 trips per day.[164] The County's regulations for Point Wells development require construction of an internal road network but contain no requirement for highway improvements to provide access to the new Urban Center. As this access must come through Shoreline, coordination with the City's comprehensive plan is a necessity.

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[162] Shoreline III, Index #14; see generally, Shoreline III, Index #104, Sect. 3.11 Transportation and Transit.
[163] Shoreline III, Index #319, at 266.
[164] Consolidated Prehearing Brief – Shoreline III, at 13, citing DSEIS, at 3.11-26.

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The Board finds and concludes the County's actions were **not guided by Goal 3**. Adoption of the Ordinances does not provide efficient multi-modal transportation based on regional priorities and is not coordinated with city comprehensive plans.

- Parks – Goal 9

Goal 9 reads:

> Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.[165]

Shoreline contends the dense population of Point Wells, with egress only to the south through Shoreline, will place additional demand on parks and recreation facilities unlikely to be provided at Point Wells. Shoreline points out that the parks impact fees levied by Snohomish County under present regulations only fund parks facilities in Snohomish County, which Point Wells residents are less likely to use.[166]

BSRE again asks the Board to rely on its "Plan Vision" PowerPoint[167] indicating its intent with respect to parks.

> Intervenor's Plan Vision portrays a very large wooded area, 2/3 mile public beach and boardwalk, a floating public park on the pier, a daylighted stream, and a public plaza and amphitheater. The on-site parks and open spaces proposed for Point Wells far exceed the norm…[168]

The Board finds the FSEIS addressed the very real need for additional active recreational facilities to serve a large residential population at Point Wells.[169] The FSEIS analysis concluded that demand for passive recreation would have spill-over effects on Richmond

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[165] RCW 36.70A.020(9).
[166] Consolidated Prehearing Brief – Shoreline III, at 22-23; Consolidated Prehearing Brief - Shoreline IV, at 10.
[167] Shoreline III, Index #317.
[168] Intervenor's Response, Shoreline III, at 21.
[169] Shoreline III, Index #169, FSEIS, at 3-46 to 3-48.

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Beach Saltwater Park in Shoreline,[170] and demand for active recreation would be absorbed primarily by City Park in Edmonds.[171] A specific mitigation measure was identified:

> Any development permitted under the Proposed Action that would add more than 500 residents to the Paramount [Point Wells] site shall be required to provide parks and open space on site that allow for active recreational activities. Examples include, but are not limited to ball fields, playgrounds and tennis courts. The proposed recreational facilities shall be approved by the Snohomish County Parks Department prior to issuance of a construction permit.[172]

The Board also finds the development regulations adopted for the Point Wells Urban Center require set-aside of land for parks and open space, an integrated open space network, and public access to the shoreline.[173] In light of these code requirements, the Board concludes the County was guided by Goal 9.

The Board finds and concludes Petitioners **have not carried their burden** in demonstrating the County's actions were not guided by Goal 9.

- <u>Interjurisdictional Coordination – Goal 11</u>

The GMA Goal 11 language – "ensure coordination between communities and jurisdictions to reconcile conflicts" – underscores the emphasis on intergovernmental coordination that appears in other provisions of the GMA, including the RCW 36.70A.100 mandate discussed in Legal Issue 4 above.[174] For example, the legislative findings of RCW 36.70A.010 stress

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[170] Shoreline III, Index #169, at 3-48.
[171] Demand for active recreational facilities in Edmonds was the subject of the Board's decision in *Petso II v City of Edmonds*, CPSGMHB Case No. 09-3-0005, Final Decision and Order (Aug 17, 2009).
[172] Shoreline III, Index #169, FSEIS at 3-48.
[173] The UC Code requires open space set-aside of 150 square feet per residential unit and 2% of floor area for non-residential development. Fifty per cent of open space must be open to the public for active recreation, with 25% in one tract. All on-site recreational amenities must be available in the first phase. The Code requires an integrated open space network and public access to the shoreline.SCC 30.34A.070(1) – (3), .190, .180(2)(c)(vii).
[174] E.g., RCW 36.70A.010 "It is in the public interest that … local governments cooperate and coordinate with one another in land use planning"; .100 (comprehensive plans "shall be coordinated with and consistent with" neighboring city or county plans); .210(1) (requiring CPPs to provide a "framework [to] ensure that city and county comprehensive plans are consistent").

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the importance of coordinated planning, stating "citizens, communities, local governments and the private sector [should] cooperate and coordinate" in land use planning.

Petitioners argue forcefully that the County has not been guided by the goal of "ensuring coordination" or an effort to "reconcile conflict." Rather, they assert the County actions "have created and perpetuated a high rank order conflict" between the County and the two municipalities impacted by the Point Wells redevelopment.[175]

The Board notes that Goal 11 is primarily concerned with the planning process, calling for citizen participation and interjurisdictional coordination. While the Goal uses the word "encourage" for citizen participation – "*encourage* the involvement of citizens in the planning process" - the word "ensure" gives greater emphasis to the coordination clause of the Goal – "*ensure* coordination between communities and jurisdictions to reconcile conflicts." However, Petitioners' attempt to turn "ensure" into a requirement that all interjurisdictional conflicts be successfully resolved is not supported by any authority. Indeed, giving individual jurisdictions and communities a veto power over adjacent zoning is contrary to the presumption of validity that the statute grants to local GMA enactments.

Rather, the Board reads the second half of Goal 11 as requiring a planning city or county to make active outreach to affected communities and jurisdictions in the interest of coordination and conflict-resolution.[176] The County's process in the case before us clearly allowed communities such as the Richmond Beach neighborhood and the adjacent municipalities of Shoreline and Woodway to provide input and seek solutions.

Further, in the development regulations adopted for Point Wells, the County provides additional opportunities for Shoreline and/or Woodway to shape the Point Wells

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[175] Consolidated Prehearing Brief – Shoreline III, at 23-24; Consolidated Prehearing Brief – Shoreline IV, at 10-16.

[176] See *Kap II v. City of Redmond*, CPSGMHB Case No. 06-3-0026, Final Decision and Order (Apr. 5, 2007), at 11 (year-long record of emails between city and county concerning the disputed transportation plan established the record of coordination required by Goal 11).

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development, through negotiating a municipal agreement or through comments before the design review board or hearing examiner procedure.[177] Petitioners complain that these processes do not guarantee the municipality's preferences will prevail, but again, they cite no authority for their interpretation of Goal 11.

The Board therefore finds and concludes Petitioners **have not carried their burden** in demonstrating the County's actions were not guided by Goal 11.

Conclusion

The Board concludes that Petitioners have carried their burden in demonstrating the County's actions were not guided by GMA Goals 1, 3 and 12, but have not carried their burden with respect to Goals 9 and 11. However, the GMA Goals are provided for guidance in the enactment of comprehensive plans and development regulations.[178] Thus, disregard of a Planning Goal is generally not sufficient basis for a ruling of non-compliance unless a related GMA requirement has been violated.[179]

Legal Issue 6 challenges both the *Shoreline III* and *Shoreline IV* ordinances. As to *Shoreline III*, the Board has determined the County failed to comply with RCW 36.70A.070 (preamble) and RCW 36.70A.100 by enacting an Urban Center designation lacking plans for efficient highway or transit access, and inconsistent with capital planning of a neighbor municipality. The Board finds and concludes that the County's adoption of the *Shoreline III* ordinances **was not guided by** Goals 1, 3, and12. The Board is left with a firm and definite conviction that a mistake has been made.[180]

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[177] SCC 30.34A.180; SCC 30.75.
[178] RCW 36.70A.020 (preamble).
[179] *DOE/CTED v City of Kent*, CPSGMHB Case No. 05-3-0034, Final Decision and Order (Apr. 19, 2006), at 52-53; *KCRP et al v Kitsap County*, CPSGMHB Case No. 00-3-0019c, Final Decision and Order (May 19, 2001), at 10; *Children's Alliance, et al v City of Bellevue*, CPSGMHB Case No. 96-03-0023, Final Decision and Order (Nov. 13, 1996), at 9.
[180] The Board acknowledges the BSRE vision for Point Wells meets other GMA priorities and has the potential to fulfill Goals 1, 3, and 12 if the County brings the necessary infrastructure and services plans into compliance as set forth in this Order.

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As to the *Shoreline IV* ordinances, all Petitioners' challenges concerning GMA requirements have been dismissed or abandoned.[181] In the absence of any proof that the County failed to comply with mandatory provisions of the statute, the Board **dismisses** the portion of Legal Issue 6 alleging the County's adoption of the *Shoreline IV* ordinances was not guided by GMA Goals.

Finally, Petitioners have failed to carry their burden of demonstrating failure to be guided by Goals 9 and 11. These portions of Legal Issue 6 are **dismissed**.

LEGAL ISSUE 7

The Prehearing Order sets forth Legal Issue 7 as follows:

> 7. Did the Ordinances fail to be guided by RCW 36.70A.020(11) and fail to comply with RCW 36.70A.140 and RCW 36.70A.035 where Snohomish County introduced and adopted new substantive amendments to the Ordinances at the end of the public comment period or after the public comment period had closed, without providing further public notice or an opportunity to provide comment? If so, are the ordinances invalid?

This issue was raised by Save Richmond Beach and was argued on cross-motions for a dispositive ruling. In its Order on Motions, the Board **dismissed** Legal Issue 7.[182]

LEGAL ISSUE 8

Legal Issues 8, 9 and 10 are SEPA challenges. Shoreline and Save Richmond Beach raised these issues, but Save Richmond Beach's issues were dismissed on motions for lack of standing to raise SEPA claims.[183] The arguments in the consolidated petitioners' briefing for Issues 8 *(Shoreline III)* and 10 *(Shoreline IV)* are therefore only considered on behalf of Shoreline. Sub-issue 8(4) – greenhouse gas mitigation – which was raised only by Save Richmond Beach, is stricken.

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[181] These include Legal Issues 1, 3, and 4.
[182] Order on Dispositive Motions, at 20.
[183] Order on Dispositive Motions, at 8.

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The Prehearing Order sets forth Legal Issue 8 as follows:

> 8. Did Snohomish County fail to comply with SEPA where the SEIS prepared for the project: 1) considered only the "do nothing" and high-density "Urban Center" alternatives; 2) failed to identify the specific units of local government that would provide essential services to an Urban Center at Point Wells; 3) failed to address the significant probable adverse impacts and required mitigation for existing essential services in Shoreline, including emergency services, transportation, and parks; ~~and 4) failed to address how greenhouse gas emissions and climate change impacts from an Urban Center at Point Wells would be mitigated?~~

Discussion and Analysis

The adequacy of an EIS, the Washington Supreme Court has held, is tested under the rule of reason:

> In order for an EIS to be adequate under this rule, the EIS must present decision makers with a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" of the agency's decision. *Cheney,* 87 Wn.2d at 344-45 (quoting *Trout Unlimited v. Morton,* 509 F.2d 1276, 1283 (9th Cir. 1974)). The rule of reason is "in large part a broad, flexible cost-effectiveness standard", in which the adequacy of an EIS is best determined "on a case-by-case basis guided by all of the policy and factual considerations reasonably related to SEPA's terse directives." *R. Settle* § 14(a)(i), at 156, 155.[184]

In addition, the lead agency's decision is entitled to substantial weight.[185] In *Better Brinnon Coalition v Jefferson County*,[186] the Board said:

> In any action involving an attack on the adequacy of a "detailed statement", the decision of the governmental agency is to be given substantial weight. RCW 43.21C.090. Therefore, we accord the County's decision substantial weight as we examine the adequacy of the County's environmental review.

- SEPA Alternatives

Snohomish County issued a DSEIS[187] in February 2009 to analyze the proposal to designate Point Wells as an Urban Center and rezone the property to Planned Community

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[184] *Klickitat County Citizens v. Klickitat County,* 122 Wn.2d 619, 627, 866 P.2d 1256 (1993).
[185] *Barrie v Kitsap County*, 97 Wn.2d, 232, 236 (1982); *Klickitat County Citizens*, 122 Wn.2d 619, 633.
[186] WWGMHB Case No. 03-2-0007, Final Decision and Order (Aug. 22, 2003), at 29.
[187] Shoreline III, Index #104.

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Business. Shoreline, Woodway, the Port of Edmonds, various transit agencies and other urban service providers, along with citizens, provided comments. The FSEIS,[188] issued June 2009, responded to comments but deferred some analysis of impacts and mitigation to the permitting stage.[189]

The County's SEIS considered only two alternatives:

(1) The Proposed Action, amending the County Comprehensive Plan FLUM and zoning to designate Point Wells an Urban Center and changing the zoning from Heavy Industrial to Planned Business Community; and

(2) The No Action Alternative, retaining comprehensive plan designation of Urban Industrial and zoning designation of Heavy Industrial.

At the outset, the County argues that Shoreline did not raise the issue of alternatives during the DSEIS scoping process and so is precluded from raising this objection now.[190] WAC 197-11-545(1) provides:

> If a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special expertise. Any consulted agency that fails to submit substantive information to the lead agency in response to a draft EIS is thereafter barred from alleging any defect in the lead agency's compliance with Part Four of these rules.

Here Shoreline submitted written comments to the scoping notice within the time allowed (see WAC 197-11-550(1)). Shoreline also provided substantive response to the draft EIS, including in its DSEIS comments a request for analysis of "scaled-back" alternatives.[191] The Board concludes Shoreline's objection is not barred.

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[188] Shoreline III, Index # 169.
[189] Shoreline III, Index #169, FSEIS Chap. 4: DSEIS Comments: Responses; see e.g., at 3-32, noting analysis of impacts to occur at project development level.
[190] County Response Brief – Shoreline III, at 23.
[191] Shoreline III, Index #110, at 3; Index #131, at 4; Index #116.

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An EIS is required to contain analysis of alternatives to the proposed action.[192] The SEPA Rules define reasonable alternatives:[193]

> "Reasonable alternative" means an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly or indirectly through requirement of mitigation measures.

The Rules clarify:

> The word 'reasonable' is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.[194]

Thus an agency is not required to explore every plausible alternative.[195] The rules simply require that "the proposal (or preferred alternative)" be compared with "alternative courses [plural] of action."[196] One of these alternatives must be the "no-action" alternative: "The "no-action" alternative shall be evaluated and compared to other alternatives [plural]."[197]

The courts have stressed the need for a reasonably detailed analysis of a reasonable number and range of alternatives: the discussion of alternatives "is of major importance, because it provides for a reasoned decision among alternatives having differing environmental impacts."[198] The EIS "must provide sufficient information to allow officials to make a reasoned choice among alternatives."[199]

The SEPA Rules indicate preparation of the EIS for a nonproject action, as is the case here, gives the lead agency more flexibility.[200] The reason for more flexible SEPA review of

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[192] RCW 43.21C.030(c)(iii); WAC 197-11-440(5).
[193] WAC 197-11-786
[194] WAC 197-11-440(5)(b)(i)
[195] *SWAP v. Okanogan County,* 66 Wn.App. 539, 506 (1992) (holding SEPA does not require that every remote and speculative alternative to an action be included in the EIS); *Weyerhaeuser v. Pierce County,* 124 Wn.2d 26, 41 (1994)(not all potential alternatives must be examined).
[196] WAC 197-11-440(5)(a).
[197] WAC 197-11-440(5)(b)(ii).
[198] *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 42, 873 P.2d 498 (1994).
[199] *Kiewit Construction Grp v. Clark County*, 83 Wn.App. 133, 139-140, 920 P.2d 1207 (1996) (citing *Klickitat County Citizens*, 122 Wn.2d at 633, and *SWAP v Okanogan County*, 66 Wn.App. 439, 442 (1992).
[200] WAC 197-11-442.

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nonproject actions is "because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals."[201] In the present case, the County's nonproject action involves just 61 acres in a confined area. The Board finds there is substantial and detailed information available relating to both the natural and built environment for Point Wells and the impacts of potential redevelopment. Thus, though this is a nonproject action, the environmental analysis should still provide decision makers with the basis for "a reasoned decision among alternatives having different environmental impacts."[202]

Indeed, analysis of alternatives is central in nonproject SEPA review. The Rules state:

> The lead agency *shall discuss* impacts and *alternatives* [plural] in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. *Alternatives should be emphasized.*[203]

The Rules clarify:

> The EIS's discussion of alternatives for a comprehensive plan, community plan, or other areawide zoning or for shoreline or land use plans shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.[204]

Shoreline asserts that the County had other land use designations and combinations of land use designations it could have considered for the Point Wells redevelopment that would have yielded less density, generated fewer vehicle trips, and imposed lesser strain on public facilities and services.[205] The Board agrees. The record provided in this case contains a

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[201] WAC 197-11-442(1).
[202] *Brinnon Group v. Jefferson County*, 159 Wn.App 446, 481 (2011), citing *Weyerhaeuser v. Pierce County*, 124 Wn.2d at 42.
[203] WAC 197-11-442(2) (emphasis supplied).
[204] WAC 197-11-442(4).
[205] Consolidated Prehearing Brief – Shoreline III, at 29, citing Shoreline DSEIS Comment, Shoreline III, Index #218, p. 3.

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number of plans which, though not perhaps formally proposed, might have formed the basis for one or more EIS alternatives resulting in lower environmental costs.[206]

At the Hearing on the Merits, the County orally agreed that the pivotal public objective of the Point Wells proposal is rehabilitation and reuse of a contaminated and obsolete industrial site. Accommodating growth to meet GMA targets is not the primary driver, so alternative Urban Center locations need not be considered. [207] However, limiting the analysis only to (a) the land use and zoning requested by the Intervenor and (b) the no-action alternative, without considering any alternative scenarios, deprived County officials of the information necessary to determine whether a reasonable change in use of Point Wells could be achieved with less environmental impact.

In *Brinnon Group v Jefferson County*,[208] affirming a Western Board decision, the Court of Appeals approved the SEPA review for a master planned resort. The court ruled the three alternatives gave County Commissioners an analysis of differing sewer, stormwater and transportation requirements generated under various scenarios, thus providing a range of choices. The Court did not require an intermediate or off-site alternative, but one which met the objectives of the resort proposal while offering County Commissioners information to allow choices based on differing impacts. Relying on the Supreme Court's analysis in *King County,*[209] the *Brinnon* court explained:

> Brinnon Group suggests that *King County* articulates a rule that, for an alternative to be 'reasonable' under SEPA, it must have "intermediary impacts" between the proposal and the no action alternative. While the *King County* court indeed described the one-unit-per-acre alternative as "presenting intermediary

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[206] For example, a Paramount of Washington 2006 proposal to develop 1200 – 1400 housing units, a marina complex, with access to transit via van pools, Shoreline III, Index #16; Woodway's Point Wells comprehensive plan alternatives, DSEIS, Appendix A. Docket XIII Scoping Summary; Woodway Mayor Nichols letter re: scoping (undated), Shoreline III, Index #35; Woodway's 11/4/08 proposal for an Urban Village development, Shoreline III, Index #77.

[207] Compare, *Brinnon Grp. v. Jefferson County,* 159 Wn.App. 446 (2011); *Davidson Serles v City of Kirkland*, GMHB Case No. 09-3-0007c, Finding of Compliance (Feb. 2, 2011), at 8.

[208] *Brinnon Group,* 159 Wn. App. 446.

[209] *King County v CPSGMHB, 138 Wn.2d 161 (1999).*

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> impacts" between the proposal and the no action alternative, the court approved the alternative because it had "fewer impacts" in some areas.[210]

In the Board's recent *Davidson Serles* decision,[211] the Board approved the city's revised SEIS evaluating a large commercial project in downtown Kirkland, finding the analysis gave the City Council specific information about which intersections would need improvements if the requested development were allocated in different configurations.

By contrast, the "bookend" analysis of no-action and proposed-action in the present case fails to provide any information to allow decisions that might "approximate the proposal's objectives at a lower environmental cost."[212] For example, Shoreline points out that the Proposed Action generates 12,860 vehicle trips per day on Richmond Beach Drive, while Shoreline's Comprehensive Plan Policy PW-12 states:[213]

> The maximum daily traffic that the City should permit emanating from or entering into Point Wells may not exceed 8,250 vehicle trips per day.

The FSEIS does not analyze any alternatives that would inform the County Council of the intensity of development that would generate traffic at this reduced level. The County Council has no information about thresholds at which a reduced intensity or different balancing of land uses would require fewer intersection improvements or impose other lesser impacts.

At the Hearing on the Merits, BSRE stated that alternatives will be enthusiastically considered during the *permitting* process. BSRE suggests strategies such as the mix of senior housing and the provision of transit service might result in lesser environmental burden. However, land use designations – not just permit decisions - need to be informed by a reasonable analysis of alternatives. To a large extent, density allowances are already

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[210] 159 Wn. App. at 482, fn. 10 (citations omitted).
[211] GMHB Case No. 09-3-0007c, Finding of Compliance, (Feb. 2, 2011), at 8.
[212] WAC 197-11-786.
[213] Shoreline III, Index 319.

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set with the Urban Center designation. As the Western Board pointed out in *Better Brinnon Coalition v. Jefferson County*:[214]

> Simply providing, as Jefferson County has, that any impacts will be addressed on a permit basis, fails to assess the cumulative impacts and to fully inform the decision makers of the potential consequences of the designations challenged here.

The Board concludes Ordinances No 09-038 and 09-051 were adopted in violation of RCW 43.21C.030(c)(iii) and do not comply with the requirements of SEPA for review of reasonable alternatives.

- <u>Identification of Responsible Local Governments</u>

Shoreline alleges the FSEIS is non-compliant because it "failed to identify the specific units of local government that would provide essential services to an Urban Center at Point Wells."[215] SEPA requires analysis of impacts on both the natural and built environment:

> Discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire, and police protection, that may result from a proposal.[216]

The Board finds the DSEIS and FSEIS generally identify non-County agencies that might be impacted by the proposal or might provide particular urban services.[217] With respect to a non-project action, the SEPA Rules require:

> The EIS should identify subsequent actions that would be undertaken by other agencies as a result of the nonproject proposal, such as transportation and utility systems.[218]

The Board does not read this as a mandate to choose each service provider, and Shoreline provides no authority for such a requirement.

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[214] WWGMHB Case No. 03-2-0007, Amended FDO (Nov. 3, 2003).
[215] Consolidated Prehearing Brief – Shoreline III, at 30; Consolidated Prehearing Brief, Shoreline IV, at 18.
[216] WAC 197-11-440(6)(e).
[217] Shoreline III, Index # 104, DSEIS; Index #169, FSEIS, Chapters 3.11 Transportation and 3.12 Public Services. The Board notes relevant agencies are included in the distribution lists DSEIS Chapter 4 and FSEIS Chapter 5.
[218] WAC 197-11-442(3).

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The Board concludes Shoreline has not carried its burden in proving that there is a SEPA duty to identify the responsible governmental unit in each case.[219]

- Required Mitigation

Shoreline contends the FSEIS failed to identify and mitigate impacts to Shoreline's parks, emergency services, and transportation facilities.[220] The City points out that all access to Point Wells is through Shoreline via Richmond Beach Drive. This means Point Wells residents are most likely to use Shoreline libraries, recreation facilities, schools, roads and other public services. Shoreline is reasonably concerned that Urban Center development at Point Wells will reduce its ability as a city to provide necessary services, not just to Point Wells, but in its own service territory.

WAC 197-11-440(6)(a) provides the requirement for EIS analysis of mitigation, stating the EIS shall "discuss reasonable mitigation measures that would significantly mitigate [the significant] impacts." The EIS shall:

> Clearly indicate those mitigation measures … if any, that could be implemented or might be required, as well as those, if any, that agencies or applicants are committed to implement.[221]

Impacts to be analyzed and mitigated include the built environment:

> Discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire and police protection, that may result from a proposal.[222]

Shoreline contends that the FSEIS fails to identify and require the necessary mitigation for the Point Wells Urban Center designation. [223]

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[219] SEPA differs in this respect from the GMA. The GMA requires that expanded or intensified urban land use designations be accompanied by adopted plans for provision of urban services, either in the county or city's plan or by reference to plans of the agency providing the service. RCW 36.70A.070(3), (4) and (6), requiring capital facilities, utilities and transportation plans consistent with land use plans.
[220] Consolidated Prehearing Brief – Shoreline III, at 31-34; Consolidated Prehearing Brief – Shoreline IV, at 19-20.
[221] WAC 197-11-440(6)(c)(iii).
[222] WAC 197-11-440(6)(e).
[223] Consolidated Prehearing Brief – Shoreline III at 30, citing WAC 197-11-440(6)(a) and (e).

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- Parks

The FSEIS concludes Urban Center development at Point Wells will increase demand for parks and recreational facilities, and will impact municipal park usage in Shoreline and Edmonds.[224] In mitigation, the FSEIS requires any permitted development to "provide parks and open space amenities on site that allow for active recreational activities."[225] Snohomish County Parks Department is identified as the agency responsible for approving such facilities "prior to issuance of a construction permit" for any development that would add more than 500 residents.[226] The Board's discussion of GMA Goal 9, above, describes how these requirements are incorporated in the Urban Center development regulations.[227] The Board finds and concludes the County's SEPA review (a) addressed the impacts of the proposal on parks and recreational facilities, including Shoreline's parks, and (b) identified mitigation measures to be implemented prior to any development permit being issued.

Shoreline further argues it should share in parks impact fees collected by the County from Point Wells. While the Board appreciates the logic of Shoreline's argument, the Board does not find that SEPA requires the particular mitigation requested by the City.

- Police, Fire and Emergency Services

The DSEIS identifies the need for police, fire and emergency medical services located to provide quick response time to the additional population of Point Wells.[228] As mitigation, the FSEIS indicates agreements should be entered into with designated agencies prior to issuance of future development permits.[229] For police service, where Urban Center development would result in "a sharp increase in demand for police protection," BSRE is required to provide a commercial storefront for use by Snohomish County Sheriff's

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[224] Shoreline III, Index #169, at 3-46 to 3-48; see, Shoreline III Index 104, DSEIS at 3.12-3 to 3.12-5.
[225] Shoreline III, Index #169, at 3-48.
[226] Shoreline III, Index #169, at 3-48.
[227] See Legal Issue 6, supra.
[228] Shoreline III, Index #169, DSEIS, at 3.12-1 to 3.12-3.
[229] Shoreline III, Index #169, FSEIS, 3-45 and 3-46; FSEIS 1-13 to 1-14.

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Department deputies.[230] For fire and emergency service, BSRE must provide documentation that identifies the municipality or fire district responsible for providing services at the site, prior to issuance of construction permits.[231] Alternatively, the County may coordinate with Edmonds Fire Department, Shoreline Fire Department, and/or Snohomish County Fire District 1 to implement a mutual assistance agreement to provide first response service to Point Wells.[232] The FSEIS indicates fire code enforcement may be delegated by the County to the fire authority to which the site is assigned for fire protection purposes.[233]

The Board concludes the County's SEPA review (a) addressed the lack of police, fire and emergency services to the site and (b) identified mitigation measures to be implemented prior to any development permit being issued. The Board finds nothing in the FSEIS suggesting that public safety services in the City of Shoreline itself would be degraded as a result of Point Wells development, so long as the new development is adequately served by other measures.

- Transportation

The Point Wells environmental review identifies impacts to off-site transportation infrastructure as the most compelling SEPA challenge. The DSEIS and FSEIS analyze a series of road segments and intersections in Shoreline, Woodway and Edmonds, measure how they would be impacted, and identify mitigation measures – restriping, turn lanes, signalization, etc.[234] The FSEIS defers specific mitigation to subsequent project-level analysis.[235] In the subsequent development regulation amendments, no mitigation

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[230] Shoreline III, Index #169, FSEIS, at 1-12.
[231] Shoreline III, Index #169, FSEIS, at 3-45.
[232] Shoreline III, Index #169, FSEIS, at 3-45.
[233] Shoreline III, Index #169, FSEIS, at 3-46.
[234] Shoreline III, Index #104, DSEIS, Section 3.11; Index #169, FSEIS Section 3.11.
[235] Shoreline III, Index #169, FSEIS Section 3.11 at 3-23 to 3-33, 3-40.

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measures for off-site transportation impacts are required. The County and BSRE assert that mitigation measures will be imposed as project phases are applied for and approved.[236] Shoreline contends the FSEIS was inadequate because mitigation strategies were not provided.[237] Shoreline relies on *Better Brinnon Coalition v. Jefferson County*,[238] where the Western Board observed that a cursory analysis of impacts, along with postponing further environmental review until the permitting phase, leads to "dangerous incrementalism" where environmental issues are never really addressed. Acknowledging the flexibility allowed in SEPA review of non-project actions, the *Better Brinnon* Board warned that deferral of analysis to the permit process was not a proper use of that flexibility.[239]

Better Brinnon is distinguishable. In *Better Brinnon*, the EIS failed to include any analysis of fish and wildlife habitat, endangered species, water management, and other environmental issues despite comment and requests from WDFW and area Tribes. Here, by contrast, the FSEIS contains extensive analysis of the off-site transportation impacts of concern to Shoreline. For "capacity mitigation," the FSEIS identifies roadway improvement projects at 13 intersections and along 3 roadway segments, including signalization, road widening, and turn lanes.[240] All but three of the projects are in the City of Shoreline. The FSEIS indicates additional "safety mitigation measures" might also be required, such as bulb-outs, speed humps and other traffic calming devices.[241] Planning-level costs for all identified improvements were estimated at $24 million.[242]

The FSEIS states, "as this is a programmatic assessment, [the mitigation measures] provide a conservative order-of-magnitude estimate" of needed mitigation and "do not represent

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[236] County Response – Shoreline III, at 22, 28; Intervenor's Response – Shoreline III, at 24.
[237] Consolidated Prehearing Brief -Shoreline III, at 30.
[238] WWGMHB Case No. 03-2-0007, Final Decision and Order (Aug. 22, 2003), at 30 (quoting the hearing examiner's warning concerning a "dangerous incrementalism").
[239] *Better Brinnon,* at 27, (citing *Butler v. Lewis County*, WWGMHB No. 99-2-0027c, Final Decision and Order (June 30, 2000).
[240] Shoreline III, Index #169, FSEIS, at 3-24, 3-25.
[241] Shoreline III, Index #169, FSEIS, at 3-23.
[242] Shoreline III, Index #169, FSEIS, at 3-33 (includes no-action alternative costs).

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commitments by the affected jurisdictions or by the applicant."[243] Project application indicating actual proposed development levels and phasing would trigger more detailed analysis, including the necessary commitments to implement the identified improvements.[244]

While the SEPA analysis defers specific mitigation requirements to the project-permit process, this appears to the Board to be consistent with the WAC rule that the EIS indicate mitigation measures "that could be implemented or might be required."[245] Giving the County's decision substantial weight, as we must, the Board finds the FSEIS "discuss[ion] of reasonable mitigation measures that would significantly mitigate [transportation] impacts" satisfies the requirements of WAC 197-11-440(6).

Conclusion

The Board finds and concludes the FSEIS is legally inadequate for failure to comply with RCW 43.21C.030(c)(iii). The Board remands the SEPA documents for identification and analysis of reasonable alternatives.

The Board finds the Petitioner failed to carry its burden of demonstrating the FSEIS was non-compliant with the SEPA requirement to identify and discuss reasonable mitigation measures. Legal Issue 8 sections (2) and (3) are dismissed.

LEGAL ISSUE 9

The Prehearing Order sets forth Legal Issue 9 as follows:

> 9. [SHORELINE IV] Was the County's SEPA review process inconsistent with its Comprehensive Plan policies and in violation of RCW 36.70A.140, .040(4) and .120 in that the County adopted a SEPA review process for the Urban Center zoning district for Point Wells without a non-project EIS, an action inconsistent with and failing to implement LU Policy 5.B.12 and in violation of the early and continuous public participation contemplated by requiring the EIS as a planning tool?

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[243] Shoreline III, Index #169, FSEIS, at 3-23.
[244] Shoreline III, Index #169, FSEIS, at 3-24.
[245] WAC 197-11-440(6)(c)(iii).

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This issue was raised in the *Shoreline IV* PFR of Shoreline but abandoned in its pre-hearing brief.[246] Accordingly, Legal Issue 9 is **dismissed.**

LEGAL ISSUE 10

The Prehearing Order sets forth Legal Issue 10 as follows:

> 10. **[SHORELINE IV]** Did the County fail to comply with SEPA by issuing a DNS that 1) failed to identify the specific units of local government that would provide parks, police, fire and emergency services to an Urban Center at Point Wells; and 2) failed to address probable significant adverse impacts requiring an EIS under RCW 43.21C.030(2)(c) (including inadequate police, fire and emergency medical response to support projected growth, impacts to parks in Shoreline, and implementation of transportation projects in Shoreline to mitigate projected growth without interlocal agreements or development agreements for such projects), and the impacts are different than those addressed in the 2005 GMA Comprehensive Plan Update EIS or the 2009 SEIS for Point Wells?

This issue is raised by the City of Shoreline and challenges the adequacy of environmental review for the *Shoreline IV* ordinances, in particular, the County's issuance of a DNS and failure to provide addenda on certain matters.

Discussion and Analysis

On April 16, 2009, the County issued a DNS for the *Shoreline IV* Ordinances. The DNS was based on the County staff conclusion that the Point Wells rezone and development regulation amendments did not have a significant adverse impact on the environment requiring an EIS. The County reasoned that the FSEIS on the comprehensive plan and FLUM amendments adequately assessed impacts and identified general mitigation options, and that further detailed impacts and mitigation would be determined through project permit review.

Here the Board has ruled the FSEIS is inadequate for failure to consider reasonable alternatives. A DNS based on an inadequate FSEIS is insufficient and does not comply with SEPA. The Board need not address the parties' additional arguments concerning deferral of

[246] Consolidated Prehearing Brief - Shoreline IV, at 18.

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mitigation to the project permit process. However, in the interest of resolving all issues,[247] the Board addresses Shoreline's contentions as to EIS addenda.

- Addenda for New Information or Substantial Changes

Shoreline further contends the County's DNS failed to assess new information or substantial changes to the Point Wells proposal and regulations.[248] Shoreline asserts that four changes required additional analysis and mitigation: new floor area ratio and densities, new information from Shoreline's 2009 traffic and safety analysis, the van pool option to meet transit access requirements, and lengthening the transit location requirement from ¼ mile to ½ mile.

The SEPA Rules provide:[249]

> For DNSs and EISs, preparation of a new threshold determination or supplemental EIS is required if there are:
> (i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts … or
> (ii) New information indicating a proposal's significant adverse environmental impacts.

The requirement may be satisfied in some instances by "[a]n addendum that adds analyses or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document."[250]

In the present case, the County issued four addenda to the DNS:

- Addendum 1 (Jul. 14, 2009) – Six amendments proposed by the County Executive[251]
- Addendum 2 (Sep. 15, 2009) – Council amendments, including FAR provisions, role of cities in project review, and change from Type I to Type II review[252]
- Addendum 3 (Nov. 13, 2009) – Adding two named mobile home parks[253]

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[247] See *Suquamish Tribe v CPSGMHB*, 156 Wn.App. 743 (2010).
[248] Consolidate Prehearing Brief – Shoreline IV, at 24-26.
[249] WAC 197-11-600(3)(b).
[250] WAC 197-11-600(4)(c).
[251] Shoreline IV, Index 28.
[252] Shoreline IV, Index 155.

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- Addendum 4 (Apr. 8, 2010) - Adding 14 additional amendments, including FAR provisions and recommendations from the Urban Land Institute[254]

- Floor area ratio and density increases.

Shoreline states the FAR maximums were increased in the adopted development regulations, allowing for significantly more density than had been assumed and analyzed in the DSEIS. The Board disagrees. In fact, the proposed ordinance which formed the basis for the DSEIS analysis allowed higher FARs[255] than were eventually adopted in Ordinance 09-079.[256] The tables are provided for comparison as Exhibit B to this Order. They do not indicate the FAR amendment was likely to have significant environmental impact and do not require an addendum to the DNS.

- Shoreline's traffic study

With due notice to the County, Shoreline undertook its own traffic study following issuance of the FSEIS. Shoreline sent its Point Wells Traffic and Safety Analysis to the County on September 30, 2009.[257] Shoreline's analysis detailed the impacts to levels of service on Shoreline streets and intersections from build-out of Point Wells. The study identified required roadway and intersection improvements at a cost of $33.4 million.[258] Shoreline argues an addendum is required, at minimum, to assess this new information and require necessary mitigation of impacts.[259]

BSRE critiques the Shoreline calculations:

> Apart from the inaccurate assumption as to project density,[260] Shoreline's analysis fails to consider 1) the type and mix of unit types (senior and live/work

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[253] Shoreline IV, Index 159.
[254] Shoreline IV, Index 161. The Board notes not all of the proposed amendments were adopted.
[255] Shoreline IV, Index 71, p. 50.
[256] SCC 30.34A.030, Table 30.34A.030(1).
[257] Shoreline IV, Index 180.
[258] Shoreline IV, Index 180; Shoreline III, Index 218.
[259] Consolidated Prehearing Brief – Shoreline IV, at 25.
[260] BSRE characterizes the Point Wells build-out of 3500 units as an "imaginary hypothetical." Intervenor's Restatement of Facts, at 11; Intervenor's Response – Shoreline IV, at 15.

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units generate significantly fewer trips); 2) reductions resulting from enhanced transit availability, both bus and commuter rail; and 3) internal capture from the provision of on-site grocery store, medical and dental offices and the like.[261]

The Board concurs with Shoreline. Not every third-party "study" requires reanalysis by the lead agency under SEPA. However, on the facts of this case, where the infrastructure at issue is within Shoreline's jurisdiction and best known to its transportation staff, the County Council was entitled to assessment of the Shoreline study in order to inform its decision concerning the Point Wells development regulations.

- Van pool option and half-mile transit location.

Shoreline argues that an addendum or supplemental EIS was required to assess impacts of the Council's last-minute amendments to the transit access regulation introduced and passed after public comment was closed.[262] As indicated in the marked text, the adopted amendments to SCC 30.34A.085 increased required distance to transit stops and allowed van pools as a transit option.

> **SCC 30.34A.085 Access to Public Transportation**
> Business or residential buildings within an urban center either:
> (1) Shall be constructed within ~~one-quarter~~ one-half mile of existing or planned stops or stations for high capacity transit routes such as light rail or commuter lines or regional express bus routes or transit corridors that contain multiple bus routes:
> (2) Shall provide for new stops or stations for such high capacity transit routes or transit corridors within ~~one-quarter~~ one-half mile of any business or residence and coordinate with transit providers to assure use of the new stops or stations; or
> (3) Shall provide a mechanism such as van pools or other similar means of transporting people on a regular schedule in high occupancy vehicles to operational stops or stations for high occupancy transit.

Petitioners have provided a preliminary analysis demonstrating that van pool service cannot transport sufficient numbers of people to prevent traffic congestion that will decrease levels of service between Point Wells and the high-capacity transit corridors on SR 99 and I-5.

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[261] Intervenor's Restatement of Facts, at 9.
[262] Consolidated Prehearing Brief – Shoreline IV, at 26-27; Consolidated Reply Brief – Shoreline IV, at 11. See Shoreline IV, Index #298, amendment introduced May 5, 2010.

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Shoreline points out projected peak hour trips must be reduced by at least 25% to reduce to just one the number of Shoreline intersections projected to operate at LOS Level F as a result of Point Wells development. Accommodating 25% of peak hour trips in van pools would create its own "logistical headache."[263] If at least 25% of trips cannot be diverted, LOS fails at additional intersections in Shoreline. [264]

The Board previously ruled the van-pool and half-mile amendments were within the scope of prior public discussion and thus did not require re-noticing although introduced and passed after the close of public comment.[265] The Board notes that an earlier proposal from Paramount of Washington offered a permanent van pool or shuttle service as a transit solution to link Point Wells to high-capacity transit and ferry service in Edmonds.[266] While this earlier proposal affirms the Board's finding that van pools were within the scope of prior discussion, it also underscores the need for environmental analysis of language which, on its face, makes van pools a permanent, not merely interim, substitute for high-capacity transit access. At the same time, the County may determine whether doubling the walking distance to transit from one-quarter mile to one-half mile is likely to significantly decrease use of public transit.

Conclusion

The Board concludes that the DNS for Ordinance Nos. 09-079 and 09-080 rests on an inadequate EIS and therefore is legally inadequate. The Board further finds that Shoreline has carried its burden of proof in demonstrating an addendum or supplemental EIS was required to take into consideration Shoreline's Traffic and Safety Study and the amendments to SCC 30.34A.085.

VII. CONCLUSION OF LEGAL ISSUES

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[263] Consolidated Prehearing Brief Shoreline IV, at 7. The Board notes Shoreline's calculations jump unaccountably from 25% of peak trips to 25% of total population.
[264] Shoreline III, Index #180.
[265] Order on Dispositive Motions, at 20-22.
[266] Shoreline III, Index #17. June 27, 2006 Docketing Proposal and SEPA Checklist.

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Ordinance Nos. 09-038 and 09-051amended the Snohomish County comprehensive plan and FLUM to designate Point Wells an Urban Center. The Board concludes the action is clearly erroneous in three respects:

- The designation was inconsistent with County comprehensive plan provisions concerning Urban Centers and thus non-compliant with the internal consistency requirements of RCW 36.70A.070 (preamble). [Legal Issue 1]
- Because the action thwarted GMA compliance by the City of Shoreline, the action violated the RCW 36.70A.100 requirement for external consistency. [Legal Issue 4(b)].
- The action was not guided by GMA Planning Goals 1, 3, and 12. [Legal Issue 6 (Goals 1, 3, 12)].

Petitioners abandoned or failed to carry their burden of proof on other legal issues alleging GMA violations for Ordinance Nos. 09-038 and 09-051: Legal Issue 2, Legal Issue 4(a) and (c), Legal Issue 5, and Legal Issue 6 (Goals 9 and 11).

Ordinance Nos. 09-079 and 09-080 amended the County's development regulations concerning Urban Centers with specific reference to Point Wells. The Board dismissed all of the Petitioners' allegations of non-compliance with GMA requirements due to abandonment or citation to inapplicable statutory provisions: Legal Issue 1, Legal Issue 3, and Legal Issue 4. The Petitioners carried their burden of showing the ordinances were not guided by GMA Planning Goals 1, 3, and 12, but because the goal violations were not tied to violation of specific statutory requirements, the Board did not reach a finding of GMA non-compliance with respect to Ordinance Nos. 09-079 and 09-080. Petitioners' request for a finding of invalidity is without merit.

The City of Shoreline also raised SEPA challenges. The Board ruled the County's FSEIS for Ordinance Nos. 09-038 and 09-051 failed to comply with RCW 43.21C.030(c)(iii) and remanded for analysis of reasonable alternatives. However, Shoreline failed to carry its

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burden of demonstrating violation of the SEPA requirements with respect to identification of responsible agency or mitigation measures.

As to the challenge to the DNS for Ordinance Nos. 09-079 and 09-080, the Board ruled that because the DNS is predicated on the FSEIS for the comprehensive plan amendments, which has been remanded as inadequate, the DNS is also inadequate. The Board further found certain new information and changes to the proposal required addenda to the DNS pursuant to WAC 197-11-600(3).

The Board remands all four ordinances to the County to take legislative action to achieve compliance with the GMA and SEPA as set forth in this order. RCW 36.70A.300(3)(b) requires the Board to set a time for compliance "not in excess of one hundred eighty days, or such longer period as determined by the board in cases of unusual scope or complexity." The Board finds the present case presents unusual complexity, as compliance is likely to require negotiation of interlocal agreements and commitments from regional transportation and other service providers, in addition to revision of SEPA analysis. The Board therefore sets a one-year compliance schedule. If the County acts to bring its plan into compliance with the GMA prior to the compliance deadline, RCW 36.70A.330(1) provides that it may by motion request an earlier hearing.

VIII. INVALIDITY[267]

RCW 36.70A.302(1) empowers the Board to invalidate a comprehensive plan amendment which is found to be inconsistent with the GMA, where the Board "includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter."

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[267] As indicated above, the Petitioners have not met their burden of proving Ordinance Nos. 09-079 and 09-080 violate GMA requirements. Therefore the Board only addresses the question of invalidity with respect to Ordinance Nos. 09-038 and 09-051.

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The Board found that Snohomish County's adoption of Ordinance Nos. 09-038 and 09-051 was **clearly erroneous** as it violates the internal consistency requirements of RCW 36.70A.070 (preamble) and the external consistency requirements of RCW 36.70A.100. The noncompliant Ordinances are **remanded** to the County in this Order. The Board also found that the County's action was **not guided by** GMA Goals 1, 3, and 12, which provide:

> 1.Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
>
> 3.Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
>
> 12.Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

GMA Goals 1, 3, and 12 are linked in their call for coordinated planning that ensures urban growth is efficiently served by multimodal transportation and other urban services. In *Fallgatter V and VIII*,[268] the Board explained the interdependence of these goals:

> The Growth Management Act, from its inception, was built around the concept of coordinating urban growth with availability of urban infrastructure. Determining that "uncoordinated and unplanned growth" posed a threat to the state and its citizens [RCW 36.70A.010], the Legislature created a framework that requires consistency between urban land use planning and coordinated provision of capital facilities and urban infrastructure. *See, e.g.*, RCW 36.70A.070(3), .110(3). The "urban growth" and "public facilities" goals used to guide local comprehensive plans are cross-referenced. [RCW 36.70A.020(1), (12)]… The goal of an efficient transportation system, coordinated with local comprehensive plans, is equally interrelated. RCW 36.70A.020(3).

The Board may enter an order of invalidity upon determination that the continued validity of a non-compliant enactment substantially interferes with the fulfillment of the goals of the

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[268] *Fallgatter V v City of Sultan,* CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006), at 11; *Fallgatter VIII v City of Sultan*, CPSGMHB Case No. 06-3-0034, Final Decision and Order (Feb. 13, 2007), at 14-15; see also *KCRP IV v Kitsap County*, CPSGMHB Case No. 06-3-0007, Order Finding Partial Compliance (Mar. 16, 2007), at 16.

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GMA. Based on the facts and conclusions set forth under Legal Issues 1, 4, and 6 above, the Board makes the following Findings of Fact and Conclusions of Law.

In enacting Ordinance Nos. 09-038 and 09-051 Snohomish County designated Point Wells an Urban Center. The Urban Center designation for Point Wells is inconsistent with the County's comprehensive plan policies for Urban Centers, which require ready access to transit, the road system and other urban services. The designation is also inconsistent with City of Shoreline infrastructure capacity, as it would result in traffic on Shoreline roads beyond what can be accommodated in the City's capital facilities plans. Thus the Ordinances violate the internal consistency requirements of RCW 36.70A.070 (preamble) and the external consistency requirements of RCW 36.70A.100.

The designation of Point Wells as an Urban Center interferes with the fulfillment of GMA Goals because the enactment thwarts GMA objectives:

- to accommodate urban growth where urban services can be efficiently provided [Goal 1],
- to encourage an efficient multi-modal transportation system based on regional priorities and consistent with city comprehensive plans [Goal 3], and
- to ensure provision of urban services in urban areas as growth occurs, without decreasing service levels for existing residents [Goal 12].

The Board concludes the continued validity of Ordinance Nos. 09-038 and 09-051 **substantially interferes** with the goals of providing urban development where urban services can be efficiently delivered without decreasing established levels of service [Goals 1 and 12]. The continued validity of the ordinances also **substantially interferes** with the goal of developing "efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans" [Goal 3].

Therefore the Board enters a **determination of invalidity** for Snohomish County Ordinance Nos. 09-038 and 09-051.

IX. ORDER

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Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties and having deliberated on the matter, the Board ORDERS:

Case 09-3-0013c – *City of Shoreline, et al. v Snohomish County (Shoreline III)*

1) Snohomish County's adoption of Ordinance Nos. 09-038 and 09-051 was **clearly erroneous** in the following respects:

- The County's action **does not comply** with the requirements of RCW 36.70A.070 (preamble) and RCW 36.70A.100 (as concerns the City of Shoreline).
- The County was **not guided by** RCW 36.70A.020, Planning Goals 1, 3, and 12.
- The County's SEPA review **did not comply** with RCW 43.21C.030(c)(iii).

2) Concerning Ordinance Nos. 09-038 and 09-051, Petitioners have abandoned or failed to carry the burden of proof in demonstrating failure to comply with:

- RCW 36.70A.070 (3), (6), and (8),
- RCW 36.70A.100 as regards Legal Issue 4(a) Woodway and (c) King County,
- RCW 36.70A.110(3) and (4),
- RCW 36.70A.020(9) and (11), and
- WAC 197-11-440(6) as regards Legal Issue 8(2) and (3).

Legal Issues 2 and 5, and the indicated portions of Legal Issues 4, 6 and 8 are **dismissed.**

3) The Board **remands** Ordinance Nos. 09-038 and 09-051 to Snohomish County to take legislative action to comply with the requirements of the GMA and SEPA as set forth in this Order.

4) The continued validity of Ordinance Nos. 09-038 and 09-051 substantially interferes with the fulfillment of GMA Goals 1, 3, and 12- RCW 36.70A.020(1), (3), (12). Therefore the Board enters a **determination of invalidity** with respect to Ordinance Nos. 09-038 and 09-051.

Case 10-3-0011c – *City of Shoreline, et al. v Snohomish County (Shoreline IV)*

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5) Concerning Ordinance Nos. 09-079 and 09-080, Petitioners have abandoned or failed to carry the burden of proof in demonstrating failure to comply with:

- RCW 36.70A.070 (preamble),
- RCW 36.70A.040(4) and RCW 36.70A.120, and
- RCW 36.70A.100.

Legal Issue 3 and challenges to Ordinance Nos. 09-079 and 09-080 under Legal Issues 1 and 4 are **dismissed.** Challenges to Ordinance Nos. 09-079 and 09-080 under Legal Issue 6 (GMA Goals) are also **dismissed**. Petitioners' request for an order of invalidity is **denied.**

6) The SEPA review for Ordinance Nos. 09-079 and 09-080 is deficient, as set forth in this Order.

7) The Board **remands** Ordinance Nos. 09-079 and 09-080 to Snohomish County to take legislative action to comply with the requirements of SEPA as set forth in this Order.

Combined Compliance Schedule

8) The Board sets the following schedule for the County's compliance:

Item	Date Due
Compliance Due	April 25, 2012
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	May 9, 2012
Objections to a Finding of Compliance	May 23, 2012
Response to Objections	May 30, 2012
Compliance Hearing – Location to be determined	June 6, 2012 10:00 a.m.

DATED this 17th day of May, 2011.

_____
Margaret Pageler, Board Member

_____
David O. Earling, Board Member

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William P. Roehl, Board Member

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Exhibit A

Restated and Coordinated Legal Issues
Shoreline III and Shoreline IV

I. INTERNAL CONSISTENCY

1. Did Snohomish County Ordinances 09-038, 09-051, 09-079, and 09-080 (collectively, the "Ordinances") fail to comply with RCW 36.70A.070, because they are internally inconsistent with Snohomish County GMACP/GPP, Goal LU 2, Policy LU 3.A.2, Policy LU 3.A.3, Glossary Appendix E, LU Policy 3.B.1 – 2, and provisions in the GMACP/GPP that establish access to high capacity transit as a criterion for designation as an Urban Center?[269] If so, are the Ordinances invalid?

2. **[SHORELINE III]** Did Snohomish County Ordinances 09-038 and 09-051 (collectively, the "Shoreline III Ordinances") fail to comply with RCW 36.70A.070 (preamble), (3), (6) and (8) as they apply to Point Wells, because they are not consistent with the GMACP elements related to capital facilities, transportation, parks/open space, and recreational facilities?[270] If so, are the Ordinances invalid?

3. **[SHORELINE IV]** Did Snohomish County Ordinances 09-079 and 09-080 (collectively, the "Shoreline IV Ordinances") violate RCW 36.70A.040(4) and RCW 36.70A.120 by adopting development regulations that were inconsistent with and failed to implement Snohomish County GMACP provisions in the "Centers" section of the LU Urban Center Chapter, LU Policy 3.A.3, FLUM Center Designation "Urban Center," and Glossary Appendix E, by designating Point Wells as an Urban Center zone where the location of Point Wells is not in proximity to existing or planned high capacity transit routes, transportation corridors, or public transportation stations?[271]

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[269] **Shoreline III:** Woodway Petition for Review ("PFR") ¶ 4.1, 4.1.1 – 4.1.4; Shoreline PFR ¶ 3.9; Save Richmond Beach PFR ¶ 17. **Shoreline IV:** Woodway PFR ¶ 4.1, 4.1.1 – 4.1.4.
[270] **Shoreline III:** Shoreline PFR ¶ 3.5, 3.7, 3.9; Save Richmond Beach PFR ¶ 13, 15.
[271] **Shoreline IV:** Shoreline PFR ¶ 3.8; Save Richmond Beach PFR ¶ 3.8.

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II. COORDINATION WITH NEIGHBORING JURISDICTIONS

4. Did the Ordinances fail to comply with RCW 36.70A.100 where:

   a. TOWN OF WOODWAY: Point Wells is located within the Town's MUGA. The Town's Comprehensive Plan shows the property with an Industrial designation. The Ordinances are not coordinated or consistent with the Town's existing Comprehensive Plan.[272]

   b. CITY OF SHORELINE: The City of Shoreline Comprehensive Plan indicates a Mixed Use development with urban densities. However, the densities proposed in the challenged Ordinances far exceed the contemplation of the Shoreline Comprehensive Plan.[273]

   c. KING COUNTY: The Point Wells designation is not consistent with the transportation element of King County's GMACP. (See King County GMACP, Technical Appendix C, Transportation.)[274]

If so, are the Ordinances invalid?

5. **[SHORELINE III]** Did the Shoreline III Ordinances fail to comply with RCW 36.70A.110(3) and (4) as they apply to Point Wells because they designate urban growth in an area not adequately served by public facilities and services, and did not acknowledge, given the realities of access and proximity, that Shoreline and/or Woodway are the units of local government most appropriate to provide urban services?[275]

III. GMA GOALS

6. Did the Ordinances fail to be guided by RCW 36.70A.010 and RCW 36.70A.020 (1) [compact urban development], (3) [transportation], (9) [parks], (11) [coordination with

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[272] S**horeline III:** Woodway PFR ¶ 4.2, 4.2.1; Save Richmond Beach PFR ¶ 9. **Shoreline IV:** Woodway PFR ¶ 4.2, 4.2.1.
[273] S**horeline III:** Woodway PFR ¶ 4.2, 4.2.2; Save Richmond Beach PFR ¶ 8; Shoreline PFR 3.1. **Shoreline IV:** Woodway PFR ¶ 4.2, 4.2.2.
[274] **Shoreline III:** Save Richmond Beach PFR ¶ 10.
[275] **Shoreline III:** Shoreline PFR ¶ 3.4, 3.6; Save Richmond Beach PFR ¶ 12, 14.

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neighboring jurisdictions], and (12) [provision of capital facilities and services]?[276] If so, are the ordinances invalid?

IV. PUBLIC NOTICE

7. Did the Ordinances fail to be guided by RCW 36.70A.020(11) and fail to comply with RCW 36.70A.140 and RCW 36.70A.035 where Snohomish County introduced and adopted new substantive amendments to the Ordinances at the end of the public comment period or after the public comment had period had closed, without providing further public notice or an opportunity to provide comment?[277] If so, are the ordinances invalid?

V. SEPA

8. Did Snohomish County fail to comply with SEPA where the SEIS prepared for the project: 1) considered only the "do nothing" and high-density "Urban Center" alternatives;[278] 2) failed to identify the specific units of local government that would provide essential services to an Urban Center at Point Wells;[279] 3) failed to address the significant probable adverse impacts and required mitigation for existing essential services in Shoreline, including emergency services, transportation, and parks;[280] and 4) failed to address how greenhouse gas emissions and climate change impacts from an Urban Center at Point Wells would be mitigated?[281]

9. **[SHORELINE IV]** Was the County's SEPA review process inconsistent with its Comprehensive Plan policies and in violation of RCW 36.70A.140, .040(4) and .120 in that the County adopted a SEPA review process for the Urban Center zoning district for Point

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[276] **Shoreline III:** Woodway PFR ¶ 4.3 [RCW 36.70A.020(1), (3), (11), (12)]; Shoreline PFR ¶ 3.2 [36.70A.010, 36.70A.020(3), (11)], 3.3 [36.70A.020(12)], 3.7 [36.70A.020(9)], 3.8 [36.70A.020(3)]; Save Richmond Beach PFR ¶ 7 [36.70A.010, 36.70A.020(3), (11)], 11 [36.70A.020(12)], 13 [36.70A.020(9)]. **Shoreline IV:** Woodway PFR ¶ 4.3 [RCW 36.70A.020(1), (3), (11), (12)]; Shoreline PFR ¶ 3.1 [36.70A.010, 36.70A.020(3), (11)], 3.2 [36.70A.020(12)], 3.3 [36.70A.020(9)], 3.4 [36.70A.020(3)]; Save Richmond Beach PFR ¶ 3.1 [36.70A.010, 36.70A.020(3), (11)], 3.2 [36.70A.020(12)], 3.3 [36.70A.020(9)], 3.4 [36.70A.020(3)].
[277] **Shoreline III**: Save Richmond Beach PFR ¶ 20. **Shoreline IV**: Save Richmond Beach PFR ¶ 3.9.
[278] **Shoreline III:** Shoreline PFR ¶ 3.11; Save Richmond Beach PFR ¶ 18.
[279] **Shoreline III:** Shoreline PFR ¶ 3.12.
[280] **Shoreline III:** Shoreline PFR ¶ 3.13.
[281] **Shoreline III:** Save Richmond Beach PFR ¶ 19.

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Wells without a non-project EIS, an action inconsistent with and failing to implement LU Policy 5.B.12 and in violation of the early and continuous public participation contemplated by requiring the EIS as a planning tool?[282]

10. **[SHORELINE IV]** Did the County fail to comply with SEPA by issuing a DNS that 1) failed to identify the specific units of local government that would provide parks, police, fire and emergency services to an Urban Center at Point Wells; and 2) failed to address probable significant adverse impacts requiring an EIS under RCW 43.21C.030(2)(c) (including inadequate police, fire and emergency medical response to support projected growth, impacts to parks in Shoreline, and implementation of transportation projects in Shoreline to mitigate projected growth without interlocal agreements or development agreements for such projects), and the impacts are different than those addressed in the 2005 GMA Comprehensive Plan Update EIS or the 2009 SEIS for Point Wells? [283]

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[282] **Shoreline IV:** Shoreline PFR ¶ 3.7; Save Richmond Beach PFR ¶ 3.7.
[283] **Shoreline IV:** Shoreline PFR ¶ 3.5, 3.6; Save Richmond Beach PFR ¶ 3.5, 3.6.

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EXHIBIT B

1. Floor area ratios adopted in Ordinance No. 09-079.

Table 30.34A.030(1)
Floor to Area Ratios

	Minimum	Maximum	Maximum w/ bonus 30.34A.030(2)	Maximum w/ bonus 30.34A.030(3)
Non-residential	.5	1.0	1.5	2.5
Residential	.5	1.0	1.5	2.5
Mixed Use	1.0	2.0	3.0	5.0
Ground Floor Retail	.25	2.0	2.25	5.0

2. Floor area ratios proposed in draft ordinance providing base-line assumptions for the DSEIS. *Shoreline IV* Index 71, p. 50.

Table 30.34A.030(1)
Floor to Area Ratios

	Minimum	Maximum	Maximum w/ bonus 30.34A.030(2)	Maximum w/ bonus 30.34A.030(3)
Non-residential	.5	1.0	1.5	2.5
Residential	1.0	2.0	3.0	4.0
Mixed Use	1.5	3.0	4.5	6.5

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