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SHORELINE CITY ATTORNEY

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)

ORDER FINDING COMPLIANCE

[Re: Ordinance Nos. 12-068 and 12-069]

AND RESCINDING INVALIDITY

I. PROCEDURAL BACKGROUND

This matter came before the Board for a Compliance Hearing on December 6, 2012 following submittal of Snohomish County's Statement of Actions Taken to Comply with Final Decision and Order (SATC), filed November 7, 2012. The County states its adoption of Amended Ordinance Nos. 12-068 and 12-069 (Compliance Ordinances) brings the County into compliance with respect to the GMA and SEPA violations identified in the Final Decision and Order (FDO) issued by the Board on April 25, 2011.¹

¹ A Corrected Final Decision and Order, issued May 17, 2011, made clerical corrections.

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COUNTY OF SNOHOMISH

1 The Compliance Hearing was held telephonically and was attended by Board members
2 Margaret Pageler, William Roehl, and Cheryl Pflug, with Ms. Pageler presiding. Snohomish
3 County was represented by Deputy Prosecuting Attorneys John Moffat, Martin Rollins, and
4 Matthew Otten. Petitioner City of Shoreline was represented by its attorney Flannery
5 Collins.² Zachary Hiatt appeared for Petitioners Save Richmond Beach. Intervenor BSRE
6 Point Wells was represented by its attorney Gary Huff. Court reporting services were
7 provided by Liz Harvey of Buell Realtime Reporting, LLC.
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10 In hearing the matter, the Board also had before it:

- 11 • Snohomish County's Index to the Compliance Record, filed November 7, 2012,
- 12 • Petitioner City of Shoreline's Response to Snohomish County's Compliance Actions,
13 filed November 20, 2012,
- 14 • Petitioner Save Richmond Beach's Response to Snohomish County's Compliance
15 Actions, filed November 21, 2012, and
- 16 • Town of Woodway's Response to Snohomish County's Compliance Actions, filed
17 November 28, 2012.
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20 Subsequently the Board received:

- 21 • Errata Sheet to Snohomish County's Statement of Actions Taken to Comply with
22 Final Decision and Order, filed December 7, 2012.
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25 II. FDO CONCLUSIONS OF NONCOMPLIANCE

26 In these coordinated cases, the City of Shoreline, Town of Woodway, and Save Richmond
27 Beach, a neighborhood organization, challenged Snohomish County's amendments of its
28 comprehensive plan – Ordinance Nos. 09-038 and 09-051 – and development regulations –
29 Ordinance Nos. 09-079 and 09-080 – that provided for the redevelopment of Point Wells, an
30 unincorporated urban area.
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32 ² Wayne Tanaka, attorney for the Town of Woodway, did not attend the hearing due to schedule misinformation.

1 The FDO concluded Ordinance Nos. 09-038 and 09-051 did not comply with the GMA,
2 stating:³

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

10 The FDO concluded the County's actions did not comply with SEPA, as follows:⁴

11 The Board remanded the County's FSEIS for Ordinance Nos. 09-038 and 09-
12 051 for analysis of reasonable alternatives [as required by RCW
13 43.21C.030(c)(iii)]. As to the DNS for Ordinance Nos. 09-079 and 09-080, the
14 Board ruled that because the DNS is predicated on an inadequate FSEIS, the
15 DNS is also inadequate. The Board further found certain new information and
16 changes to the proposal required addenda to the DNS [per WAC 197-11-
600(3)].

17 In making a determination of Invalidity for Ordinance Nos. 09-038 and 09-051 the FDO
18 stated:⁵

19 The Board concludes the continued validity of Ordinance Nos. 09-038 and 09-
20 051 **substantially interferes** with the goals of providing urban development
21 where urban services can be efficiently delivered without decreasing
22 established levels of service [Goals 1 and 12]. The continued validity of the
23 ordinances also **substantially interferes** with the goal of developing "efficient
24 multimodal transportation systems that are based on regional priorities and
25 coordinated with county and city comprehensive plans" [Goal 3]. Therefore
26 the Board enters a **determination of invalidity** for Snohomish County
Ordinance Nos. 09-038 and 09-051.

27 III. STANDARD AND SCOPE OF REVIEW

28 On remand from a finding of noncompliance, the County is required to come into
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32 ³ FDO at 70.

⁴ FDO, at 2.

⁵ FDO, at 73.

1 compliance with the GMA.⁶ The burden is on the petitioners to show that the action taken
2 by the County is not in compliance with the Board's order on issues where no determination
3 of invalidity was entered.⁷ Where invalidity has been imposed, the County is required to
4 show that the ordinances it has enacted in response to the determination of invalidity will no
5 longer substantially interfere with the fulfillment of the goals of the GMA.⁸ If the County's
6 actions no longer substantially interfere with the fulfillment of the goals of the GMA, the
7 determination of invalidity should be lifted.
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10 Issues not within the nature, scope and statutory basis of the conclusions of noncompliance
11 in the FDO will not be addressed in the compliance hearing, but require the filing of a new
12 petition for review.⁹ The County's obligation on remand is to adopt ordinances to come into
13 compliance with the GMA; it may achieve compliance through means other than those
14 discussed in the FDO.¹⁰
15

16 IV. BOARD DISCUSSION AND ANALYSIS

17 Compliance with SEPA

18 The FDO determined the FSEIS violated RCW 43.21C.030(c)(iii) by providing only
19 "bookend" analysis of the Urban Center redevelopment proposal for Point Wells. Citing
20 cases requiring that an EIS "must provide sufficient information to allow officials to make a
21 reasoned choice among alternatives,"¹¹ the Board found the FSEIS provided the County
22 Council "no information about thresholds at which a reduced intensity or different balancing
23 of land uses would ... impose other lesser impacts,"¹² even though a number of plans for
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28 ⁶ RCW 36.70A.300(3)(b).

⁷ RCW 36.70A.320(2); WAC 242-03-940(3).

⁸ RCW 36.70A.320(4); WAC 242-03-940(3).

⁹ WAC 242-03-940(5).

¹⁰ *Screen, et al. v. Kitsap County*, CPSGMHB No. 99-3-0012c, Final Decision and Order (November 22, 1999)
29 (combined with Order on Compliance in coordinated case of *Alpine, et al. v. Kitsap County*, CPSGMHB No.
30 98-3-0032c) at 6.

¹¹ *Kiewit Construction Grp v. Clark County*, 83 Wn.App. 133, 139-140, 920 P.2d 1207 (1996) (citing *Klickitat
31 County Citizens*, 122 Wn.2d at 633, and *SWAP v. Okanogan County*, 66 Wn.App. 439, 442 (1992).

¹² FDO, at 58.
32

1 Point Wells redevelopment at various intensities had been proposed over the years.¹³

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3 On remand, the County prepared an Addendum to the FSEIS (FSEIS Addendum) providing
4 additional analysis of a non-project alternative at lower development intensity resulting in
5 different or lesser environmental impacts.¹⁴ With this mid-range alternative, the intensity of
6 development as an Urban Village has been reduced compared to the level of development
7 associated with the development of an Urban Center at Point Wells.¹⁵ Specifically, the mix
8 of development in the mid-range alternative includes approximately 1,800 housing units,
9 20,000 square feet of retail space, and about 115,000 square feet of office space.¹⁶ This
10 mix of development reduces the number of vehicle trips generated to 8,251, compared with
11 the 12,614 of the Proposed Action.¹⁷

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14 The Board finds and concludes the FSEIS Addendum analysis of a mid-range alternative
15 satisfies the requirements of RCW 43.21C.030(c)(iii), providing the County Council with
16 information needed to determine whether Point Wells redevelopment might be achieved
17 with different or lesser environmental impacts.

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19 The FDO also determined the County violated SEPA rules at WAC 197-11-600(3) by not
20 providing SEIS addenda analyzing (a) the Shoreline Traffic and Safety Analysis for Point
21 Wells (2009) and (b) late-added amendments to code section SCC 30.34A.085 concerning
22 transit access. The FSEIS Addendum transportation analysis incorporates and takes into
23 consideration information from the Shoreline Traffic Study.¹⁸ SCC 30.34A.085 has been
24 repealed in its entirety, making that objection moot.

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27 The Board finds and concludes the County's issuance of the FSEIS Addendum brings it into
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30 ¹³ See proposals cited in FDO, at 57, fn. 206.

31 ¹⁴ Index #42, Addendum No. 1 to the Final Supplemental Environmental Impact Statement for "Final Docket
XIII Amendments to the GMA Comprehensive Plan – Paramount of Washington, LLC" (August 27, 2012)

32 ¹⁵ *Id.*, Section 3.1.3.

¹⁶ *Id.*

¹⁷ *Id.*, Section 4.11.3.

¹⁸ *Id.*, Section 2.2.3 and 4.11.3.

1 compliance with SEPA with respect to the deficiencies identified in the FDO.

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3 Compliance with GMA

4 The FDO found designation of Point Wells as an Urban Center was inconsistent with Urban
5 Centers criteria in the Comprehensive Plan, violating RCW 36.70A.070 (preamble). The
6 FDO also found that allowing Point Wells to develop as an Urban Center would permit an
7 intensity of development causing the City of Shoreline's capital facilities plan to be
8 noncompliant; this violated RCW 36.70A.100, which calls for interjurisdictional consistency.
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10 The Compliance Ordinances amend the County's Urban Center policies, deleting reference
11 to Point Wells as an Urban Center and reversing some of the amendments previously made
12 in order to fit Point Wells into the Urban Centers designation.¹⁹ The Centers Section of the
13 Land Use element of the Comprehensive Plan is amended by adding Point Wells as an
14 Urban Village and modifying Urban Village policies to provide flexibility to accommodate the
15 Point Wells designation. The County's Future Land Use Map (FLUM) and zoning map
16 designations for the Point Wells property are changed to Urban Village and Planned
17 Business Community, respectively. Two new definitions are added to the glossary:
18 "Centers" and "Local Transit Services."²⁰ The Board finds these amendments together
19 resolve the internal inconsistency identified in the FDO and comply with RCW 36.70A.070
20 (preamble).
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24 The Compliance Ordinances further amend the Urban Village policies to ensure need for
25 services to an Urban Village doesn't thwart the adopted plans of service-provider
26 jurisdictions in violation of RCW 36.70A.100. Amended Policy LU 3.C.5 requires that
27 provision of needed public services provided by entities other than the County must be
28 incorporated in the Capital Facilities Plans of the service providers.²¹ New Policy LU 3.C.7,
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32 ¹⁹ Point Wells lacks the access to high-capacity transit services that is at the core of the County's Urban
Centers policies. See FDO, at 15-21, 45-47.

²⁰ County SATC, at 70; Index #198, Section 8, pp. 5 and 26.

²¹ Index # 198, p. 14, Policy LU 3.C.5.

1 which is specific to the Urban Village at Point Wells, requires the property owner to
2 negotiate binding agreements with entities responsible for providing necessary services,
3 utilities or infrastructure and to limit the intensity of use to be consistent with the level of
4 service standards adopted by the providing entity.²² The same requirement is repeated in
5 the newly-adopted development regulations – SCC 30.31A.115(9). The Board finds these
6 provisions comply with the RCW 36.70A.100 requirement for consistency and coordination
7 with the plans of adjacent jurisdictions.
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10 The Compliance Ordinances amend and clarify the transit requirements for Urban Villages
11 and for the Point Wells re-development in particular. Amended Policy LU 3.C.2, new Policy
12 LU 3.C.7, and the Glossary addition of a definition for “local transit service” together provide
13 the framework for designing local transit solutions that maximize access to higher-frequency
14 corridors. Rather than trying to make the Point Wells proposal fit the “high-capacity transit”
15 criteria, the Plan language now stresses access to “local bus service or customized
16 transit.”²³
17

18 The Board finds these amendments, taken together, demonstrate that the County’s action
19 no longer interferes with the fulfillment of GMA Goals 1, 3, and 12.²⁴
20

- 21 • GMA Goal 1 (Urban Growth): “Encourage development in urban areas where
22 adequate public facilities and services exist or can be provided in an efficient
23 manner.”
- 24 • GMA Goal 3 (Transportation): “Encourage efficient multimodal transportation
25 systems that are . . . coordinated with county and city comprehensive plans.”
- 26 • GMA Goal 12 (Public Facilities and Services): “Ensure that those public
27 facilities and services necessary to support development shall be adequate to
28 serve the development at the time the development is available for occupancy
and use without decreasing current service levels below locally established
minimum standards.”

29 Rescission of Invalidity
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32 ²² *Id.* pp. 14-15, Policy LU 3.C.7.

²³ *Id.* pp. 14-15, Policy LU 3.C.7.

²⁴ RCW 36.70A.020(1), (2), (12).

1 RCW 36.70A.320(4) provides:

2 A county or city subject to a determination of invalidity made under RCW
3 36.70A.300 or RCW 36.70A.302 has the burden of demonstrating that the
4 ordinance or resolution it has enacted in response to the determination of
5 invalidity will no longer substantially interfere with the fulfillment of the goals of
6 the GMA.

7 The County's SATC and its argument at the Compliance Hearing demonstrate that the
8 Compliance Ordinances effectively address the deficiencies identified in the FDO. The
9 Board finds the County's Comprehensive Plan and regulatory provisions for redevelopment
10 at Point Wells no longer frustrate Goals 1, 3, and 12. The determination of invalidity is
11 **rescinded**.

12
13 **V. ORDER**

14 The Board, having reviewed the submittals of the parties, having heard oral argument, and
15 having deliberated on the matter, hereby ORDERS:

- 16 1) By adopting Amended Ordinance Nos. 12-068 and 12-069 Snohomish County has
17 complied with the GMA and SEPA by curing the violations cited in the April 25, 2011
18 Final Decision and Order. The Board **finds compliance** re: Ordinance Nos. 12-068
19 and 12-069.
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21 2) The determination of invalidity is **rescinded**.
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23 3) Coordinated Case Nos. 09-3-0013c and 10-3-0011c are **closed**.

24 DATED this 20th day of December, 2012.

25 
26 _____
27 Margaret Pageler, Presiding Officer

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29 _____
30 William Roehl, Board Member

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32 _____
Cheryl Pflug, Board Member

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2 **Note: This is a final decision and order of the Growth Management Hearings Board**
3 **issued pursuant to RCW 36.70A.300.²⁵**
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30 ²⁵ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), -840.

32 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.

It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth
Management Hearings Board is not authorized to provide legal advice.

